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Clerk of the Superior Court
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MERCED

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

15 Applicant,

16 v.

17
18 **MERCED PROPERTY & CASUALTY
COMPANY, a California corporation,**

19 Respondent.
20

Case No. 18CV-04739

**NOTICE OF APPLICATION AND
APPLICATION FOR ORDER
APPROVING PAYMENT OF
ADMINISTRATIVE AND
PROFESSIONAL FEES AND EXPENSES
FOR THE PERIOD OF NOVEMBER 15,
2018, TO MARCH 31, 2019;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[FILED CONCURRENTLY WITH:

**1) DECLARATION OF SCOTT PEARCE;
AND**

2) INDEX OF EXHIBITS/EXHIBITS]

Date: September 5, 2019
Time: 8:15 a.m.
Dept: 8
Judge: Hon. Brian McCabe
Action Filed: November 30, 2018

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TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 5, 2019, at 8:15 a.m., or as soon thereafter as the matter may be heard in Department 8 of the Superior Court of the State of California, Merced County, 627 W. 21st Street, Merced, California, 95340, applicant Insurance Commissioner of the State of California in his capacity as the Liquidator of Merced Property & Casualty Company (Merced), will and hereby does apply to the court for an order approving payment of administrative and professional fees and expenses for the period of November 15, 2018, through March 31, 2019, in the total amount of \$1,106,141.73.

This application is made under Insurance Code sections 1035 and 1036 on the grounds that the Commissioner, as Liquidator, is authorized to pay the salaries and expenses necessary to carry out the functions of an insolvent insurer, and to employ and compensate legal counsel to transact estate business.

This application is based on this notice, the accompanying memorandum of points and authorities in support thereof, the declaration of Scott Pearce filed concurrently with this application, the index of exhibits and exhibits filed concurrently with this application, the first status report of the Commissioner on the liquidation of Merced filed concurrently with this application, and such additional evidence and argument as may be offered at the time of the hearing on the application.

Pursuant to Local Rule 3.1 (F), the Court may issue a tentative ruling before the scheduled hearing date. Tentative rulings will be made available by telephone at 209-725-4240 and by posting on the Court’s website at www.mercedcourt.org no later than 3:00 p.m. on the Court day preceding the scheduled hearing. If the Court has not directed argument in the tentative ruling, oral argument is permitted only if a party intending to appear notifies all other parties by telephone or in person by 4:00 p.m. on the Court day before the hearing of the party’s intention to appear. A party also must notify the Court by telephone of the party’s intention to appear by calling 209-725-4240 by 4:00 p.m. on the Court day before the hearing. The tentative ruling will

1 become the ruling of the Court if the Court has not directed oral argument by its tentative ruling
2 and notice of intent to appear has not been given.

3 Dated: August 7, 2019

Respectfully Submitted,

4 XAVIER BECERRA
5 Attorney General of California
6 MOLLY K. MOSLEY
7 Supervising Deputy Attorney General

8 */s/ Debbie J. Vorous*

9 DEBBIE J. VOROUS
10 Deputy Attorney General
11 *Attorneys for Applicant Insurance*
12 *Commissioner of the State of California*

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Carpenter v. Pacific Mut. Life Ins. Co.
 (1937) 10 Cal.2d 30716

In re Executive Life Ins. Co.
 (1995) 32 Cal.App.4th 34416, 17, 18

STATUTES

Government Code § 1104017

Insurance Code

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APPLICATION FOR APPROVAL OF FEES AND EXPENSES

INTRODUCTION

In mid-November 2018, the Insurance Commissioner learned that, due to the Camp Fire in Butte County, California, Merced Property & Casualty Company (“Merced”) would be rendered insolvent. The Commissioner immediately took the steps necessary to protect the public interest against the pending insolvency, including gaining immediate access to Merced personnel, affiliates and consultants, and claims data and policy information. On December 3, 2018, the court issued an order appointing the Commissioner as Liquidator of the Merced estate (Liq. Order). This is the Commissioner’s first application for approval of fees and expenses, and is filed concurrently with his first status report on the liquidation of Merced.

Under Insurance Code section 1035, the Commissioner is authorized to pay the salaries of the special deputy commissioners and employees and all other expenses necessary to carry out the functions of the management of an insolvent estate. Section 1036 further authorizes the Commissioner to employ and compensate legal counsel to prosecute and defend actions on behalf of Merced and to advise the Commissioner on estate business. The fees and expenses incurred for these purposes are entitled to Class 1 priority status over all other expenses of the estate. (Ins. Code, § 1033, subd. (a)(1).)

The Commissioner seeks approval of administrative and professional fees and expenses paid by the Merced estate from November 15, 2018, through March 31, 2019 (“Reporting Period”) in the total amount of \$1,106,141.73. This amount includes administrative and operating fees and expenses in the amount of \$1,059,268.98, and legal fees and expenses in the amount of \$46,872.75.

ADMINISTRATIVE AND OPERATING FEES AND EXPENSES

The Merced estate’s administrative fees and expenses generally concern the Commissioner’s efforts to discharge his duties to Merced policyholders and creditors to marshal and manage Merced’s assets, to investigate and collect the liabilities owed to it by third parties, and to dispose and otherwise deal with Merced’s assets. The fees and expenses, which total \$1,059,268.98, fall into two broad categories: 1) \$416,100.78 for the Conservation and

1 Liquidation Office's ("CLO") allocated administrative operating fees; and 2) \$643,168.20 for
2 direct estate operating expenses. (Declaration of Scott Pearce in Support of Fee Application
3 (Pearce Decl.), ¶¶ 7-8; Index of Exhibits in Support of Fee Application (Index Ex.), Ex. A
4 [Summary of Merced Fees and Expenses].)

5 **I. CLO ALLOCATED ADMINISTRATIVE FEES**

6 CLO allocated administrative fees are overhead costs that the CLO incurs for rent, salaries,
7 email and data systems, etc., which it allocates to each conservation or liquidation estate under its
8 management and oversight on a pro rata basis. (Pearce Decl. ¶ 9.) The CLO is comprised of
9 insurance insolvency professionals who oversee the liquidation of troubled insurance companies,
10 and who provide estate administrative services directly to each estate under CLO's management
11 and oversight. (*Ibid.*) As explained in the Commissioner's status report, the Commissioner
12 delegated his duties to liquidate the Merced estate over to the CLO and to a Deputy Liquidator.

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

18 During the Reporting Period, the Merced estate incurred 1,817.25 direct hours out of
19 12,219.28 total CLO hours (or 14.87 percent) of the total direct hours of all insolvent insurer
20 estates. (Pearce Decl., ¶ 11, Index Ex. B [summary of CLO overall direct hours & Merced
21 hours].) Merced's portion of the allocated costs for the Reporting Period based on 1,817.25 hours
22 was \$416,100.78. (*Id.* ¶ 11; Index Ex. A.)

23 The CLO allocated hours and costs for the Merced estate were spread between the
24 following five CLO departments:

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Departments	Total No. of Hours	Total Fees by Dept.
Estate Trust & Executive	803.50	\$ 184,583.21
Information Technology	718.75	\$ 165,626.87
Finance & Accounting	16.75	\$ 3,718.09
Claims	264.25	\$ 59,105.51
Reinsurance	14.00	\$ 3,067.10
Total	1,817.25	\$ 416,100.78

(Pearce Decl., ¶¶ 12, 15, 18, 20, 23, 25; Index Ex. C.)

