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MAR 12 2014

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

**INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,**

Plaintiff,

v.

**FRONTIER PACIFIC INSURANCE
COMPANY, A California Corporation,**

Defendants.

Case No. GIC 774028

**TWENTY THIRD STATUS
CONFERENCE REPORT**

Date: March 28, 2013
Time: 1:00 P.M.
Dept: 71
Judge: The Honorable Ronald S. Prager
Trial Date: None
Action Filed: September 7, 2001

INTRODUCTION

Frontier Pacific Insurance Company ("Frontier Pacific" or "FPIC"), a California domiciled property and casualty company, was conserved by the Insurance Commissioner ("Commissioner") on September 7, 2001, based on a finding that further transaction of its business would be hazardous to policyholders and creditors pursuant to Insurance Code section 1011. Subsequently, the Commissioner determined that FPIC's financial condition was such that rehabilitation would be

1 futile and the Commissioner's Application for Order Appointing Commissioner as Liquidator and
2 Restraining Orders was granted on November 30, 2001 (the "Liquidation Order"). Prior to the
3 Commissioner's actions, in August 2001, FPIC's parent company, Frontier Insurance Company
4 of New York ("FIC") voluntarily entered rehabilitation under the control of the New York
5 Superintendent of Insurance, acting through the New York Liquidation Bureau ("NYLB"). As a
6 result of FIC's rehabilitation, certain reinsurance recoverables due to FPIC from FIC were not
7 received and could therefore no longer be carried as assets on the books of FPIC. An
8 examination by the California Department of Insurance's Financial Analysis Division found that
9 based on the disallowance of the FIC reinsurance credit in the amount of \$12,842,609, FPIC's
10 surplus as regards policyholders was a negative \$5,289,995.

11 At the time of the initial case management conference in this matter on March 15, 2002, the
12 Court announced its intention to hold semi-annual status conferences in this matter so that the
13 Court could periodically be informed regarding the status of the liquidation of FPIC. For the
14 convenience of the Court, the Liquidator presented the first status report on September 13, 2002,
15 the second on March 24, 2003, the third on February 24, 2004, the fourth on September 30, 2004,
16 the fifth on April 29, 2005, the sixth on January 13, 2006, the seventh on June 9, 2006, the eighth
17 report on January 5, 2006, the ninth report on October 5, 2007, the tenth report on April 16, 2008,
18 the eleventh report on October 17, 2008, the twelfth report on April 17, 2009, the thirteenth report
19 on November 6, 2009, the fourteenth report on March 12, 2010, the fifteenth report on July 16,
20 2010, the sixteenth report on April 15, 2011, the seventeenth report on July 8, 2011, the
21 eighteenth report on October 7, 2011, the nineteenth report on February 24, 2012. the twentieth
22 report on August 31, 2012, the twenty first report on March 1, 2013 and the twenty second report
23 on September 13, 2013. The twenty second status report is hereby incorporated herein by
24 reference.

25 STATUS OF NICO LITIGATION/ARBITRATION

26 As previously noted, the Liquidator instituted an action for declaratory relief against
27 National Indemnity Insurance Company entitled *Steve Poizner, Insurance Commissioner for the*
28 *State of California in his capacity as Liquidator of Frontier Pacific Insurance Company v.*

1 *National Indemnity Company*, San Diego Superior Court, Case No. 37-2008-00080104-CU-MC-
2 CTL. NICO removed the case to the United States District Court for the Southern District of
3 California, where it was assigned Case No. 08 CV 772 L. Upon NICO's application, the court
4 granted its request to stay the proceeding pending completion of arbitration. The last Federal
5 Status Conference was held on November 16, 2011 at which time the case was dismissed, at the
6 joint request of the parties, due to the conclusion of the arbitration between the Liquidator and
7 NICO.

8 As noted in the Reinsurance portion of prior Statements, the Liquidator commenced
9 arbitration with NICO seeking recovery of all amounts due from NICO. On August 12, 2011,
10 the arbitration panel awarded FPIC \$13,039,326.28 (an amount NICO agreed was due) and
11 interest at the rate of 6% simple interest to be paid within 30 days. On August 27, 2011, the
12 arbitration panel awarded interest of \$4,700,000.00 payable no later than September 11, 2011.
13 Pursuant to the terms of the awards, NICO has paid FPIC \$17,739,326.28.

