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FREMONT INDEMNITY COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FREMONT INDEMNITY COMPANY,
for itself and as successor in interest to
Comstock Insurance Company,

Plaintiff,

v.

FREMONT GENERAL CORPORATION,
FREMONT COMPENSATION
INSURANCE GROUP, INC., DOES 1-30,
DOES 31-60,

Defendant.

CASE NO.

BC320766

COMPLAINT FOR:

- i. DECLARATORY RELIEF;
- ii. INJUNCTIVE RELIEF;
- iii. BREACH OF CONTRACT;
- iv. BREACH OF FIDUCIARY DUTY;
- v. UNJUST ENRICHMENT;
- vi. CONSTRUCTIVE TRUST
(CIV. CODE § 2224);
- vii. CONVERSION;
- viii. AVOIDANCE OF FRAUDULENT
TRANSFER (CIV. CODE § 3439 *et seq.*);
- ix. AVOIDANCE OF VOIDABLE
PREFERENCE (INS. CODE § 1034);
- x. AVOIDANCE OF FRAUDULENT
TRANSFER (INS. CODE § 1034.1);
- xi. VIOLATION OF THE HOLDING
COMPANY ACT (INS. CODE § 1215.5);
- xii. RECOVERY OF IMPERMISSIBLE
DISTRIBUTION (INS. CODE § 1215.16).

DOCSSC1:343540.1

COMPLAINT BY FREMONT INDEMNITY ON BEHALF OF COMSTOCK FOR DECLARATORY & INJUNCTIVE RELIEF, ETC.

1 Fremont Indemnity Company ("Fremont Indemnity"), a California corporation, by and
2 through John Garamendi, Insurance Commissioner of the State of California ("the
3 Commissioner"), acting solely as statutory liquidator of Fremont Indemnity, for its complaint
4 alleges as follows:

5 1. Fremont Indemnity was licensed to transact insurance business in the State of
6 California, and was engaged in the underwriting and sale of workers' compensation insurance.
7 The Commissioner was appointed as the liquidator of Fremont Indemnity by the above-entitled
8 court in the proceeding entitled *Insurance Commissioner v. Fremont Indemnity Company*, Los
9 Angeles County Superior Court Case No. BS083582 ("the Liquidation Proceeding"). A true and
10 correct copy of the court's Order Appointing Insurance Commissioner As Liquidator and
11 Restraining Orders ("the Liquidation Order") issued on July 2, 2003 in the Liquidation
12 Proceeding is attached hereto as Exhibit A and incorporated herein by reference.

13 2. Comstock Insurance Company ("Comstock") was also licensed to transact
14 insurance business in the State of California, and was engaged in the underwriting and sale of
15 multiple line property and casualty insurance. Comstock ceased writing new or renewal business
16 in or about 1986, and voluntarily limited its business to the payment or runoff of liabilities on pre-
17 existing policies. In or about 1996, Fremont General caused Comstock to assume certain
18 reinsurance liabilities and obligations of Fremont Indemnity. Until March 14, 2003, Comstock's
19 primary activity was the settlement of outstanding loss liability through settlements,
20 commutations and negotiations, including the former reinsurance liabilities and obligations of
21 Fremont Indemnity. On or about March 14, 2003, Fremont General caused Comstock to merge
22 into Fremont Indemnity. By operation of law, Comstock's assets, including its contractual and
23 equitable rights, its claims, and its causes of action, became Fremont Indemnity's assets. As
24 such, Fremont Indemnity is the successor in interest to Comstock, and Fremont Indemnity has the
25 right to expect, demand, and enforce Comstock's contractual and equitable rights, to enforce its
26 claims, and to assert its causes of action.

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1 3. Defendant Fremont General Corporation ("Fremont General") is a publicly traded
2 corporation organized under the laws of the State of Nevada. Fremont Compensation Insurance
3 Group, Inc. ("Fremont Insurance Group"), a Delaware corporation, is and has been at relevant
4 times a wholly owned subsidiary of Fremont General. Fremont Indemnity has been at relevant
5 times a wholly owned subsidiary of Fremont Insurance Group. At all times relevant to this action
6 prior to the commencement of the Liquidation Proceeding, Fremont Indemnity was owned,
7 dominated, and controlled by Fremont General, through Fremont General's subsidiary, Fremont
8 Insurance Group, which was under the ownership, domination, and control of Fremont General
9 such that Fremont Insurance Group operated as the alter ego of Fremont General.

10 4. Defendant Does 1 through 30 are persons, corporations, partnerships, or other
11 entities who have done or will do acts otherwise alleged in this complaint. Fremont Indemnity is
12 informed and believes and thereupon alleges that defendant Does 1 through 30, inclusive, at all
13 times mentioned herein, have aided and abetted, or have acted and are continuing to act in concert
14 with defendant Fremont General and that each of said Does participated in the acts and
15 transactions and is, therefore, jointly or separately liable for the acts alleged herein. The true
16 names and capacities, whether individual, corporate, associate or otherwise, are unknown to
17 Fremont Indemnity and are named herein pursuant to Code of Civil Procedure section 474 as
18 defendant Does 1 through 30. Fremont Indemnity reserves its right upon learning their true
19 names and capacities to state a claim against any persons, corporations, partnerships, or other
20 entities as both a Doe subject to this paragraph and a Doe subject to the following paragraph.

21 5. Defendant Does 31 through 60 are persons, corporations, partnerships, or other
22 entities who have benefited financially or otherwise from the wrongful actions described herein.
23 Fremont Indemnity is informed and believes and thereupon alleges that defendant Does 31
24 through 60, inclusive, at all times mentioned herein, received all or some portion of the
25 misappropriated, converted, and fraudulently transferred assets, or the proceeds, profits, or other
26 benefits arising therefrom, and whose receipt or benefit must be cancelled and avoided, returned
27 or reimbursed to Fremont Indemnity, and/or such Does must be enjoined and forbidden from
28 using or otherwise benefiting therefrom. The true names and capacities, whether individual,

1 corporate, associate or otherwise, are unknown to Fremont Indemnity and are named herein
2 pursuant to Code of Civil Procedure section 474 as defendant Does 31 through 60. Fremont
3 Indemnity reserves its right upon learning their true names and capacities to state a claim against
4 any persons, corporations, partnerships, or other entities as both a Doe subject to this paragraph
5 and a Doe subject to the previous paragraph.

6 JURISDICTION

7 6. Pursuant to Insurance Code section 1058, the above-entitled court has jurisdiction
8 to hear and determine this action since it affects the interests of Fremont Indemnity and of the
9 Commissioner, as statutory liquidator of Fremont Indemnity.

10 7. Pursuant to Insurance Code section 1020, after issuance of an order under either
11 section 1011 or 1016, or at any time thereafter, the court shall issue such other injunctions or
12 orders as may be deemed necessary to prevent any or all of the following occurrences, among
13 others: interference with the Commissioner or the proceeding; the waste of assets of such person;
14 the institution or prosecution of any actions or proceedings against the conserved company; the
15 obtaining of preferences, judgments, attachments, or other liens against the estate or its assets; or
16 the making of any levy against the estate or its assets. This court has jurisdiction to hear all
17 applications and actions by the Commissioner seeking the entry or enforcement of orders
18 pursuant to Insurance Code section 1020.

19 FACTS COMMON TO ALL CAUSES OF ACTION

20 8. Fremont General, Fremont Insurance Group, and Fremont Indemnity are subject to
21 the California Insurance Holding Company System Regulatory Act, Insurance Code sections
22 1215, *et seq.*, which requires, *inter alia*, that all material transactions between insurers and their
23 affiliates be on terms that are “fair and reasonable.” Transactions that may be proper or
24 permissible among non-regulated entities may not be proper or permissible under the Insurance
25 Holding Company System Regulatory Act.

26 9. Fremont General, Fremont Insurance Group, and Fremont Indemnity entered into
27 an agreement, memorialized by a letter dated November 27, 2000 (“November 27, 2000 Letter”),
28 to permit the Commissioner as regulator of Fremont Indemnity to supervise and provide ongoing

1 regulatory oversight of Fremont Indemnity. Fremont General, Fremont Insurance Group, and
2 Fremont Indemnity purported to enter into a second agreement, allegedly memorialized by a letter
3 dated July 2, 2002 ("July 2, 2002 Letter"), to replace the November 27, 2000 Letter, but
4 continuing the requirement from the November 27, 2000 Letter that Fremont Indemnity would
5 submit to the Commissioner's ongoing supervision and regulatory oversight.

6 10. As shown by the facts below, Fremont General and Fremont Insurance Group
7 violated the California Holding Company System Regulatory Act in that Fremont General
8 imposed material transactions on Fremont Indemnity and Comstock that were not fair and
9 reasonable to the insurance company subsidiaries, breached the November 27, 2000 Letter and
10 the July 2, 2002 Letter, and breached the covenant of good faith and fair dealing inhering in each
11 by concealing material transactions from the Commissioner as regulator of Fremont Indemnity
12 and Comstock. The facts illustrate a pattern and practice of looting the insurance company
13 subsidiaries of their assets, and employing schemes and artifices to convey those assets to entities
14 beyond the regulation or control of the Commissioner as regulator of Fremont Indemnity and
15 Comstock, all of which breached Fremont General's fiduciary duty to the insurance company
16 subsidiaries.

17 11. As shown further by the facts below, Fremont General and Fremont Insurance
18 Group, by their domination and control of the insurance company subsidiaries, committed
19 continuing and ongoing torts by planning and executing a scheme and practice to misappropriate,
20 convert, and fraudulently transfer assets of their insurance company subsidiaries with the intent to
21 hinder, delay, and defraud creditors, including but not limited to Fremont Indemnity, which was
22 (a) a creditor of Fremont General, Fremont Insurance Group, Fremont Reinsurance Company,
23 Ltd. (Bermuda) ("Fremont Re (Bermuda)"), and Comstock, and (b) a future creditor of Fremont
24 General and Fremont Insurance Group. At all times relevant to these allegations, Fremont
25 General and Fremont Insurance Group knew or reasonably should have known that their acts
26 would cause Fremont Indemnity, Fremont Re (Bermuda), and Comstock to have inadequate
27 assets to pay debts as they became due, including debts owed to Fremont Indemnity. Fremont
28 General and Fremont Insurance Group concealed these facts from Fremont Indemnity and from

1 the Commissioner such that Fremont Indemnity and the Commissioner could not have discovered
2 the facts necessary to bring these claims until after the date of the Liquidation Order when
3 Fremont Indemnity and the Commissioner were able to obtain some documentation of these
4 transactions. However, Fremont General and Fremont Insurance Group continue to conceal these
5 and, upon information and belief, other fraudulent transactions by refusing to disclose, or by
6 forbidding others within their control from disclosing information, records, files, and other
7 documents that are Fremont Indemnity's property, and to which Fremont Indemnity is entitled
8 under terms of the Liquidation Order.

