

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 90013-1230
Telephone: (213) 269-6014
6 Fax: (916) 731-2144
E-mail: Douglas.Beteta@doj.ca.gov
7 *Attorneys for Petitioner*
Insurance Commissioner of the State of California

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/26/2024 2:24 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Tang, Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12
13 **INSURANCE COMMISSIONER OF THE**
14 **STATE OF CALIFORNIA,**

Petitioner,

15
16 v.

17 **WESTERN GENERAL INSURANCE**
18 **COMPANY,**

Respondent.

Case No. 21STCP01655

**INSURANCE COMMISSIONER'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT
WITH YOSEMITE INSURANCE
COMPANY**

Date: January 29, 2025
Time: 9:30 a.m.
Dept: 82
Judge: Hon. Stephen I. Goorvitch
Trial Date: n/a
Action Filed: May 21, 2021

1 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 29, 2025, at 9:30 a.m., or as soon thereafter as
3 the matter may be heard in Department 82 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 in his capacity as the Liquidator of Western General
6 Insurance Company (Commissioner), will and hereby does move the Court for an order
7 approving its settlement with Yosemite Insurance Company (Yosemite).

8 The Commissioner submits that good cause exists to approve this settlement because it
9 resolves a long standing dispute between Western General Insurance Company (Western General)
10 and Yosemite and its predecessors, the settlement provides for a significant payment to the
11 Western General estate for the benefit of policyholders and creditors, and avoids incurring any
12 further attorney fees and arbitration expenses.

13 This motion is based on this notice, the accompanying memorandum of points and
14 authorities in support thereof, the declaration Scott Pearce filed concurrently with this motion, the
15 file on this matter, and such additional evidence and argument as may be offered at the time of the
16 hearing on the motion.

17 Dated: November 25, 2024

Respectfully submitted,

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

21 

22 DOUGLAS J. BETETA
23 Deputy Attorney General
24 *Attorneys for Petitioner*
25 *Insurance Commissioner of the State of*
26 *California*

TABLE OF CONTENTS

	Page
Memorandum of Points and Authorities	5
I. Factual Background	5
A. The Reinsurance Agreement and the underlying dispute.	5
B. The conservation and liquidation proceedings.....	7
C. The liquidation court proceedings and the arbitration.	7
D. The settlement agreement.	8
II. Legal Standard	9
III. Argument	9
A. The Commissioner has extensive authority in liquidating Western General, including to settle claims.	9
B. The Commissioner's decision to enter into the Settlement Agreement is a proper exercise of his discretion and is fully consistent with his statutory powers.	10
Conclusion	10

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 Exec. Life Ins. Co.
(1995) 32 Cal.App.4th 344 9

STATUTES

Cal. Ins. Code
§ 1037..... 5, 9
§ 1037, subd. (a)..... 9
§ 1037, subd. (b) 9
§ 1037, subd. (c)..... 9, 10
§ 1037, subd. (d) 9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Insurance Commissioner as the Liquidator of Western General Insurance Company
3 (Commissioner) has settled Western General’s dispute with Yosemite Insurance Company
4 (Yosemite).¹ The settlement provides for resolution of a long-standing dispute with Yosemite
5 over the amount due from Yosemite to Western General under a reinsurance agreement. The
6 dispute has resulted in the Western General estate incurring almost \$360,000 in attorney fees and
7 expenses and would require an additional expenditure of approximately \$275,000 to arbitrate to a
8 judgment. The current disputed amount is \$956,000. The settlement provides for a payment of
9 \$517,640.65 to the Western General estate and finally ends this dispute. The Commissioner
10 submits that this settlement is the best value that the Western General estate can obtain from its
11 dispute with Yosemite.

12 The Commissioner’s decision to enter into the settlement agreement is reviewed for abuse
13 of discretion. That decision was well-within the Commissioner’s discretion. It was based on
14 reasoned analysis of the parties’ dispute, the costs of litigation, and Western General’s likelihood
15 to prevail. The decision was authorized pursuant to Insurance Code section 1037, is not in breach
16 of any fiduciary duty, and is not improperly discriminatory. Thus, the Commissioner requests that
17 the Court approve Western General’s settlement with Yosemite.