14 The award excluded FPIC's pre-liquidation Unallocated Loss Adjustment Expense
15 (ULAE) claim against NICO, without prejudice to FPIC's pursuit of that claim in a separate
16 proceeding. In June 2012, this Court signed a commission for out of state discovery (deposition
17 and production of documents) in connection with that claim. The Liquidator successfully used
18 the Court's commission to have the New York rehabilitation court for Frontier Insurance
19 Company ("FIC") issue its subpoena for the documents the Liquidator was seeking. The
20 subpoena resulted in an agreement under which the Liquidator obtained, to the extent available,
21 all pertinent records sought. The Liquidator also obtained an affidavit of a pre-liquidation
22 employee of FIC that provides the underlying support for Frontier Pacific's pre-liquidation
23 billings to NICO for ULAE in excess of \$3 million. The affidavit, along with supporting
24 documentation for the pre-liquidation ULAE billing, was forwarded to NICO on January 31,
25 2013. The Liquidator also obtained information from FIC which has allowed the estate to bill
26 other reinsurers. This is an ongoing project.

27 FPIC's post-arbitration billings to NICO continue. Pre-liquidation ULAE and its
28 associated interest, along with post-arbitration billings through June 30, 2012, amount to

1 \$5,559,967.26. Since the pre-liquidation ULAE has been outstanding for nearly 10 years, a
2 significant portion of this billing is for interest. As of December 31, 2012, NICO has made
3 payments on the post-liquidation claims only, totaling \$431,237.00. NICO questions the amounts
4 billed.

5 As noted in the prior status conference statement, NICO refuses to pay FPIC for any part
6 of the pre-liquidation ULAE, so the Liquidator has instituted a second arbitration to recover the
7 unpaid pre-liquidation ULAE balance along with interest. An arbitration panel has been seated
8 and on January 23, 2014 the arbitral organizational meeting was held in New York. Prior to
9 the organizational meeting the parties submitted and exchanged position papers wherein the
10 Liquidator was notified that NICO claimed that in the prior arbitration the award was overstated
11 due to a billing error that included losses not properly ceded, but which NICO claims it did not
12 catch until just recently. This “mistake” in the award by the first arbitration panel resulted in an
13 overpayment by NICO to FPIC of \$6,370,589. NICO intends to seek an offset of this amount
14 against any amounts recovered by FPIC in the pending second arbitration for the unpaid ULAE
15 balance. The Liquidator disputes NICO’s assertion and is filing a motion with the arbitration
16 panel to preclude NICO from relitigating the propriety of the prior arbitration award. The
17 arbitration is scheduled for hearing on Tuesday, January 27th through Thursday, January 29th,
18 2015.

19 The Liquidator determined that Frontier Pacific has excess reinsurance limits under the
20 NICO reinsurance contract which it will not need. Pursuant to Endorsement No. 3 between NICO
21 and FIC, NICO agreed that if FIC and FPIC agree to a reallocation of any excess limit to FIC,
22 NICO will be bound by that determination. The Liquidator believes that it has at least \$17
23 million in excess limit and was negotiating with FIC to transfer the excess limit for valuable
24 consideration. However, FIC entered an agreement with NICO to settle its claims with NICO for
25 \$9 million and leave FPIC with nothing. The motion in New York to set aside this agreement
26 was denied by the court.

27 It is possible if FPIC is paid all ULAE owed, that together with other reinsurance proceeds
28 collected there will be enough assets to honor all policyholder claims and the insurance guaranty

1 association claims in full. The Liquidator will be in a better position to determine when the estate
2 will be projected to close once the issues with NICO are resolved and the bulk of the reinsurance
3 billings are paid.

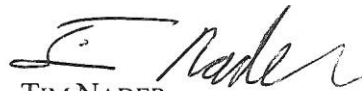
4 **CONCLUSION**

5 Plaintiff requests the Court accept this report and schedule the next status conference.

6 Dated: March 12, 2013

Respectfully Submitted,

7 KAMALA D. HARRIS
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9 DIANE SHAW
10 Supervising Deputy Attorney General
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15 80879338.doc

DECLARATION OF SERVICE BY U.S. MAIL

FILED
Clerk of the Superior Court
MAR 12 2014
By: E. CASTANEDA, Deputy

Case Name: **Insurance Commissioner of the State of California v. Frontier Pacific Insurance Company, a California Corporation**

Case No.: **GIC 774028**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 12, 2014, I served the attached:

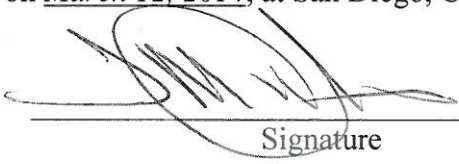
TWENTY THIRD STATUS CONFERENCE REPORT

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 12, 2014, at San Diego, California.

T. Houston
Declarant


Signature

Case Name: **Insurance Commissioner of the State of California v. Frontier Pacific Insurance Company, a California Corporation**

No.: **GIC 774028**

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