9 **Diversion of Assets from Fremont Re (Bermuda)**

10 12. Fremont Re (Bermuda) was a wholly owned, direct subsidiary of Fremont
11 Indemnity from the date of Fremont Re (Bermuda)'s organization in or about 1986 until
12 September 2000. By 1996, Fremont Re (Bermuda) had accumulated realizable assets worth in
13 excess of \$19 million.

14 13. In December 1996, Fremont General, through its domination and control, caused
15 Fremont Re (Bermuda) to transfer \$19,610,325 in investment assets to Fremont Insurance Group
16 in return for an unsecured note in the same amount. The terms of the note purportedly required
17 Fremont Insurance Group to make interest-only payments of 10% annually, and to repay the
18 principal in 2006.

19 14. The terms of the note purportedly allowed Fremont Re (Bermuda) to defer
20 collection from Fremont Insurance Group of any interest payment. Because of Fremont
21 General's domination and control, the terms of the note allowed Fremont General to compel
22 Fremont Re (Bermuda) to defer payment at Fremont General's command without regard to
23 Fremont Indemnity's or Fremont Re (Bermuda)'s fiduciary duty to its respective policyholders
24 and creditors.

25 15. As a result of the provision purportedly allowing Fremont Re (Bermuda) to defer
26 interest payments, but which actually allowed Fremont General to continue to misappropriate,
27 convert, and fraudulently transfer Fremont Re (Bermuda)'s assets, Fremont Re (Bermuda)

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1 deferred and Fremont Insurance Group owed in excess of \$1,900,000 in deferred interest
2 payments to Fremont Indemnity's subsidiary, Fremont Re (Bermuda) by September 1, 2000.

3 16. In or about December 1999, Fremont General, through its domination and control,
4 caused Fremont Re (Bermuda) to invest \$5,475,000 in Fremont General's Series B Senior Notes
5 due March 17, 2009, with a par value of \$7,300,000. In or about May 2000, Fremont General,
6 through its domination and control, caused Fremont Re (Bermuda) to invest \$2,148,000 in
7 Fremont General's Series A Senior Notes due March 17, 2004, with par value of \$4,500,000.

8 17. On or about September 1, 2000, Fremont General, through its domination and
9 control, caused Fremont Insurance Group to purchase all issued and outstanding stock of Fremont
10 Re (Bermuda) for \$6,819,912, and caused the ownership and apparent control of Fremont Re
11 (Bermuda) to transfer from Fremont Indemnity to Fremont Insurance Group.

12 18. Together, the Series A and Series B Senior Notes owned by Fremont Re
13 (Bermuda) had a par value of \$11,800,000, and were carried on the books of Fremont Re
14 (Bermuda) at a value of \$7,875,339. In or about October 2000, after having just caused Fremont
15 Indemnity to transfer ownership of Fremont Re (Bermuda) and its remaining assets to Fremont
16 Insurance Group, Fremont General, through its domination and control, caused Fremont Re
17 (Bermuda) to declare a dividend to Fremont Insurance Group, and caused Fremont Re (Bermuda)
18 to satisfy the dividend by transferring the Series A and Series B Senior Notes to Fremont
19 Insurance Group.

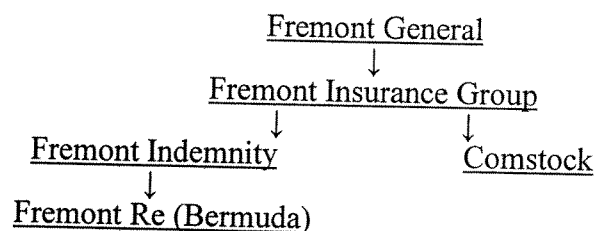
20 19. No aspect of the transactions among Fremont Insurance Group, Fremont
21 Indemnity, and Fremont Re (Bermuda) was fair and reasonable to Fremont Indemnity. Fremont
22 General stripped Fremont Re (Bermuda) and its shareholder, Fremont Indemnity, of more than
23 \$19 million in investments in return for an unsecured note of questionable and, ultimately, of no
24 value. Fremont General misappropriated the time-value of investments from Fremont Re
25 (Bermuda) and its shareholder, Fremont Indemnity, by compelling Fremont Re (Bermuda) to sign
26 an agreement that allowed Fremont General to require Fremont Re (Bermuda) to defer interest
27 payments on the unsecured note, by allowing Fremont General to excuse Fremont Insurance
28 Group's payment of interest to Fremont Re (Bermuda), and by causing Fremont Re (Bermuda) to

1 lose more than \$1.9 million to unpaid interest payments. Upon information and belief, Fremont
2 General embarked on and fulfilled a scheme to transfer additional assets to Fremont General from
3 Fremont Re (Bermuda), to the detriment of Fremont Re (Bermuda)'s sole shareholder, Fremont
4 Indemnity, by causing Fremont Re (Bermuda) to purchase Fremont General's Series A and Series
5 B Senior Notes, to compel Fremont Indemnity to sell Fremont Re (Bermuda) to Fremont
6 Insurance Group for less than the value of the Series A and Series B Senior Notes alone, and by
7 causing Fremont Re (Bermuda) to declare a "dividend" of the Series A and Series B Senior Notes
8 to its new corporate parent, Fremont Insurance Group, little more than a month after the effective
9 date of the transfer of Fremont Re (Bermuda) from Fremont Indemnity to Fremont Insurance
10 Group.

11 20. Fremont General evaded regulation and concealed the misappropriation,
12 conversion, and fraudulent transfer of Fremont Re (Bermuda)'s assets because Fremont Re
13 (Bermuda), as an offshore company, was not subject to the Commissioner's regulatory authority
14 except through the Commissioner's regulation of Fremont Indemnity. Upon information and
15 belief, Fremont General ensured its evasion of regulation and concealment by completing its
16 scheme to transfer Fremont Re (Bermuda) from Fremont Indemnity to Fremont Insurance Group
17 before entering into the November 27, 2000 Letter, knowing that the misappropriation,
18 conversion, and fraudulent transfer of assets owned by Fremont Indemnity as the sole shareholder
19 of Fremont Re (Bermuda) might trigger the Commissioner's discovery, objection, and opposition
20 as regulator under the enhanced regulatory oversight required by the November 27, 2000 Letter.

21 **Diversion of Assets from Comstock**

22 21. As of January 2000, both Comstock and Fremont Indemnity were wholly owned,
23 direct insurance company subsidiaries of Fremont Insurance Group and, as discussed above,
24 Fremont Re (Bermuda) was at that time a wholly owned, direct subsidiary of Fremont Indemnity:



1 However, as discussed above, Fremont General caused Fremont Indemnity to convey its interest
2 in Fremont Re (Bermuda) to Fremont Insurance Group effective September 1, 2000, where
3 transactions that benefited Fremont Re (Bermuda) would inure to the benefit of Fremont
4 Insurance Group and Fremont General, and not to Fremont Indemnity, its policyholders, or its
5 creditors, and where transactions involving Fremont Re (Bermuda) would not be subject to the
6 Commissioner's enhanced regulatory oversight under the November 27, 2000 Letter.

7 22. Beginning in March 2000 and continuing until at least September 2002, Fremont
8 General embarked on a scheme to transfer liabilities of Fremont Re (Bermuda) to Comstock for
9 the ultimate benefit of Fremont Insurance Group and Fremont General, and to the detriment of
10 Fremont Indemnity, Comstock and their respective policyholders and creditors. Initially,
11 Fremont Indemnity and Fremont Re (Bermuda) were both liable on contracts of reinsurance,
12 otherwise known as "treaties," with various entities. Fremont General, through its domination
13 and control, caused Fremont Indemnity to transfer certain of its policyholder liabilities to
14 Comstock.

15 23. Fremont General, through its domination and control, caused Comstock and
16 Fremont Re (Bermuda) to enter into a series of settlements, otherwise known as "commutations"
17 of reinsurance treaties on which Comstock and Fremont Re (Bermuda) were then jointly liable.
18 However, Fremont General caused Comstock to pay the entire amount agreed in the commutation
19 and recorded only an intercompany account payable from Fremont Re (Bermuda) to Comstock
20 for Fremont Re (Bermuda)'s alleged share of the commutation. By March 14, 2003, Fremont Re
21 (Bermuda) had repaid only a small portion of the amount due to Comstock for the commutations,
22 and nearly \$3,300,000 was then due and owing from Fremont Re (Bermuda) to Comstock.

23 24. In addition to causing Comstock to pay for commutations for which Fremont Re
24 (Bermuda) did not compensate Comstock, Fremont General, through its domination and control,
25 and upon information and belief, also caused Comstock to assume a greater proportion of the
26 commutation than Comstock would otherwise be liable under the treaties. Upon information and
27 belief, the inequitable distribution of the liability for the commutation caused Comstock to bear
28 more of the cost of each commutation than Comstock was contractually liable for, and allowed

1 Fremont Re (Bermuda) to avoid both its fair and reasonable share of the liability, and to avoid
2 repayment of the amounts paid by Comstock on behalf of Fremont Re (Bermuda).

