

1 KAMALA D. HARRIS
Attorney General of California
2 W. DEAN FREEMAN
FELIX E. LEATHERWOOD
3 Supervising Deputy Attorneys General
LISA W. CHAO, SBN 198536
4 Deputy Attorney General
300 South Spring Street, Room 1702
5 Los Angeles, California 90013
Telephone: (213) 897-2481
6 Fax: (213) 897-5775

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Superior Court Of California
County Of Los Angeles

SEP 15 2011

John A. Clarke, Executive Officer/Clerk
By: Robin Sanchez, Deputy

7 *Attorneys for Applicant Insurance Commissioner*
of the State of California, in his capacity as the
8 *Liquidator of Fremont Indemnity Company*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

11
12 INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

CASE NO. BS083582

13 Applicant,

[Assigned for All Purposes to
the Honorable William Highberger

14 v.

15 FREMONT INDEMNITY COMPANY,

**SEVENTH VERIFIED APPLICATION
FOR ORDER APPROVING
LIQUIDATOR'S PROPOSAL TO
DISBURSE ASSETS TO STATE
INSURANCE GUARANTEE
ASSOCIATIONS OR FUNDS [INS. CODE
§ 1035.5]; MEMORANDUM OF POINTS
& AUTHORITIES IN SUPPORT
THEREOF**

16 Respondent.
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Date: October 17, 2011
Time: 2:00 p.m.
Dept.: CCW-307
Judge: Hon. William Highberger

I.

INTRODUCTION

Pursuant to California Insurance Code section 1035.5, the Insurance Commissioner of the State of California, in his capacity as the Liquidator ("Liquidator") of Fremont Indemnity Company ("Fremont"), seeks the Court's approval of his proposal to disburse a portion of the Fremont liquidation estate's assets to the California Insurance Guaranty Association ("CIGA") and to insurance guaranty associations that perform similar functions in the other states in which Fremont conducted its workers' compensation business (collectively, the "IGAs"). The Liquidator proposes to disburse approximately \$42 million, to the IGAs in accordance with their estimated reported losses through December 31, 2010, as specified in the distribution schedule attached to the application as Exhibit A.

II.

VERIFIED APPLICATION

Applicant, the Insurance Commissioner of the State of California, in his capacity as Liquidator of Fremont Indemnity Company states as follows:

1. On June 4, 2003, the Los Angeles County Superior Court ordered and appointed the Commissioner to serve as Conservator of Fremont.
2. On July 2, 2003, the same court found that Fremont was insolvent and, on that basis, terminated the Commissioner's status as Conservator and appointed the Commissioner to serve as the Liquidator of Fremont. The entry of the Liquidation Order triggered the duty of the IGAs to pay all covered policyholder claims in accordance with the IGAs' respective statutes.
3. California Insurance Code section 1035.5 provides in relevant portion that:
"Notwithstanding the provisions of Article 14 (commencing with Section 1010), with regard only to those insurers subject to this article:
 "(a) Within 120 days of the issuance of an order directing the winding up and liquidation of the business of an insolvent insurer under Section 1016, the commissioner shall make application to the court for approval of a proposal to

1 disburse the insurer's assets, from time to time as such assets become available, to
2 the California Insurance Guarantee Association, or the California Life and Health
3 Insurance Guarantee Association, and to any entity or person performing a similar
4 function in another state.

5 “(b) The proposal shall at least include the following provisions for:

6 “(1) Reserving amounts for the payment of expenses of administration and
7 the payment of claims of secured creditors (to the extent of the value of the
8 security held) and claims falling within the priorities established in paragraphs (1)
9 to (4), inclusive, of subdivision (a) of Section 1033.

10 “(2) Disbursement of the assets marshaled to date and subsequent
11 disbursements of assets as they become available.

12 “(3) Equitable allocation of disbursements to each of the associations
13 entitled thereto.

14 “(4) The securing by the commissioner from each of the associations
15 entitled to disbursements pursuant to this section of an agreement to return to the
16 commissioner such assets previously disbursed as may be required to pay claims
17 of secured creditors and claims falling within the priorities established in
18 paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1033 in accordance
19 with the priorities. No bond shall be required of any association.

20 “(5) A full report to be made by the association to the commissioner
21 accounting for all assets so disbursed to the association, all disbursements made
22 therefrom, any interest earned by the association on the assets, and any other
23 matter as the court may direct.

24 “(c) The commissioner's proposal shall provide for disbursements to the
25 associations in amounts estimated at least equal to the claim payments made or to
26 be made by the associations for which such associations could assert a claim
27 against the commissioner, and shall further provide that if the assets available for
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1 disbursement from time to time do not equal or exceed the amount of the claim
2 payments made or to be made by the associations, then disbursements shall be in
3 the amount of available assets. The reserves of the insolvent insurer on the date of
4 the order of liquidation shall be used for purposes of determining the pro rata
5 allocation of funds among eligible associations.

6 “(d) The commissioner shall offset the amount disbursed to any entity or
7 person performing a function in any other state similar to that function performed
8 by the California Insurance Guarantee Association, or the California Life and
9 Health Insurance Guarantee Association, by the amount of any statutory deposit,
10 premiums, or any other asset of the insolvent insurer held in that state.