A. Estate Trust and Executive Department

The Estate Trust and Executive Department is responsible for the overall administration and management of the Merced estate. (Pearce Decl., ¶ 13.) Executive Management members include, among others, the Special Deputy Insurance Commissioner and Chief Executive Officer. (*Ibid.*) The department coordinates and directs the activities of the other CLO departments and their resources as related to services attributed to the Merced estate. (*Ibid.*)

The Estate Trust and Executive Department was responsible for the pre-liquidation logistical planning and coordination necessary to expeditiously place Merced into liquidation and trigger the California Insurance Guarantee Association's ("CIGA") statutory obligations to pay and discharge the Merced covered claims. (Pearce Decl., ¶ 14.) Post liquidation, the department assumed the daily oversight and management of the estate, which included such things as coordinating and transitioning the Merced claims to CIGA, taking immediate control of all Merced estate assets, fulfilling the time-sensitive notices and other immediate legal requirements of the Liquidation Order, directing the preparation of Merced's financial records, and working with CLO's legal counsel and Claims Department to develop and implement a proof of claim process. (*Ibid.*)

1 **B. Information Technology Department**

2 The Information Technology (IT) Department provided immediate support to assist with
3 coordinating and transferring Merced's obligation to handle and pay its policyholder claims to
4 CIGA. (Pearce Decl., ¶ 16.) This included providing resources and systems support for CIGA's
5 on-site claims handling unit administering the Merced claims in Atwater, California. (*Ibid.*) Staff
6 worked extensively with technicians from CIGA and third party vendors to secure, back-up, and
7 transfer policy data to both the CLO and CIGA for handling and payment of claims. (*Ibid.*) The
8 department also provided support in the form of resources and systems that have helped to
9 manage and transition the Merced's home office technology infrastructure needs such as the
10 email, phone and imaging systems to the CLO's San Francisco office and systems. (*Ibid.*)

11 The CLO Administration/Facilities Department is generally responsible for managing
12 estate records in storage as well as assisting with the relocation and transition efforts related to
13 remote liquidation sites. (Pearce Decl., ¶ 17.) Because of the urgency associated with the Merced
14 estate, staff in the CLO IT Department handled this work, which involved taking into possession
15 Merced's physical and electronic records, and storing them at the CLO's San Francisco office.
16 (*Ibid.*) The CLO intends to use the legacy Merced records for historical inquiry and periodic
17 CIGA claims handling support, and as a key data resource in continuing to manage the claim
18 process and ultimately in distributing estate assets. (*Ibid.*) The IT Department work also involved
19 securing and taking control of Merced's Atwater facility and company vehicles. (*Ibid.*) Thus, all
20 of the direct hours typically handled by the Administration/Facilities Department are included in
21 the hours charged by the IT Department for this Reporting Period. (*Ibid.*)

22 **C. Finance and Accounting Department**

23 During the Reporting Period, the Commissioner relied primarily upon Merced's retained
24 accounting and finance personnel, supported by affiliated resources provided through an
25 administrative "shared" services relationship with Merced's parent entity United Heritage
26 Financial Group. (Pearce Decl., ¶ 19.) The Commissioner also retained several of the Merced
27 employees (as discussed below) to assist in various aspects of the liquidation. (*Ibid.*) The CLO
28 Liquidation Manager directed some of the employees to manage the Merced comprehensive

1 general ledger system, and the employees were responsible for the reconciliation of all cash
2 receipts and disbursements of the Merced estate through May of 2019. (*Ibid.*) The general ledger
3 and all treasury management were transferred to CLO management in July 2019, which will
4 likely result in increased CLO hours over the next reporting period. (*Ibid.*)

5 **D. Claims Department**

6 The CLO Claims Department is responsible for, among other things, all proofs of claims
7 filed against an estate and any “non CIGA-covered” claims (or portions of non-covered claims).
8 (Pearce Decl., ¶ 21.) Here, the Liquidation Order required the Commissioner to mail a proof of
9 claim packet to all known creditors advising them of their legal right to submit a proof of claim
10 no later than June 30, 2019, to be considered a valid and properly submitted claim. (*Ibid.*) The
11 department prepared and mailed the proof of claim packet, helped to transition all open Merced
12 claims to CIGA, and assisted CIGA by reviewing and setting up new claims and confirming and
13 documenting Merced policy coverage. (*Id.*, ¶ 22.) The department will continue to determine the
14 validity of all properly submitted proofs of claims against the Merced estate. (*Ibid.*) Also, on an
15 ongoing basis, the department is helping to administer and maintain the Merced data files from
16 which the estate will address the ultimate approved creditor population and calculate the future
17 equitable distribution of estate assets. (*Ibid.*)

18 **E. Reinsurance Department**

19 As of December 3, 2018, most all reinsurance due Merced had been collected by Merced’s
20 management with the exception of \$5 million in catastrophic coverage due from one reinsurer,
21 which the estate received the last week of December 2018. (Pearce Decl., ¶ 24.) The CLO
22 Reinsurance Department reviewed the Merced reinsurance treaties and associated recoveries,
23 spoke with Merced personnel and the reinsurance brokers who service the program, and
24 confirmed the amounts collected and due. (*Ibid.*) The department will continue to monitor losses
25 paid by CIGA for additional potential reinsurance recoveries. (*Ibid.*)

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

27 In addition to the Allocated Expenses, the Commissioner also incurred operating expenses
28 specifically for Merced, which are paid directly out of estate assets. (Pearce Decl., ¶ 26.) These

1 fees and expenses, which were paid primarily to third-party vendors, retained Merced employees,
 2 and for the operation of the Merced home office, were necessary for the administration of the
 3 Merced estate. (*Id.* ¶ 26.) For the Reporting Period, these fees and expenses totaled \$643,168.20,
 4 and comprised four types:

5	Types of Fees and Expenses	Fees & Expenses
6	Affiliates & Consulting	\$139,902.71
7	Compensation & Benefits	\$322,898.00
8	Travel Expenses	\$19,662.49
9	Office Expenses	\$160,705.00
10	Total	\$643,168.20

11
 12 (Pearce Decl., ¶¶ 26, 31, 34, 37, 39; Index Ex. A.)

13 **A. Affiliates and Consulting**

14 Mr. Robert Hogeboom was Merced's long-time consultant and legal counsel. (Pearce Decl.,
 15 ¶ 28.) In mid-November 2018, Merced engaged Mr. Hogeboom to communicate and coordinate
 16 the transfer of operational control of Merced to the CLO. (*Ibid.*) Mr. Hogeboom attended initial
 17 meetings with Merced and the California Department of Insurance (CDI) to prepare for the
 18 Commissioner's inevitable seizure of Merced. (*Ibid.*) He also assisted the CLO and CDI in
 19 gaining access to Merced systems, staff and facilities, and in providing notice of the liquidation to
 20 company board members and management working out of state. (*Ibid.*) The estate honored a
 21 November 2018 retainer it had agreed to pay Mr. Hogeboom and paid his outstanding invoices
 22 for work performed through the date of the December 3, 2018 Liquidation Order. (*Id.* ¶¶ 27-28.)

23 The Merced estate uses the services of its affiliate and parent entity United Heritage
 24 Financial Group. (Pearce Decl., ¶ 29.) Under a shared services arrangement with United Heritage,
 25 Merced receives certain corporate and administrative services and systems infrastructure support
 26 on an allocated basis, which include such things as IT infrastructure and technical system support,
 27 comprehensive payroll and employee benefits administration, and corporate governance advice.
 28

1 (*Ibid.*) Each month, United Heritage charges Merced with its proportionate share for the services
2 and systems rendered. (*Ibid.*) The Commissioner has worked with United Heritage to reduce the
3 scope of the services to only the human resources and IT infrastructure services. (*Ibid.*)

4 Also, certain United Heritage staff were paid a portion of their time to assist the CLO, in
5 accordance with the administrative “shared” services agreement, thereby continuing to support
6 Merced into liquidation. (Pearce Decl., ¶ 30.) Lastly, the estate incurred minimal expenses in
7 retaining temporary help to assist with high volume data entry and mailing work associated with
8 the initial liquidation requirements. (*Ibid.*)

9 **B. Compensation and Benefits**

10 As of December 3, 2018, Merced had 16 full-time employees. (Pearce Decl., ¶ 32.) The
11 Commissioner used the services of all 16 employees to assist in implementing the immediate
12 requirements of the Liquidation Order, i.e., the liquidation notice and policy cancellation process
13 for Merced’s in-force business, and to assist the CLO with transitioning the operational control of
14 the estate to the CLO. (*Ibid.*) Thereafter, the Commissioner offered nine of the 16 employees
15 retention agreements to stay on with the estate to further assist in implementing the continuing
16 operational requirements of the liquidation proceeding and to assist in transitioning the estate’s
17 long-term operations to the CLO’s San Francisco office. (*Ibid.*) All nine employees continued to
18 work in this capacity through March 31, 2019, with two remaining as of the date of this
19 application. (*Ibid.*)

20 The Merced estate honored the existing employment terms of each full-time employee, but
21 did not assume or pay any amount of independent employment contracts. (Pearce Decl., ¶ 33.) In
22 addition to salary, the estate continued to pay payroll taxes, insurance premiums, all required
23 payroll withholding and a modest retirement contribution. (*Ibid.*)