3 25. The transactions between Comstock and Fremont Re (Bermuda) were not subject
4 to the enhanced regulatory oversight under the November 27, 2000 Letter or the July 2, 2002
5 Letter because Comstock was not subject to supervision under either letter and, after its purchase
6 by Fremont Insurance Group, Fremont Re (Bermuda) was no longer a Fremont Indemnity
7 subsidiary. However, on March 14, 2003, after completing the transactions described above,
8 Fremont General merged Comstock into Fremont Indemnity. Fremont General did not cause
9 Fremont Re (Bermuda) to settle the intercompany payable to Comstock, causing Fremont
10 Indemnity to bear the share of commutations purportedly assumed by Fremont Re (Bermuda),
11 and to bear a greater share of commutations owed by Fremont Re (Bermuda). Although seeking
12 and obtaining the Commissioner's approval as regulator of Comstock and Fremont Indemnity for
13 the merger, neither Fremont General nor Fremont Insurance Group advised the Commissioner
14 that Fremont General had inequitably, in bad faith, and in violation of the Insurance Code,
15 imposed upon Comstock, and then on Fremont Indemnity by merger, the burden for commutation
16 payments purportedly assumed by Fremont Re (Bermuda). The scheme had the effect of
17 preserving Fremont Re (Bermuda)'s assets for Fremont Insurance Group and Fremont General,
18 while misappropriating, converting, and fraudulently transferring them from Fremont Indemnity
19 and Comstock, all to the detriment of Fremont Indemnity and Comstock, and to their respective
20 policyholders and creditors.

21 26. In addition to the above, Fremont General's and Fremont Insurance Group's use of
22 the scheme to transfer liabilities of Fremont Re (Bermuda) to Comstock, which was not subject to
23 supervision under the letters of supervision and regulatory oversight, but then to merge Comstock
24 into Fremont Indemnity after completing Fremont General's scheme, was a breach of the
25 November 27, 2000 Letter, a violation of the terms of the July 2, 2002 Letter, and a breach of the
26 covenant of good faith and fair dealing inhering in each.

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Diversion of Net Operating Losses from Comstock

27. Prior to this court's entry of the Liquidation Order, Comstock suffered substantial net operating losses ("NOLs") for federal income tax purposes. The NOLs were property of Comstock and were available for Comstock's use under applicable law, to reduce income for purposes of federal income tax liability. Such NOLs may, under certain circumstances, be applied to reduce income for prior years ("carry backs") or may be used to reduce income for future years ("carry forwards"). NOL carry backs and carry forwards were valuable property of Comstock because of their potential use to reduce federal tax liability.

28. In or about 1996, Fremont General caused Comstock to enter into an Intercompany Tax Allocation Agreement purportedly signed by Comstock on October 24, 1996, and by Fremont General on October 30, 1996 ("Tax Allocation Agreement"). Under the terms of the Tax Allocation Agreement, Fremont General would file a consolidated federal tax return under which Comstock would participate in the tax benefits, advantages, and liabilities of consolidating the profits and losses from Comstock and Fremont General. Under the Tax Allocation Agreement, Comstock would calculate its tax liability or tax refund as if it were filing a separate federal income tax return. If Comstock owed taxes on a separate return basis, Comstock would be liable to Fremont General for that amount. If Comstock were owed a refund on a separate return basis as the result of NOLs, Fremont General would pay the benefit obtained thereby to Comstock. The Tax Allocation Agreement provided for Fremont General to make the intercompany payment for the use of Comstock's NOLs no later than three years after the filing of the consolidated income tax return in which Fremont General utilized Comstock's NOLs to offset the consolidated corporations' taxable income. The Tax Allocation Agreement further provided that Comstock could seek an earlier payment to Comstock for the use of Comstock's NOLs by making a written application therefor to Fremont General's board of directors.

29. Fremont General and Fremont Insurance Group were aware that the Commissioner, acting as statutory regulator of Comstock and its affiliates, interpreted the California Insurance Code to require Fremont General to compensate its direct and indirect insurance company subsidiaries fully for the use of their NOLs. The Commissioner had

1 determined that the failure to compensate direct and indirect insurance company subsidiaries for
2 the use of their NOLs was not "fair and reasonable," as required by Insurance Code section
3 1215.5(a)(1).

4 30. Fremont Indemnity is informed and believes, and on that basis alleges, that
5 Fremont General improperly used Comstock's NOLs to shore up Comstock's statutorily required
6 surplus to benefit Fremont General and certain insiders to the detriment of Comstock. In the
7 Report of Examination as of December 31, 1999, the Commissioner, acting as statutory regulator
8 of Comstock, found that Comstock had improperly booked a federal income tax recoverable
9 based on NOL carry forwards as an admitted asset of Comstock. Neither Fremont General nor
10 Comstock contested or disputed the findings of the Commissioner, thereby conceding the
11 Commissioner's findings. The improper booking of the recoverable allowed Fremont General to
12 avoid the commitment of other assets to Comstock's statutorily required surplus, and permitted
13 Fremont General to falsely improve the appearance of Comstock's then-present financial
14 condition. The improper booking was also an admission that the NOLs were Comstock's asset.

15 31. By December 31, 2002, Comstock's NOLs were considerable, amounting to more
16 than \$52 million. Less than four months later, on or about March 14, 2003, Fremont General,
17 through its domination and control, merged Comstock into Fremont Indemnity. By operation of
18 law, Comstock's assets, including its NOLs and its causes of action, became Fremont Indemnity's
19 assets. As such, Fremont Indemnity is the successor in interest to Comstock, and Fremont
20 Indemnity has the right to expect, demand, and enforce Comstock's contractual and equitable
21 rights and to enforce its claims, including its right and claim to reimbursement for the use of
22 Comstock's NOLs, and to assert Comstock's causes of action.

23 32. Fremont General dominated and controlled Comstock at the time that Comstock
24 and Fremont General entered into the Tax Allocation Agreement. If Fremont General disputes
25 that the Tax Allocation Agreement requires Fremont General to compensate Comstock for the use
26 of its NOLs, or if Fremont General believes that the Tax Allocation Agreement allows Fremont
27 General to use Comstock's NOLs without compensating Comstock, then Fremont General's
28 domination and control permitted Fremont General to draft the Tax Allocation Agreement with

1 terms favorable to Fremont General and detrimental to Comstock. Fremont General's evasion of
2 its responsibility to compensate Comstock for the use of its NOLs contributed to the weakening
3 of the financial condition of Comstock. Fremont Indemnity is informed and believes, and on that
4 basis alleges, that Fremont General drafted the Tax Allocation Agreement and, to the extent that
5 Fremont General believes that any provisions allow it to retain the benefit of Comstock's NOLs,
6 then Fremont General drafted such provisions in its favor in order to deprive Comstock of the
7 benefit of its NOLs.

8 33. When Fremont General merged Comstock into Fremont Indemnity on or about
9 March 14, 2003, Fremont General and Fremont Insurance Group knew or had reason to know that
10 their failure to compensate Comstock or Fremont Indemnity for the use of Comstock's NOLs
11 violated the Insurance Code and breached Fremont General's and Fremont Insurance Group's
12 fiduciary duty to Comstock and Fremont Indemnity, and to Comstock's and Fremont Indemnity's
13 respective policyholders and creditors.

14 34. On June 3, 2003, the Commissioner filed a verified application to place Fremont
15 Indemnity into conservation. Simultaneously with the filing of the Commissioner's application
16 for the Conservation Order, the Commissioner also sought a hearing to place Fremont Indemnity
17 into liquidation pursuant to Insurance Code section 1016. The hearing on the Commissioner's
18 verified application for conservation was held on June 4, 2003, and the court entered its "Order
19 Appointing Conservator and Restraining Orders" on the same day. The hearing on the
20 Commissioner's June 3, 2003 liquidation application was held on July 2, 2003, at which time the
21 Commissioner was appointed as the statutory liquidator of Fremont Indemnity pursuant to the
22 court's Liquidation Order.

23 35. The Commissioner, as liquidator, cooperated with Fremont General in preparing
24 Fremont Indemnity's separate 2002 federal tax return calculation for Fremont General's use in
25 filing a consolidated tax return on or before September 15, 2003. During the week of September
26 22, 2003, without advance notification, Fremont General advised the Commissioner that in
27 Fremont General's consolidated 2002 Federal Tax Return, Fremont General had taken a
28 "worthless stock deduction" for the stock of Fremont Indemnity. The Commissioner has since

1 made repeated demands upon Fremont General to produce a copy of Fremont General's
2 consolidated 2002 Federal Tax Return and prior years' returns for the Commissioner's review,
3 but Fremont General has refused to comply.

4 36. Fremont General's action to take a worthless stock deduction, under applicable
5 federal tax law, allowed Fremont General to appropriate Comstock's NOLs without
6 compensating Fremont Indemnity. By taking this action, Fremont General diverted to Fremont
7 General's exclusive use all or a large portion of Comstock's NOLs. Fremont General's action
8 destroyed the potential value of Comstock's NOLs to Fremont Indemnity in order to reap an
9 immediate federal tax benefit for Fremont General, and absorbed the NOLs for Fremont
10 General's own benefit without an exchange of fair and sufficient consideration to Fremont
11 Indemnity. Fremont General's action was improper, in that the taking of the deduction was
12 impermissible under applicable law and regulation, and in that the requisites to the taking of such
13 a deduction did not exist as of the end of the applicable 2002 tax year. Fremont General's action
14 was also inconsistent with its representations to the public and to regulators that the NOLs were
15 Comstock's asset, to which Fremont Indemnity succeeded.

16 37. Fremont Indemnity is informed and believes, and on that basis alleges that
17 Fremont General has received the benefit of a substantial amount of Comstock's NOLs as a result
18 of the reduction in the consolidated federal income tax liability of Fremont General and Fremont
19 Indemnity, or by taking certain tax positions or making certain tax elections on the consolidated
20 tax returns without adequately compensating Fremont Indemnity for the use of Comstock's
21 NOLs. As a liquidating company, Fremont Indemnity remains a taxpayer. By appropriating
22 Comstock's NOLs to its exclusive use, and by preventing Fremont Indemnity from obtaining fair
23 and reasonable consideration for the use of Comstock's NOLs, Fremont General has interfered
24 with property of the estate in violation of paragraphs 20 and 21 of the Liquidation Order, and has
25 otherwise breached Fremont General's legal obligations as set forth hereafter. By depriving the
26 estate of the benefits of Comstock's NOLs, the estate will be unable to realize the value of the
27 NOLs, which would otherwise be available for the benefit of Fremont Indemnity and Comstock,
28 and their respective policyholders and creditors.

