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County of Los Angeles

JUN 16 2017

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

12 INSURANCE COMMISSIONER OF THE
13 STATE OF CALIFORNIA,

14 Applicant,

15 v.

16 FREMONT INDEMNITY COMPANY,

17 Respondent.

CASE NO. BS083582

LIQUIDATOR'S THIRTEENTH
ANNUAL STATUS CONFERENCE
REPORT FOR PERIOD JANUARY 1,
2016 THROUGH MARCH 31, 2017

Hearing Date: June 26, 2017
Time: 11:00 a.m.
Dept: CCW 322
Judge: Hon. William F. Highberger

Action Filed: June 3, 2003

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1 Insurance Commissioner of the State of California, in his capacity as Liquidator
2 (“Liquidator”) of Fremont Indemnity Company (“Fremont”), hereby submits the following
3 Thirteenth Annual Status Conference Report for the period January 1, 2016 through March 31,
4 2017 (“2016 Annual Report”).¹

5 INTRODUCTION

6 The Liquidator through his Conservation and Liquidation Office (the “CLO”) continues to
7 manage the liquidation of an insurance company with billions of dollars of policyholder liability.
8 This report provides a comprehensive update on the current status of the Fremont liquidation
9 estate.

10 Currently, all of the Liquidator’s operations associated with Fremont’s liquidation are
11 overseen by the CLO. As of March 31, 2017, Fremont had approximately \$101.4 million in
12 balance sheet assets, including cash, investments, statutory deposits and reinsurance recoverable.
13 As of March 31, 2017, Fremont’s liabilities are now estimated at \$2.074 billion, including
14 approximately \$1.765 billion in Class 2 policyholder liabilities.

15 In 2016, the Liquidator continued to advance his overall closing plan through his efforts to
16 complete the final resolution and collection of the estate’s remaining reinsurance recoveries. He
17 has worked to complete the final determination of the estate’s policy liability while continuing to
18 wind down overall administrative operations. Good progress has been made in wrapping up the
19 remaining affairs of the estate with the intent to seek court authority to make a final distribution
20 of its assets in the next 12 months. Specifically, the estate has made significant progress in the
21 past year related to the discontinuation of the routine monthly process of billing, collecting and
22 commuting the remaining reinsurance. As a result of the various commutations and assignments
23 completed in 2016, the CLO reinsurance unit discontinued all routine billing and collection
24 activity effective December 31, 2016. The reinsurance unit anticipates resolving all remaining
25 treaties via sale or commutation by year-end 2017. Also during 2016 the Fremont Estate, as the
26 legal beneficiary to a living trust, took possession of real property in Fullerton, California and
27

28 ¹ In the 2016 report, the Liquidator is including the most recent financial data up to March 31, 2017.

1 thereafter successfully repaired, marketed and sold the property with the Court's approval.

2 This report will provide the court with the progress made on the Fremont estate since the
3 last report and current efforts to position the estate for final distribution and closure.

4 **ADMINISTRATION OF LIQUIDATION ESTATE**

5 The Liquidator handles the administrative functions in the following three categories:
6 (1) Policy Administration (the process of performing and enforcing general contractual rights
7 under an insurance policy); (2) Claims Administration (the administration and adjustment of
8 proofs of claim filed against Fremont); and (3) Company Administration (the remaining general
9 corporate functions that are required to complete the liquidation, including information
10 technology, final asset recoveries, reinsurance collections, and financial reporting/accounting and
11 investment management).

12 **A. Policy Administration**

13 Policy administration currently involves maintenance of the estate's electronic policy
14 database and periodically reviewing coverage information for the insurance guaranty associations
15 ("IGAs") as well as for addressing the proofs of claim that pertain to coverage issues against the
16 Fremont estate. CLO staff continue to provide these services to the IGAs, albeit on a reduced
17 basis for the year. The estate will likely experience an increase in certain areas of policy
18 administration during 2017 as the estate works to transition certain functions and information as
19 part of the process to finalize the IGA and other Class 2 liability.

