

1 ROB BONTA
Attorney General of California
2 LISA W. CHAO
Supervising Deputy Attorney General
3 DOUGLAS J. BETETA
Deputy Attorney General
4 State Bar No. 260377
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6014
6 Fax: (916) 731-2144
E-mail: Douglas.Beteta@doj.ca.gov
7

Electronically FILED by
Superior Court of California,
County of Los Angeles
8/28/2023 2:36 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By V. Sino-Cruz, Deputy Clerk

8 *Attorneys for Petitioner Insurance Commissioner of*
9 *the State of California, in his capacity as the*
10 *Liquidator of Western General Insurance Company*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13 CENTRAL DISTRICT

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

16 Petitioner,

17 v.

18 **WESTERN GENERAL INSURANCE**
19 **COMPANY, a California corporation,**

20 Respondent

Case No. 21STCP01655

**NOTICE OF MOTION AND MOTION
FOR ORDER APPROVING
LIQUIDATOR'S (1) PAYMENT OF
ADMINISTRATIVE AND
PROFESSIONAL FEES AND EXPENSES
FOR THE PERIOD OF JANUARY 1,
2022, TO OCTOBER 31, 2022 AND (2)
APPROVAL TO DESTROY LEGACY
RECORDS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF
[FILED CONCURRENTLY WITH
DECLARATION OF SCOTT PEARCE]**

21 Date: November 1, 2023
22 Time: 8:30 a.m.
23 Dept: 39
24 Judge: Hon. Stephen I. Goorvitch
25 Action Filed: May 26, 2021

26 Reservation ID: 004047829279
27

1 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 1, 2023, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard in Department 39 of the Superior Court of the State of California, Los
4 Angeles County, 111 North Hill Street, Los Angeles, California, 90012, Petitioner Insurance
5 Commissioner of the State of California (Commissioner) in his capacity as the Liquidator of
6 Western General Insurance Company (Liquidator), will and hereby does move the Court for an
7 order approving the Commissioner’s costs and payment of administrative and professional fees
8 and expenses for the period January 1, 2022 through October 31, 2022 (the “Second Reporting
9 Period”) in the amount of \$5,173,678. The Liquidator further requests that the Court approve his
10 request to destroy approximately 975 boxes of certain hard copy legacy records that are either
11 beyond their seven-year retention period or that have been retained for over a year, have been
12 scanned, and will remain available electronically.

13 This motion is made under Insurance Code sections 1035, 1036 and 1037 on the grounds
14 that the Commissioner, as Liquidator, is authorized to conduct the business of Western General to
15 maximize the value of the company, to pay the salaries and expenses necessary to carry out the
16 functions of an insolvent insurer as necessary to successfully liquidate Western General, and to
17 reduce the estate’s overhead by destroying old unnecessary records being held in long-term
18 storage or that are otherwise available in electronic form.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 This motion is based on this notice, the accompanying memorandum of points and
2 authorities in support thereof, the declaration of Scott Pearce filed concurrently with this motion,
3 the other pleadings on file for this matter, and such additional evidence and argument as may be
4 offered at the time of the hearing on the motion.

5
6 Dated: August 28, 2023

Respectfully submitted,

7 ROB BONTA
8 Attorney General of California
9 LISA W. CHAO
 Supervising Deputy Attorney General

10
11 /s/ Douglas Beteta
12 DOUGLAS J. BETETA
13 Deputy Attorney General
14 *Attorneys for Petitioner Insurance*
15 *Commissioner of the State of California, in*
16 *his capacity as the Liquidator of Western*
17 *General Insurance Company*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
Memorandum of Points and Authorities	6
Background	7
Administration of the Western General Liquidation.....	7
I. Overview of Insolvency Administration.....	7
II. Roles of the Court and the Commissioner in the Liquidation Process	8
Administrative and Operating Fees and Expenses.....	9
I. CLO Allocated Administrative and Staffing Fees	9
A. Estate Trust and Executive Department.....	10
B. Claims Department.....	11
C. Information Technology and Administration Department.....	13
D. Finance and Accounting Department.....	14
E. Reinsurance Department	15
II. Direct Estate Fees and Expenses.....	16
A. Staffing, Compensation and Benefits.....	17
B. Consulting and Other Professional Fees	18
C. Software and Licensing.....	18
D. Rent Expense.....	19
E. Operating/Business Expenses	19
F. Taxes	20
G. Legal Fees and Expenses	20
Document Destruction	21
The Commissioner Has Acted Well-Within His Discretion in Paying the Administrative and Professional Fees of the Estate.....	22
Conclusion	23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

CASES

In re Executive Life Ins. Co.
(1995) 32 Cal.App.4th 344 9, 22

STATUTES

California Insurance Code

§ 1010 - 1062 8
§ 1011, subd. (a)..... 8
§ 1032..... 8
§ 1033, subd. (a)(1) 6
§ 1035..... 6, 8, 9, 22
§ 1035..... 9
§ 1035, subd. (a)..... 22
§ 1036..... 6, 8, 9
§ 1037, subd. (a)..... 8
§ 1037, subds. (d)..... 9
§ 1037, subds. (g)..... 9
§ 11698.1..... 6

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 As the liquidator of Western General Insurance Company (Western General), the primary
3 role of the Insurance Commissioner of the State of California (Liquidator or Commissioner) is to
4 marshal and collect all available assets for distribution for payment of policyholder claims, to
5 resolve claims by creditors against the company, and ultimately to wind up its business as quickly
6 and efficiently as possible. To achieve these goals, the Commissioner, through his Conservation
7 and Liquidation Office (CLO), must appoint and employ special deputy commissioners and
8 assistants, utilize and update computers and facilities, including premises to conduct Western
9 General’s business, and contract with vendors and professionals.