1 38. By letter dated July 27, 2004, sent by certified mail, Fremont Indemnity made
2 demands upon Fremont General's board of directors: (a) to account for all NOLs generated by
3 Comstock and utilized by Fremont General in its consolidated federal income tax returns; (b) to
4 provide copies of all consolidated federal income tax returns in which Fremont General utilized
5 Comstock's NOLs; (c) to pay Fremont Indemnity for the appropriation and use of Comstock's
6 NOLs, with interest from the date that Fremont General obtained the benefit of Comstock's
7 NOLs; and (d) to advance payment of any compensation to the extent that Fremont General
8 believed that Comstock's right had not yet accrued to receive the benefit of Comstock's NOLs.
9 An attorney, by letter of August 9, 2004, purporting to act at the board of directors' behest, has
10 refused to comply with Fremont Indemnity's demands.

11 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**
12 (Code of Civil Procedure § 1060)
13 (Against Fremont General)

14 39. Fremont Indemnity refers to and alleges herein the allegations set forth in
15 paragraphs 1 through 38 above.

16 40. An actual controversy has arisen and now exists between Fremont Indemnity, as
17 successor to Comstock, and Fremont General concerning Fremont General's receipt of the
18 economic benefit of Comstock's NOLs as a result of the reduction in the consolidated federal
19 income tax liability of the affiliated group, or by taking certain tax positions or making certain tax
20 elections on the tax returns without adequately compensating Fremont Indemnity for Comstock's
21 NOLs.

22 41. An actual controversy has arisen and now exists between Fremont Indemnity and
23 Fremont General concerning their respective rights and duties in that Fremont General contends it
24 has the right to claim a worthless stock deduction and the Commissioner, as liquidator of Fremont
25 Indemnity, contends that the claiming of the deduction was improper and further contends that
26 Fremont General's actions in doing so constitute an impermissible interference with and taking of
27 the assets of the estate by appropriating the value of Comstock's NOLs to Fremont General's own
28 exclusive use, all in violation of Insurance Code section 1020.

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1 42. Fremont Indemnity desires a judicial determination and declaration of its rights
2 with respect to the propriety of the worthless stock deduction and the rights to ownership and use
3 of the NOLs based upon the facts and circumstances described above, including this court's
4 Conservation and Liquidation Orders.

5 43. Such a declaration is necessary and appropriate at this time in order that Fremont
6 Indemnity may proceed under the law to properly marshal the assets of the estate of Fremont
7 Indemnity and administer the estate.

8 44. Therefore, Fremont Indemnity seeks a declaration that:

- 9 a. Fremont General's receipt of the economic benefit of Comstock's NOLs
10 without adequately compensating Fremont Indemnity for the NOLs was
11 improper and/or a breach of contract;
- 12 b. Fremont General's taking of the worthless stock deduction for the tax year
13 2002 was improper;
- 14 c. Comstock's NOLs appropriated by Fremont General are the property of the
15 Fremont Indemnity estate and may be used by the Fremont Indemnity
16 estate in future federal tax returns to offset federal income tax liability;
- 17 d. Fremont General's actions in appropriating Comstock's NOLs to its own
18 use violate Insurance Code sections 1020 and other sections of the
19 Insurance Code;
- 20 e. Fremont Indemnity's right to the economic benefit derived from Fremont
21 General's use of Comstock's NOLs has accrued and is immediately due
22 and owing by Fremont General; or, alternatively, if Fremont Indemnity's
23 right to the economic benefit of Comstock's NOLs has not yet accrued,
24 Fremont General's board of directors lacked authority to deny and/or
25 breached its fiduciary duty to Fremont Indemnity by denying Fremont
26 Indemnity's request that Fremont General advance payment for the
27 economic benefit derived from the use of Comstock's NOLs, and that
28 Fremont Indemnity's board of directors must approve Fremont Indemnity's

1 request and advance payment immediately to Fremont Indemnity for the
2 economic benefit derived from the use of Comstock's NOLs; or,
3 alternatively, if Fremont Indemnity's right to the economic benefit of
4 Comstock's NOLs has not yet accrued, Fremont Indemnity's right to
5 payment for the economic benefit derived from the use of Comstock's
6 NOLs will accrue on a date certain, and Fremont General must pay
7 Fremont Indemnity for the use of Comstock's NOLs on or before that date
8 certain.

9 45. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

10 **SECOND CAUSE OF ACTION FOR PERMANENT INJUNCTION**
11 (Insurance Code § 1020)
12 (Against Fremont General)

13 46. Fremont Indemnity refers to and alleges herein the allegations set forth in
14 paragraphs 1 through 45 above.

15 47. Any injunctive relief deemed by the court to be necessary may be granted under
16 Insurance Code section 1020 to prevent, *inter alia*, interference with the Commissioner or the
17 Liquidation Proceeding, the waste of assets of the estate, the obtaining of preferences,
18 attachments, or judgments or other liens against the estate or its assets, and the making of any
19 levy against the estate or its assets.

20 48. As described above, Fremont General improperly and impermissibly claimed a
21 worthless stock deduction on its 2002 Federal Tax Return. The taking of that deduction
22 potentially destroyed the value of Comstock's NOLs and/or caused the value of Comstock's
23 NOLs to be absorbed by Fremont General without fair consideration being paid to Fremont
24 Indemnity. The taking of that deduction deprived Fremont Indemnity of the economic benefit to
25 which it was otherwise entitled by virtue of owning Comstock's NOLs. Fremont General has
26 also refused to provide a copy of the consolidated 2002 Federal Tax Return to the Commissioner
27 in his capacity as trustee of Fremont Indemnity, even though Fremont Indemnity was a member
28 of the consolidated tax group in the year 2002 and is entitled to a copy of the return. These

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1 actions constituted a taking of control over estate property in violation of this court's Liquidation
2 Order.

3 49. Fremont Indemnity has no adequate remedy at law. Fremont Indemnity seeks to
4 prevent the continuing harm and damages caused by Fremont General's deprivation of Fremont
5 Indemnity's rights to use Comstock's carry forward NOLs to offset future federal income tax
6 liability, which damages may not be meaningfully calculated at the present time. Waste of estate
7 assets, and irreparable harm to the estate, its policyholders and creditors will result if Fremont
8 Indemnity is not permitted to benefit from Comstock's NOLs to reduce future federal tax liability
9 or to otherwise generate funds to devote to the payment of Fremont Indemnity's and Comstock's
10 respective policyholders and creditors.

11 50. Therefore, Fremont Indemnity seeks a mandatory injunction:

- 12 a. Ordering Fremont General to file an amended consolidated federal tax
13 return for the year 2002 which does not take a worthless stock deduction
14 for Fremont Indemnity stock;
- 15 b. Ordering Fremont General not to interfere with Comstock's NOL assets
16 and to return to Fremont Indemnity the NOL assets of Comstock
17 wrongfully taken by Fremont General, or to pass through to Fremont
18 Indemnity all economic benefit realized by Fremont General from the prior
19 use of Comstock's NOLs; or, alternatively, to pass through to Fremont
20 Indemnity on or before a date certain all economic benefit realized by
21 Fremont General from the prior use of Comstock's NOLs;
- 22 c. Ordering Fremont General to take all steps necessary to return Fremont
23 Indemnity to the status existing prior to the taking of the improper
24 deduction; and
- 25 d. Ordering Fremont General to turn over to the Commissioner copies of its
26 consolidated 2002 Federal Tax Return, and the consolidated federal tax
27 returns for such prior years as the Commissioner determines is necessary to
28 accurately determine the value and use of Comstock's NOLs.

1 51. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

2 **THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT**
3 (Against Fremont General, Fremont Insurance Group)

4 52. Fremont Indemnity refers to and alleges herein the allegations set forth in
5 paragraphs 1 through 51 above.

6 53. The Tax Allocation Agreement, described above, required Fremont General to
7 compensate Fremont Indemnity, as successor to Comstock, for the use of Comstock's NOLs no
8 later than three years after the filing of the consolidated income tax return in which Fremont
9 General utilized Comstock's NOLs to offset the consolidated corporations' taxable income, and
10 the Tax Allocation Agreement further provided that Comstock could seek an earlier payment to
11 Comstock for the use of Comstock's NOLs by making a written application therefor to Fremont
12 General's board of directors. Fremont General's board of directors has refused to recognize its
13 duty to pay Fremont General for the utilization of Comstock's NOLs, to pay Fremont Indemnity
14 for the utilization of Comstock's NOLs, or to advance payment upon Fremont Indemnity's
15 request.

16 54. Fremont General's actions constitute a breach of the Tax Allocation Agreement, a
17 breach of Fremont General's covenant of good faith and fair dealing, and a deliberate
18 contravention of the intention and spirit of the Tax Allocation Agreement by appropriating all of
19 the benefits of the agreement to Fremont General while at the same time denying the benefits of
20 the agreement to Fremont Indemnity as successor to Comstock.

21 55. As a result of Fremont General's breach of the Tax Allocation Agreement and the
22 covenant of good fair dealing, Fremont Indemnity's justified expectations were denied and
23 Fremont Indemnity has been damaged in an amount to be proven at trial.

24 56. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

25 **FOURTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**
26 (Against Fremont General, Fremont Insurance Group, Does 1-30)

27 57. Fremont Indemnity refers to and alleges herein the allegations set forth in
28 paragraphs 1 through 56 above.

1 58. Through Fremont Insurance Group, Fremont General, as the parent company of
2 Fremont Indemnity and Comstock, owned, dominated, and controlled Fremont Indemnity and
3 Comstock through stock ownership, common officers and directors, and always exerted complete
4 control over the actions of Fremont Indemnity and Comstock. As a result, Fremont General owed
5 a fiduciary duty and a duty of loyalty to its insurance company subsidiaries to act for the benefit
6 of Fremont Indemnity and Comstock within the scope of the relationship. As a result, Fremont
7 General owed a duty to deal fairly with Fremont Indemnity and Comstock, and owed a duty to
8 Fremont Indemnity and Comstock to, among other things, abstain from overreaching and
9 unfairness in its dealings with Fremont Indemnity and Comstock, and not to favor the interest of
10 Fremont General while at the same time sacrificing and betraying the interests of Fremont
11 Indemnity and Comstock, and their respective policyholders and creditors. That duty includes a
12 duty not to take actions that cause Fremont Indemnity or Comstock to forego legitimate tax
13 savings which Comstock owned and which should have passed to Fremont Indemnity as
14 Comstock's successor; not to take actions that caused Fremont Indemnity to assume liabilities
15 that were not fairly and equitably attributed to Fremont Indemnity; not to misappropriate, convert,
16 and fraudulently transfer assets belonging to Fremont Indemnity or its wholly owned subsidiary,
17 Fremont Re (Bermuda); and not to engage in fraudulent and bad faith conduct, amounting to
18 constructive fraud, designed to convert those assets to Fremont General's exclusive use while at
19 the same time failing to provide fair and adequate consideration for the assets converted to
20 Fremont General's exclusive use.