20 **B. Claims Administration**

21 **1. Proof of Claims ("POCs") Management**

22 The Claims Department still had 297 open POCs at the end of 2016. Net policyholder
23 class claim liabilities (Class 2) including IGAs increased by approximately \$69.1 million during
24 the year (\$68 million in IGA adverse loss development and \$1.1 million in POC development).
25 All claims below the policyholder class level are rendered moot as there are no assets to pay those
26 classes.

27 As of March 31, 2017, there were 297 POCs remaining to be processed and closed. A
28 number of these open claims relate to assumed reinsurance that has remained open to support

1 collection of reinsurance. With the present likelihood of the estate's reinsurance activities
2 ceasing by the end of 2017, those claims, along with all Class 7 general creditor claims, will be
3 closed. The Liquidator has determined that Fremont will not have sufficient assets to pay in full
4 all Class 2 policyholder claims, and therefore has determined that claims below Class 2 will be
5 closed without administration.

6 The remaining open Class 2 claims consist of 41 IGAs claims and 47 non-covered or
7 overcap claims. The estate continues to infrequently receive new claims, primarily latent claims
8 from both IGA covered workers compensation policyholders and non-workers compensation
9 property and casualty business. As of March 31, 2017 the estate carries a reserve of \$20.6 million
10 for all remaining open non-IGA, non-covered and overcap claims. Additionally, the estate has
11 approved non-IGA Class 2 claims totaling approximately \$5 million.

12 The estate continues to address a claim from the United States Department of Health and
13 Human Services for approximately \$280,000 for alleged Medicare Secondary Payor liabilities.
14 The claim has a number of novel issues, including reverse preemption under the McCarran-
15 Ferguson Act (15 U.S.C. § 1011 et seq.), the Fremont estate's rejection of a prior claim filed by
16 the same agency for the same issues, and that the federal agency has filed a similar claim against
17 the California Insurance Guarantee Association (CIGA). The challenge facing the estate is that
18 the federal government does not recognize the claims bar date under state law, nor does it accept
19 California's claim priority scheme under Insurance Code section 1033. If the estate is unable to
20 resolve the matter, it is possible that this issue could prolong the life of the estate.

21 The estate recently received court approval of its proposal to require all contingent and
22 undetermined Class 2 claims be liquidated and finalized by September 29, 2017 in order to be
23 considered for potential participation in the final distribution process as required by Insurance
24 Code section 1025. The estate has recently completed the formal notification to its creditors
25 advising them of the established deadline to finalize and submit their unliquidated claims in
26 accordance with the Court's order.

27 ///

28 ///

1 **2. IGA Claims and Distribution**

2 In addition to providing continued documentation and support of the IGAs' claims
3 handling functions, the Liquidator's primary task is to distribute early access funds to the IGAs
4 pursuant to Insurance Code section 1035.5.

5 For 2016, the Liquidator determined that no early access distribution would be made.
6 The Liquidator's decision is based on a number of factors, including the progress made in
7 collecting and/or resolving the remaining estate assets, thereby positioning the estate for closure.
8 Given the expectation to complete all remaining asset recoveries by year-end 2017, the Liquidator
9 opted to plan a single final distribution, thereby avoiding any further potential for over-
10 distribution to IGA claimants in light of the requirement for ultimate pro rata distribution to all
11 Class 2 claimants.

12 **3. Non-IGA Covered Claims**

13 Certain types of Class 2 policyholder liabilities are not protected or not fully covered by
14 the IGAs, but are nonetheless entitled to ultimately share ratably with all other Class 2 claims.
15 These non-IGA covered liabilities include workers' compensation claims payable under the
16 United States Longshore & Harbor Workers Act ("USL&H Claims") and claims that are not
17 covered or only partially covered by the IGAs based on exclusions and coverage limitations
18 found in the IGAs' controlling statutes. The Liquidator has continued to update these claims for
19 reinsurance billing purposes, and resolve such claims as appropriate. These open claims are
20 also contingent and undetermined, and must now be liquidated and finalized by September 29,
21 2017 pursuant to this Court's order. Reserves for these claims are included in the \$20.6 million
22 reported above.

