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Indemnity Company

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Superior Court of California
County of Los Angeles

JUL 15 2019

Sherri R. Carter, Executive Officer/Clerk
By: Tanya Herrera, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SPRING STREET COURTHOUSE

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

Applicant,

v.

**FREMONT INDEMNITY COMPANY, a
California corporation,**

Respondent.

Case No. BS083582

**LIQUIDATOR'S NOTICE OF
APPLICATION AND APPLICATION
FOR ORDER:**

**(1) SETTling AND APPROVING FINAL
REPORT AND ACCOUNT OF
LIQUIDATOR OF FREMONT
INDEMNITY COMPANY;**

**(2) AUTHORIZING DISBURSEMENT OF
FUNDS;**

**(3) APPROVING PAYMENT OF
EXPENSES; AND**

**(4) TERMINATING LIQUIDATION
PROCEEDING AND DISCHARGING
INSURANCE COMMISSIONER AS
LIQUIDATOR;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: August 16, 2019
Time: 10:00 a.m.
Dept: 10
Judge: The Honorable William F.
Highberger

1
2 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on August 16, 2019, at 10:00 a.m., or as soon thereafter as
4 the matter may be heard in Department 10 of the Superior Court of the State of California, Los
5 Angeles County, Spring Street Courthouse located at 312 N. Spring Street, Los Angeles,
6 California 90012, applicant Insurance Commissioner of the State of California (Commissioner or
7 Liquidator), in his capacity as the Liquidator of Fremont Indemnity Company (Fremont), will and
8 hereby does apply to the Court for an Order (1) Settling and Approving Final Report and Account
9 of Liquidator of Fremont Indemnity Company; (2) Authorizing Disbursement of Funds; (3)
10 Approving Payment of Expenses; and (4) Terminating Proceeding and Discharging the Insurance
11 Commissioner as Liquidator.

12 The application is based on this Notice, the accompanying Memorandum of Points and
13 Authorities in support thereof, the Declarations of Scott Pearce, John Battle and Raymond
14 Minehan, and such additional evidence and argument as may be offered at the time of the hearing
15 on this application.

16
17 Dated: July 15, 2019

Respectfully Submitted,

18 XAVIER BECERRA
19 Attorney General of California

20 

21 LISA W. CHAO
22 Supervising Deputy Attorney General
23 *Attorneys for Applicant Insurance*
24 *Commissioner of the State of California,*
25 *in his capacity as the Liquidator of*
26 *Fremont Indemnity Company*
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INTRODUCTION

Fremont Indemnity Company (Fremont) was one of the largest workers' compensation insurance companies in California and transacted insurance throughout the country. When its financial condition deteriorated in early 2000, the Commissioner permitted Fremont to continue doing business under increased regulatory oversight. Fremont, however, was unable to materially improve its operations, and in 2002, was placed into "discontinued operations" status and ceased writing new and renewal business altogether. In 2003, after the consensual attempt to avoid formal conservation and liquidation had failed, Fremont was placed into statutory conservation. On June 3, 2003, this Court issued an order appointing the Commissioner as conservator.

As conservator, the Commissioner determined that it was futile to conduct the operations of Fremont and applied to this Court for an order of liquidation. On July 2, 2003, this Court issued an order finding Fremont insolvent, terminated the Commissioner's status as conservator and appointed the Commissioner as its liquidator. At the time of liquidation, Fremont's insurance claim liability exceeded \$1.8 billion. Upon the Court's issuance of the liquidation order and finding Fremont insolvent, the Liquidator relinquished all open claims files to the California Insurance Guarantee Association (CIGA) and insurance guaranty associations (collectively, IGAs) in other states in which Fremont transacted insurance.

The Liquidator has essentially completed the administration of the Fremont liquidation. All proofs of claims submitted against the estate have been adjusted or administered; all assets monetized and collected (see discussion of five remaining non-transferable annuities and other proceeds at *infra* pp. 14-15), and all administrative tasks have been or are in the final stages of completion.

The Liquidator is authorized by Insurance Code¹ section 1033, subdivision (a) to make a distribution of estate assets on claims in a statutory insolvency proceeding in accordance with the priorities specified therein. As discussed below, the Liquidator has completed a final determination of all timely filed claims, and all estate assets have been marshaled. The Liquidator now proposes to make a distribution of those assets to claimants on all allowed claims

¹ Unless otherwise noted, all section references will be to the Insurance Code.