21 59. By taking the actions described above, Fremont General breached its fiduciary
22 duty to Fremont Indemnity and Comstock, and caused significant economic damage to Fremont
23 Indemnity and Comstock, in an amount to be proven at trial.

24 60. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

25 **FIFTH CAUSE OF ACTION FOR UNJUST ENRICHMENT**
26 (Against Fremont General, Fremont Insurance Group, Does 31-60)

27 61. Fremont Indemnity refers to and alleges herein the allegations set forth in
28 paragraphs 1 through 60 above.

62. By improperly claiming the benefit of Comstock's NOLs, by causing Fremont Indemnity to assume liabilities that were not fairly and equitably attributed to Fremont Indemnity, and by misappropriating, converting, and fraudulently transferring assets belonging to Fremont Indemnity or its wholly owned subsidiary, Fremont Re (Bermuda), Fremont General, Fremont Insurance Group, and Does 31-60 have been unjustly enriched to the detriment of Fremont Indemnity and Comstock, and to the detriment of their respective policyholders and its creditors. Equitable considerations require Fremont General and others benefiting from the NOLs and other assets to disgorge all benefits gained by Fremont General's and Fremont Insurance Group's misappropriation, conversion, and fraudulent transfer of assets described herein, with the amount of the benefits to be determined at trial.

63. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

SIXTH CAUSE OF ACTION FOR IMPOSITION OF A CONSTRUCTIVE TRUST

(Against Fremont General, Fremont Insurance Group, Does 31-60)

64. Fremont Indemnity refers to and alleges herein the allegations set forth in paragraphs 1 through 63 above.

65. As described above, Fremont General and Fremont Insurance Group misappropriated, converted, and fraudulently transferred the assets of Fremont Indemnity and Comstock, and the assets of Fremont Re (Bermuda) to which Fremont Indemnity had a superior right than Fremont General or Fremont Insurance Group. Fremont General, Fremont Insurance Group, and Does 1-30 misappropriated, converted, and fraudulently transferred these assets by wrongful acts, including but not limited to fraud, undue influence, and violation of a trust, and remedies at law are inadequate to remedy the detriment caused by the wrongful acts.

66. As a result of the wrongful acts described above, Fremont General, Fremont Insurance Group, and Does 31-60 are involuntary trustees for Fremont Indemnity's benefit of misappropriated, converted, and fraudulently transferred assets, and of any proceeds or profits derived therefrom. Equitable considerations require Fremont General and others benefiting from the misappropriated, converted, and fraudulently transferred assets, to convey the assets and any proceeds or profits derived therefrom as determined at trial, to Fremont Indemnity.

1 67. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

2 **SEVENTH CAUSE OF ACTION FOR CONVERSION**
3 (Against Fremont General, Fremont Insurance Group, Does 1-30, Does 31-60)

4 68. Fremont Indemnity refers to and alleges herein the allegations set forth in
5 paragraphs 1 through 67 above.

6 69. As described above, Fremont Indemnity and Comstock owned and/or possessed,
7 or had a superior right than Fremont General, Fremont Insurance Group, or Does 31-60 to own
8 and/or possess the assets misappropriated, converted, and fraudulently transferred by Fremont
9 General, Fremont Insurance Group, and Does 1-30. Fremont General, Fremont Insurance Group,
10 and Does 1-30 misappropriated, converted, and fraudulently transferred the assets, without
11 Fremont Indemnity's or Comstock's consent, causing harm to Fremont Indemnity itself and as
12 successor to Comstock. But for the misappropriation, conversion, and fraudulent transfer by
13 Fremont General, Fremont Insurance Group, and Does 1-30, Fremont Indemnity and Comstock
14 would not have lost those assets and would not have been harmed by that loss.

15 70. Fremont Indemnity is entitled to damages in an amount to be proven at trial for the
16 conversion of the assets described above.

17 71. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

18 **EIGHTH CAUSE OF ACTION FOR AVOIDANCE AND**
19 **RECOVERY OF A FRAUDULENT TRANSFER**
20 (Civil Code § 3439, *et seq.*)
21 (Against Fremont General, Fremont Insurance Group, Does 31-60)

22 72. Fremont Indemnity refers to and alleges herein the allegations set forth in
23 paragraphs 1 through 71 above.

24 73. Fremont Indemnity was at all relevant times a creditor of Comstock, and
25 Comstock continued to incur additional obligations to Fremont Indemnity after Fremont General
26 misappropriated, converted, and fraudulently transferred assets until Fremont General merged
27 Comstock into Fremont Indemnity. Comstock was at all relevant times a creditor of Fremont Re
28 (Bermuda), and Fremont Re (Bermuda) continued to incur additional obligations to Comstock
after Fremont General misappropriated, converted, and fraudulently transferred assets until

1 Fremont General merged Comstock into Fremont Indemnity. Fremont Re (Bermuda) was at all
2 relevant times a creditor of Fremont Indemnity, and Fremont Re (Bermuda) continued to incur
3 additional obligations to Fremont Indemnity after Fremont General misappropriated, converted,
4 and fraudulently transferred assets until at least the date of the Liquidation Order.

5 74. Fremont General and Fremont Insurance Group, by their domination and control,
6 and Does 1-30, with actual intent to hinder, delay, and defraud Comstock, Fremont Indemnity,
7 and other creditors, misappropriated, converted, and fraudulently transferred assets of insurance
8 company subsidiaries, without receiving a reasonably equivalent value in exchange for the
9 transfer. Fremont General, Fremont Insurance Group, and Does 1-30, knew that Comstock and
10 Fremont Re (Bermuda) were engaged in, and would continue to engage in a business for which
11 the remaining assets of Comstock and Fremont Re (Bermuda) would be unreasonably small in
12 relation to the business; and Fremont General, Fremont Insurance Group, and Does 1-30 intended
13 to cause Comstock and Fremont Re (Bermuda) to incur debts beyond their ability to pay as the
14 such debts became due.

15 75. Additionally, Fremont General, Fremont Insurance Group, and Does 1-30
16 misappropriated, converted, and fraudulently transferred assets of their insurance company
17 subsidiaries without receiving a reasonably equivalent value in exchange for the transfer at a time
18 or times when Comstock and Fremont Re (Bermuda) were insolvent, or would become insolvent
19 as a result of the misappropriation, conversion, and fraudulent transfer.

20 76. Fremont Indemnity is entitled to avoidance, return, and/or attachment of the
21 misappropriated, converted, or fraudulently transferred assets, and of the proceeds or profits
22 derived therefrom; and Fremont Indemnity is entitled to an injunction against further disposition
23 of the assets, proceeds, or profits, for the appointment of a receiver to take charge of the assets,
24 proceeds, or profits, or for damages in an amount to be proven at trial against Fremont General,
25 Fremont Insurance Group, and Does 31-60 for the misappropriation, conversion, or fraudulent
26 transfer of the assets.

27 77. Wherefore, Fremont Indemnity prays for relief as set forth below.

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**NINTH CAUSE OF ACTION FOR AVOIDANCE AND
RECOVERY OF VOIDABLE PREFERENCE**
(Insurance Code § 1034)
(Against Fremont General, Fremont Insurance Group, Does 31-60)

78. Fremont Indemnity refers to and alleges herein the allegations set forth in paragraphs 1 through 77 above

79. To the extent the Fremont General and/or Fremont Insurance Group allege that the taking of the assets described above were in satisfaction of antecedent debts, a premise that Fremont Indemnity expressly denies, the actions of Fremont General and Fremont Insurance Group in misappropriating, converting, and fraudulently transferring the assets amount to a taking of a preference in that Fremont General and Fremont Insurance Group, admitted "insiders," thereby appropriated to themselves, without a sufficient benefit to the estate of Fremont Indemnity, assets which otherwise could be used to pay or to develop funds to pay Fremont Indemnity's and Comstock's respective policyholders and creditors.

80. The actions resulting in the misappropriation, conversion, and fraudulent transfer of assets to Fremont General, Fremont Insurance Group, and Does 31-60 were made for the benefit of Fremont General, Fremont Insurance Group, and Does 31-60, and to the detriment of Fremont Indemnity and Comstock.

81. The misappropriations, conversions, and fraudulent transfers were made, in effect, within a period of one year preceding the filing of the Commissioner's successful application for the Liquidation Order.

82. The misappropriations, conversions, and fraudulent transfers will allow Fremont General, Fremont Insurance Group, and Does 31-60 to recover a greater percentage of Fremont Indemnity's debts to Fremont General or Fremont Insurance Group, if any, than other policyholders and creditors in the liquidation proceedings.

83. By reason of the foregoing, the misappropriation, conversion, and fraudulent transfers constitute voidable preferences under Insurance Code section 1034, which the Commissioner seeks to avoid by this complaint.

84. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

**TENTH CAUSE OF ACTION FOR AVOIDANCE AND
RECOVERY OF FRAUDULENT TRANSFER**
(Insurance Code § 1034.1)
(Against Fremont General, Fremont Insurance Group, Does 31-60)

85. Fremont Indemnity refers to and alleges herein the allegations set forth in paragraphs 1 through 84 above.

86. As described above, the actions of Fremont General and Fremont Insurance Group above in misappropriating, converting, and fraudulently transferring assets, were transactions made, done and taken without fair consideration to Fremont Indemnity or to Comstock.

87. As described above, the actions of Fremont General and Fremont Insurance Group in misappropriating, converting, and fraudulently transferring the assets of Fremont Indemnity and Comstock, were made and done with the intent to hinder, defraud and delay other creditors, because the acts were done with the knowledge and as part of a scheme and plan to defraud Fremont Indemnity and Comstock and their respective policyholders and creditors.

88. The misappropriations, conversions, and fraudulent transfers were made, in effect, within a period of one year preceding the filing of the Commissioner's successful application for the Liquidation Order.