24 **C. Travel Expenses**

25 During the initial phase of the liquidation process, the Merced estate incurred travel
26 expenses (rental car, hotel, mileage) for two, full-time CLO employees to travel to and from the
27 Merced home office in Atwater. (Pearce Decl., ¶ 35.) The CLO employees were provided access
28 to certain Merced systems and personnel in mid-November to commence immediate planning and

1 logistics to address the urgent needs associated with the Camp Fire. (*Ibid.*) The Merced estate also
 2 honored a final expense report for one Merced executive. (*Ibid.*)

3 After December 3, 2018, CLO employees incurred rental car, meal per diem, lodging,
 4 mileage, etc., expenses in travel to and from Atwater to implement the immediate operational
 5 requirements of the Liquidation Order. (Pearce Decl., ¶ 36.) This work included transitioning the
 6 Merced claim-handling process to CIGA, and the estate's operations to the CLO. (*Ibid.*)

7 **D. Office Expenses**

8 The Merced estate incurred various office expenses to maintain a fully functional and
 9 secure work environment to implement the requirements of the Liquidation Order. (Pearce Decl.,
 10 ¶ 38.) In addition to the customary costs of owning and maintaining an office building (utilities,
 11 insurance, taxes, etc.) the Merced estate paid for the continuing use and services of its
 12 comprehensive policy administration system/software, and incurred significant telephone usage
 13 and postage expenses during the initial months of the liquidation. (*Ibid.*) The Commissioner has
 14 been actively scaling back all resources to only those deemed essential to the remaining
 15 operations of the estate. (*Ibid.*)

16 **LEGAL FEES AND EXPENSES**

17 During the Reporting Period, the Commissioner faced a variety of issues that required the
 18 assistance and advice of legal counsel. (Pearce Decl., ¶¶ 40-41.) Generally, non-litigation legal
 19 services are provided to the Commissioner by and/or under the direction of CDI's Corporate
 20 Affairs Bureau (CAB). (*Id.* ¶ 41.) The Attorney General's Office provides litigation services
 21 needed by the Commissioner. (*Ibid.*) The Commissioner also required specialized legal services,
 22 including in the area of taxation. (*Id.* ¶ 44.) The Commissioner retained an outside law firm as
 23 special counsel to assist with specialty areas of the law. (*Ibid.*)

24 The legal fees and expenses incurred by the Merced estate during the Reporting Period
 25 totaled \$46,872.75. (Pearce Decl., ¶ 45; Index Ex. A.)

26 **I. LEGAL SERVICES PERFORMED DURING THE REPORTING PERIOD**

27 The Commissioner relied on the CAB to provide legal services on estate matters, such as
 28 assisting with the preparation and implementation of the insolvency proceeding, drafting legal

1 correspondence, and providing advice on corporate governance issues, leasehold interests, and
2 liquidation estate planning. (Pearce Decl., ¶ 42.)

3 The Attorney General's Office provided services that included drafting the comprehensive
4 liquidation pleadings, representing the Commissioner at the December 3, 2018 hearing in Merced,
5 California, and assisting and representing the estate in reviewing, evaluating, and advising on
6 potential legal filings and litigation. (Pearce Decl., ¶ 43.)

7 Lastly, the Orrick law firm provided representation related to the initial liquidation
8 proceeding, certain complex tax requests and their economic impact on the Merced estate, and
9 general guidance as requested. (Pearce Decl., ¶ 44.)

10 **II. REVIEW AND APPROVAL OF LEGAL SERVICES PROVIDED TO THE COMMISSIONER**
11 **BY OUTSIDE LAW FIRMS**

12 CDI has strict guidelines governing the hiring and compensation of private law firms that
13 perform services in liquidation matters. (Pearce Decl., ¶ 46.) Those guidelines require that outside
14 law firms submit monthly bills describing each task performed, including but not limited to the
15 date the task was performed, and time expended. (*Ibid.*) With respect to expenses incurred by the
16 law firms, CDI requires that invoices contain an itemization of disbursements by category. (*Ibid.*)

17 When the Commissioner receives invoices for legal services, his staff carefully review the
18 invoices to determine whether they comply with CDI's guidelines and whether the fees and
19 expenses sought are reasonable, necessary, accurate and appropriate. (Pearce Decl., ¶ 47.) Only
20 after invoices have been carefully reviewed and approved will outside law firms be paid the
21 amounts sought in their invoices. (*Ibid.*) These procedures are intended to ensure that no
22 unreasonable or unnecessary fees or expenses are paid. (*Ibid.*) Staff who review the legal bills
23 have regular contact with the outside attorneys, see the attorney's work product, and are
24 knowledgeable about the legal work being performed by the outside law firms. (*Ibid.*)

25 Here, the Liquidation Manager has reviewed the invoices submitted by the Orrick law firm
26 and has approved the amounts sought by the firm as reasonable, necessary, accurate, appropriate
27 and in the best interest of Merced. (Pearce Decl., ¶ 48.)
28

1 WHEREFORE, the Commissioner respectfully requests that the court enter an order as
2 follows:

3 1. Approving the Commissioner's payment of administrative and operating fees and
4 expenses in the total amount of \$1,059,268.98 for the period of November 15, 2018, through
5 March 31, 2019;

6 2. Approving the Commissioner's payment of legal fees and expenses in the total
7 amount of \$46,872.75 for the period of November 15, 2018, through March 31, 2019; and

8 3. Authorizing the Commissioner to take any and all action necessary to accomplish the
9 purpose of the order prayed for herein.

10 Dated: August 7, 2019

Respectfully Submitted,

11 XAVIER BECERRA
12 Attorney General of California
13 MOLLY K. MOSLEY
14 Supervising Deputy Attorney General

15 */s/ Debbie J. Vorous*

16 DEBBIE J. VOROUS
17 Deputy Attorney General
18 Attorneys for Applicant Insurance
19 Commissioner of the State of California

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Commissioner is vested with substantial discretion to conduct the liquidation of an
3 insolvent insurer subject to the limitation “that the exercise of discretion be neither arbitrary nor
4 improperly discriminatory.” (See *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 356
5 (citing *Carpenter v. Pacific Mut. Life Ins. Co.* (1937) 10 Cal.2d 307, 329.) The Commissioner’s
6 decisions as to matters concerning an insolvent insurer are reviewed by the court under an abuse
7 of discretion standard. (*In re Executive Life, supra*, 32 Cal.App.4th at 358.)

8 **I. THE COMMISSIONER APPROPRIATELY DETERMINED AND PAID THE**
9 **ADMINISTRATIVE AND OPERATING FEES AND EXPENSES OF THE MERCED ESTATE**

10 The Commissioner’s payment of the fees and expenses of an estate for the purposes of
11 administering the insolvent insurer are entitled to Class 1 priority status over and above all other
12 expenses of the estate. (Ins. Code, § 1033, subd. (a)(1).)

13 Under Insurance Code section 1035, the Commissioner is authorized to appoint a special
14 deputy insurance commissioner and employ clerks and assistants to handle the business of the
15 insolvent insurer. The Commissioner is authorized to reimburse the payment of administrative
16 and operating fees and expenses from the assets of the estate, as follows:

17 The costs of employing special deputy commissioners, clerks, and assistants
18 appointed to carry out this article, and all expenses of taking possession of,
19 conserving, conducting, liquidating, disposing of, or otherwise dealing with the
20 business and property of that person under this article, shall be fixed by the
21 commissioner, *subject to the approval of the court*, and shall be paid out of the
22 assets of that person to the department.

23 (Ins. Code, § 1035, subd. (a), italics added.) The “approval” language in section 1035 connotes an
24 initial discretion by the Commissioner to determine whether the fees and expenses are proper. (*In*
25 *re Executive Life Ins. Co., supra*, 32 Cal.App.4th at pp. 401-403.)

26 The Commissioner is conducting a diligent and efficient liquidation of Merced. This
27 application, combined with the accompanying first status report of the Commissioner, explain
28 that his decisions with respect to the payment of the administrative and operating fees and
expenses have been made with the best interest of policyholders and creditors in mind and are
neither arbitrary nor improperly discriminatory. The Commissioner properly exercised his

1 discretion as Liquidator of the Merced estate in paying the administrative and operating fees and
2 expenses for the Reporting Period. The court should approve them.