1 in accordance with the priority scheme set forth in section 1033, subdivision (a). Specifically, the
2 Liquidator proposes to make a distribution of Fremont’s remaining assets to the following classes
3 of approved claimants: Class 1 (expenses of administration) and Class 2 (policyholder and IGA
4 claims). There is insufficient assets to fully pay Class 2 claims. Thus, the Liquidator is not
5 making any distributions to classes below Class 2.

6 **ROLES OF THE LIQUIDATOR AND THE COURT**

7 Generally, sections 1010 through 1062 govern conservation and liquidation proceedings
8 against insurers domiciled in California.² Under these provisions, the Commissioner has broad
9 authority and discretion to operate, wind down, liquidate, and distribute the assets of an insolvent
10 insurer to ensure the “orderly and equitable distribution of the assets” to those entitled to share in
11 those assets. (*In re Title USA Corp.* (1996) 36 Cal.App.4th 363, 372.)

12 As liquidator, the Commissioner acts as a “trustee for the benefit of all creditors and other
13 persons interested in the estate of the person against whom the proceedings are pending.” (§
14 1057.) The Liquidator is vested with “broad powers” to conduct the liquidation process in the
15 manner that he determines to be in the best interests of policyholders and creditors. (*Commercial*
16 *Nat. Bank v. Superior Court* (1993) 14 Cal.App.4th 393, 402.)

17 The Court also plays a vital role in the process. In addition to assisting the Liquidator in
18 enforcing the various injunctions set forth in the Liquidation Order (which injunctions were
19 specifically authorized by the Insurance Code), the Court acts as the arbiter of disputed claims (§
20 1032) and approves the compensation of deputies, clerks and assistants (§ 1035), the
21 compensation of outside counsel employed to assist in the liquidation (§ 1036), compromises of
22 any claims by or against the insurance company (§ 1037, subd. (c)), the acquisition or disposition
23 of certain property (§ 1037, subd. (d)), and larger investment transactions (§ 1037, subd. (g)).

24 ///

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26 ///

27 ² There are additional provisions governing conservation and liquidation proceedings
28 elsewhere in the Insurance Code. For example, California has adopted the Uniform Insurers
Rehabilitation Act for insurers domiciled in other states. (Ins. Code, §§ 1064.1-1064.12.)

LIQUIDATOR'S FINAL REPORT AND ACCOUNTING

I. LIQUIDATOR'S REPORT ON ACTIVITIES

The Liquidator has completed, or is in the final stages of completing, all administrative tasks in connection with the liquidation of Fremont. Throughout 16 years of liquidation, the Liquidator has performed numerous tasks included shutting down the insurance operations, closing the home and branch offices, continuing long-tail reinsurance billing to conclusion or commutation, completed a comprehensive collection operation, and thereby releasing over \$1 billion in assets to the IGA claimants.

A. Winding Down of Fremont's Business Operations

At the time Fremont was placed into conservation in June 2003, Fremont was conducting limited internal business operations and had contracted out much of the policy administration to third party administrators. After the liquidation order was entered, the Liquidator closed most of Fremont's offices, terminated all but one office lease, and consolidated all administrative functions (other than reinsurance) into his Conservation and Liquidation Office (CLO) in San Francisco. (Declaration of Scott Pearce (Pearce Decl.), ¶ 5.)

B. Reinsurance

Fremont's only business function not immediately conducted by the CLO were reinsurance billing and collections, which continued to be conducted out of a small office in Santa Monica staffed by 14 former employees of Fremont who were knowledgeable with Fremont's extensive reinsurance programs. That office closed in 2009 and all reinsurance operations have since been handled by CLO staff in San Francisco with the assistance of consultants retained by the Liquidator. (Pearce Decl., ¶¶ 6-7.)

Reinsurance represented Fremont's largest asset. The Liquidator completed the routine process of monthly billing and collecting of reinsurance as of December 31, 2016. Final commutation/settlement activities were completed in 2017 through early 2018. By year-end 2017, the Fremont estate has essentially shut down its comprehensive reinsurance unit with the exception of some final collections and completing any final requirements associated with recent

1 treaty sales/assignments. The estate continues to hold five reinsurance annuities it cannot sell or
2 assign. (Pearce Decl., ¶¶ 8-9.)

3 The Liquidator collected reinsurance through both monthly billings and
4 commutations/settlements with reinsurers. Throughout the liquidation proceeding, the Fremont
5 estate collected \$499.9 million in reinsurance proceeds. The Liquidator sought and obtained the
6 Court's approval of any commutation of reinsurance contract in excess of \$100,000. (Pearce
7 Decl., ¶¶ 10-11.)