10 Pursuant to Insurance Code section 1035,¹ the Liquidator is authorized to pay the salaries of
11 the special deputy commissioners and employees and all other expenses necessary to carry out the
12 functions of the management of an insolvent insurer. Section 1036 further empowers the
13 Commissioner to employ and compensate legal counsel to prosecute and defend actions on behalf
14 of Western General and to advise the Commissioner on estate business. The expenses incurred for
15 these purposes are entitled to Class 1 priority status over and above all other expenses of the
16 estate pursuant to section 1033, subdivision (a)(l).

17 Consistent with his prior motion for approval of fees, the Commissioner hereby submits his
18 request for approval of administrative and professional fees and expenses incurred and paid from
19 January 1, 2022 through October 31, 2022 (the “Second Reporting Period”), in the total amount
20 of \$5,173,678. (Cf. § 11698.1 [providing for an accounting of expenses to occur “[f]rom time to
21 time and in any event at or prior to the” final disposition of the estate].)

22 In addition, as part of his duties to conduct the business of Western General and reduce the
23 costs of the estate, the Commissioner seeks to dispose of older company records and documents
24 no longer deemed necessary or essential to the estate. The Commissioner has identified a
25 population of 975 file boxes that contain old legacy policy files that either fall beyond the
26 retention policy of the company or are hardcopy documents that have been converted to imaged

27 _____
28 ¹ Unless otherwise noted, all statutory references will be to the Insurance Code.

1 files and are retained in and accessible from the Western General policy administration systems.
2 The Commissioner will retain all the estate's imaged documents for the foreseeable future in a
3 secure database. Out of an abundance of caution, the Commissioner has taken a sampling of the
4 stored boxes for inspection and confirmation of the contents and to ensure the materials are
5 located electronically in the Western General systems. After reviewing the sample of boxes
6 retrieved the Commissioner is confident the records being requested for destruction are either
7 unnecessary and qualify under the company's prior destruction policy, are duplicative of files
8 held and accessible in the Western General systems. Thus, the Commissioner seeks to reduce the
9 Western General's physical records population by 975 boxes thereby reducing the estate's off-site
10 storage footprint and costs to store unused and unnecessary legacy records. The Commissioner
11 respectfully requests that the Court approve the request to destroy the requested legacy records.

12 **BACKGROUND**

13 Western General was a property and casualty insurance company that provided non-
14 standard private passenger automobile insurance. Beginning in 2020, Western General
15 experienced significant and continued financial losses, leading the Commissioner to conclude that
16 Western General's continued transaction of business would be hazardous to policyholders,
17 creditors, and the public. Thus, the Commissioner, with the consent of Western General, applied
18 to this Court for an order of conservation, which it entered on May 26, 2021.

19 During the conservation, liabilities continued to accrue with no apparent prospects of new
20 capital or material reduction in liabilities. The Commissioner determined that Western General
21 was insolvent under the Insurance Code. With the consent of Western General's management and
22 majority shareholder, the Commissioner sought and the Court entered an order of liquidation on
23 August 5, 2021.

24 **ADMINISTRATION OF THE WESTERN GENERAL LIQUIDATION**

25 **I. OVERVIEW OF INSOLVENCY ADMINISTRATION**

26 As conveyed in the Commissioner's prior expense motion, an insolvent insurance company
27 must continue to operate similarly to a "regular" insurance company, the liquidator's primary
28 goals are to marshal and collect all available assets and ultimately to wind up the company's

1 business affairs as quickly and efficiently as possible. The Liquidator therefore continues to
2 employ people, utilize and update computers and facilities, including premises for the estate's
3 business operations, contract with vendors and professionals and do the many other things
4 described below to perform the necessary tasks to marshal assets and pay claims. (See § 1011,
5 subd. (a) (authorizing the Commissioner "to conduct ... the business of [the insurer], or so much
6 thereof as to the commissioner may deem appropriate"); and § 1037, subd. (a) [granting the
7 Commissioner the exclusive power and authority "to carry on and conduct the business and
8 affairs of [the insurer]".])

9 The Commissioner continues to use the services of the CLO and retains a significantly
10 reduced number of employees of the insolvent insurer. These resources and services are
11 supplemented by specialized vendors, contractors and consultants. (See § 1035.) The
12 Commissioner also employs a number of attorneys. Non-litigation legal services mainly are
13 provided by the Corporate Affairs Bureau (CAB) of the Department of Insurance's Legal
14 Division. The Office of the Attorney General is the Commissioner's primary litigation counsel.
15 To the extent necessary both sets of attorneys can be supplemented by private counsel with
16 expertise in specialized areas of the law. (See § 1036.)

17 **II. ROLES OF THE COURT AND THE COMMISSIONER IN THE LIQUIDATION PROCESS**

18 The Insurance Code provisions that govern this proceeding are primarily set forth in
19 sections 1010 through 1062. Although the Legislature has vested the Commissioner as Liquidator
20 with very broad discretion to conduct the liquidation process in the manner that he determines to
21 be in the best interests of policyholders and creditors, the Court plays a vital role in the process.
22 In addition to assisting the Liquidator in enforcing the various injunctions set forth in the
23 Liquidation Order (which injunctions were specifically authorized by the Legislature to assist the
24 Court and the Liquidator in conducting an orderly and efficient liquidation), the Court acts as the
25 arbiter of disputed claims (see § 1032), and several other provisions of the Insurance Code
26 instruct the Liquidator to seek the guidance and approval of the Court on matters relating to the
27 expenses of administration, compensation paid to consultants, professionals and legal counsel,
28

1 asset dispositions, and larger investment transactions. (See §§ 1035, 1036 and 1037, subds. (d) &
2 (g).)