3 **II. THE COMMISSIONER APPROPRIATELY DETERMINED AND PAID THE LEGAL FEES**
4 **AND EXPENSES OF THE MERCED ESTATE**

5 Insurance Code section 1036 authorizes the Commissioner to employ and to compensate
6 legal counsel with the court's approval as follows:

7 Notwithstanding any other provision of law, the provisions of Article 4
8 (commencing with Section 11040) of Chapter 1 of Part 1 of Division 3 of Title 2
9 of the Government Code, pertaining to legal services, shall apply in the institution
10 and prosecution of all insurance delinquency proceedings under this code. The
11 compensation of any counsel outside of California state service who is employed
12 pursuant to these provisions to represent the commissioner as receiver shall be
13 fixed by the commissioner, subject to approval of the court. Compensation of
14 counsel representing the commissioner as receiver shall be paid from the assets of
15 the person against whom the commissioner has proceeded under this article....¹

16 The only reported California case the Commissioner has located that addresses the payment
17 of legal expenses accords the Commissioner substantial deference in his determination as to the
18 need for assistance and the rate of compensation. In *In re Executive Life Insurance Company*, the
19 Court of Appeal determined that the initial determination of the propriety of approving
20 professional service fees for legal work performed on behalf of an insolvent insurer lies within the
21 Commissioner's discretion. (*In re Executive Life Ins. Co.*, *supra*, 32 Cal.App.4th at p. 401.) The
22 Court further described the standards that govern the Commissioner's and the Court's approval of
23 legal fees as follows:

24 The Commissioner is the public officer designated as the steward for the funds of
25 the insolvent insurer whose estate he or she administers. The Commissioner's
26 initial determination necessarily requires adequately detailed information
27 describing the work performed, by whom it was performed, the time spent and
28 when it was spent, and the rate and amount billed, unless an approved contract of
employment specifies a different basis of compensation. ... The Commissioner
should possess sufficient information to be able to determine from the billings any
excessive or duplicative charges, and seek clarification and correction where
appropriate....

To obtain court approval for payment of the fees deemed appropriate, the
Commissioner must supply the court with adequate information to permit
intelligent evaluation of the basis for the Commissioner's determination. The court
must be satisfied that the Commissioner has performed his duty to protect the

¹ Government Code section 11040 requires state agencies to obtain the Attorney General's approval of hiring outside counsel.

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interests of the estate. It is not required by statute, nor is it practical, for the court to undertake a detailed review of the invoices before approving payment. The Commissioner must, however, be ready to provide whatever documentation the court may find necessary in determining the propriety of the Commissioner's request that payment be approved.

(Ibid.)

The standards are met in this case. The Orrick law firm provided to the Commissioner legal bills that describe in detail the tasks performed, the person who performed the work, and the time expended on each task. The invoices were reviewed by the Commissioner's Liquidation Manager who is familiar with the work performed, and he approved the invoices for payment only to the extent they complied with CDI's guidelines and were reasonable, necessary, accurate and appropriate. (Pearce Decl., ¶¶ 44-48.)

The Commissioner properly exercised his discretion as Liquidator of the Merced estate in paying the legal fees and expenses of the estate. The court should approve them as well.

CONCLUSION

The Commissioner respectfully requests that the court approve the payment of the administrative and professional fees and expense sought herein.

Dated: August 7, 2019

Respectfully Submitted,
XAVIER BECERRA
Attorney General of California
MOLLY K. MOSLEY
Supervising Deputy Attorney General

/s/ Debbie J. Vorous

DEBBIE J. VOROUS
Deputy Attorney General
*Attorneys for Applicant Insurance
Commissioner of the State of California*

SA2018303475

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Insurance Commissioner of the State of California v. Merced Property & Casualty Co.**

No.: 18CV-04739

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member’s direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On August 7, 2019, I served the attached **NOTICE OF APPLICATION AND APPLICATION FOR ORDER APPROVING PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL FEES AND EXPENSES FOR THE PERIOD OF NOVEMBER 15, 2018, TO MARCH 31, 2019; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF [FILED CONCURRENTLY WITH: 1) DECLARATION OF SCOTT PEARCE; AND 2) INDEX OF EXHIBITS/EXHIBITS]** by placing a true copy thereof enclosed in a sealed envelope with **FEDEX**, addressed as follows:

Jeffrey D. Neumeyer, Esq.
Sr. Vice President, General Counsel and Corporate Secretary
United Heritage Financial Group
707 E. United Heritage Court
Meridian, ID 83642

Brad Roeber
Executive Director
California Insurance Guarantee Association
101 N. Brand Avenue, Ste. 600
Glendale, CA 91203

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2019, at Sacramento, California.

K. Burr
Declarant

/s/ K. Burr
Signature

FILED
Merced Superior Court
8/7/2019 11:26 AM
Clerk of the Superior Court
By: Melissa Chavez, Deputy

1 XAVIER BECERRA
Attorney General of California
2 MOLLY K. MOSLEY
Supervising Deputy Attorney General
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7 E-mail: Debbie.Vorous@doj.ca.gov
*Attorneys for Applicant Insurance Commissioner of
8 the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11
12
13 **INSURANCE COMMISSIONER OF THE
14 STATE OF CALIFORNIA,**

15 Applicant,

16 v.

17 **MERCED PROPERTY & CASUALTY
18 COMPANY, a California corporation,**

19 Respondent.

Case No. 18CV-04739

**DECLARATION OF SCOTT PEARCE IN
SUPPORT OF APPLICATION FOR
ORDER APPROVING PAYMENT OF
ADMINISTRATIVE AND
PROFESSIONAL FEES AND EXPENSES
FOR THE PERIOD OF NOVEMBER 15,
2018, TO MARCH 31, 2019**

Date: September 5, 2019
Time: 8:15 am
Dept: 8
Judge: Hon. Brian McCabe
Action Filed: November 30, 2018

21
22 I, Scott Pearce, declare:

23 1. I am the Senior Estate Trust Officer of the California Insurance Commissioner's
24 Conservation and Liquidation Office (CLO).

25 2. I make this declaration in support of the application for order approving payment of
26 administrative and professional fees and expenses for the period of November 15, 2018, to March
27 31, 2019 ("Reporting Period"). The following information is true and correct and based on my
28 personal knowledge and, if called to do so, I could and would testify competently to it.

1 3. The Insurance Commissioner of the State of California (Commissioner), in his
2 statutory role as Liquidator, has the responsibility for the management and administration of the
3 liquidation of numerous California insurers, including the Merced Property & Casualty Company
4 (Merced).

5 4. The Commissioner delegated his statutory administrative duties to liquidate the
6 Merced estate over to the CLO and a Deputy Liquidator. On December 3, 2018, the court
7 appointed me as the Liquidation Manager of the Merced estate, and empowered me to carry out
8 any and all duties and exercise the authority of the Liquidator and Deputy Liquidator David E.
9 Wilson as may be delegated by the Liquidator and Deputy Liquidator.

10 5. As the Liquidation Manager, I am responsible for managing the affairs of Merced. I
11 have primary responsibility for the overall administration of the Merced liquidation estate,
12 including but not limited to, matters pertaining to Merced's financial reporting, claim
13 administration, legal matters, reinsurance contracts, and estate expenditures. As the Liquidation
14 Manager, I am also responsible for the management of Merced's books and records, and I have
15 overall custody and control of them.

16 6. Upon learning that the Camp Fire rendered Merced insolvent, the Commissioner
17 immediately took the steps necessary to protect the public interest against the pending insolvency,
18 including gaining immediate access to Merced personnel, affiliates and consultants, and claims
19 data and policy information. After the court issued its Liquidation Order (Liq. Order) on
20 December 3, 2018, the Commissioner has continued to actively work to conduct an economical,
21 efficient, and orderly liquidation of Merced.

22 7. The Commissioner seeks approval of \$1,106,141.73 in administrative and
23 professional fees and expenses paid by the Merced estate during the Reporting Period. The fees
24 and expenses include administrative and operating fees and expenses in the amount of
25 \$1,059,268.98 and legal fees and expenses in the amount of \$46,872.75. A true and correct copy
26 of a detailed summary of Merced's fees and expenses for the Reporting Period is attached as
27 Exhibit A to the Index of Exhibits in Support of the Commissioner's Fee Application. This
28

1 Exhibit was prepared under my direction and correctly reflects the fees and expenses paid by the
2 Merced estate during the Reporting Period.