23 As of March 31, 2017, the Liquidator continued to monitor several aggregate POCs that
24 involve Class 2 policyholders in states with net worth exclusions which preclude certain high net
25 worth policyholders from eligibility to have their claims paid by the IGAs (Net Worth Exception
26 claims). Net Worth Exception claims are handled differently by different states. In some states
27 IGAs do not pay and require the claims to be returned to the policyholders for handling, while
28 other states' IGAs actually pay the claims and seek reimbursement from the policyholders (Net

1 Worth Subrogation claims). The Claims Department continues to obtain periodic loss and
2 expense reports from the Class 2 Net Worth Exception policyholders with open POCs in order to
3 track losses and bill reinsurance. These claims are also subject to the September 29, 2017
4 liquidation deadline.

5 **4. Subrogation**

6 The collection of subrogation receivables is essentially complete. Continuing efforts to
7 track and recover small, significantly aged balances is no longer cost justified for the Liquidator
8 to devote estate resources.

9 **C. Company Administration**

10 **1. Finance – Accounting & Investment Management**

11 The CLO Accounting Department is responsible for recording and reporting all financial
12 aspects of the Fremont estate and maintains the estate's general ledgers inherited from Fremont at
13 the time of liquidation in 2003. ~~The staff evaluated historical ledgers and records of Fremont and~~
14 ~~its subsidiaries and has converted them to a liquidation basis of accounting.~~ The department
15 produces periodic financial statements, manages estate cash as well as the accounts
16 payable/receivable functions. It is also responsible to ensure audit compliance and supports the
17 preparation of tax filings.

18 Fremont's invested assets are managed by third party institutional money managers. The
19 CFO of the CLO has the responsibility to manage this third party relationship as well as the
20 accounting department.

21 **2. Reinsurance**

22 **a. Summary**

23 As a result of various reinsurance commutation and collection efforts that occurred over
24 the past 15 months, prospective reinsurance recoverables, net of an allowance for uncollectable
25 reinsurance, now total \$18.7 million due from the estate's remaining reinsurers. Fremont's
26 traditional monthly routine of billing and collecting reinsurance was completed and discontinued
27 as of December 31, 2016. One Reinsurance Analyst was released as of January 31, 2017. In
28 addition, the workloads for two consultants were significantly reduced.

1 **b. Reinsurance Recoverable**

2 The major reinsurance recoveries on Fremont's books as of March 31, 2017 are: a)
3 residual recoveries from various reinsurers to be sold for \$1.9 million²; b) Conseco Annuity in the
4 amount of \$2.6 million; c) Insurance Company of North American (INA) in the amount of \$6
5 million (reduced by assumed offsets of \$4.6 million; to be commuted or assigned); d) IBNR
6 reserves of \$9.2 million; and e) Cigna Reinsurance Corporation (Cigna Re) balances commuted
7 for \$265,108.³

8 Amounts received from reinsurers post-liquidation total \$497.6 million.

9 **c. Administration of Fremont's Reinsurance**

10 Fremont's reinsurance operations continue to be handled by the CLO staff in San
11 Francisco. During 2016, their efforts focused on resolving recoveries due from Cigna Re and
12 INA, general ledger clean-up, support for POC resolution, and support to transition data and
13 documents relating to the sale of Fremont's residual recoveries.

14 **d. Reinsurance Processing**

15 Ceded Contracts: Completed.

16 Assumed Contracts: The remaining task on the assumed book of business is to administer
17 and close reinsurance POCs. It is anticipated that no funds will be available for claimants below
18 the Class 2 and claims for classes below Class 2 will not be administered. Thus, No Asset letters
19 are scheduled to be sent to assumed reinsurance claimants during the fourth quarter 2017.

20 **e. Reinsurance Disputes**

21 There are no active disputes with reinsurers and none are expected.

22 **f. Reinsurance Collections**

23 The Commissioner collected \$2.9 million from reinsurance billings since January 1, 2016.
24 As noted above, the reinsurance billing and collection function was completed as of December
25 31, 2016.

26 ² The residual reinsurance was sold to Amberley Alternative Assets, Limited and was
27 approved by the court in the second quarter of 2017.

28 ³ The Liquidator's motion for court approval of the commutation with Cigna Re is
scheduled for hearing on June 22, 2017.