11 “(e) Notice of such application shall be given to the associations in and to
12 the commissioners of insurance of each of the states. Any such notice shall be
13 deemed to have been given when deposited in the United States certified mails,
14 first-class postage prepaid, at least 30 days prior to submission of such application
15 to the court. Action on the application may be taken by the court provided the
16 above required notice has been given and provided further that the commissioner's
17 proposal complies with paragraphs (1) and (4) of subdivision (b).”

18 19 **PLAN APPROVAL AND PRIOR DISTRIBUTION**

20 4. On December 3, 2004, the Court approved the plan proposed by the Liquidator for
21 the early distribution of Fremont's assets to the IGAs as required under Insurance Code section
22 1035.5 (the “Plan”). Pursuant to the Plan, each IGA will receive an early access distribution
23 equal to a percentage of an amount based on the ratio of the IGA's paid losses (which includes
24 the amount of paid “allocated loss adjustment expense,” or ALAE, on specific claims) to the total
25 of all IGAs' paid losses (including ALAE). Statutory deposits will be netted from each IGA's
26 share to ensure that the allocation of the early access distribution remains equitably proportionate
27 to each IGA's respective share of Fremont's aggregate claim payment liability. Under the Plan,
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1 the Liquidator also agreed to maintain a \$60 million reserve, subject to periodic adjustment, to
2 cover items listed in Insurance Code section 1035.5(b)(1) (the "Reserve").

3 5. The Court further approved the first distribution by the Liquidator from Fremont's
4 assets to the IGAs for claim payment activity reported by the IGAs from July 2, 2003, through
5 June 30, 2004. On December 14, 2004, the Liquidator disbursed Fremont's assets in the
6 aggregate amount of \$49,224,224 to the IGAs based on claim losses reported to the Liquidator,
7 after offsetting statutory deposits and other assets that were turned over to the IGAs upon
8 Fremont's insolvency.

9 6. On July 7, 2005, the Court approved a second distribution of Fremont's assets to
10 the IGAs for claim payment activity reported by the IGAs from July 1, 2004, through December
11 31, 2004. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets in the
12 aggregate amount of \$36,934,280 to the IGAs based on claim losses reported to the Liquidator,
13 after offsetting statutory deposits and other assets that were turned over to the IGAs upon
14 Fremont's insolvency.

15 7. On June 11, 2006, the Court approved a third distribution of Fremont's assets to
16 the IGAs for claim payment activity reported by the IGAs from July 1, 2005, through December
17 31, 2005. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets in the
18 aggregate amount of \$168,063,039 to the IGAs based on claim losses reported to the Liquidator,
19 after offsetting statutory deposits and other assets that were turned over to the IGAs upon
20 Fremont's insolvency.

21 8. On August 3, 2007, the Court approved a fourth distribution of Fremont's assets to
22 the IGAs for claim payment activity reported by the IGAs from July 1, 2006, through December
23 31, 2006. Pursuant to the Court's approval, the Liquidator disbursed Fremont's assets in the
24 aggregate amount of \$144,007,213 to the IGAs based on claim losses reported to the Liquidator,
25 after offsetting statutory deposits and other assets that were turned over to the IGAs upon
26 Fremont's insolvency.

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1 estate from the consolidated taxpayer group. Taking into account a variety of factors regarding
2 the estate, including the completion of the tax deconsolidation plan, the need to avoid over-
3 distributions to certain IGAs, and the need to reserve adequate funds to eventually make an
4 interim distribution to policyholders and other creditors of the estate that are not covered by the
5 IGAs but that nonetheless fall within the policyholder priority class under Insurance Code section
6 1033(a)(2) (the "Uncovered Claims"), the Liquidator has now determined to make a seventh
7 Early Access Distribution of approximately \$42 million, and to thereafter reserve the balance of
8 the estate's assets consistent with the requirements of Insurance Code section 1035.5(b)(1).

9 13. In the prior Early Access Distributions discussed above, the IGAs were reimbursed
10 for all paid claims and related expenses at percentages between 85-100%. However, several
11 years ago the Liquidator settled all major litigation involving this estate. In addition, the
12 Liquidator has continued to administer and monitor the adjustment of Uncovered Claims that will
13 eventually share in future distributions *pari passu* with the IGAs. Based on these settlements and
14 developments in adjusting and estimating the amount of the estate's potential liability on
15 Uncovered Claims, the Liquidator determined that the estimated final distribution to Class 2
16 participants, including both IGAs and Uncovered Claims, will be in the range of 40-50%. This
17 analysis caused the Liquidator to change the method used to make early access distributions to
18 participating "Insurance Guaranty Associations." Effective as of the 2009 Early Access
19 Distribution, the Liquidator established a cap on such distributions of 38% of each IGA's total
20 incurred losses. Consistent with the 2009 protocol, if an IGA's distributions exceed the 38% cap,
21 that particular IGA will not participate in further Early Access Distributions. In addition, the
22 Liquidator will not make a distribution to an IGA that will cause its aggregate distributions to
23 exceed its total paid losses to date.