3 **ADMINISTRATIVE AND OPERATING FEES AND EXPENSES**

4 8. The Merced estate's administrative and operating fees and expenses in the amount of
5 \$1,059,268.98 fall into two broad categories: 1) \$416,100.78 for the CLO's allocated
6 administrative operating fees; and 2) \$643,168.20 for direct estate operating expenses.

7 **CLO Allocated Administrative Fees**

8 9. The \$416,100.78 in CLO allocated administrative fees are essentially overhead costs
9 that the CLO incurs for rent, salaries, email and data systems, etc., which it allocates to each
10 conservation or liquidation estate under its management and oversight on a pro rata basis. The
11 CLO is comprised of insurance insolvency professionals who oversee the liquidation of troubled
12 insurance companies. The CLO staff provide estate administrative services directly to each estate
13 under its management and oversight.

14 10. Each conservation or liquidation estate is charged a portion of the monthly allocated
15 costs based on the amount of time that the CLO employees worked on estate matters. For
16 example, if total estate hours for a particular month are 4000 hours, and 200 of those hours are
17 attributed to a particular estate, the CLO would charge that estate five percent (or 200/4000) of
18 the allocated costs for that month. To track the hours and costs, the CLO maintains a timekeeping
19 system in which each employee records time spent for work on each estate. The employee time
20 records are reviewed monthly by the estate trust manager for each estate to ensure that the hours
21 are accurate and billed to the correct estate.

22 11. During the Reporting Period, the Merced estate incurred 1,817.25 direct hours out of
23 12,219.28 total CLO hours (or 14.87 percent) of the total direct hours of all insolvent insurer
24 estates. Attached as Exhibit B to the Index of Exhibits in support of the Commissioner's fee
25 application is a summary of CLO overall direct hours & Merced hours. This exhibit was prepared
26 under my direction and correctly reflects CLO overall direct hours and Merced only hours.
27 Merced's portion of the allocated costs for the Reporting Period based on 1,817.25 hours was
28 \$416,100.78.

1 12. During the Reporting Period, Merced's hours and costs were spread between five
2 CLO departments: 1) Estate Trust and Executive; 2) Information Technology; 3) Finance and
3 Accounting; 4) Claims; and 5) Reinsurance. Attached as Exhibit C to the Commissioner's Index
4 of Exhibits in support of this application is a true and correct copy of a spreadsheet reflecting the
5 total number of Merced hours and corresponding total fees for each of these five departments.
6 This exhibit was prepared under my direction and correctly reflects the total hours and
7 corresponding fees for each of the five CLO departments.

8 *Estate Trust & Executive*

9 13. The Estate Trust and Executive Department is responsible for the overall
10 administration and management of the Merced liquidation estate. Executive Management
11 members include the Special Deputy Insurance Commissioner and Chief Executive Officer, the
12 Chief Claims Officer, the Chief Estate Trust Officer, the Chief Financial Officer and the
13 Reinsurance Officer. The department coordinates and directs the activities of the other CLO
14 departments and their resources as related to services attributed to each estate under the CLO's
15 management, including the Merced estate.

16 14. The Estate Trust and Executive Department was responsible for pre-liquidation
17 logistical planning, coordination of legal resources and other essential preparations to
18 expeditiously place Merced into liquidation and trigger the California Insurance Guarantee
19 Association's ("CIGA") statutory obligations to pay and discharge the Merced covered claims.
20 After the court issued the Merced Liquidation Order on December 3, 2018, the department
21 assumed the daily oversight and management of the estate. This included doing such things as
22 coordinating and transitioning the payment of Merced claims to CIGA, taking immediate control
23 of all Merced estate assets and bank accounts, fulfilling the time-sensitive notices and other
24 immediate legal requirements of the Liquidation Order, directing the preparation of Merced's
25 financial records, working with CLO's legal counsel and Claims Department to develop and
26 implement a proof of claim process, and complying with the federal and state audit and tax filing
27 requirements for the estate.
28

1 15. The hours attributed to the Estate Trust and Executive Department totaled 803.5, with
2 the corresponding fees equal to \$184,583.21.

3 *Information Technology Department*

4 16. The Information Technology (IT) Department provided immediate and direct support
5 to assist with coordinating and transferring Merced's obligation to handle and pay its policyholder
6 claims to CIGA. This included providing resources and systems support for CIGA's on-site
7 claims handling unit administering the Merced claims in Atwater, California. Staff worked
8 extensively with technicians from CIGA and third party vendors to secure, back-up, and transfer
9 the comprehensive policy administration data to both the CLO and CIGA for the immediate
10 handling and payment of Merced claims. The department also provided direct support to the
11 Merced estate in the form of resources and systems that have helped to manage and transition the
12 Merced's home office technology infrastructure needs such as the email, phone and imaging
13 systems to the CLO's San Francisco office and systems.

14 17. The CLO Administration/Facilities Department is generally responsible for managing
15 estate records in storage as well as assisting with the relocation and transition efforts related to
16 remote liquidation sites. Because of the urgency associated with the Merced estate, staff in the
17 CLO IT Department handled this facilities and records work as it related to the Merced
18 liquidation. This work involved taking into possession Merced's physical and electronic records,
19 and storing them at the CLO's San Francisco office. The Commissioner and CLO intend to use
20 the legacy Merced records and data for historical inquiry and periodic CIGA claims handling
21 support, and use it as a key data resource in continuing to manage the proof of claim process and
22 ultimately in completing the distribution of estate assets. The CLO IT Department work also
23 involved securing and taking control of Merced's Atwater facility and company vehicles.
24 Consequently, all of the direct hours typically incurred by the Administration/Facilities
25 Department are included in the hours charged by the IT Department for this Reporting Period.

26 18. The hours attributed to the IT Department totaled 718.75, with the corresponding fees
27 equal to \$165,626.87.

28

1 *Finance and Accounting Department*

2 19. The CLO Finance and Accounting Department provided limited support during the
3 Reporting Period. Instead, the Commissioner relied primarily upon Merced's retained accounting
4 and finance personnel (and its comprehensive general ledger system), supported by affiliated
5 resources provided through an administrative "shared" services relationship with Merced's parent
6 entity United Heritage Financial Group. The Commissioner also retained several of the Merced
7 employees (as discussed below) to assist in various aspects of the liquidation. Some of these
8 employees (at my direction) managed the Merced comprehensive general ledger system and were
9 responsible for the reconciliation of all cash receipts and disbursements of the Merced estate
10 through May of 2019. The general ledger and all treasury management were transferred to CLO
11 management in July 2019, which will likely result in increased CLO hours over the next reporting
12 period.

13 20. The hours attributed to the Finance and Accounting Department totaled 16.75, with
14 the corresponding fees equal to \$3,718.09.

15 *Claims Department*

16 21. The CLO Claims Department is responsible for, among other things, the
17 administration and determination of all pre-liquidation subrogation claims against an insolvent
18 estate, all proofs of claims filed against an estate, and any "non CIGA-covered" claims (or
19 portions of non-covered claims). In this case, the Liquidation Order required the Commissioner to
20 mail a proof of claim packet to all known creditors advising them of their rights and the legal
21 requirement to submit a proof of claim no later than June 30, 2019, to be considered a valid and
22 properly submitted claim.

23 22. The Claims Department prepared and mailed the proof of claim packet, helped to
24 transition all open Merced claims to CIGA, and assisted CIGA by reviewing requests, setting up
25 new claims and providing confirmation and documentation related to Merced policy coverage.
26 Also, the department has and will continue to determine the validity of all properly submitted
27 proofs of claims against the Merced estate. Further, on an ongoing basis, the department is
28 helping to administer and maintain the Merced data files (electronic and hardcopy) from which

1 the estate will address the ultimate approved creditor population and calculate the future equitable
2 distribution of estate assets.

3 23. The hours attributed to the Claims Department totaled 264.25, with the corresponding
4 fees equal to \$59,105.51.