1 amount of \$2,497,303, including \$2,400,578 for administrative and operating expenses pursuant
2 to section 1035, and \$96,725 for legal fees and expenses pursuant to section 1036.

3 In addition to a number of reinsurance commutations approved by the Court, on February
4 28, 2017, this Court also approved the sale of a real estate asset located in the city of Fullerton,
5 Orange County, California for \$789,000.

6 **B. Pending Matters**

7 **1. Browning Ferris Industries, LLC et al.**

8 The estate has resolved its dispute with Browning-Ferris Industries, LLC, BFI Waste
9 Systems of North America, LLC and Azusa Land Reclamation Co., Inc. (collectively "BFI").
10 BFI has open proofs of claim in the Fremont estate under two excess umbrella policies issued by
11 Fremont. On June 4, 2013, the Liquidator rejected BFI's claim. On July 3, 2013, BFI filed its
12 Order to Show Cause (OSC) Application pursuant to section 1032 seeking the issuance of an
13 OSC as to why its claim against Fremont should not be allowed. On August 26, 2013, the Court
14 held a hearing on BFI's OSC Application and issued an order, which amongst other provided the
15 parties to consider a compromise. Since then, the parties have engaged in negotiations which
16 culminated in an agreement to resolve the claim. The motion seeking court approval of the
17 settlement is pending and scheduled for hearing on June 26, 2017.

18 **2. Administrative and Professional Fees and Expenses for 2016**

19 The Liquidator has already filed his Application for Order Approving Payment of
20 Administrative and Professional Fees and Expenses for Year Ending December 31, 2016, and
21 anticipates filing to be heard at the June 26, 2017 status conference hearing before the Court.

22 **3. Commutation with Cigna Re**

23 The Cigna Re reinsurance was one of the major reinsurance collection item in 2016. This
24 matter has been resolved through a commutation. The hearing seeking court approval for this
25 agreement is set for June 22, 2017.

26 **CONCLUSION**

27 In 2016, the Liquidator focused primarily on resolving and closing the remaining
28 reinsurance program as well as seeking all unliquidated claims to be determined by September

1 2017 in anticipation of positioning the estate for a final distribution and closure in early 2018. As
2 detailed in this report, the final collections to complete the run-off of the reinsurance program as
3 well as the final determination of all remaining unresolved Class 2 claims against the estate will
4 continue to require the Liquidator's active management through 2017.

5 The Liquidator, though his CLO staff, is prepared to address any questions the Court may
6 have regarding this 2016 Annual Report at the status conference on June 26, 2017.

7
8 Dated: June 16, 2017

XAVIER BECERRA
Attorney General of California

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10
11 

12 LISA W. CHAO
13 Supervising Deputy Attorney General
14 *Attorneys for Applicant*
Insurance Commissioner of the State of California,
as Liquidator of Fremont Indemnity Company

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EXHIBIT A

950 **950 Fremont Indemnity Co**
STATEMENT OF ASSETS AND LIABILITIES
As of March 31, 2017

| | Dec 31 2016A | Mar 31 2017A |
|---|----------------------------|----------------------------|
| ASSETS | | |
| Participation in pooled investments, at market | 71,882,700 | 73,404,900 |
| Accrued investment income | 194,500 | 202,200 |
| Statutory deposits held by other states | 2,576,400 | 2,576,500 |
| Recoverable from reinsurers | 20,025,600 | 18,688,600 |
| Receivable from affiliates | 1,360,000 | 1,360,000 |
| Property and equipment, net of accumulated depreciation | 787,900 | - |
| Deposits and other assets | 5,191,000 | 5,191,000 |
| Total Available Assets | 102,018,100 | 101,423,200 |
| LIABILITIES | | |
| Secured claims | 39,500 | 39,500 |
| Claims against policies, including guaranty associations, before distributions | 2,786,040,900 | 2,787,009,000 |
| Early access and other Class 2 distributions | (1,021,353,400) | (1,021,353,400) |
| California and Federal claims having preference | 62,900 | 62,900 |
| All other claims | 308,621,600 | 308,598,900 |
| Total Estimated Liabilities | 2,073,411,500 | 2,074,356,900 |
| NET ASSETS (DEFICIENCY) | (1,971,393,400) | (1,972,933,700) |