8 **C. Release of Statutory Deposits to Insurance Guaranty Associations**

9 The entry of the liquidation order triggered the duty of IGAs to pay all of Fremont's
10 insurance policy liabilities in accordance with the terms of each IGA's state statute. The IGAs
11 effectively step into Fremont's shoes and take over the adjustment and payment of Fremont's
12 open insurance claims. Upon payment of the claim, each IGA becomes subrogated to the
13 policyholders' claim against Fremont. (Pearce Decl., ¶ 12.)

14 The IGAs were given immediate access to protective statutory deposits posted by Fremont
15 in each of the states in which it conducted business. (Pearce Decl., ¶ 13.) For example, section
16 11691 requires every insurer transacting workers' compensation insurance or reinsurance to
17 deposit cash or other forms of securities as collateral for payment of the insurer's obligations in
18 California. In the event of an insurer's delinquency, the Commissioner must immediately take
19 control or possession of the statutory deposit and transfer it to CIGA to pay compensable
20 workers' compensation claims of the insolvent insurer. (§§ 11698, 11698.3.) \$380,366,233 in
21 statutory deposits were released to IGAs to pay claims against Fremont policies. (Pearce Decl., ¶
22 14.)

23 **D. Early Access Distributions to Insurance Guaranty Associations**

24 Pursuant to section 1035.5, the Liquidator is authorized to develop a proposal to make
25 periodic disbursements of estate assets to IGAs to assist the IGAs in meeting their statutory
26 obligations to pay covered claims. In 2004, the Liquidator proposed, and the Court approved, a
27 plan for early access distributions of Fremont assets to IGAs. (Pearce Decl., ¶ 15.) Pursuant to
28 the plan, the Liquidator made eleven early access distributions totaling \$642,328,685:

1	2004	\$ 49,224,224
2	2005	36,934,280
3	2006	168,063,039
4	2007	144,007,213
5	2008	49,675,212
6	2009	50,000,000
7	2011	39,905,597
8	2012	39,617,203
9	2013	25,564,790
10	2014	25,426,592
11	2015	13,910,535

12 (Pearce Decl., ¶ 16.)

13 The Liquidator made no further early access distributions after 2015 in order to preserve a
14 sufficient amount of estate assets to make a pro rata distribution to all Class 2 claimants. (Pearce
15 Decl., ¶ 17.)

16 **E. Administration of Proofs of Claim**

17 Pursuant to section 1021, the Liquidator published notices to creditors that claims against
18 the insolvent estate of Fremont had to be filed by no later than the Claims Bar Date of June 30,
19 2004. The Liquidator mailed approximately 139,642 Proofs of Claim (POC) forms to persons
20 possibly interested in the assets of Fremont. The Liquidator issued two types of POCs. The
21 Liquidator sent “deemed filed” notices to all workers’ compensation claimants with open claims
22 against Fremont and all policyholders who have claims for return of unearned premiums. All
23 other claimants were mailed booklets that contain information and instructions for filing a POC.
24 By the Claims Bar Date, the Liquidator received 126,913 POCs of which 43,351 were contingent
25 and undetermined claims. (Declaration of John Battle (Battle Decl.), ¶¶ 4-7.)

26 By 2017, the Liquidator had resolved the majority of the POCs. The Liquidator determined
27 that Fremont will not have sufficient assets to pay in full Class 2 policyholder claims, and
28 therefore determined that claims below Class 2 will be administratively closed without further

1 handling. Notices of the administrative closure of these claims were sent to the affected
2 claimants. (Battle Decl., ¶¶ 8-9.)

3 The remaining open Class 2 claims consisted primarily of 98 contingent and undetermined
4 claims, which must be liquidated in order to make a final pro rata distribution. (See § 1025
5 [providing that only unliquidated or undetermined claims must be “definitely, proved, and
6 allowed” in order to share in any distribution].) Accordingly, the Liquidator sought and obtained
7 a court order setting deadlines of September 29, 2017 for the liquidation of all open Class 2
8 claims. All open Class 2 claims have now been finally determined. (Battle Decl., ¶¶10-11.)