89. The transfers will allow Fremont General and Fremont Insurance Group to recover a greater percentage of Fremont Indemnity's debts to Fremont General and/or to Fremont Insurance Group than other policyholders and creditors will recover in the liquidation proceedings, and the transfers have inflicted substantial financial damage on Fremont Indemnity and Comstock, and to their respective policyholders and creditors.

90. By reason of the foregoing, the transfers constitute a fraudulent transfer under Insurance Code section 1034.1.

91. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

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**ELEVENTH CAUSE OF ACTION FOR VIOLATION OF THE
HOLDING COMPANY ACT**
(Insurance Code § 1215.5)
(Against Fremont General, Fremont Insurance Group)

92. Fremont Indemnity refers to and alleges herein the allegations set forth in paragraphs 1 through 91 above.

93. By taking the actions described above, and by misappropriating, converting, and fraudulently transferring to themselves the exclusive use and value of the assets of Fremont Indemnity and Comstock while not providing fair and reasonable consideration therefor, Fremont General and Fremont Insurance Group conducted transactions with their insurance company subsidiaries, the terms of which were neither fair nor reasonable within the meaning of Insurance Code section 1215.5.

94. Section 1215.5 requires that all arrangements between Fremont General and Fremont Insurance Group, on the one hand, and Fremont Indemnity or Comstock, on the other hand, be on fair and reasonable terms. As alleged above, Fremont General and Fremont Insurance Group's misappropriations, conversions, and fraudulent transfers were not on fair and reasonable terms.

95. By reason of the foregoing, Fremont General and Fremont Insurance Group have violated Insurance Code section 1215.5, have inflicted significant damage on Fremont Indemnity and Comstock, and are subject to the remedies and penalties set forth in Insurance Code section 1215, *et seq.*, among others, including an order that Fremont General and Fremont Insurance Group pay to Fremont Indemnity the full value of the assets misappropriated, converted, and fraudulently transferred from Fremont Indemnity and Comstock, which value represents the fair and reasonable compensation required by Insurance Code section 1215.5.

96. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

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1 **TWELFTH CAUSE OF ACTION FOR RECOVERY OF IMPERMISSIBLE**
2 **DISTRIBUTION UNDER THE HOLDING COMPANY ACT**

3 (Insurance Code § 1215.16)

4 (Against Fremont General, Fremont Insurance Group, Does 31-60)

5 97. Fremont Indemnity refers to and alleges herein the allegations set forth in
6 paragraphs 1 through 96 above.

7 98. By taking the actions described above, Fremont General and Fremont Insurance
8 Group improperly and unreasonably distributed to themselves and to Does 31-60 the value of the
9 assets of Fremont Indemnity and Comstock, and did so, in effect, within a period of one year
10 preceding the filing of the Commissioner's successful application for the Liquidation Order and,
11 at the time they did so, knew or reasonably should have known that by doing so they would
12 impair the ability of Fremont Indemnity to fulfill its contractual obligations.

13 99. Accordingly, Fremont Indemnity is entitled to recovery of all amounts needed, in
14 excess of Fremont Indemnity's assets, to pay its contractual obligations and to reimburse any
15 guarantee funds, which amount the Commissioner currently estimates to be in excess of \$400
16 million.

17 100. Wherefore, Fremont Indemnity prays for relief as set forth herein and below.

18 **WHEREFORE**, Fremont Indemnity, by and through the Insurance Commissioner of the
19 State of California, as liquidator of Fremont Indemnity, prays for judgment in Fremont
20 Indemnity's favor as follows:

21 101. For a declaration that:

- 22 a. Fremont General's receipt of the benefit of Comstock's NOLs without
23 adequately compensating Fremont Indemnity for the NOLs was improper
24 and/or a breach of contract;
25 b. Fremont General's taking of the worthless stock deduction for the tax year
26 2002 was improper;
27 c. Comstock's NOLs appropriated by Fremont General are the property of the
28 Fremont Indemnity estate and may be used by the Fremont Indemnity
 estate in future federal tax returns to offset income tax liability;

- 1 d. Fremont General's actions in appropriating Comstock's NOLs to Fremont
2 General's own use violate Insurance Code section 1020, the injunctions set
3 forth in the Conservation Order, the Liquidation Order, and certain other
4 sections of the Insurance Code; and
- 5 e. Fremont Indemnity's right to the economic benefit derived from Fremont
6 General's use of Comstock's NOLs has accrued and is immediately due
7 and owing by Fremont General; or, alternatively, if Fremont Indemnity's
8 right to the economic benefit of Comstock's NOLs has not yet accrued,
9 Fremont General's board of directors lacked authority to deny and/or
10 breached its fiduciary duty to Fremont Indemnity by denying Fremont
11 Indemnity's request that Fremont General advance payment for the
12 economic benefit derived from the use of Comstock's NOLs, and that
13 Fremont Indemnity's board of directors must approve Fremont Indemnity's
14 request and advance payment immediately to Fremont Indemnity for the
15 economic benefit derived from the use of Comstock's NOLs; or,
16 alternatively, if Fremont Indemnity's right to the economic benefit of
17 Comstock's NOLs has not yet accrued, Fremont Indemnity's right to
18 payment for the economic benefit derived from the use of Comstock's
19 NOLs will accrue on a date certain, and that Fremont General must pay
20 Fremont Indemnity for the use of Comstock's NOLs on or before that date
21 certain.

22 102. For an injunction:

- 23 a. Ordering Fremont General to file an amended consolidated federal tax
24 return for the year 2002 which does not take a worthless stock deduction
25 for Fremont Indemnity stock;
- 26 b. Ordering Fremont General not to interfere with Comstock's NOL assets
27 and to return to Fremont Indemnity the Comstock NOL assets wrongfully
28 taken by Fremont General or to pass through to Fremont Indemnity all

1 economic benefit realized by Fremont General from the prior use of
2 Comstock's NOLs;

3 c. Ordering Fremont General to take all steps necessary to return Fremont
4 Indemnity to the status existing prior to the taking of the improper
5 deduction; and

6 d. Ordering Fremont General to turn over to the Commissioner copies of its
7 consolidated 2002 Federal Tax Return, and the consolidated federal tax
8 returns for such prior years as the Commissioner determines is necessary to
9 accurately determine the value and use of Comstock's NOLs;

10 103. For a judgment that Fremont General acting alone or through its alter ego, Fremont
11 Insurance Group, breached the Tax Allocation Agreement by appropriating
12 Comstock's NOLs without paying to Fremont Indemnity the economic benefit
13 derived by Fremont General from the use of Comstock's NOLs, and that Fremont
14 General and Fremont Insurance Group are liable to Fremont Indemnity therefor;

15 104. For a judgment that Fremont General and others aiding and abetting, or acting in
16 concert with Fremont General breached their fiduciary duty to Fremont Indemnity
17 and are liable therefor;

18 105. For a decree that Fremont General and others have been unjustly enriched from
19 Comstock's NOL assets wrongfully misappropriated, converted, or fraudulently
20 transferred by Fremont General and Fremont Insurance Group, and for an order
21 that Fremont General and all transferees disgorge to Fremont Indemnity all
22 benefits obtained from Comstock's NOLs;

23 106. For a decree that all assets misappropriated, converted, and fraudulently
24 transferred by Fremont General and Fremont Insurance Group, and any proceeds
25 or profits arising from such assets are subject to a constructive trust in favor of
26 Fremont Indemnity; and for an order that Fremont General, Fremont Insurance
27 Group, and all others retaining assets, or the proceeds or profits arising therefrom,
28 must preserve such assets, proceeds, and profits for the benefit of Fremont

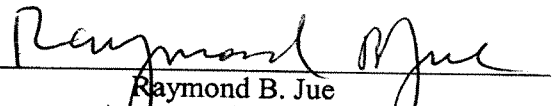
- 1 Indemnity, and must convey such assets, proceeds, and profits to Fremont
2 Indemnity forthwith;
- 3 107. For a judgment and order that assets misappropriated, converted, and fraudulently
4 transferred by Fremont General and Fremont Insurance Group, and any proceeds
5 or profits arising from such assets, were wrongfully converted, and that Fremont
6 General, Fremont Insurance Group, others aiding and abetting, or acting in concert
7 with them are liable to Fremont Indemnity therefor,
- 8 108. For a decree and judgment pursuant to Civil Code section 3439.07:
- 9 a. Voiding the transfer of the assets misappropriated, converted, and
10 fraudulently transferred by Fremont General and Fremont Insurance
11 Group;
- 12 b. Issuing an attachment or other provisional remedy against the assets
13 misappropriated, converted, and fraudulently transferred by Fremont
14 General and Fremont Insurance Group, and any proceeds or profits derived
15 therefrom, whether in the possession of Fremont General, Fremont
16 Insurance Group, or any transferee;
- 17 c. Enjoining further disposition by Fremont General, Fremont Insurance
18 Group, or any transferee of the misappropriated, converted, and
19 fraudulently transferred assets;
- 20 d. Appointing a receiver to take charge of the misappropriated, converted, and
21 fraudulently transferred assets, or of any proceeds or profits derived
22 therefrom;
- 23 e. Granting any other relief the circumstances may require;
- 24 109. For a finding and judgment pursuant to Insurance Code section 1034 that the assets
25 misappropriated, converted, and fraudulently transferred by Fremont General and
26 Fremont Insurance Group are, each and every, voidable preferences and as such
27 are to be cancelled and avoided; and for an order that any such asset is to be
28 preserved for Fremont Indemnity's benefit and delivered to Fremont Indemnity, or