3 Beside some clear guideposts, the Legislature has provided relatively little guidance with
4 respect to the specific transactions and expenses that require Court approval, leaving it to the
5 Liquidator and the Court to establish approval and oversight procedures that are reasonable and
6 make sense given the particular needs of each insolvent insurer estate, and that facilitate the
7 Court's assessment of whether the Commissioner is properly exercising his broad discretion as
8 statutory liquidator. (See, e.g., *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 358, 401-
9 403 [standard of review for court's review of liquidator's decisions is "abuse of discretion;" and
10 liquidator must supply the court with adequate information to permit intelligent evaluation of the
11 basis for the liquidator's determinations].)

12 **ADMINISTRATIVE AND OPERATING FEES AND EXPENSES**

13 Western General's fees and expenses concern the Commissioner's continuing efforts to
14 marshal and manage Western General's assets, to investigate and collect the liabilities owed to it
15 by third parties, and to dispose and otherwise deal with Western General's assets and obligations.
16 The fees and expenses for the Second Reporting Period, which total \$5,173,678 fall into two
17 broad categories: 1) \$1,135,938 for the CLO allocated administrative operating and staffing fees;
18 and 2) \$4,037,740 for direct estate operating expenses paid by Western General or the CLO
19 during the Second Reporting Period. (Pearce Decl., ¶ 3 & Ex. A.)

20 Notably, the First Reporting Period was for only a six-month reporting period whereas, the
21 Second Reporting Period is for ten months. (See April 27, 2022 Notice of Motion for Order
22 Approving Liquidator's Fees and Expenses, at p. 6:23-26.) This explains the increased fees and
23 expenses between the two periods.

24 **I. CLO ALLOCATED ADMINISTRATIVE AND STAFFING FEES**

25 CLO allocated administrative and staffing fees are overhead costs that the CLO incurs for
26 rent, salaries, email and data systems, etc., which it allocates to each conservation or liquidation
27 estate under its management and oversight on a pro rata basis. (Pearce Decl., ¶ 4.) The CLO is
28 comprised of insurance insolvency professionals who oversee the liquidation of troubled

1 insurance companies, and who provide estate administrative services directly to each estate under
2 CLO's management and oversight. (*Ibid.*)

3 Each conservation or liquidation estate is charged a portion of the monthly allocated costs
4 based on the amount of time that the CLO employees worked on estate matters. (Pearce Decl.,
5 ¶ 5.) To track the hours and costs, the CLO maintains a timekeeping system in which each
6 employee records time spent for work on each estate, and the estate trust manager reviews the
7 records to ensure that the hours are accurate and billed to the correct estate. (*Ibid.*)

8 During the Second Reporting Period, the CLO on behalf of Western General incurred
9 4,543.75 direct hours out of 26,559 total CLO hours or approximately 17% percent of the total
10 direct hours of all insolvent insurer estates. (Pearce Decl., ¶ 6.) Western General's portion of the
11 CLO's allocated costs for the Second Reporting Period based on 4,543.75 hours was \$1,135,938.
12 (*Ibid.*) The CLO allocated hours and costs for the Western General estate were spread between
13 the following five CLO departments:

Departments	Total No. of Hours	Total Fees by Dept.
Estate Trust & Executive	1,270.00	\$ 317,500
Claims	1,683	\$ 420,750
IT & Admin.	1,416.50	\$ 354,125
Finance & Accounting	40.25	\$ 10,063
Reinsurance	134	\$ 33,500
Total	4,543.75	\$1,135,938

14
15
16
17
18
19
20
21
22 (Pearce Decl., ¶ 6.)

23 **A. Estate Trust and Executive Department**

24 The Estate Trust and Executive Departments (together the "Estate Trust Department") is
25 responsible for the overall administration and management of Western General. (Pearce Decl., ¶
26 7.) The department coordinates and directs the activities of the other CLO departments and their
27 resources utilized in furthering Western General's plan of liquidation. (*Ibid.*)
28

1 During the Second Reporting Period, the Estate Trust Department worked primarily on
2 continuing to manage the estate’s daily run-off operations as well as work weekly to plan and
3 advance the transition of the entire local liquidation operation from its office in north Los Angeles
4 to the CLO’s office in San Francisco. (Pearce Decl., ¶ 8.) Consistent with the prior reporting
5 period the department continues to monitor and direct the on-going claims run-off through the
6 participating IGAs, monitor and support the periodic preparation of reinsurance
7 billings/collections as well as address any disputes between the parties within the reinsurance
8 program. (*Ibid.*) The Estate Trust Department continued to manage Western General’s reporting,
9 specifically the preparation of monthly financial records. (Pearce Decl., ¶ 9.) The department,
10 with the assistance of accounting consultants, managed the 2022 review of the estate’s Agreed
11 Upon Procedures by a third party audit firm. Further, the department coupled with the help of
12 some retained staff managed the process of terminating all remaining employees and closing the
13 estate’s human resources department. (*Ibid.*) Going forward Estate Trust will continue to have
14 weekly responsibility to manage the liquidation to closure including time-sensitive work to
15 transfer all participants and ultimately decommission the Western General 401K plan over the
16 next year. (Pearce Decl., ¶ 10.) As described above, the department devoted significant time and
17 effort in 2022 implementing the relocation plan and transitioning the entire liquidation estate to
18 San Francisco for the balance of the run-off. (*Ibid.*) All ongoing work processes of the estate had
19 to be assessed for completion, transfer or discontinuation. (*Ibid.*) Both the Estate Trust
20 Department and Admin/IT also took the lead in clearing, preparing and returning the office space
21 back to the landlord which was completed by March 31, 2022.