9 **F. Legal Matters**

10 The Fremont estate engaged in extensive litigation over the years to collect assets owed to
11 Fremont and prosecute claims of the estate. The Liquidator prosecuted claims against insiders
12 and others responsible for Fremont’s failure, litigated against vendors over contract and property
13 disputes, sought to recover voidable preferences against creditors, and defended litigation
14 instituted by reinsurers. (Pearce Decl., ¶ 18.) Significant litigation included:

- 15 • *Claims against Fremont General Corp.*: Fremont brought actions against its former
16 parent companies to recover net operating losses, other assets diverted from Fremont
17 to benefit the parent companies, and valuable art work;
- 18 • *Action against Former Directors and Officers of Fremont*: Suit for breach of
19 fiduciary duty against seven individuals who served as officers and directors of
20 Fremont arising from the implementation of an underwriting scheme that damaged
21 Fremont;
- 22 • *Recovery of Voidable Preferences*: The Liquidation brought several actions to
23 recover voidable preferences pursuant to section 1034 to avoid payments made on
24 account of antecedent debt by Fremont to its creditors within 4 months of the date of
25 filing the liquidation petition;
- 26 • *Disputes with Vendors and Contractors*: The Liquidator sued Seyfarth Shaw,
27 Fremont’s former attorneys, for legal malpractice, Concentra Managed Care Services,
28 Inc. regarding contract dispute over medical bill review services;

- *Disputes with Reinsurers:* The Liquidator filed a declaratory relief action against reinsurer Gerling Global Reinsurance Corporation of America after it stopped paying on reinsurance obligations and attempted to rescind the reinsurance contract. The Liquidator also served an arbitration demand on Fire & Casualty of Connecticut for non-payment of reinsurance. (Pearce Decl., ¶¶ 19a-e.)

All matters have been resolved through settlements. There is no litigation pending at this time. (Pearce Decl., ¶ 20.)

G. Records

Pursuant to the conservation and liquidation orders, the Commissioner took custody and control of Fremont's records, which consisted of some 215,000 boxes of files stored in various facilities across the country and consisting primarily of the company's legacy claim files and policies. After the resolution of Fremont's legal issues, the Liquidator had little need to access the records he maintains even though the estate incurred approximately \$427,000 annually to store the records. (Pearce Decl., ¶¶ 21-22.)

It has been the practice of the Commissioner to obtain court approval to retain an insolvent insurer's records for a period of three years following entry of an order terminating the liquidation proceeding. Because of the continuing storage expense coupled with the estate's lack of operational need, the Liquidator obtained a court order in 2015 to begin destruction of 166,828 boxes of Fremont's nonessential legacy files. Pursuant to the order, all nonessential files have been disposed. (Pearce Decl., ¶ 23.)

The Commissioner expects to systematically destroy all remaining records of Fremont commencing immediately with the approval of the closing order, except for those records necessary for examination by the Department of Finance or other auditor of the Commissioner's books and records pursuant to section 1061. (Pearce Decl., ¶ 24.)

II. LIQUIDATOR'S ACCOUNT

A. Financial Statement as of March 31, 2019

The financial statements for Fremont show that as of March 31, 2019, the Fremont estate has assets totaling \$87,416,100, including cash or cash equivalent of which includes pooled

investments of \$83,472,900 and accrued investment income of \$254,400, and other recoverables from reinsurers, receivables and other assets total \$3,688,800. Liabilities (exclusive of the closing budget) total \$1,731,089,200, including net Class 2 liabilities in excess of \$1.5 billion, and total net deficiency in excess of \$1.6 billion. (See Declaration of Raymond Minehan (Minehan Decl.), ¶¶ 5-6 and Exhibit A, Statement of Assets and Liabilities.) The balance of non-cash assets, with the exception of five non-transferrable annuities, have been deemed uncollectable or have no immediate or reliable market place to monetize the receivable and will be written off. (*Id.*, ¶ 7.)

B. Payment of Administrative Expenses

The Liquidator has paid his operating expenses incurred in the administration of the Fremont estate pursuant to section 1035, which mandates that all expenses of estate administration shall be paid out of the assets of the insolvent insurer and be approved by the court. Such expenses are payable as Class 1 expense of administration pursuant to section 1033, subdivision (a)(1). (Pearce Decl., ¶ 25.)