18 **I. FACTUAL BACKGROUND**

19 **A. The Reinsurance Agreement and the underlying dispute.²**

20 As part of Western General’s operations, it entered into reinsurance agreements with third-
21 party insurers to cede risk to these insurers in order to limit Western General’s exposure to losses
22 from insurance policies it had issued. (Declaration of Scott Pearce (Pearce Decl.), ¶ 2.) Through
23 these agreements, the third-party insurers indemnify Western General for a proportional share of
24 policy limits and related claims adjustment expenses in exchange for a portion of the premiums

25 _____
26 ¹ Yosemite is the successor to Fletcher Reinsurance Company. Fletcher Reinsurance
Company was previously known as Maiden Reinsurance Company. For clarity, all further
27 references will be to Yosemite even if at the time of the events below it had a different name.

28 ² As the Court may recall, the Commissioner previously presented this dispute to the
Court. (See June 5, 2023 Commissioner’s Motion for OSC re Contempt Against Non-Party
Fletcher Reinsurance Company.)

1 paid for those policies. (*Ibid.*) These agreements are commonly referred to as “quota share”
2 reinsurance contracts or treaties and the third-party insurers accepting a proportional share of the
3 risk are commonly called reinsurers. (*Ibid.*) Western General had quota share contracts in place to
4 limit Western General’s exposure to losses on its personal auto policies. (*Ibid.*)

5 On May 21, 2014, Western General entered with Yosemite into an Automobile Quota Share
6 Reinsurance Agreement (the Reinsurance Agreement). (Pearce Decl., ¶ 3.) In essence, the original
7 Reinsurance Agreement provided that Yosemite would assume 40% of the loss on reinsured
8 policies, subject to certain limitations, in exchange for 40% of premiums paid by policyholders on
9 those policies. (*Ibid.*) Those percentages changed significantly during the life of the agreement.
10 (*Ibid.*) The Reinsurance Agreement also provided for a “ceding commission.” (*Ibid.*) The ceding
11 commission provides for Western General to retain a percentage of the premiums to which
12 Yosemite was entitled under the Reinsurance Agreement. (*Ibid.*) The ceding commission was
13 subject to adjustment based on the actual losses experienced on the policies. (*Ibid.*) In effect, the
14 larger the loss on the policies, the lower the amount of premiums Western General was entitled to
15 retain (a slide adjustment). (*Ibid.*) The slide adjustment was calculated on a yearly basis (a treaty
16 year) and, when the losses caused the premiums that Western General was entitled to retain to
17 slide down to a lower percentage than the default percentage set by the Reinsurance Agreement,
18 those premiums would have to be paid to Yosemite as a return commission. (*Ibid.*) Starting in
19 2015, Western General incurred significant return commission obligations that it neglected to
20 accrue and that would have resulted in a return commission payable to Yosemite, possibly up to
21 \$10 million. (*Ibid.*)

22 In 2019, Yosemite and Western General entered into an amendment of the Reinsurance
23 Agreement to significantly reduce those return commissions payable to Yosemite (Addendum
24 No. 8). (Pearce Decl., ¶ 4.) Separately, Yosemite and Western General’s parent company,
25 Western General Holding Company, entered into another agreement, the Subject Liabilities
26 Agreement, that provided for additional consideration to Yosemite for entering into the
27 amendment to the Reinsurance Agreement, but to which Western General was not a party. (*Ibid.*)
28

1 Yosemite and Western General vigorously dispute the effect of Addendum No. 8 and the
2 Subject Liabilities Agreement. (Pearce Decl., ¶ 5.) In particular, Western General's position is
3 that under Addendum No. 8, the deficit carryforward provision is not applicable to the 2014,
4 2015, and 2016 treaty years. (*Ibid.*) On the other hand, Yosemite's position is that the deficit
5 carryforward provision is applicable to the 2014, 2015, and 2016 treaty years and deficits may be
6 carried forward to the 2017 treaty year. (*Ibid.*)