22 **B. Claims Department**

23 The Liquidation Order required the Commissioner to mail a Proof of Claim (“POC”)
24 notice and packet to all known creditors advising them of their legal right to submit a POC to the
25 CLO for recovery from Western General. (Pearce Decl., ¶ 11.) Upon the receipt of timely,
26 responsive POCs, the Claims Department has developed and maintains a database containing all
27 POCs issued to potential creditors for determination and administration. (*Ibid.*) The Liquidator
28 has received 2,087 timely received POCs. 1,912 are insurance policy related, 173 are general

1 creditor demands and two are shareholder claims. (*Ibid.*) All timely received POCs have been
2 initially reviewed for completeness and priority classification. (*Ibid.*) The CLO claims department
3 has started the process of first considering each policyholder class POC to ensure any received
4 that seek coverage benefits already paid or to be paid by the participating guaranty associations
5 are identified and denied. (Pearce Decl., ¶ 12.) From this group only policy-related POCs seeking
6 liquidated damages in excess of the guaranty fund’s statutory cap will be considered for “over-
7 cap” approval – that amount of damages incurred above the \$500,000 statutory limit on guaranty
8 fund coverage per claim. (*Ibid.*) Other than properly documented damages in excess of the
9 \$500,000 IGA limit, the balance of the POCs will be denied as the policy benefits are or will be
10 provided by the participating IGA. (*Ibid.*) The Class 2 review process is in its early stages and
11 will require most of 2023 to largely determine the estate’s claimed policy and creditor liability.
12 (*Ibid.*) Once all Class 2 (policyholder class) POCs are reviewed and determined, the Claims
13 Department will work sequentially down through the priority classes. (*Ibid.*) The Claims
14 Department will only consider priority classes of creditors where that class of creditor has a likely
15 prospect to participate in a distribution of estate assets. (*Ibid.*) It is not clear at the present if the
16 estate will recover sufficient assets to pay through all of the Class 2 policyholder class of
17 creditors. (*Ibid.*)

18 In addition to the initial set-up and review of the POCs, a priority for 2022 was the
19 processing of subrogation claims and billing for subrogation recoveries. (Pearce Decl., ¶ 13.)
20 Most of the participating IGAs do not honor and are exempted by law from third-party
21 subrogation demands, as such the IGAs do not pursue subrogation recoveries either. (*Ibid.*)
22 During the Second Reporting Period, the Western General estate and its claims staff were
23 managing 689 subrogation files. (*Ibid.*) 152 cases were managed in-house by retained consultants
24 and CLO employees and will be transferred to a third-party vendor in early 2023. (*Ibid.*) The
25 other 537 subrogation files have already been placed with legal collection entities. (*Ibid.*) In
26 addition to the subrogation recovery efforts, the Claims Department also managed the vehicle
27 salvage process. (Pearce Decl., ¶ 14.) Commencing the Second Reporting Period there were 123
28 vehicles pending final salvage. (*Ibid.*) 16 of those vehicles were for claims paid by Western

1 General and generated no recovery to the estate. (*Ibid.*) The balance of 107 salvaged vehicles are
2 awaiting settlement by the participating guaranty associations (predominantly CIGA). (*Ibid.*)
3 There are no remaining open salvage files associated with any claims paid by Western General
4 pre-liquidation. (*Ibid.*) Western General collected approximately \$200,000 in subrogation and
5 salvage recoveries during the Second Reporting Period. (Pearce Decl., ¶ 15.) The Claims
6 Department continues to provide daily claims handling support and documentation to the
7 participating IGAs. (*Ibid.*) It is not anticipated that the Claims Department will establish the
8 estate's ultimate creditor liability until late in 2023 once all POC determinations are made and a
9 better estimate of available assets is developed. (*Ibid.*) Thereafter the department together with
10 the Estate Trust Department will seek approval of a plan to distribute Western General's available
11 assets to creditors. (*Ibid.*) The Claims Department continues to provide assistance to individual
12 claimants in working through the liquidation process. (*Ibid.*)

13 **C. Information Technology and Administration Department**

14 The Information Technology (IT) Department at the CLO oversees the on-site
15 management of Western General's technology and data infrastructure such as email, phone, video
16 communications and imaging systems. (Pearce Decl., ¶ 16.) The IT Department together with
17 retained employees and consultants continue to work with the participating IGAs now paying
18 Western General's covered claims by assisting in periodic data transfers, file clean up and
19 programming as well as providing requested documentation and or research. (*Ibid.*) The IT staff
20 will continue to process the quarterly claims data and expense feeds from the various guaranty
21 entities paying Western General's covered claims for use in preparing the estates reporting and
22 financials as well as processing reinsurance. (*Ibid.*) In addition to the coordination with the IGAs,
23 the IT Department with the help of retained consultants is also programming and populating the
24 CLO's electronic repository (GOLD system) with Western General paid claim data and
25 documentation. (*Ibid.*) The database is used to support the claims handling run off, POC
26 approvals and eventually provides the necessary information to develop and complete a
27 distribution of assets to creditors. (*Ibid.*)
28