From inception of conservation on June 4, 2003, to the present, the Liquidator has obtained this Court's approval of Fremont's administrative and professional expenses on an annual basis pursuant to sections 1035 and 1036:

June 4, 2003 through January 31, 2005	\$ 22,148,271
February 1, 2005 through December 31, 2005	11,594,768
January 1, 2006 through December 31, 2006	8,229,168
January 1, 2007 through December 31, 2007	9,493,197
January 1, 2008 through December 31, 2008	12,527,733
January 1, 2009 through December 31, 2009	9,622,169
January 1, 2010 through December 31, 2010	4,043,268
January 1, 2011 through December 31, 2011	3,490,189
January 1, 2012 through December 31, 2012	3,895,489
January 1, 2013 through December 31, 2013	3,360,143
January 1, 2014 through December 31, 2014	2,970,360

1	January 1, 2015 through December 31, 2015	2,497,303
2	January 1, 2016 through December 31, 2016	2,446,536
3	January 1, 2017 through December 31, 2017	1,172,342
4	(Pearce Decl., ¶ 26.)	

5 Concurrent with the filing of this final report and accounting, the Liquidator is also filing
6 his final application seeking court approval of class 1 administrative and professional fees and
7 expenses from January 1, 2018 through March 31, 2019 totaling \$1,001,284.

8 The Commissioner has reserved a closing budget for Fremont to cover anticipated costs
9 over the next 12 months (April 1, 2019 through March 31, 2020) in the amount of \$1,218,665.
10 This reserve represents the estimated expenses of administration post-closing such as legal fees,
11 audits fees, tax advice and preparation fees, and administrative expenses. A significant portion of
12 the budget is allocated to the anticipated federal income taxes owed by the estate. (See Minehan
13 Decl., ¶ 10 and Exhibit B, Estimated Closing Reserve Budget.)

14 **PROPOSED DISTRIBUTION OF ASSETS**

15 Section 1033, subdivision (a) requires the equitable distribution of an insolvent insurer's
16 assets among all claimants. Thus, claimants of a lower priority class are not entitled to any
17 distribution until claimants in a higher priority class have been fully paid. Claimants within the
18 same class are entitled to share pro rata in the distribution to that class. (*Commercial Nat'l Bank*
19 *v. Superior Court (Garamendi)* (1993) 14 Cal.App.4th 393, 398.)

20 The approved proofs of claim of all Class 2 claimants of the Fremont estate are attached,
21 The following classes have been approved for payment:

22	Class 1 (Closing Reserve for Admin Expenses):	\$ 1,218,665
23	Class 2 (Policyholder and IGA):	\$ <u>83,444,525</u>
24	Total	\$ 84,663,190

25 Excluding the expenses of Class 1 (Administrative Expenses) already paid, the Liquidator
26 proposes to distribute \$83,444,525 to the claimants in Classes 2 and in the amounts set forth in
27 Exhibit A in this distribution of assets. (Battle Decl., ¶ 11.) The amount to be distributed to each
28 claimant is based on a projected distribution percentage of 43.25% of the approved claim amount.

(Minehan Decl., ¶¶ 8-9.)

REMAINING ASSETS FOR FUTURE DISTRIBUTION

While the Liquidator has used all commercial means to liquidate Fremont's assets, the estate continues to hold five non-transferrable reinsurance annuities it cannot sell or assign. The annuities were purchased by Fremont's reinsurers in lieu of reinsurance payments to Fremont, and provide guaranteed periodic payments to Fremont for the life of the claimant. Two annuities are issued by Conseco (formerly National Fidelity Life Insurance Company), and the claimants are the widows of deceased injured workers. A third annuity is issued by Genworth Financial and the injured worker is the claimant. Two additional annuities were issued by Symetra Life Insurance Company. (Pearce Decl., ¶¶ 27-28.)

At this time, the Liquidator expects that payments under the Conseco and Genworth annuities may continue for 15 to 24 years should each claimant reach his or her full life expectancy. In 2019, these annuities will generate \$713,885 for Fremont and payments will increase three percent annually. The other two annuities each has two annual payments remaining totaling \$400,000. (Pearce Decl., ¶ 29.) The schedule of the expected payments due under the annuities from 2020 through 2032 is attached as Exhibit A to the Declaration of Scott Pearce.

The estate also expects to receive the \$300,000 payment from the sale of the corporate shell of Fremont Life Insurance Company. The payment is due after the conditions to complete purchase have been satisfied and the transactions closes. (Pearce Decl., ¶ 30.)

Given the duration of the expected income, the Liquidator has determined it is in the best interests of Fremont's policyholders and creditors to proceed with a distribution of assets and the administrative closure of the estate instead of keeping the estate open for decades to make a final distribution and incurring significant amounts of administrative expenses. (Pearce Decl., ¶ 31.)