5 *Reinsurance Department*

6 24. At the time the court entered the Liquidation Order on December 3, 2018, most all
7 reinsurance due Merced had been collected by Merced's management with the exception of \$5
8 million in catastrophic coverage due from one reinsurer, Mutual Re. The CLO Reinsurance
9 Department reviewed the Merced reinsurance treaties and associated recoveries, spoke with
10 Merced personnel and the reinsurance brokers who service the program, and confirmed the
11 amounts collected and due. The Merced estate received the final Mutual Re \$5 million
12 reinsurance payment the last week of December 2018. The department will continue to monitor
13 losses paid by CIGA for potential reinsurance recoveries and coordinate future contacts through
14 the brokers/reinsurers to ensure that future lines of communication and potential billings are
15 established.

16 25. The hours attributed to the Reinsurance Department totaled 14.00, with the
17 corresponding fees equal to \$3,067.10

18 **Direct Estate Fees and Expenses**

19 26. The direct administrative and operating fees and expenses for Merced are paid out of
20 estate assets. The \$643,168.20 paid in fees and expenses were necessary for the administration of
21 the estate, and comprise four types: 1) Affiliates and Consulting; 2) Compensation and Benefits;
22 3) Travel Expenses; and 4) Office Expenses. Exhibit A to the Commissioner's Index of Exhibits
23 in support of this application details the fees and expenses by type, and by the time period—pre-
24 liquidation (November 15 to December 2, 2018) and post liquidation (December 3, 2018 to
25 March 31, 2019.)

26 *Affiliates and Consulting*

27 27. While much of the liquidation responsibilities are performed by the staff of the CLO,
28 the Commissioner must also hire consultants to provide specialized services to the estate. In some

1 cases, the Commissioner may also deem it necessary and more efficient to retain the services of
2 affiliates of the estate. Further, in situations where the insurance company has retained the
3 services of affiliates or consultants to assist in the liquidation proceedings, the Commissioner may
4 choose to honor those arrangements.

5 28. Mr. Robert Hogeboom of the law firm Hinshaw & Culbertson, LLP, was Merced's
6 long-time consultant and legal counsel. Pre-liquidation, in mid-November, the Merced company
7 engaged Mr. Hogeboom to communicate and coordinate the transfer of operational control of
8 Merced to the CLO. Mr. Hogeboom attended initial meetings with the company and the
9 California Department of Insurance (CDI) in preparation for the Commissioner's inevitable
10 seizure of Merced. He also assisted the CLO and CDI in gaining timely access to Merced
11 systems, staff and facilities, and in providing immediate notice of the liquidation to the
12 company's various board members and management working remotely from Idaho and Oregon.
13 The Merced estate honored the November 2018 retainer it had agreed to pay Mr. Hogeboom and
14 paid his outstanding invoices for work performed through the date of the December 3, 2018
15 Liquidation Order.

16 29. The Merced estate also continues to use the services of its affiliate and parent entity
17 United Heritage Financial Group. Under a shared service arrangement with United Heritage,
18 Merced receives certain corporate and administrative services and systems infrastructure support
19 on an allocated basis. The services and systems include things such as investment and treasury
20 services, IT infrastructure and technical system support, comprehensive payroll and employee
21 benefits administration, and corporate legal/governance advice. Each month, United Heritage
22 charges Merced with its proportionate share for the services and systems rendered. The agreement
23 appears fair and cost effective to Merced as many of the services provided would be considerably
24 more expensive if contracted directly and exclusively by Merced. The majority of the fees and
25 expenses associated with these services occurred during the first month of liquidation. The
26 Commissioner has worked with United Heritage to reduce the scope of the services to only
27 essential services required by the liquidation estate—the Human Resources and IT infrastructure
28 services are the only components still in place.

1 30. In addition, certain United Heritage staff were paid a portion of their time to assist the
2 CLO in accordance with the administrative “shared” service agreement, thereby continuing to
3 support Merced into liquidation. Lastly, the estate incurred minimal expenses in retaining
4 temporary help to assist with high volume data entry and mailing work associated with the initial
5 liquidation requirements.

6 31. The fees and expenses for affiliates and consultants for the Reporting Period totaled
7 \$139,902.71.

8 *Compensation and Benefits*

9 32. As of December 3, 2018, Merced had 16 full-time employees. The Commissioner
10 utilized the services of all 16 employees to assist him in implementing the immediate
11 requirements of the Liquidation Order, i.e., the time-sensitive liquidation notice and policy
12 cancellation process for Merced’s in-force business, and to assist the CLO with transitioning the
13 operational control of the estate to the CLO. Thereafter, the Commissioner offered nine of the 16
14 Merced employees retention agreements to stay on with the estate to provide further assistance in
15 implementing the continuing operational requirements of the liquidation proceeding and to assist
16 in transitioning the estate’s long-term operations to the CLO’s office in San Francisco. All nine
17 employees continued to work in this capacity through March 31, 2019, with only two remaining
18 with the estate as of the date of this application.

19 33. The Merced estate honored the existing employment terms of each full-time
20 employee, but did not assume or pay any amount of independent employment contracts. In
21 addition to salary, the estate continued to pay payroll taxes, insurance premiums, all required
22 payroll withholding and a modest retirement contribution.

23 34. The compensation and benefits for the Reporting Period totaled \$322,898.00.

24 *Travel Expenses*

25 35. During the initial phase of the liquidation process, the Merced estate incurred travel
26 expenses (rental car, hotel, mileage) for two, full-time CLO employees to travel to and from the
27 Merced home office in Atwater. The CLO employees were provided access to certain Merced
28 systems and personnel in mid-November to commence immediate planning and logistics to

1 address the urgent needs associated with the Camp Fire. The Merced estate also honored a final
2 expense report for one Merced executive.

3 36. The large majority of the remaining Merced estate travel expenses were incurred
4 immediately after the court entered the Liquidation Order on December 3, 2018. CLO employees
5 incurred rental car, meal per diem, lodging, mileage, etc., expenses in travel to and from Atwater
6 to implement the immediate operational requirements of the order, including the transition of the
7 Merced claim-handling process to CIGA, and to assist in transitioning the estate's operations to
8 the CLO.

9 37. The travel expenses for the Reporting Period totaled \$19,662.49

10 *Office Expenses*

11 38. The Merced estate incurred various office expenses to maintain a fully functional and
12 secure work environment to implement the requirements of the Liquidation Order. In addition to
13 the customary costs of owning and maintaining an office building (utilities, insurance, taxes, etc.)
14 the Merced estate paid for the continuing use and services of its comprehensive policy
15 administration system/software, and incurred significant telephone usage and postage expenses
16 during the initial months of the insolvency. The Commissioner has been actively scaling back all
17 resources to only those deemed essential to the remaining operations of the liquidation estate.

18 39. The office expenses for the Reporting Period totaled \$160,705.00.

19 **LEGAL FEES AND EXPENSES**

20 40. My responsibilities in the liquidation proceeding include, but are not limited to,
21 reviewing, monitoring and using the information provided to me by my staff at the CLO, and by
22 attorneys employed by the Commissioner. They also include reviewing the bills of legal counsel.

23 41. Throughout the course of the Reporting Period, the Commissioner faced a variety of
24 complex legal issues that required the assistance and advice of legal counsel. Generally, non-
25 litigation legal services are provided to the Commissioner by and/or under the direction of CDI's
26 Corporate Affairs Bureau (CAB). In addition, the Attorney General's Office provides the
27 litigation services needed by the Commissioner.
28

1 42. During the Reporting Period, the Commissioner relied on the CAB to provide legal
2 services on estate matters, such as assisting with the preparation and implementation of the
3 insolvency proceeding, drafting legal correspondence, and providing advice on corporate
4 governance issues, leasehold interests, and liquidation estate planning.

5 43. The Attorney General's Office provided services that included drafting the
6 comprehensive liquidation pleadings, representing the Commissioner at the December 3, 2018
7 hearing in Merced, California, and assisting and representing the Merced estate in reviewing,
8 evaluating, and advising on potential legal filings and litigation.

9 44. I also retained the Orrick law firm, which provided representation related to the initial
10 liquidation proceeding, certain complex tax requests and their economic impact on the Merced
11 estate as well as general guidance as requested.

12 45. The legal fees and expenses incurred by Merced during the Reporting Period totaled
13 \$46,872.75.