7 **B. The conservation and liquidation proceedings.**

8 In 2020, the Commissioner determined that Western General was operating in a hazardous
9 financial condition, requiring close oversight by the Commissioner. (Pearce Decl., ¶ 6.) After
10 Western General's losses continued to mount and upon application by the Commissioner, the
11 Court appointed the Commissioner conservator of Western General. (*Ibid.*; May 26, 2021 Order
12 Appointing Insurance Commissioner as Conservator, at p. 2.) After the Commissioner took over
13 daily operations of Western General, the Commissioner determined that he could not effect the
14 rehabilitation of Western General and that Western General was insolvent under the Insurance
15 Code. (Pearce Decl., ¶ 6.) Thus, upon application by the Commissioner, on August 5, 2021, the
16 Court entered an order of liquidation and appointed the Commissioner as Liquidator of Western
17 General. (Pearce Decl., ¶ 6; August 5, 2021 Liquidation Order.)

18 **C. The liquidation court proceedings and the arbitration.**

19 The dispute came to the fore in December 2022, when Yosemite refused to pay for its share
20 of losses on the policies it agreed to reinsure. (Pearce Decl., ¶ 7.) Post-liquidation, the
21 Commissioner billed Yosemite approximately \$956,000 for amounts due to the Western General
22 estate under the Reinsurance Agreement. (*Ibid.*) Yosemite refused to pay and instead served the
23 Commissioner with a demand for arbitration claiming that it was entitled to a setoff based on a
24 return commission it was due pursuant to the Reinsurance Agreement. (*Ibid.*) The Commissioner
25 sought the Court's assistance in adjudicating the dispute. (*Ibid.*) Ultimately, the Court ruled that
26 the matter should be determined through an arbitration pursuant to the Reinsurance Agreement's
27 arbitration provision. (*Ibid.*) The Commissioner incurred approximately \$38,910 in pre-arbitration
28 attorney fees on this dispute. (*Ibid.*)

1 The arbitration has been slow and ponderous, requiring the engagement of expert
2 reinsurance counsel as well as a reinsurance expert, and the significant expenditure of time from
3 two employees of the Conservation and Liquidation Office (CLO). (Pearce Decl., ¶ 8.) To date,
4 the Western General estate has incurred approximately \$320,000 in attorney fees and expenses
5 for the arbitration. (*Ibid.*) Western General and its reinsurance counsel estimate that the Western
6 General estate would incur an additional \$275,000 to arbitrate the matter to a judgment, not
7 including any potential appeals. (*Ibid.*)

8 While the Commissioner is confident in his position, there remains a risk that the arbitration
9 panel may disagree. (Pearce Decl., ¶ 9.) In addition, given the history of this dispute, even if
10 Western General prevails, Yosemite is likely to appeal, requiring further expenditure of attorney
11 fees and expenses. (*Ibid.*) Thus, the Liquidator believes that the present settlement is the best
12 value that the Western General estate can obtain from its dispute with Yosemite. (*Ibid.*)

13 **D. The settlement agreement.**

14 On November 5, 2024, Western General and Yosemite entered into a settlement agreement
15 and release (the Settlement Agreement) to resolve their dispute. (Pearce Decl., ¶ 10, Ex. 1
16 (Settlement Agreement).) The Settlement Agreement resolves the parties' dispute by providing
17 for a revised calculation of the ceding commission, loss adjustment, and the return commission.
18 (Settlement Agreement, § 2 & Ex. A.) It further provides that a deficit carryforward will be
19 allowed for all years at issue (2014 to 2018).³ (Settlement Agreement, § 2.a.) In addition, for any
20 deficit carried forward to the 2017 treaty year, Western General will receive a 47.5% discount on
21 that deficit. (Settlement Agreement, § 2.b.) Pursuant to the agreement, Yosemite will make a
22 payment of \$517,640.65 to the Western General estate. (Settlement Agreement, § 3.) This amount
23 represents 47.5% of the disputed amount plus undisputed claims owed by Yosemite that it has not
24 been willing to pay until resolution of this dispute. (Pearce Decl., ¶ 10.) In addition, the
25 agreement applies to future balances due under the Reinsurance Agreement, thereby providing for
26 a final resolution of the parties' dispute. (Settlement Agreement, § 4.)