1 In addition to the monthly work described above, the IT Department together with Estate
2 Trust manage the office facilities of Western General. (Pearce Decl., ¶ 17.) The department also
3 coordinates any issues or needs associated with the short-term sublease described in the
4 Liquidator's first status report, and recently worked with the sub-tenant to secure a longer term
5 lease directly with the landlord thereby eliminating the sublease relationship to Western General.
6 (*Ibid.*) The IT department played a major role in helping Estate Trust develop, implement and
7 complete the relocation of the liquidation estate to the CLO offices in late 2022. (*Ibid.*) As part of
8 that work, a number of remote users had to be established and supported and the remaining
9 Western General systems critical to a successful run-off were relocated to a colocation site in
10 north Los Angeles. (*Ibid.*) The building has been cleared entirely, cleaned and returned to the
11 landlord timely. (*Ibid.*) In addition to the routine monthly systems maintenance and user support,
12 the IT Department will continue to support Western General's distribution work, reinsurance
13 billings and POC process by collecting, organizing and reporting the loss and loss adjustment
14 expense data associated with the participating IGA's and loading the data into the GOLD System.
15 (*Ibid.*) This quarterly process of loading paid data will likely go on for a couple of years. (*Ibid.*)

16 **D. Finance and Accounting Department**

17 During the Second Reporting Period Western General continued to rely upon the retained
18 accounting staff of the company supplemented with consultants to manage all financial aspects of
19 the estate. (Pearce Decl., ¶ 18.) The retained Western General accounting staff under the direction
20 of the CLO and their consultants commenced the process of transitioning both the management of
21 the general ledger and the treasury function to the CLO. (*Ibid.*) The department has completed the
22 transition of the general ledger, accounts payable and the Western General treasury to the CLO.
23 (*Ibid.*) To complete the transition on or about year-end 2022 the Western General estate stopped
24 processing accounts payable and redirected that function as well as accounts receivable to the
25 CLO in November 2022. (*Ibid.*) Currently, the department is working through a review and
26 assessment of the loading balances transferred to the CLO system. (Pearce Decl., ¶ 19.) This
27 process will take some time to ensure the conversion of the accounts from a statutory basis of
28 reporting to a liquidation/cash basis going forward are supported. (*Ibid.*) Thereafter the CLO will

1 have their auditors review the 2022 year-end ledgers likely in June of 2023. (*Ibid.*) As of this
2 writing the CLO has absorbed the preparation of all accounting entries, schedules and work
3 papers for Western General as well as the reconciliation of all cash receipts and disbursements of
4 the estate going forward. (*Ibid.*) Once the department completes its review of the loading balances
5 and any necessary restatement, the department will produce financial reports for the Western
6 General estate as needed. (*Ibid.*) Also, the CLO accounting staff with the assistance of Estate
7 Trust and a retained consultant managed the 2022 independent review of Western General's
8 agreed upon procedures as well as asset confirmations and paid expense support by the estate's
9 independent auditors. (*Ibid.*) This review conducted through October 31, 2022 to allow sufficient
10 time to make all the necessary operational transitions by year-end 2022. (*Ibid.*) The CLO
11 accounting department in San Francisco has taken responsibility for all financial aspects of the
12 liquidation estate going forward to conclusion. (*Ibid.*)

13 **E. Reinsurance Department**

14 For the Second Reporting Period the Commissioner and the CLO largely relied upon
15 consultants to continue to assess and manage the estate's reinsurance programs. (Pearce Decl.,
16 ¶ 20.) During this time the CLO reinsurance staff have also become increasingly more involved in
17 the preparation, review and collection of Western General's reinsurance billings. (*Ibid.*) While
18 this transition advances the estate will use consultants to continue to help compile and prepare the
19 necessary premium, loss and loss expense data, while the CLO reinsurance staff work to assume
20 that work with the continuing assistance (as needed) of third party consultants. (*Ibid.*) The CLO
21 reinsurance staff is making progress towards managing the entire billing and collection process
22 and will work to address any inquiries and issues raised by the reinsurers. (*Ibid.*) It is anticipated
23 the estate will have the entire reinsurance processing function within the CLO by year-end 2023 if
24 not sooner. (*Ibid.*)

25 Western General continued to use the services of legal consultants for advice and
26 interpretation of reinsurance treaty terms and conditions associated with disputed balances due
27 the liquidation estate. (Pearce Decl., ¶ 21.)
28

1 During the Second Reporting Period, the Western General estate has prepared quarterly
2 reinsurance billings through September 30, 2022 to its primary reinsurers. (Pearce Decl., ¶ 22.)
3 The September billing was released in early December 2022. (*Ibid.*) Two of the three primary
4 reinsurers will owe approximately 80% of all claims paid in potential recoveries (Partner Re and
5 Maiden Re). The third reinsurer is a small group comprised of three participants. (*Ibid.*) The
6 billing to the group members is processed through a managing general agency called Suncoast.
7 (*Ibid.*) This reinsurer group is expected to pay 100% of the paid losses and expenses subject to
8 contractual off-sets and billing disputes. (*Ibid.*) Since conservation of Western General in late
9 May 2021 the estate has collected approximately \$6.6 million in recoveries from two of the
10 reinsurers. (*Ibid.*) The Suncoast managed program has been delayed in processing its 2021 and
11 2022 reinsurance billings due to continuing data impediments/issues and a lack of cooperation by
12 the Suncoast entity. (*Ibid.*) After making repeated demands over the last two years for Suncoast to
13 process the necessary loss data and prepare the overdue billings to the reinsurers, the Liquidator
14 has finally received indication Suncoast is making progress but is still working through some
15 reconciling errors in the loss data. (*Ibid.*) The Liquidator is now monitoring Suncoast's progress
16 weekly and hopes to have the tardy billings processed for review and release within the next
17 quarter. (*Ibid.*)

18 Going forward Western General will continue to rely on quarterly claims data feeds from
19 the IGAs to prepare the reinsurance billings. (Pearce Decl., ¶ 23.)