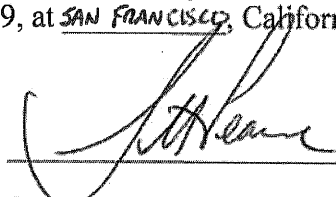
14 46. CDI has strict guidelines governing the hiring and compensation of private law firms
15 that perform services in conservation and liquidation matters. Those guidelines require, among
16 other things, that outside law firms submit monthly bills and that the billing invoices contain
17 detailed information describing each task performed, including, but not limited to, the date the
18 task was performed, and the time expended. With respect to expenses incurred by the law firms,
19 CDI requires that invoices contain an itemization of disbursements by category.

20 47. In accordance with CDI's procedures and guidelines, the CLO requires that when
21 invoices are received, they are carefully reviewed by staff to determine whether the fees and
22 expenses sought are reasonable, necessary, correct and appropriate. Only after invoices have been
23 carefully reviewed and approved will outside law firms be paid the amounts sought in their
24 invoices. The procedures established by CDI are intended to ensure that no unreasonable or
25 unnecessary fees or expenses are approved or paid.

26 48. In this case, I have regular contact with the Orrick attorneys, see the attorneys' work
27 product, and am knowledgeable about the legal work being performed by the attorneys. I
28 reviewed the legal bills and invoices submitted to the Merced estate by the Orrick law firm, and

1 approved the amounts sought by the firm as reasonable, necessary, accurate, appropriate and in
2 the best interest of Merced.

3 I declare under penalty of perjury of the laws of the State of California that the foregoing is
4 true and correct. Executed this 7th day of August, 2019, at SAN FRANCISCO, California.

5
6 
7 _____
8 Scott Pearce

9 SA2018303475

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Insurance Commissioner of the State of California v. Merced Property & Casualty Co.**

No.: 18CV-04739

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On August 7, 2019, I served the attached **DECLARATION OF SCOTT PEARCE IN SUPPORT OF APPLICATION FOR ORDER APPROVING PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL FEES AND EXPENSES FOR THE PERIOD OF NOVEMBER 15, 2018, TO MARCH 31, 2019** by placing a true copy thereof enclosed in a sealed envelope with **FEDEX**, addressed as follows:

Jeffrey D. Neumeyer, Esq.
Sr. Vice President, General Counsel and Corporate Secretary
United Heritage Financial Group
707 E. United Heritage Court
Meridian, ID 83642

Brad Roeber
Executive Director
California Insurance Guarantee Association
101 N. Brand Avenue, Ste. 600
Glendale, CA 91203

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2019, at Sacramento, California.

K. Burr

Declarant

/s/ K. Burr

Signature

1 XAVIER BECERRA
Attorney General of California
2 MOLLY K. MOSLEY
Supervising Deputy Attorney General
3 DEBBIE J. VOROUS
Deputy Attorney General
4 State Bar No. 166884
1300 I Street, Suite 125
5 P.O. Box 944255
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6 Telephone: (916) 210-7349
Fax: (916) 323-7095
7 E-mail: Debbie.Vorous@doj.ca.gov
*Attorneys for Applicant Insurance Commissioner of
8 the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MERCED

11
12
13 **INSURANCE COMMISSIONER OF THE
14 STATE OF CALIFORNIA,**

15 Applicant,

16 v.

17 **MERCED PROPERTY & CASUALTY
18 COMPANY, a California corporation,**

19 Respondent.

Case No. 18CV-04739

**INDEX OF EXHIBITS AND EXHIBITS
TO INSURANCE COMMISSIONER'S
APPLICATION FOR ORDER
APPROVING PAYMENT OF
ADMINISTRATIVE AND
PROFESSIONAL FEES AND EXPENSES
FOR THE PERIOD OF NOVEMBER 15,
2018, TO MARCH 31, 2019**

Date: September 5, 2019
Time: 8:15 am
Dept: 8
Judge: Hon. Brian McCabe
Action Filed: November 30, 2018

22
23 Pursuant to California Rules of Court, rule 3.1110(f), Applicant Insurance
24 Commissioner of the State of California submits this index of exhibits in support of his
25 application for an order approving payment of administrative and professional fees and
26 expenses for the period of November 15, 2018, to March 31, 2019:

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Exhibit Letter	Exhibit Page Number	Exhibit Description
A	1	Merced Property & Casualty Fees & Expenses Detailed Spreadsheet for the Period November 15, 2018, through March 31, 2019
B	2	Conservation and Liquidation Office (CLO) Summary of Allocated Fees for Merced Property & Casualty (November 2018, through March 2019)
C	3	Detailed CLO Allocated Fees Spreadsheet for Merced Property & Casualty (November 15, 2018, through March 31, 2019)

Dated: August 7, 2019

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
MOLLY K. MOSLEY
Supervising Deputy Attorney General

/s/ Debbie J. Vorous

DEBBIE J. VOROUS
Deputy Attorney General
*Attorneys for Applicant Insurance
Commissioner of the State of California*

SA2018303475

EXHIBIT A

MERCED PROPERTY AND CASUALTY FEES & EXPENSES

Hourly Rate Number of Hours	CLO ALLOCATED EXPENSES					Liquidation Totals 12/03/18-03/31/19	TOTALS FOR REPORTING PERIOD	
	Nov 15-Dec 2, 2018 (Pre-liquidation)	12/3/18-12/31/18	1/1/19-1/31/19	2/1/19-2/28/19	3/1/19-3/31/19		1,817.25	hours allocated expense for direct hours
	\$227.14	\$243.55	\$232.13	\$221.87	\$209.95			
	236.75	449.00	477.25	405.00	249.25	1,580.50	1,817.25	
TOTAL FEES	\$53,775.40	\$109,353.95	\$110,784.04	\$89,857.35	\$52,330.04	\$362,325.38	\$416,100.78	