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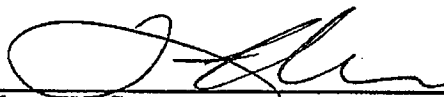
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amount; and

2. Authorizing the Liquidator to take any and all action necessary to accomplish the purposes of the Order prayed for herein.

Dated: September 16, 2011

KAMALA D. HARRIS
Attorney General of California
W. DEAN FREEMAN
FELIX E. LEATHERWOOD
Supervising Deputy Attorneys General



LISA W. CHAO
Deputy Attorney General

*Attorneys for the Insurance Commissioner of the
State of California, in his capacity as Liquidator of
Fremont Indemnity Company*

VERIFICATION

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I, Scott D. Pearce, state that I am a Senior Estate Trust Officer with the California Insurance Commissioner's Conservation and Liquidation Office and have overall responsibility for the liquidation of Fremont Indemnity Company. I have read the SEVENTH VERIFIED APPLICATION FOR ORDER APPROVING LIQUIDATOR'S PROPOSAL TO DISBURSE ASSETS TO STATE INSURANCE GUARANTEE ASSOCIATIONS OR FUNDS; and know the contents thereof. The statements contained therein are not all within my personal knowledge, and I am informed that no single officer of the Conservation and Liquidation Office has personal knowledge of all these matters. The statements are based upon information assembled by employees authorized to maintain and analyze the records of Fremont Indemnity Company in liquidation. I am informed and believe that the statements based upon that information are true. As those matters that are within my own personal knowledge, the statements herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on September 13, 2011.



Scott D. Pearce

1. MEMORANDUM OF POINTS AND AUTHORITIES

2. California Insurance Code section 1035.5 states the procedural requirements regarding the
3. disbursement of an insolvent insurer's assets. The following sets forth the responsibility of the
4. Insurance Commissioner of the State of California, in his capacity as the Liquidator (the
5. "Liquidator") of Fremont Indemnity Company, to apply for the disbursements to the California
6. Insurance Guarantee Association and the Insurance Guarantee Associations in other states
7. (collectively "IGAs"):

8. Within 120 days of the issuance of an order directing the winding up and
9. liquidation of the business of an insolvent insurer under Section 1016, the
10. commissioner shall make application to the court for approval of a proposal to
11. disburse the insurer's assets, from time to time as such assets become available, to
12. the California Insurance Guarantee Association, or the California Life and Health
13. Insurance Guarantee Association, and to any entity or person performing a similar
14. function in another state.

15. (Cal. Ins. Code § 1035.5(a).)

16. California and other states have similar requirements regarding the handling of assets of
17. insolvent insurers that require the equitable distribution of an insolvent insurer's assets among all
18. IGAs. (Cal. Ins. Code § 1033(a); *Commercial Nat'l Bank v. Superior Court (Garamendi)* (1993),
19. 14 Cal.App.4th 393, 398 (finding that claimants within same class are entitled to share pro rata in
20. distribution to class).)

21. As required under Insurance Code section 1035.5(b)(1), the Liquidator has established a
22. reasonable plan to reserve assets to pay secured claims and the higher or ratable priority
23. disbursement required under Insurance Code section 1033(a). Therefore, the Liquidator should
24. be allowed to make his proposed early access distribution of approximately \$42 million to the
25. IGAs.

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1 Based on the foregoing, the Liquidator respectfully requests that the Court grant the
2 application and approve the proposal to disburse assets to state Insurance Guarantee Associations.

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4 Dated: September 16, 2011

KAMALA D. HARRIS
Attorney General of California
W. DEAN FREEMAN
FELIX E. LEATHERWOOD
Supervising Deputy Attorneys General

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Deputy Attorney General

10 *Attorneys for the Insurance Commissioner of the*
11 *State of California, in his capacity as Liquidator of*
12 *Fremont Indemnity Company*

EXHIBIT "A"

Fremont Indemnity Co
Proposed 7th Early Access Distribution to IGAs
September 2011

<u>Insurance Guaranty Association</u>	<u>Proposed Current Distribution</u>
Alabama Insurance Guaranty Association	\$85,686
Alaska Insurance Guaranty Association	809,256
Special Fund of the Industrial Commission of Arizona	1,766,977
California Insurance Guarantee Association	29,234,335
Colorado Insurance Guaranty Association	1,846,124
Connecticut Insurance Guaranty Association	293,294
District of Columbia Guaranty Association	150,835
Idaho Insurance Guaranty Association	147,783
Kentucky Insurance Guaranty Association	649,566
Minnesota Insurance Guaranty Association	27,125
Montana Insurance Guaranty Association	1,681,084
Nevada Insurance Guaranty Association	36,519
New Mexico Property & Casualty Insurance Guaranty Assn.	361,662
Texas Property & Casualty Insurance Guaranty Assn.	1,675,697
Utah Property & Casualty Insurance Guaranty Association	2,130,050
Virginia Property & Casualty Insurance Guaranty Assn.	84,633
Wisconsin Insurance Guaranty Fund	1,053,610
	<u>\$42,034,236</u>