20 **II. DIRECT ESTATE FEES AND EXPENSES**

21 In addition to the CLO's Allocated Expenses described above Western General also
22 incurred direct operating costs that were paid directly out of estate assets or directly by the CLO.
23 (Pearce Decl., ¶ 24.) These direct expenses, which were paid primarily to third-party product and
24 service vendors, a landlord, consultants, contractors, retained Western General employees, and
25 for the overall costs of operation of the Western General home office in Calabasas, California,
26 were necessary to the successful administration of the Western General estate through the Second
27 Reporting Period or October 31, 2022. (*Ibid.*) For the Second Reporting Period, these fees and
28 expenses totaled \$4,037,740 as described below. (*Id.* & Ex. A.)

1 **A. Staffing, Compensation and Benefits**

2 Historically, and prior to its conservation in May of 2021, Western General used the
3 contracted services and staff provided by its affiliate agency All Motorist Insurance Agency
4 (AMIA) in accordance with a formal agency agreement. (Pearce Decl., ¶ 25.) During Western
5 General’s conservation the Commissioner negotiated the transfer of all essential staff, contracts,
6 assets and systems from AMIA to Western General. (*Ibid.*) Under this arrangement Western
7 General only pays for the actual costs of the essential services and personnel in lieu of the claims
8 handling and service fees traditionally charged by AMIA. (*Ibid.*) Further, by taking on the direct
9 expense and maintaining only the necessary level of staff, systems and services the estate made a
10 significant reduction to its monthly overhead expense. (*Ibid.*) The CLO has now completed the
11 transition of the Western General estate into the CLO offices in San Francisco. (*Ibid.*)

12 The Western General estate concluded 2022 with 9 full-time employees. Over the course of
13 the Second Reporting Period the estate released 26 full-time employees. (Pearce Decl., ¶ 26.) The
14 Commissioner has made arrangements to retain 7 of the 9 local full-time employees under short-
15 term consultancy agreements to allow for the completion of certain projects and transition
16 activities. (*Ibid.*) All 7 of the consultants will support the liquidation estate remotely during their
17 remaining tenure. (*Ibid.*) All of the staff being retained as consultants possess institutional
18 knowledge and can provide continuity and efficiency to the transition and/or closure of essential
19 functional areas. (*Ibid.*) Those areas will include data management and reporting (IT); claims and
20 subrogation; reinsurance and human resources. (*Ibid.*) In addition to the 7 retained consultants
21 Western General will continue to rely upon 2 accounting consultants (on a much reduced basis)
22 and 1 local network consultant (all three consultants having been already engaged by the estate)
23 to assist in completing the full transition of the remaining local estate work by the end of 2023.
24 (Pearce Decl., ¶ 27.) As work is resolved, discontinued, or moved to the CLO for handling all
25 local Western General consultants will be released based on need. (*Ibid.*) The total amount of
26 compensation/benefits paid to retained employees of Western General as well as payroll related
27 expenses (group medical and payroll taxes) paid on behalf of the retained employees during the
28

1 Second Reporting Period was \$2,290,586. (*Ibid.*) In addition to their normal pay and benefits, the
2 final payments to the 26 terminated Western General employees include both unused PTO and
3 any accrued paid leave as well as the retention payments offered by the Commissioner to incent
4 the employees to remain through the final transition and closure of the local office. (*Ibid.*)

5 **B. Consulting and Other Professional Fees**

6 In addition to the 7 employees and their transition to short term consultancy status, as
7 discussed above, Western General continued to incur additional consulting and other professional
8 fees in connection with the services of accounting, taxation, reinsurance and technology
9 professionals. (Pearce Decl., ¶ 28.) The continuing services were hired or retained to support and
10 maintain the estate’s legacy accounting and treasury systems through their transition to the CLO,
11 conduct agreed upon procedures review of the estate’s financial statements, continue to provide
12 network infrastructure and web hosting/security services, federal and state tax preparation and
13 filings in accordance with Western General’s continued participation in the Western General
14 Holdings, Inc.’s tax sharing agreement and consolidated tax filings and finally accounting and
15 reinsurance assistance in preparation and collection of quarterly billings. (*Ibid.*) Western General
16 continued to use the services of its historical audit and tax consultants and worked with a
17 reinsurance consultant to provide advice on contract interpretation and dispute analysis. (*Ibid.*)

18 The amount paid to the firms and individuals described in the preceding paragraph totaled
19 \$430,629. (Pearce Decl., ¶ 28 & Ex. A.)

20 **C. Software and Licensing**

21 For the majority of the Second Reporting Period Western General continued to rely upon its
22 comprehensive legacy general ledger and policy administration systems to maintain, prepare and
23 run off the book of business. (Pearce Decl., ¶ 29.) The estate has commenced the process of
24 scaling down and decommissioning both system as the estate works to consolidate all operations
25 into the CLO offices. (*Ibid.*) As previously reported, Western General operated two separate
26 policy administration systems and comprehensive general ledger/treasury accounting software to
27 manage the business. (*Ibid.*) All the systems maintained by Western General have various
28 licensing and application/service fees for peripheral services and amenities associated with the

1 various insurance programs previously offered by the company. (*Ibid.*) The estate continues to
2 maintain only the essential system components and continues to assess needs and will continue to
3 terminate or discontinue any non-essential services and support. (*Ibid.*) Western General paid
4 \$247,520 in software and licensing fees. (*Ibid.*)