To avoid incurring additional administrative expense, the Liquidator further requests authority to make future periodic distributions of the income received from all of the annuities and any other subsequent proceeds to the approved Class 2 claimants based on the approved claimant's pro rata share of the amount of money available to distribute under the established

1 distribution methodology approved by the Court without the need to reopen the Fremont
2 liquidation proceeding and/or for further court orders. The Liquidator proposes that a distribution
3 be made each time the collected proceeds accumulate to at least \$5 million.³ (Pearce Decl.,
4 ¶¶ 32-33.)

5 The future periodic distribution would be of all monies collected less a \$100,000
6 administrative reserve to cover the costs of the distribution, and any post-distribution and
7 claimant support work. In addition to the task of processing payments to approved claimants, the
8 estate will need to preserve and periodically maintain an approved claimant database, and
9 continue to account for the administrative reserve/expenses (such as periodic notifications and
10 claimant information updates, on-going expense review, check issuance, managing unclaimed
11 funds, monitoring federal tax compliance as well as audit compliance) and the periodic receipt of
12 the anticipated post-distribution collections for the next number of years. (Pearce Decl., ¶¶ 34-
13 35.)

14 Finally, after considering the net cost of processing any subsequent distributions to
15 approved claimants, the Liquidator requests to be relieved of paying any distribution amount less
16 than \$10. (Pearce Decl., ¶ 36.)

17 WHEREFORE, the Liquidator prays for an order that provides as follows:

18 1. The Report and Account of Liquidator for the period from June 4, 2003, through
19 March 31, 2019, is settled and approved.

20 2. The Liquidator is authorized to distribute approximately \$83,444,525 to the
21 approved Class 2 claimants set forth in Exhibit A based on a distribution rate of 43.25 % of the
22 approved claim amount. The amount available for distribution is subject to adjustment for
23 investment income and changes in market value of investments that have been posted as of the
24 date the investments are withdrawn from the investment pool. The distributions shall be made
25 within forty-five (45) days of the entry of the Court's order.

26 3. The Liquidator is authorized to retain a reserve of \$1,218,666 for payment of

27 ³ The Liquidator has included an Estimated Schedule of Future Distribution, attached as
28 Exhibit B to Declaration of Scott Pearce, illustrating the estimated amount each approved Class 2
claimant is likely to receive based on a \$5 million future distribution.

1 administrative closing expenses incurred by the Liquidator from and after April 1, 2019. A report
2 to the Court of the expenditure of these funds shall not be required. The Liquidator is further
3 authorized to distribute pro rata any surplus amount of the closing reserve to the approved Class 2
4 claimants based on the approved overall projected distribution rate of 43.25% of the approved
5 claim amount.

6 4. Without further court order, the Commissioner is further authorized to distribute
7 any annuity collections or other post-distribution proceeds, once those amounts collected reach or
8 exceed \$5 million, to the approved Class 2 claimants based on each claimant's equitable (pro
9 rata) share of the remaining approved unpaid portion of the Class 2 liability. The Commissioner
10 shall not be required to pay any distribution amount less than \$10. The Commissioner is further
11 authorized to retain a \$100,000 administrative reserve to pay all costs and maintenance expenses
12 associated with the anticipated distributions. Once all collections have been deemed complete,
13 any remaining funds held in reserve will be distributed to approved Class 2 claimants at the time
14 of the final distribution.

15 5. In accordance with the six month waiting period of Code of Civil Procedure
16 section 1517, the Commissioner, as to disbursements which are either undeliverable or as to
17 which issued checks have not then been negotiated, is authorized to void such checks as have not
18 then been negotiated and escheat all undeliverable amounts and amounts of non-negotiated
19 checks to the Insurance Fund pursuant to Insurance Code section 12937.

20 6. The Liquidator is authorized to destroy all records of Fremont in his custody and
21 control, except for those records necessary for examination by the Department of Finance or other
22 auditor of the Liquidator's books and records pursuant to Insurance Code section 1061.

23 7. The Liquidator is authorized to take any action necessary to accomplish the
24 purpose of this Order.