27 ³ Notably, for the 2017 and 2018 treaty years, the losses experienced to date on Western
28 General's policies did not reduce Western General's ceding commission, i.e., no return
commission is due to Yosemite in those years.

1 The Settlement Agreement contains mutual releases for any claims arising from the dispute
2 over the interpretation of Addendum No. 8. (Settlement Agreement, § 5.) Furthermore, upon
3 completion of the settlement payment, the parties will work to dismiss the arbitration and any
4 related litigation proceedings with prejudice. (Settlement Agreement, § 17.) The agreement also
5 contains a confidentiality provision. (Settlement Agreement, § 12.) But Yosemite has consented
6 to the public filing of the agreement. (Pearce Decl., ¶ 10.)

7 **II. LEGAL STANDARD**

8 The Insurance Commissioner's actions as conservator or liquidator of a distressed insurance
9 company are reviewed for abuse of discretion. (See *In re Exec. Life Ins. Co.* (1995) 32
10 Cal.App.4th 344, 358.) Unless the commissioner's actions are unsupported by a rational basis,
11 contrary to specific statute, a breach of fiduciary duty, or improperly discriminatory, the trial
12 court should ratify those actions. (See *ibid.*)

13 **III. ARGUMENT**

14 **A. The Commissioner has extensive authority in liquidating Western General, 15 including to settle claims.**

16 Insurance Code section 1037 enumerates, but does not limit, the Commissioner's authority
17 as conservator or liquidator of an insurance company. For example, it provides authority for the
18 Commissioner to conduct the business of the insurer, collect debts, and dispose of property. (Ins.
19 Code, § 1037, subds. (a), (b), & (d).) But if a transaction involves property with a market value
20 that exceeds \$20,000, he must obtain court approval. (Ins. Code, § 1037, subd. (d).) Most relevant
21 to this motion, section 1037, subdivision (c) provides the Commissioner with "authority to
22 compound, compromise or in any other manner negotiate settlements of claims against that
23 person upon such terms and conditions as the commissioner shall deem to be most advantageous
24 to the estate of the person being administered or liquidated or otherwise dealt with under this
25 article."
26
27
28

B. The Commissioner's decision to enter into the Settlement Agreement is a proper exercise of his discretion and is fully consistent with his statutory powers.

The Commissioner believes and submits to the Court that the Settlement Agreement represents the most advantageous outcome to the Western General estate to a long-standing dispute. Pursuant to section 1037, subdivision (c), this determination is left to the Commissioner's discretion and it is not contrary to any statute. This determination is also rational, based on the history of this dispute, the parties' respective positions, the risks of litigation, the attorney fees and expenses incurred to date and those to be incurred if the matter is not settled, and the significant payment Yosemite will make to the estate pursuant to the Settlement Agreement. In addition, entering into the Settlement Agreement did not breach any fiduciary duty and is not improperly discriminatory. Instead, the Commissioner is compromising a genuine dispute with a creditor and debtor for what he believes is the best value to the Western General estate. By maximizing the value to the Western General estate, the Settlement Agreement is also in the best interest of policyholders and creditors.

CONCLUSION

For the foregoing reasons, the Commissioner respectfully requests that the Court approve the Settlement Agreement with Yosemite.

Dated: November 25, 2024

Respectfully submitted,

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

[Signature]

DOUGLAS J. BETETA
Deputy Attorney General
Attorneys for Petitioner
Insurance Commissioner of the State of
California

LA2020603913
Motion for Approval of Yosemite Settlement.docx

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 November 26, 2024, I served the attached **INSURANCE COMMISSIONER'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT WITH YOSEMITE INSURANCE COMPANY** 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: jmcpherson@hinshawlaw.com

*Attorneys for Western General Insurance
Company*

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 November 26, 2024, at Los Angeles, California.

Alyssa Barragan

Declarant

/s/ Alyssa Barragan

Signature