950 **950 Fremont Indemnity Co**
STATEMENT OF ASSETS AND LIABILITIES
As of March 31, 2017

| | Dec 31 2016A | Mar 31 2017A |
|--|---------------------------|---------------------------|
| ASSETS detail | | |
| Cash and Investments | | |
| 12001 | 71,882,652 | 73,404,855 |
| | <u>71,882,652</u> | <u>73,404,855</u> |
| 13015 | 194,485 | 202,183 |
| 12012 | 2,576,420 | 2,576,504 |
| Reinsurance Receivable | | |
| 13001 | 8,058,992 | 7,911,887 |
| 13002 | 21,203,098 | 20,013,209 |
| 13003 | (9,236,456) | (9,236,456) |
| | <u>20,025,634</u> | <u>18,688,641</u> |
| Receivable from Affiliates | | |
| 13012 | 1,359,991 | 1,359,991 |
| | <u>1,359,991</u> | <u>1,359,991</u> |
| Property and Equipment | | |
| 14005 | 787,864 | - |
| | <u>787,864</u> | <u>-</u> |
| Other Assets | | |
| 15005 | 5,123,821 | 5,123,821 |
| 17003 | 67,176 | 67,176 |
| | <u>5,190,997</u> | <u>5,190,997</u> |
| Total Available Assets | <u>102,018,042</u> | <u>101,423,170</u> |
| LIABILITIES detail | | |
| Secured Claims | | |
| 21005 | 39,454 | 39,454 |
| | <u>39,454</u> | <u>39,454</u> |
| Class 1: Payables and Accrued Expenses | | |
| 25001 | 2 | 2 |
| | <u>2</u> | <u>2</u> |
| Class 2: Losses, Reserves and non-IGA Claims | | |
| 28001 | 941,761,115 | 928,146,460 |
| 28006 | 1,807,637,213 | 1,822,220,022 |
| 29001 | 10,000,000 | 10,000,000 |
| 29091 | 26,642,557 | 26,642,557 |
| | <u>2,786,040,885</u> | <u>2,787,009,038</u> |
| Early Access and Other Class 2 Distributions | | |
| 28007 | (866,545,936) | (866,545,936) |
| 28097 | (154,807,514) | (154,807,514) |
| | <u>(1,021,353,450)</u> | <u>(1,021,353,450)</u> |

950 **950 Fremont Indemnity Co**
STATEMENT OF ASSETS AND LIABILITIES
As of March 31, 2017

| | Dec 31 2016A | Mar 31 2017A |
|--|------------------------|------------------------|
| Class 3, 5 & 6: Calif and Federal claims | | |
| 27093 Premium Tax Payable-GOLD | 62,853 | 62,853 |
| Class 3, 5 & 6 Liabilities | <u>62,853</u> | <u>62,853</u> |
| Class 7: All Other Claims | | |
| 30005 Reinsurance Payable | 289,375,743 | 289,353,040 |
| 30007 Contingent Commission | 170,752 | 170,752 |
| 30098 Other Class 7 Liabilities-GOLD | 19,075,072 | 19,075,072 |
| Class 7 Liabilities | <u>308,621,566</u> | <u>308,598,863</u> |
| Total Estimated Liabilities | <u>2,073,411,309</u> | <u>2,074,356,760</u> |
| NET ASSETS (DEFICIENCY) | <u>(1,971,393,267)</u> | <u>(1,972,933,590)</u> |

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Insurance Commissioner of the State of California v. Fremont Indemnity Company**

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; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On **June 16, 2017**, I served the attached **LIQUIDATOR'S THIRTEENTH ANNUAL STATUS CONFERENCE REPORT FOR PERIOD JANUARY 1, 2016 THROUGH MARCH 31, 2017** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

PLEASE 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 **June 16, 2017**, at Los Angeles, California.

Martha Ochoa
Declarant


Signature

SERVICE LIST

Case Name: Insurance Commissioner v. Fremont Indemnity Company
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