- 1 that Fremont General, Fremont Insurance Group, and any transferee is liable to
2 Fremont Indemnity for the value of any asset that has been further converted or
3 transferred;
- 4 110. For a finding and judgment pursuant to Insurance Code section 1034.1 that the
5 assets misappropriated, converted, and fraudulently transferred by Fremont
6 General and Fremont Insurance Group are, each and every, fraudulent transfers
7 and as such are to be cancelled and avoided; and for an order that any such asset is
8 to be preserved for Fremont Indemnity's benefit and delivered to Fremont
9 Indemnity, or that Fremont General, Fremont Insurance Group, and any transferee
10 is liable to Fremont Indemnity for the value of any asset that has been further
11 converted or transferred;
- 12 111. For a finding and judgment that, as described above, the misappropriation,
13 conversion, and fraudulent transfer of assets by Fremont General and Fremont
14 Insurance Group violated Insurance Code section 1215.5, that Fremont General
15 and Fremont Insurance Group are subject to the remedies and penalties set forth in
16 Insurance Code section 1215, *et seq.*, among others; and for an order that Fremont
17 General and Fremont Insurance Group pay to Fremont Indemnity the full value of
18 the assets misappropriated, converted, and fraudulently transferred;
- 19 112. For a finding and judgment pursuant to Insurance Code section 1215.16 that
20 Fremont General and Fremont Insurance Group improperly and unreasonably
21 distributed to themselves and to certain others the value of the assets
22 misappropriated, converted, and fraudulently transferred; and for an order that
23 Fremont Indemnity recover all amounts needed, in excess of Fremont Indemnity's
24 assets, to pay its contractual obligations and to reimburse any guarantee funds,
25 which amount shall be proved at trial but which Fremont Indemnity currently
26 estimates to be in excess of \$400 million;
- 27 113. For an order pursuant to Insurance Code section 1020 granting Fremont Indemnity
28 an attachment or other remedy ;

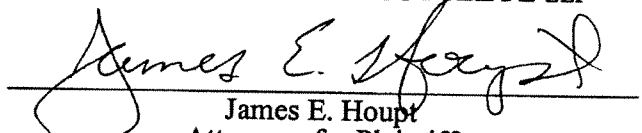
- 1 114. Fair and reasonable compensation for all assets misappropriated, converted, and
2 fraudulently transferred by Fremont General;
3 115. Compensatory damages in an amount to be proven at trial;
4 116. Punitive and exemplary damages in an amount to be proven at trial;
5 117. Costs of suit;
6 118. Pre-judgment interest at the legal rate on all sums awarded;
7 119. Such other and further relief as may be deemed proper.

8 Dated: August 27, 2004.

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ORIGINAL

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LOS ANGELES SUPERIOR COURT

JUL 02 2003

JOHN A. CLARKE, CLERK

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Applicant,

v.

FREMONT INDEMNITY COMPANY, a
California corporation,

Respondent.

Case No.: BS083582

~~PROPOSED~~ ORDER APPOINTING
INSURANCE COMMISSIONER AS
LIQUIDATOR AND RESTRAINING
ORDERS

Date: July 2, 2003
Time: 9:30 a.m.
Dept.: 86

The verified Application of the Insurance Commissioner of the State of California
("Commissioner") for an Order Appointing Commissioner as Liquidator of Fremont Indemnity
Company ("Respondent") came on regularly for hearing in Department 86 of the Los Angeles
County Superior Court.

GOOD CAUSE APPEARING FROM THE COMMISSIONER'S VERIFIED
APPLICATION, THIS COURT MAKES THE FOLLOWING FINDINGS:

1. Respondent is insolvent.
2. It would be futile for the Commissioner to continue to proceed as Conservator of

1 Respondent.

2 3. Respondent does not meet the requirements for issuance to it of a Certificate of
3 Authority.

4 4. There exist sufficient factual and legal grounds for the Commissioner to liquidate
5 and wind up the business of Respondent in a manner consistent with the provisions of this Order.

6 **WHEREFORE, GOOD CAUSE APPEARING, THIS COURT MAKES THE**
7 **FOLLOWING ORDERS** (for all purposes in this order, the term "Respondent," wherever used
8 and used in whatever context or reference, shall mean Respondent Fremont Indemnity Company
9 and shall mean for all purposes, wherever used and in whatever context or reference, all the
10 following entities: the former Fremont Indemnity Company, Comstock Insurance Company,
11 Fremont Industrial Indemnity Insurance Company, Fremont Compensation Insurance Company,
12 Fremont Casualty Company, and Fremont Pacific Insurance Company):

13 1. The Commissioner's status as Conservator is terminated, and he is appointed as
14 Liquidator of Respondent, as set forth in Insurance Code §1016, and directed as Liquidator to
15 liquidate and wind up the affairs of Respondent, to conduct the business of Respondent, or so
16 much as thereof may seem appropriate, to pay or defer payment of all proper claims and
17 obligations against Respondent accruing prior to or subsequent to his appointment as Liquidator
18 of Respondent and to act in all ways and exercise all powers necessary for the purpose of
19 carrying out such order;

20 2. The Liquidator is authorized to assume or reject, or to modify, any executory
21 contracts, including without limitation, any lease, rental or utilization contract or agreement
22 (including any schedule to any such contract or agreement), and any license or other arrangement
23 for the use of computer software of business information systems, to which Respondent is a party
24 or as to which Respondent agrees to accept an assignment of such contract; the Liquidator is
25 directed to effect any such assumption or rejection or modification of any executory contract not
26 later than 120 days of the date of the Order Appointing Conservator, unless such date is extended
27 by application to and further order of this Court; all executory contracts that are not expressly
28 assumed by the Liquidator shall be deemed rejected; any party to a contract that is rejected by the

1 Liquidator pursuant to this order shall be permitted to file a proof of claim against the liquidation
2 estate, which claim shall be treated in accordance with Insurance Code §1010, et seq.;

3 3. The Liquidator is authorized to take possession of all the assets of Respondent
4 including books, records and property, both real and personal, accounts, safe deposit boxes,
5 rights of action, and all such assets as may be in the name of Respondent, wheresoever situated;

6 4. The Liquidator is vested with title to all property and assets of Respondent,
7 including deposits, securities, contracts, rights of actions, books, records and other assets of
8 every type and nature, and including both those presently in Respondent's possession and those
9 which may be discovered hereafter, wheresoever situated, and the Liquidator is authorized to
10 deal with the same in his own name as Liquidator or in the name of Respondent, and all persons
11 are enjoined from interfering with Liquidator's possession and title thereto;

12 5. The Liquidator shall have all the powers of the directors, officers and managers of
13 Respondent, whose authorities are suspended except as such powers may be redelegated by the
14 Liquidator;

15 6. The Liquidator is authorized to terminate compensation arrangements with
16 employees, to enter into new compensation arrangements with employees, including
17 arrangements containing retention incentives, and the Liquidator is authorized to hire employees
18 on such terms and conditions as he deems reasonable;

19 7. Except upon the express authorization of the Liquidator, Respondent, its officers,
20 directors, agents and employees are enjoined from transacting any of the business of Respondent,
21 whether in the State of California or elsewhere, or from disposing of, using, transferring, selling,
22 assigning, canceling, alienating, hypothecating or concealing in any manner or any way, or
23 assisting any person in any of the foregoing, of the property or assets of Respondent or property
24 or assets in the possession of Respondent, of any nature or kind, including claims or causes of
25 action, until further order of this Court and further, such persons are enjoined from obstructing or
26 interfering with the Liquidator's conduct of his or her duties as Liquidator;

27 8. All persons are enjoined from instituting or prosecuting or maintaining any action
28 at law or suit in equity, including but not limited to actions or proceedings to compel discovery

1 or production of documents or testimony and matters in arbitration, except in matters before
2 either the California Workers Compensation Appeals Board or equivalent administrative boards
3 or organizations performing such functions in other states in which Respondent issued workers
4 compensation policies, against Respondent or against the Liquidator, and from attaching,
5 executing upon, redeeming of or taking any other legal proceedings against any of the property
6 or assets of Respondent, and from doing any act interfering with the conduct of said business by
7 the Liquidator, except upon order from this Court obtained after reasonable notice to the
8 Liquidator;

9 9. Respondent and all officers, directors, agents and employees of Respondent are
10 directed to deliver to, and immediately make available to, the Liquidator all assets, books,
11 records, accounts, records, information, computers, tapes, discs, writings, other recordings of
12 information, equipment and other property of Respondent, wheresoever situated, in said persons
13 custody or control and further, the aforesaid persons shall disclose verbally, or in writing if
14 requested by the Liquidator, the exact whereabouts of the foregoing items if such items are not in
15 the possession custody or control of said persons;

16 10. All officers, directors, trustees, employees or agents of Respondent, or any other
17 person, firm, association, partnership, corporate parent, holding company, affiliate or other entity
18 in charge of any aspect of Respondent's affairs, either in whole or in part, and including but not
19 limited to banks, savings and loan associations, financial or lending institutions, brokers, stock or
20 mutual associations, or any parent, holding company, subsidiary or affiliated corporation or any
21 other representative acting in concert with Respondent, are directed to cooperate with the
22 Liquidator in the performance of his or her duties;

23 11. The Liquidator is authorized to pay for his costs in bringing and maintaining this
24 action, and such other actions as are necessary to carry out his functions as Liquidator (including
25 reasonable costs of operating Respondent such as direct and allocated direct costs, direct and
26 allocated general and administrative costs and overhead, and all other allocated costs), out of the
27 funds and assets of Respondent; and if there are insufficient funds, to pay for his costs out of the
28 Insurance Fund, pursuant to Insurance Code section 1035;

1 12. All funds, assets, and accounts, including certificates of deposit, bank accounts,
2 and mutual fund shares, of Respondent, in various financial depository institutions, including
3 banks, savings and loan associations, industrial loan companies, mutual funds or stock
4 brokerages, wheresoever situated, shall be vested in the Liquidator and subject to withdrawal
5 upon his order only. This order does not convert funds held in a fiduciary capacity to general
6 assets of the Liquidator;

7 13. All persons who maintain records for Respondent, pursuant to written contract or
8 any other agreement, shall maintain such records and shall deliver to the Liquidator such records
9 upon his request;

10 14. All agents of Respondent and all brokers who have done business with
11 Respondent, are directed to make all remittances of all funds collected by them or in their hands
12 directly to the Liquidator. This obligation to remit collected funds is continuing in nature;

13 15. All persons having possession of any lists of policyholders or escrow holders of
14 Respondent shall deliver all such lists to the Liquidator; and that all persons are enjoined from
15 using any such lists or any information contained therein without the consent of the Liquidator;

16 16. The Liquidator is authorized to initiate such equitable or legal actions or
17 proceedings in this or other states as may appear to him necessary to carry out his functions as
18 Liquidator;

19 17. The Liquidator is authorized to appoint and employ special deputies, estate
20 managers, other professionals, clerks and assistants and to give each of them such power and
21 authority as he may deem necessary, and the Liquidator is authorized to compensate these
22 persons from the assets of Respondent as he may deem appropriate;

