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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 SECOND STATUS
CONFERENCE REPORT**

Date: September 13, 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 ("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 futile and the Commissioner's Application for Order Appointing Commissioner as Liquidator and

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

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

23 STATUS OF NICO LITIGATION/ARBITRATION

24 As previously noted, the Liquidator instituted an action for declaratory relief against
25 National Indemnity Insurance Company entitled *Steve Poizner, Insurance Commissioner for the*
26 *State of California in his capacity as Liquidator of Frontier Pacific Insurance Company v.*
27 *National Indemnity Company*, San Diego Superior Court, Case No. 37-2008-00080104-CU-MC-
28 CTL. NICO removed the case to the United States District Court for the Southern District of

1 California, where it was assigned Case No. 08 CV 772 L. Upon NICO's application, the court
2 granted its request to stay the proceeding pending completion of arbitration. The last Federal
3 Status Conference was held on November 16, 2011 at which time the case was dismissed, at the
4 joint request of the parties, due to the arbitration between the Liquidator and NICO.

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

11 The award did not cover FPIC's pre-liquidated Unallocated Loss Adjustment Expenses
12 (ULAE) claims against NICO. In June 2012, this Court signed a commission for out of state
13 discovery (deposition and production of documents) in connection with these claims. The
14 Liquidator successfully used the Court's commission to have the New York rehabilitation court
15 for Frontier Insurance Company issue its subpoena for the documents the Liquidator was seeking.
16 The subpoena resulted in an agreement under which the Liquidator obtained to the extent
17 available all pertinent records sought. We also obtained an affidavit of a pre-liquidation
18 employee of FIC that provides the underlying support for Frontier Pacific's pre-liquidation
19 billings for ULAE in excess of \$3 million. The affidavit along with supporting documentation for
20 the pre-liquidation ULAE was forwarded to NICO on January 31, 2013.

21 FPIC's post-arbitration billings to NICO continue. Pre-liquidation ULAE (excluded from
22 the arbitration award) and its associated interest along with post-arbitration billings through June
23 30, 2012 amount to \$5,559,967.26 (since the ULAE has been outstanding for nearly 10 years a
24 significant portion of this billing is for interest). As of December 31, 2012, NICO has made
25 payments against these claims amounting to \$431,237.00.

26 The Liquidator hoped that with the receipt of the affidavit, NICO would acknowledge that
27 the billing for pre-liquidation ULAE was owed and would honor its contractual obligation and
28 pay the amounts due. Unfortunately NICO refuses to pay FPIC for the pre liquidation ULAE, so

1 the Liquidator has instituted a second round of arbitration to obtain recovery of the unpaid ULAE
2 balance along with interest. It is unlikely this pending arbitration will be concluded this calendar
3 year; as of this writing, the arbitration panel is still being selected.

4 The Liquidator also obtained information which has allowed the estate to bill other
5 reinsurers. This is an ongoing project.

6 The Liquidator determined that Frontier Pacific has excess reinsurance limits under the
7 NICO reinsurance contract which it will not need. Pursuant to Endorsement No. 3 between NICO
8 and Frontier Insurance Company, NICO agreed that if Frontier and FPIC agree to a reallocation
9 of any excess limit to Frontier, NICO will be bound by that determination. The Liquidator
10 believes that it has at least \$17 million in excess limit and was negotiating with Frontier to
11 transfer the excess limit for valuable consideration. However, Frontier entered an agreement with
12 NICO to settle its claims with NICO for \$9 million and leave FPIC with nothing. Our motion in
13 New York to set aside this agreement is pending.

14 It is possible if all ULAE owed is paid and if there is a transfer for consideration of excess
15 reinsurance limits that there will be enough assets to honor all policyholder claims and the
16 insurance guaranty association claims in full.

17 In the event there remain additional assets to pay lower class claims, the Liquidator will
18 have to adjudicate all of the class 7 claims of vendors, suppliers, etc. The Liquidator has
19 refrained from incurring the cost of adjudicating these lower priority claims until it is certain that
20 there will be assets remaining in the estate to make a distribution to these lower priority claims.

21 The Liquidator will be in a better position to determine when the estate will be projected to close

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once the issues with NICO are resolved, the bulk of the reinsurance billings paid, and the disposition of the excess NICO reinsurance limit resolved.

CONCLUSION

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

Dated: August 29, 2013

Respectfully Submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

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

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 August 29, 2013, I served the attached:

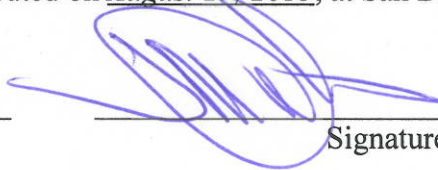
TWENTY SECOND STATUS CONFERENCE REPORT

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 August 29, 2013, at San Diego, California.

TINA M. 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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