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1 8. The estate of Fremont Indemnity Company be closed and the Commissioner shall
2 be discharged as liquidator upon the filing of a declaration that the Commissioner has distributed
3 the assets in accordance with this Court's order.
4

5 Dated: July 15, 2019

Respectfully Submitted,

6 XAVIER BECERRA
7 Attorney General of California

8 
9

10 LISA W. CHAO
11 Supervising Deputy Attorney General
12 *Attorneys for Applicant*
13 *Insurance Commissioner of the State of*
14 *California, in his capacity as the Liquidator*
15 *of Fremont Indemnity Company*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **THE ESTATE IN LIQUIDATION MAY BE CLOSED**
3 **WHEN THERE IS NO FURTHER NEED TO ADMINISTER**
4 **THE AFFAIRS OF THE FAILED INSURANCE COMPANY**

5 Insurance Code section 1057 provides that the Commissioner shall be deemed to be a
6 trustee for all creditors in the administration of insolvent insurers. “It was his duty to collect the
7 assets [Ins. Code, § 1037] and distribute them ratably among the creditors [Ins. Code, § 1025]
8 subject to certain priorities [Ins. Code, § 1033]” (*Jones & Son v. Independence Indemnity*
9 *Co.* (1942) 52 Cal.App.2d 374, 378-379.)

10 Insurance Code section 1035, subdivision (a), authorizes the Commissioner to pay all
11 expenses incurred in the administration of an insolvent insurer from the assets of that estate. The
12 Commissioner has paid his expenses pursuant to Insurance Code section 1035 by directly paying,
13 through March 31, 2019, the provider of goods or services to the estate.

14 Insurance Code section 1033, subdivision (a) also sets forth the priority for distribution of
15 assets on claims made against an insolvency insurer’s estate. Claimants in a lower priority class
16 are not entitled to any distribution until the claimants in a higher priority class are paid in full.
17 Claimants within the same class are entitled to share pro rata in distributions made to that class.
18 (*Commercial Nat’l Bank v. Superior Court (Garamendi)* (1993) 14 Cal.App.4th 393, 398.) The
19 relevant priority provisions of section 1033, subdivision (a) in this case are as follows:

- 20 (1) expense of administration;
21 (2) all claims of the insurance guarantee association and policyholders.

22 The Commissioner essentially has completed the marshaling of Fremont’s assets and has
23 adjusted or otherwise made provision for the adjustment of all claims. Further, in order to
24 minimize administrative expenses, the Commissioner has exercised his discretion to
25 administratively close the estate at this time, to distribute current assets to claimants, and to
26 provide a plan to make future distributions of subsequently received proceeds.

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CONCLUSION

The Commissioner has completed the liquidation of respondent Fremont Indemnity Company. Thus, the Commissioner should be allowed to disburse the current assets so that this matter may be administratively closed and that he may be discharged as liquidator.

Dated: July 15, 2019

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California



LISA W. CHAO
Supervising Deputy Attorney General
Attorneys for Applicant
Insurance Commissioner of the State of
California, in his capacity as the Liquidator
of Fremont Indemnity Company

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EXHIBIT A

liq_no	app_amount	Final Payout
14586	34,956.00	15,119.33
31810	32,027.03	13,852.48
31883	305,000.00	131,919.98
31916	321,898.04	139,228.79
70019	2,225,000.00	962,367.05
70147	300,000.00	129,757.36
164516	31,783.50	13,747.14
185794	82,500.00	35,683.27
189956	501.00	216.69
195777	189,970.91	82,167.08
200576	106,259.19	45,959.71
205024	100,784.92	43,591.95
214720	137,707.04	59,561.67
218198	2,665,708.28	1,152,984.19
228579	272,982.96	118,071.82
228646	1,412,474.90	610,930.03
250000	79,955,997.01	3,172,001.63
250002	1,949,549.89	293,385.13
250004	3,607,442.21	88.20
250007	111,497,113.99	3,267,862.32
250009	1,714,670,405.96	44,594,925.27
250012	18,472,259.03	452.68
250013	13,466,780.03	331.07
250014	2,808,995.65	-
250015	20,342,022.04	563,457.29
250016	11,551.00	4,996.09
250017	167.00	72.23
250021	83,692.79	-
250023	12,869,017.90	315.53
250024	384.94	166.50
250026	6,952,790.81	223,463.87
250029	23,160,824.47	1,183,092.46
250031	10,301,777.44	252.59
250035	154,099,998.54	6,473,214.13
250037	3,353,046.68	82.21
250040	5,650,178.20	138.29
250042	431,016.18	10.57
250044	3,979,923.52	97.59
250045	2,075,979.23	239,346.92
250046	66,452.75	1.63
250047	3,637,066.66	-
250048	973,585.59	23.87
250049	6,098.87	2,065.91
250050	1,233,792.03	21,806.87
250051	2,700,954.06	66.23
250053	452,848.35	-