23 18. The Liquidator is authorized to divert, take possession of and secure all mail of
24 Respondent, in order to screen such mail, and to effect a change in the rights to use any and all
25 post office boxes and other mail collection facilities used by Respondent;

26 19. Respondent and its officers, directors, agents, servants, employees, successors,
27 assigns, affiliates, and other persons or entities under their control and all persons or entities in
28 concert or participation with Respondent, and each of them, are directed to turn over to the

1 Liquidator all records, documentation, charts and/or descriptive materials of all funds, assets,
2 property (owned beneficially or otherwise), and all other assets of Respondent wherever situated,
3 and all books and records of accounts, title documents and other documents in their possession or
4 under their control, which relate, directly or indirectly to assets or property owned or held by
5 Respondent or to the business or operations of Respondent;

6 20. Except with leave of court issued after a hearing in which the Liquidator has
7 received reasonable notice, all persons are enjoined from obtaining preferences, judgments,
8 attachments or other liens, or making any levy against Respondent or its assets or property, and
9 from executing or issuing or causing the execution or issuance of any court attachment,
10 subpoena, replevin, execution or other process for the purpose of impounding or taking
11 possession of or interfering with or creating or enforcing a lien upon any property or assets
12 owned or in the possession of Respondent or the Liquidator, wheresoever situated, and from
13 doing any act interfering with the conduct of said business by the Liquidator;

14 21. Except with leave of court issued after a hearing in which the Liquidator has
15 received reasonable notice, all persons are enjoined from accelerating the due date of any
16 obligation or claimed obligation; exercising any right of set-off; taking, retaining, retaking or
17 attempting to retake possession of any real or personal property; withholding or diverting any
18 rent or other obligation; doing any act or other thing whatsoever to interfere with the possession
19 of or management by the Liquidator of the property and assets, owned or controlled by
20 Respondent or in the possession of Respondent or in any way interfering with the Liquidator or
21 to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction
22 of this Court over Respondent;

23 22. All persons are enjoined from waste of assets of Respondent;

24 23. Any and all provisions of any agreement entered into by and between any third
25 party and Respondent, including by way of illustration, but not limited to, the following types of
26 agreements (as well as any amendments, assignments, or modifications thereto): financial
27 guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,
28 mortgages, indemnification agreements, subrogation agreements, subordination agreements,

pledge agreements, assignments of rents or other collateral, financial statements, letters of credit, leases, insurance policies, guaranties, escrow agreements, management agreements, real estate brokerage and rental agreements, servicing agreements, attorney agreements, consulting agreements, easement agreements, license agreements, franchise agreements, or employment contracts that provide in any manner that selection, appointment or retention of a conservator, liquidator, receiver or trustee by any court, or entry of any order such as hereby made, shall be deemed to be, or otherwise operate as a breach, violation, event of default, termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation shall be stayed, and the assertion of any and all rights and remedies relating thereto shall also be stayed and barred, except as otherwise ordered by this Court, and this Court shall retain jurisdiction over any cause of action that has arisen or may otherwise arise under any such provision;

24. The Liquidator is authorized, pursuant to Insurance Code §1037, subsection (g), to invest and reinvest all assets in a manner he deems to be in the best interest of the creditors of the estate, including investing and reinvesting assets through an investment pool consisting exclusively of assets from other estates for which the Insurance Commissioner is the liquidator. To the extent that the Liquidator invests and reinvests through such an investment pool, such investments and re-investments may exceed \$100,000. Further, the Liquidator may make investments or reinvestments in excess of \$100,000, but not exceeding \$5,000,000 per investment or reinvestment, without prior approval if such investments or reinvestments are made pursuant to the investment guidelines of the Liquidator's Conservation & Liquidation Office, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference. The Liquidator shall file quarterly reports of such investments in excess of \$100,000 (other than investments or reinvestments in an investment pool) with the Court, with notice to all persons on the service list, such reports to be filed within 60 days of the end of each quarter;

25. The Liquidator is authorized to pay as expenses of administration all expenses heretofore incurred by the Commissioner as Conservator which are presently unpaid, and the Liquidator is authorized to pay, upon presentation, the full amount of any checks or drafts which

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1 have been issued by him, in his capacity as Conservator, and which are outstanding;

2 26. The Liquidator is authorized, pursuant to Insurance Code §1037, subsection (d),
3 to dispose of any property of Respondent by any commercially reasonable method, including, but
4 not limited to, sales at public auctions or sales in bulk to the high bidder (provided at least three
5 (3) independent dealers in the kind of property sold are given notice of the opportunity to bid);

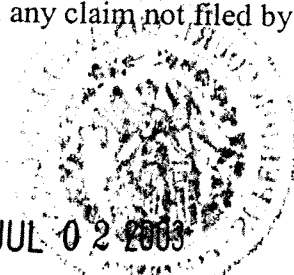
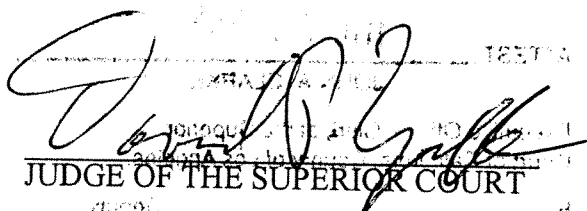
6 27. All insurance policies issued by Respondent shall be terminated and canceled
7 effective thirty (30) days following the issuance of this order, and the Liquidator shall notify
8 promptly all policyholders and all bail bond or other surety agents of such policy termination and
9 cancellation by First Class Mail at the last known address of such policyholders;

10 28. All prior injunctions and other orders of this Court, except to the extent expressly
11 modified herein, are reaffirmed and remain in full force and effect; all powers and authority
12 granted to the Liquidator under this order are in addition to and not in limitation of the powers of
13 the Liquidator under the Insurance Code and any other statutory or applicable case law;

14 29. The rights and liabilities of claimants, creditors, shareholders, policyholders,
15 escrow holders and all other persons interested in the assets of Respondent, including the State of
16 California, are fixed as of the date of the entry of this order; and

17 30. Any and all claims against Respondent (except those policyholder claims already
18 pending against Respondent, which are hereby deemed filed with the Liquidator, who shall
19 maintain a list of such claims), including those which in any way affect or seek to affect any of
20 the assets of Respondent, wherever or however such assets may be owned or held, must be filed
21 by no later than June 30, 2004, (the "Claims Bar Date"), together with proper proof thereof, in
22 accordance with the provisions of Insurance Code §1010, et seq., including, but not limited to
23 §1023, and any claim not filed by the Claims Bar Date is conclusively deemed forever waived.

24
25
26
27 Dated: JUL 02 2003

28


JUDGE OF THE SUPERIOR COURT



INSURANCE COMMISSIONER of the
STATE of CALIFORNIA
CONSERVATION & LIQUIDATION OFFICE
INVESTMENT GUIDELINES

Objectives

To maintain safety of principal and to maximize available yield while assuming a minimum of risk through a balance of quality and diversification within the investment portfolio.

A. Safety

Quality

None of the Portfolio will be invested in fixed income securities rated below investment grade quality by Standard & Poor's, Moody's or by another nationally recognized statistical rating organization. Unrated securities may not be held. The minimum average market value weighted credit quality of securities in the Portfolio will be AA- by Standard & Poor's and Aa3 by Moody's or their equivalent.

Commercial Paper will be rated no less than A1 by Standard & Poor's or P1 by Moody's.

Sectors

Permitted investments for the Portfolio shall include:

1. Fixed income securities and other fixed income obligations of any type which may be issued or guaranteed by (i) the U.S. and the agencies, instrumentalities, and political sub-divisions of the U.S., and (ii) U.S. corporations, trusts and special purpose entities. Such securities must be traded on exchanges or in over the counter markets in the U.S.. No emerging markets' securities are allowed.
2. Repurchase agreements.

Restrictions on permitted investments

None of the Portfolio may be invested in foreign securities and in securities not denominated in U.S. dollars. Manager may not elect to hedge currency and/or interest rate exposure. No speculative currency positions are permitted.

All repurchase agreements will be transacted with counterparties approved by the Manager in accordance with its policies and procedures and terms and conditions set forth in the applicable Investment Management Agreement and any applicable Master Repurchase Agreement(s).

No investment in interest only ("IO"), principal only ("PO"), or inverse floater CMOs are permitted. The manager should only accept reasonable prepayment risk, consistent with the stated objectives of their respective funds.

Derivatives, or financial investments containing derivatives, are not permitted, defined as options, forwards, futures and swaps.

Investment transactions (i) which result in leverage or short sales and/or (ii) with affiliates of the Manager, are not permitted.

Diversification

No more than 5 % of the Portfolio will be invested in the securities of any one issuer, other than those securities issued or guaranteed by the U.S. government, its agencies, and instrumentalities and refunded municipal issues (all of which may be held without limit). For the purposes of this guideline, asset backed and mortgage-related securities (not issued by the U.S. Government, its agencies or instrumentalities), issued by trusts and other special purpose entities, will be limited to no more than 5 percent per issue, in addition to a common originator limit of no more than 20 percent.

B. Maturity

Portfolio duration will be maintained within a range of (+/-) six months of the index under normal market conditions. There will be no restriction on the duration of any single security. Duration will be calculated adjusting for

any optionality in securities as well as adjusting for the expected prepayment level of mortgage-backed security pools.

C. Calculation of Returns

Returns will be calculated in compliance with the Association for Investment Management and Research standards.

D. General

All percentage restrictions on Portfolio holdings will initially be evaluated at the time of purchase. At any time thereafter, concentrations in eligible portfolio investments will not exceed the prescribed limit by more than one percent.

Notwithstanding any provision to the contrary, Manager will not be required to sell any particular holding because a rating of a security is downgraded subsequent to purchase. However, Manager is required to notify the client in the event of a downgrade below investment grade. In the event a security is split rated, the lower rating will apply with respect to all portfolio percentage and quality restrictions.

Investment personnel who will have input into or control over any investment decision on behalf of the Commissioner are required, if they have a beneficial interest in that security, to disclose in writing their beneficial interest and receive written authority from the Commissioner before an investment decision is made.

E. Benchmark

The benchmark for the Portfolio will be the Lehman 1-3 Gov/Credit A or better, (the "Index"). The objective of the Portfolio will be to maintain safety of principal and maximize available yield while assuming a minimum of risk through a balance of quality and diversification within the portfolio.