5 **D. Rent Expense**

6 From January 1 through October 31, 2022, Western General continued to incur leasehold
7 expenses to maintain its secure work environment in Calabasas to continue the run off of claims
8 and processing of reinsurance. (Pearce Decl., ¶ 30.) As reported prior the Commissioner relocated
9 local Western General's local operations to a much reduced workspace in the same office
10 building the company had been located at in Calabasas. (*Ibid.*) After formally rejecting the
11 original office lease comprised of approximately 35,000 square, the Western General estate
12 occupied a 10,000 square foot office lease through October 2022 to complete the balance of the
13 local run-off work in Calabasas. (*Ibid.*) To help reduce the estate's rent expense, the Western
14 General estate granted a sublease of approximately 4,000 square feet to a credit worthy subtenant
15 and collected approximately \$10,000 a month in sub-rent for the ten months through October
16 2022. (*Ibid.*) The estate also wrote off a \$160,000 security deposit originally held by the landlord
17 and associated with the original lease that the estate rejected in 2021. (*Ibid.*) In addition to basic
18 rent the estate paid its proportionate share of common area maintenance charges. (*Ibid.*) The total
19 rent and related expenses (net of the sub-rent received and the security deposit write-off) incurred
20 during the Second Reporting Period is \$401,982. (*Ibid.*)

21 **E. Operating/Business Expenses**

22 The Liquidator continued to incur and pay ongoing general office and business support
23 expenses, including \$200,191 in telephone, internet, office equipment/supplies, postage for
24 periodic correspondence and other notices, \$121,480 in banking/treasury related fees, and fees
25 paid to store and retrieve files. (Pearce Decl., ¶ 31.) In addition to the expenses and support
26 services paid directly by the Western General estate, the CLO also paid direct expenses for the
27 estate with the two primary expenses being postage and postage related expenses and travel.
28 (*Ibid.*) The CLO arranged and paid directly for the printing and postage of additional

1 liquidation/cancellation notices and a second installment for the mass mailing to all potential
2 creditors and known interested parties related to the proof of claim process. (*Ibid.*) The combined
3 postage and printing costs totaled \$107,877. (*Ibid.*)

4 During most of the Second Reporting Period, the Western General estate incurred travel
5 expenses for one full-time CLO employee who continued to work on-site weekly at the Calabasas
6 office. (Pearce Decl., ¶ 32.) The employee incurred rental car, meal per diem, lodging, mileage,
7 and airfare expenses in travel to and from Calabasas, CA. (*Ibid.*) The court appointed Liquidation
8 Manager continued to work out of the Calabasas location managing the daily work plans and staff
9 with an eye towards concluding or transferring local operations as the Western General estate
10 commenced the local office closure. (*Ibid.*) During the last months of the year a second CLO
11 employee travelled periodically to Calabasas to assist in the technical and logistical aspects of the
12 physical shutdown and office closure. (*Ibid.*) Some of the travel costs while incurred in 2022 were
13 invoiced and paid by the estate in 2023 and will be accounted for in the estate's next fee filing for
14 2023. (*Ibid.*) For the Second Reporting Period the Travel expenses totaled \$76,725. (*Ibid.*)

15 **F. Taxes**

16 Western General continued the process of reviewing and correcting various historical 1099
17 reporting deficiencies or the failure to report by the company prior to insolvency. (Pearce Decl.,
18 ¶ 33.) The estate will consider all remaining federal and state tax liability through the proof of
19 claim process. (*Ibid.*) The Liquidator was able to meet the 2021 and 2022 1099 submission
20 deadlines. (*Ibid.*)

21 **G. Legal Fees And Expenses**

22 During the Second Reporting Period, the Commissioner required legal assistance in
23 addressing certain requests made of the estate by its majority shareholder that required the advice
24 of legal counsel as well as providing advice on disputed asset collections and submitting periodic
25 reporting to the court. (Pearce Decl., ¶ 34.) Non-litigation legal services were provided to the
26 Commissioner by attorneys employed by the California Department of Insurance's Corporate
27 Affairs Bureau. (*Ibid.*) The Attorney General's Office represents the Commissioner in this
28

1 proceeding and provides litigation services as needed, including the drafting of liquidation related
2 pleadings and representation before this court. (*Ibid.*)

3 The legal fees and expenses incurred by Western General during the Second Reporting
4 Period and paid directly by the CLO totaled \$62,767. (Pearce Decl., ¶ 35.) It should be noted that
5 approximately \$26,613 of the total 2022 legal expenses paid during the Second Reporting Period
6 were for services rendered in 2021 and were incurred in support of both asset collections and
7 periodic reporting to the court. (*Ibid.*)

8 DOCUMENT DESTRUCTION

9 With the closure of the Western General's operations and office in Calabasas, the
10 Liquidator has identified a population of stored corporate records that have elapsed the
11 company's retention period, are largely replicated in imaged format, and are ready for disposal.
12 (Pearce Decl., ¶ 36.) The disposal of these non-essential records will generate a material reduction
13 in the monthly storage expense of the estate. (*Ibid.*) Western General's contemporary records
14 retention practice was to scan all incoming correspondence (policy-related and operations) and
15 documents into their policy administration system, then retain a hard copy for 1 year. (*Ibid.*) With
16 the assistance of retained staff the Liquidator has identified 975 boxes stored off-site that are no
17 longer necessary to the liquidation proceeding. (*Ibid.*) 471 boxes contain various types of policy
18 administration files and all are past their seven year retention timeframe. (*Ibid.*) Although not all
19 of the older files have been scanned into an electronic system a large portion of the records have
20 been scanned and could be available if necessary. (*Ibid.*) The second group of 504 files are
21 various claim and claim related files ranging from 2017 to early 2020. (*Ibid.*) In accordance with
22 Western General's retention policy all of these more contemporary records were scanned into the
23 policy administration system and have been retained in hard copy for more than 1 year. (*Ibid.*)
24 Western General will retain the electronic images and records and can reproduce legible copies of
25 the original documents into the future. (*Ibid.*) The Liquidator requests the Court's permission to
26 commence destruction of the 975 boxes of files consisting of 471 boxes of documents that are
27 beyond their seven year retention period and are no longer necessary to the liquidation proceeding
28