liq_no	app_amount	Final Payout
250056	35,156,090.07	-
250058	2,509,063.54	61.52
250060	10,812,662.27	265.12
250062	100,306.64	2.46
250065	2,850,637.36	215,744.33
250069	2,974,544.89	72.64
250073	85,477,774.12	3,588,581.00
250075	5,528,406.19	302,379.15
250077	1,250,175.82	21,144.30
250079	49,047,981.96	4,620,976.73
250084	1,620,516.21	40.07
250086	28,629,552.53	-
250088	9,076,308.55	162,999.61
250093	834,421.36	20.46
250095	222,458.35	-
250097	894,580.25	71,828.89
250099	29,791,480.09	2,135,650.01
250101	22,085,100.84	447,480.08
250106	19,038,658.83	730,142.21
501942	872,358.27	377,316.34
503483	1,282,735.62	554,814.61
850031	53,164.09	22,994.77
850043	93,196.52	40,309.78
850386	90,000.00	38,927.21
850410	7,085,274.07	3,064,554.76
850562	1,000,000.00	432,524.52
850736	71,487.41	30,920.06
850748	202,434.54	87,557.90
850813	460,340.98	199,108.76
3500282	1,515,151.10	655,340.00
3500290	1,819,264.46	786,876.49
3500291	42,500.00	18,382.29
3500292	225,039.92	97,335.28
3500293	65,073.00	28,145.67
3500295	42,283.86	18,288.81
3500298	23,760.00	10,276.78
3500306	41,161.68	17,803.44
3500307	8,350.00	3,611.58
3500310	103,725.43	44,863.79
3500311	244,062.00	105,562.80
3500312	230,323.32	99,620.48
3500324	1,031.03	445.95
3500325	3,054.72	1,321.24
3500327	23,415.37	10,127.72
3500331	503,317.03	217,696.96
3500332	232,122.92	100,398.85

liq_no	app_amount	Final Payout
3500333	11,616.94	5,024.61
3500334	280,268.37	121,222.94
3500336	273.00	118.08
3500337	46,169.26	19,969.34
3500340	142,582.29	61,670.34
3500343	129,814.14	56,147.80
3500345	1,344.00	581.31
3500346	2,732.10	1,181.70
3500347	4,845.38	2,095.75
3500348	4,185.00	1,810.12
3500349	1,738.18	751.81
3500352	564.09	243.98
3500353	11,000.00	4,757.77
3500355	10,418.58	4,506.29
3500357	8,604.04	3,721.46
3500358	13,576.24	5,872.06
3500359	718.70	310.86
3500361	12,126.12	5,244.84
3500362	38,174.08	16,511.23
3500363	941.00	407.01
3500365	290,406.37	125,607.88
3500366	115.03	49.75
3500367	62,325.92	26,957.49
3500368	1,245.33	538.64
3500369	9,461.36	4,092.27
3500370	36,387.84	15,738.63
	2,532,388,247.16	83,444,525.00

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Insurance Commissioner v. Fremont Indemnity Company**
Case No.: **BS083582**

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 July 15, 2019, I served the attached **LIQUIDATOR'S NOTICE OF APPLICATION AND APPLICATION FOR ORDER: (1) SETTling AND APPROVING FINAL REPORT AND ACCOUNT OF LIQUIDATOR OF FREMONT INDEMNITY COMPANY; (2) AUTHORIZING DISBURSEMENT OF FUNDS; (3) APPROVING PAYMENT OF EXPENSES; AND (4) TERMINATING LIQUIDATION PROCEEDING AND DISCHARGING INSURANCE COMMISSIONER AS LIQUIDATOR; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** 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 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, 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 July 15, 2019, at Los Angeles, California.

C. Adams
Declarant


Signature

SERVICE LIST

Case Name: Insurance Commissioner v. Fremont Indemnity Company
L. A. S. C. Case No.: BS083582

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Assmann Corporation of America
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Garrett, IN 46738

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Channahon, IL 60410-8670

Kenai Peninsula Borough
Kenai Penin Borough School District
144 N. Binkley St.
Soldotna, AK 99669-7520

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Nienhuis & Settergren, for James Marine
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St. Louis, MO 63102-2449

Liquidity Solutions Inc.
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Hackensack, NJ 07601

City of Olney
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Olney, IL 62450-2252

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New York Liquidation Bureau
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Oregon Insurance Guaranty Association
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