	Nov 15-Dec 2, 2018 (Pre-liquidation)	12/3/18-12/31/18	1/1/19-1/31/19	2/1/19-2/28/19	3/1/19-3/31/19		
DIRECT EXPENSES (based on GL date)							
AFFILIATE AND CONSULTING							
UHFG	\$0.00	\$27,506.00	\$2,566.00	\$3,264.00	\$2,548.00	\$35,884.00	\$35,884.00
DIRECTORS FEE	\$14,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$14,000.00
Temp Help Exp (McCall)	\$0.00	\$0.00	\$0.00	\$1,828.66	\$1,410.05	\$3,238.71	\$3,238.71
CONSULTING SERVICES	\$35,000.00	\$51,563.00	\$217.00	\$0.00	\$0.00	\$51,780.00	\$86,780.00
TOTAL AFFILIATE & CONSULTING	\$49,000.00	\$79,069.00	\$2,783.00	\$5,092.66	\$3,958.05	\$90,902.71	\$139,902.71
LEGAL							
DOI	\$0.00	\$927.50	\$0.00	\$0.00	\$7,777.50	\$8,705.00	\$8,705.00
DOJ	\$0.00	\$7,352.50	\$0.00	\$3,145.00	\$42.50	\$10,540.00	\$10,540.00
Other Legal (Orrick)	\$0.00	\$0.00	\$0.00	\$14,144.75	\$13,483.00	\$27,627.75	\$27,627.75
TOTAL LEGAL	\$0.00	\$8,280.00	\$0.00	\$17,289.75	\$21,303.00	\$46,872.75	\$46,872.75
COMPENSATION & BENEFITS							
SALARIES	\$44,129.00	\$66,666.00	\$55,302.00	\$44,302.00	\$44,594.00	\$210,864.00	\$254,993.00
PAYROLL TAX	\$2,852.00	\$5,465.00	\$6,380.00	\$4,389.00	\$3,759.00	\$19,993.00	\$22,845.00
401 K MATCH	\$1,768.00	\$3,054.00	\$2,121.00	\$1,830.00	\$1,776.00	\$8,781.00	\$10,549.00
EMPLOYEE WELFARE	\$0.00	\$18,291.00	\$8,835.00	\$3,431.00	\$3,954.00	\$34,511.00	\$34,511.00
TOTAL COMPENSATION & BENEFITS	\$48,749.00	\$93,476.00	\$72,638.00	\$53,952.00	\$54,083.00	\$274,149.00	\$322,898.00
TRAVEL EXPENSES							
Travel Expenses - CLO	\$0.00	\$9,931.49	\$0.00	\$0.00	\$0.00	\$9,931.49	\$9,931.49
TRAVEL- AIRFARE	\$0.00	\$1,000.00	\$0.00	\$0.00	\$0.00	\$1,000.00	\$1,000.00
TRAVEL - LODGING	\$0.00	\$1,731.00	\$0.00	\$0.00	\$0.00	\$1,731.00	\$1,731.00
TRAVEL- COMPANY CAR	\$0.00	\$682.00	\$231.00	\$0.00	\$0.00	\$913.00	\$913.00
TRAVEL-RENTAL, TAXI & MILEAGE	\$1,040.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,040.00
TRAVEL & INSPECTIONS	\$3,629.00	\$446.00	\$0.00	\$0.00	\$0.00	\$446.00	\$4,075.00
MEALS	\$0.00	\$972.00	\$0.00	\$0.00	\$0.00	\$972.00	\$972.00
TOTAL TRAVEL EXPENSES	\$4,669.00	\$14,762.49	\$231.00	\$0.00	\$0.00	\$14,993.49	\$19,662.49
OFFICE EXPENSES							
PAYROLL PROCESSING FEE	\$0.00	\$361.00	\$74.00	\$233.00	\$282.00	\$950.00	\$950.00
EQUIPMENT & FURNITURE	\$0.00	\$1,950.00	\$3,638.00	\$0.00	\$5,266.00	\$10,854.00	\$10,854.00
SOFTWARE EXPENSE	\$0.00	\$50,289.00	\$8,956.00	\$708.00	\$708.00	\$60,661.00	\$60,661.00
INVESTMENT	\$0.00	\$213.00	\$66.00	\$33.00	\$33.00	\$345.00	\$345.00
INSURANCE DEPT. FEES	\$107.00	\$4,207.00	\$0.00	\$216.00	\$0.00	\$4,423.00	\$4,530.00
ADVERTISING-PR-SUBSCRIPTIONS	\$0.00	\$1,650.00	\$0.00	\$0.00	\$0.00	\$1,650.00	\$1,650.00
TELEPHONE-POSTAGE	\$918.00	\$11,528.00	\$9,469.00	\$7,501.00	\$1,495.00	\$29,993.00	\$30,911.00
UNDERWRITING EXPENSE	\$0.00	\$2,388.00	\$385.00	(\$411.00)	\$0.00	\$2,362.00	\$2,362.00
RENT	\$0.00	(\$10,200.00)	\$3,400.00	\$3,400.00	\$3,400.00	\$0.00	\$0.00
METER RENTALS	\$213.00	\$1,198.00	\$4,773.00	\$0.00	\$1,200.00	\$7,171.00	\$7,384.00
PRINTING & STATIONERY	\$130.00	\$823.00	\$1,048.00	\$136.00	\$168.00	\$2,175.00	\$2,305.00
INSURANCE	\$0.00	\$2,194.00	\$1,428.00	\$1,911.00	\$241.00	\$5,774.00	\$5,774.00
CREDIT CARD/BANK FEES	\$490.00	\$2,922.00	\$745.00	\$162.00	\$0.00	\$3,829.00	\$4,319.00
UTILITIES	\$1,904.00	\$1,636.00	\$2,125.00	\$1,839.00	\$1,739.00	\$7,339.00	\$9,243.00
REAL ESTATE EXPENSE	\$1,418.00	\$2,221.00	\$8,912.00	\$2,441.00	\$2,224.00	\$15,798.00	\$17,216.00
MISCELLANEOUS	\$2.00	\$26.00	\$418.00	\$555.00	\$1,200.00	\$2,199.00	\$2,201.00
TOTAL OFFICE EXPENSES	\$5,182.00	\$73,406.00	\$45,437.00	\$18,724.00	\$17,956.00	\$155,523.00	\$160,705.00
TOTAL EXPENSES	\$107,600.00	\$268,993.49	\$121,089.00	\$95,058.41	\$97,300.05	\$582,440.95	\$690,040.95

Total Pre-liquidation Fees & Expenses 11/15/18 to 12/3/2018): **\$161,375.40** Total Liquidation Fees & Expenses (thru 3/31/2019): **\$944,766.33**

TOTAL FEES 11/15/2018 THRU 03/31/2019	\$416,100.78
TOTAL EXPENSES 11/15/2018 THRU 03/31/2019	\$690,040.95
TOTAL FEES & EXPENSES 11/15/2018 THRU 03/31/2019	\$1,106,141.73

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EXHIBIT B

CLO ALLOCATED FEES RE: MERCED PROPERTY AND CASUALTY

	All Companies	Merced Only	
Nov-18			
Direct Hours Acct. 92002	2,387.17	236.75	
Total	<u>2,387.17</u>	<u>236.75</u>	
Dec-18			
Direct Hours Acct. 92002	2,183.56	449.00	
Total	<u>2,183.56</u>	<u>449.00</u>	
Jan-19			
Direct Hours Acct. 92002	2,636.39	477.25	
Total	<u>2,636.39</u>	<u>477.25</u>	
Feb-19			
Direct Hours Acct. 92002	2,374.78	405.00	
Total	<u>2,374.78</u>	<u>405.00</u>	
Mar-19			
Direct Hours Acct. 92002	2,637.38	249.25	
Total	<u>2,637.38</u>	<u>249.25</u>	
Total Direct Hours Acct. 92002	12,219.28	1,817.25	%
Total	<u>12,219.28</u>	<u>1,817.25</u>	14.87

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EXHIBIT C

MERCED PROPERTY AND CASUALTY

FEEs	Nov 15-Dec 2, 2018 (Pre- liquidation)	12/3/18-12/31/18	1/1/19-1/31/19	2/1/19- 2/28/19	3/1/19-3/31/19	Liquidation Totals 12/03/18-03/31/19	TOTALS FOR REPORTING PERIOD
Hourly Rate	\$227.14	\$243.55	\$232.13	\$221.87	\$209.95		
Number of Hours	236.75	449.00	477.25	405.00	249.25	1,580.50	1,817.25
TOTAL FEES	\$53,775.40	\$109,353.95	\$110,784.04	\$89,857.35	\$52,330.04	\$362,325.38	\$416,100.78

	Department Hours					Total # of hours
Exec/ETD (11/21)	130.5	235	184.5	139	114.5	803.5
IT (31)	104.25	188	218.5	148.5	59.5	718.75
Accounting (32)	1	1.5	3.75	4.25	6.25	16.75
Claims (42)	1	24.5	68.5	106.25	64	264.25
Reins (33)	0	0	2	7	5	14
	236.75	449	477.25	405	249.25	1,817.25

	Allocated Expense					Total by Dept
Exec/ETD (11/21)	\$29,641.77	\$57,234.25	\$42,827.99	\$30,839.93	\$24,039.28	\$184,583.21
IT (31)	\$23,679.35	\$45,787.40	\$50,720.41	\$32,947.70	\$12,492.03	\$165,626.87
Accounting (32)	\$227.14	\$365.33	\$870.49	\$942.95	\$1,312.19	\$3,718.09
Claims (42)	\$227.14	\$5,966.98	\$15,900.91	\$23,573.69	\$13,436.80	\$59,105.51
Reins (33)	\$0.00	\$0.00	\$464.26	\$1,553.09	\$1,049.75	\$3,067.10
	\$53,775.40	\$109,353.95	\$110,784.04	\$89,857.35	\$52,330.04	\$416,100.78

This e-copy is the official court record (GC68150)

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Insurance Commissioner of the State of California v. Merced Property & Casualty Co.**

No.: 18CV-04739

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On August 7, 2019, I served the attached **INDEX OF EXHIBITS AND EXHIBITS TO INSURANCE COMMISSIONER'S APPLICATION FOR ORDER APPROVING PAYMENT OF ADMINISTRATIVE AND PROFESSIONAL FEES AND EXPENSES FOR THE PERIOD OF NOVEMBER 15, 2018, TO MARCH 31, 2019** by placing a true copy thereof enclosed in a sealed envelope with **FEDEX**, addressed as follows:

Jeffrey D. Neumeyer, Esq.
Sr. Vice President, General Counsel and Corporate Secretary
United Heritage Financial Group
707 E. United Heritage Court
Meridian, ID 83642

Brad Roeber
Executive Director
California Insurance Guarantee Association
101 N. Brand Avenue, Ste. 600
Glendale, CA 91203

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2019, at Sacramento, California.

 K. Burr
Declarant

 /s/ **K. Burr**
Signature