1 as well as 504 boxes of contemporary records that have been imaged and retained in excess of a
2 year. (See *ibid.*)

3 **THE COMMISSIONER HAS ACTED WELL-WITHIN HIS DISCRETION IN PAYING**
4 **THE ADMINISTRATIVE AND PROFESSIONAL FEES OF THE ESTATE**

5 The Commissioner is vested with “broad discretion” to conduct the liquidation of an
6 insolvent insurer subject to the limitation “that the exercise of discretion be neither arbitrary nor
7 improperly discriminatory.” (*In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356,
8 citation omitted.) His decisions as to matters concerning an insolvent insurer are reviewed by the
9 Court for abuse of discretion. (*Id.* at p. 358.)

10 Section 1035 authorizes the Commissioner to appoint a special deputy insurance
11 commissioner and employ clerks and assistants to handle the business of the insolvent insurers.
12 Section 1035 further authorizes the Commissioner to reimburse all administration costs from the
13 assets of the estate subject to the approval of the Court. (§ 1035, subd. (a).) As detailed above and
14 in the concurrently filed declaration of Liquidation Manager Scott Pearce, the Commissioner’s
15 decisions with respect to the payment of the administrative and operating fees and expenses have
16 been made with the best interest of policyholders and creditors in mind and are neither arbitrary
17 nor improperly discriminatory. The Commissioner submits that he properly exercised his
18 discretion in incurring the administrative and operating fees and expenses for the Second
19 Reporting Period. Thus, the fees and expenses detailed in this motion should be approved.

20 Separately, the Commissioner also seeks approval of the destruction of 975 boxes of legacy
21 records. Although the Commissioner has broad authority to conduct Western General’s business,
22 out of abundance of caution, he seeks approval from the Court to destroy 471 boxes of documents
23 that have been retained beyond their seven-year retention period as well as 504 boxes of
24 documents that have been scanned and thus, will remain available for use after the hard copy
25 documents are destroyed. Destruction of these hard copy documents will further reduce the costs
26 to the estate and thus, he submits, is in the best interests of the estate.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons, the Commissioner respectfully requests that the Court approve (1) the Commissioner’s payment of administrative and operating fees and expenses in the total amount of \$5,173,678 for the period of January 1, 2022, through October 31, 2022, and (2) the authority to dispose of 975 boxes of non-essential, legacy records held in storage.

Dated: August 28, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
LISA W. CHAO
Supervising Deputy Attorney General

/s/ DOUGLAS J. BETETA

DOUGLAS J. BETETA
Deputy Attorney General
*Attorneys for Petitioner Insurance
Commissioner of the State of California, in
his capacity as the Liquidator of Western
General Insurance Company*

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Insurance Commissioner v. Western General Insurance Co.**

Case No.: **21STCP01655**

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 90013-1230.

On August 28, 2023, I served the attached **NOTICE OF MOTION AND MOTION FOR ORDER APPROVING LIQUIDATOR'S (1) PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL FEES AND EXPENSES FOR THE PERIOD OF JANUARY 1, 2022, TO OCTOBER 31, 2022 AND (2) APPROVAL TO DESTROY LEGACY RECORDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [FILED CONCURRENTLY WITH DECLARATION OF SCOTT PEARCE]** by transmitting a true copy via electronic mail.

John E. McPherson, Esq.
Hinshaw & Culbertson LLP
350 South Grand Ave., Suite 3600
Los Angeles, CA 90071-3476
E-mail: jmcperson@hinshawlaw.com
Attorneys for Western General Insurance Company

**MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO P.C.**
Marc Abrams
mlabrams@mintz.com
Matt Phillips
mphillips@mintz.com
919 Third Avenue
New York, NY 10022
Attorneys for Fletcher Reinsurance Company

**MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO P.C.**

Nada I. Shamonki
nishamonki@mintz.com
Diane Hashimoto
dehashimoto@mintz.com
2049 Century Park East Suite 300
Los Angeles, CA 90067

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 28, 2023, at Los Angeles, California.

Alyssa Barragan
Declarant

/s/ Alyssa Barragan
Signature



Journal Technologies Court Portal

Court Reservation Receipt

Reservation

Reservation ID:
004047829279

Status:
RESERVED

Reservation Type:
Motion for Order (Approving Liquidator's Payment of
Administrative Fees and Destruction of Legacy Records)

Number of Motions:
1

Case Number:
21STCP01655

Case Title:
INSURANCE COMMISSIONER OF THE STATE OF
CALIFORNIA vs WESTERN GENERAL INSURANCE
COMPANY

Filing Party:
Insurance Commissioner of the State of California
(Petitioner)

Location:
Stanley Mosk Courthouse - Department 39

Date/Time:
November 1st 2023, 8:30AM

Confirmation Code:
CR-JHPPBDJTOYYJNYOGN

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension) *** Fees Exempted by Gov Code 6103.1 ***	60.00	1	0.00
TOTAL			\$0.00

Payment

Amount:
\$0.00

Type:
GOVT_EXEMPT

[← Back to Main](#)

[Print Page](#)