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FILED
Clerk of the Superior Court

FEB 14 2013

By: R. PORTILLO, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

v.

**FRONTIER PACIFIC INSURANCE
COMPANY, A California Corporation,**

Defendants.

Case No. GIC 774028

**TWENTY FIRST STATUS
CONFERENCE REPORT**

Date: March 1, 2013
Time: 1:00 P.M.
Dept: 71
Judge: The Honorable Ronald S. Prager
Trial Date: None
Action Filed: September 7, 2001

INTRODUCTION

Frontier Pacific Insurance Company ("FPIC"), a California domiciled property and casualty company, was conserved by the Insurance Commissioner ("Commissioner") on September 7, 2001, based on a finding that further transaction of its business would be hazardous to policyholders and creditors pursuant to Insurance Code section 1011. Subsequently, the Commissioner determined that FPIC's financial condition was such that rehabilitation would be

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1 futile and the Commissioner's Application for Order Appointing Commissioner as Liquidator and
2 Restraining Orders was granted on November 30, 2001 (the "Liquidation Order"). Prior to the
3 Commissioner's actions, in August 2001, FPIC's parent company, Frontier Insurance Company
4 of New York ("FIC") voluntarily entered rehabilitation under the control of the New York
5 Superintendent of Insurance, acting through the New York Liquidation Bureau ("NYLB"). As a
6 result of FIC's rehabilitation, certain reinsurance recoverables due to FPIC from FIC were not
7 received and could therefore no longer be carried as assets on the books of FPIC. An
8 examination by the California Department of Insurance's Financial Analysis Division found that
9 based on the disallowance of the FIC reinsurance credit in the amount of \$12,842,609, FPIC's
10 surplus as regards policyholders was a negative \$5,289,995.

11 At the time of the initial case management conference in this matter on March 15, 2002, the
12 Court announced its intention to hold semi-annual status conferences in this matter so that the
13 Court could periodically be informed regarding the status of the liquidation of FPIC. For the
14 convenience of the Court, the Liquidator presented the first status report on September 13, 2002,
15 the second on March 24, 2003, the third on February 24, 2004, the fourth on September 30, 2004,
16 the fifth on April 29, 2005, the sixth on January 13, 2006, the seventh on June 9, 2006, the eighth
17 report on January 5, 2006, the ninth report on October 5, 2007, the tenth report on April 16, 2008,
18 the eleventh report on October 17, 2008, the twelfth report on April 17, 2009, the thirteenth report
19 on November 6, 2009, the fourteenth report on March 12, 2010, the fifteenth report on July 16,
20 2010, the sixteenth report on April 15, 2011, the seventeenth report on July 8, 2011, the
21 eighteenth report on October 7, 2011, the nineteenth report on February 24, 2012 and the
22 twentieth report on August 31, 2012. The twentieth status report is hereby incorporated herein
23 by reference.

24 **STATUS OF THE NICO LITIGATION/ARBITRATION**

25 As previously noted, the Liquidator instituted an action for declaratory relief against
26 National Indemnity Insurance Company entitled *Steve Poizner, Insurance Commissioner for the*
27 *State of California in his capacity as Liquidator of Frontier Pacific Insurance Company v.*
28 *National Indemnity Company*, San Diego Superior Court, Case No. 37-2008-00080104-CU-MC-

1 CTL. NICO removed the case to the United States District Court for the Southern District of
2 California, where it was assigned Case No. 08 CV 772 L. Upon NICO's application, the court
3 granted its request to stay the proceeding pending completion of arbitration. The last Federal
4 Status Conference was held on November 16, 2011 at which time the case was dismissed, at the
5 joint request of the parties, due to the conclusion of arbitration between the Liquidator and NICO.

6 As noted in the Reinsurance portion of prior Statements, the Liquidator commenced
7 arbitration with NICO seeking recovery of all amounts due from NICO. On August 12, 2011,
8 the arbitration panel awarded FPIC \$13,039,326.28 and interest at the rate of 6% simple interest
9 to be paid within 30 days. On August 27, 2011, the arbitration panel awarded interest of
10 \$4,700,000.00 payable no later than September 11, 2011. Pursuant to the terms of the awards,
11 NICO has paid FPIC \$17,739,326.28.

12 The award excluded FPIC's pre-liquidated Unallocated Loss Adjustment Expenses
13 (ULAE) claims against NICO. In June 2012, this Court signed a commission for out of state
14 discovery (deposition and production of documents) in connection with these claims. The
15 Liquidator successfully used the Court's commission to have the New York rehabilitation court
16 for Frontier Insurance Company issue its subpoena for the documents the Liquidator was seeking.
17 The subpoena resulted in an agreement under which the Liquidator obtained to the extent
18 available all pertinent records sought. As a result, the Liquidator now has the necessary
19 information to produce additional reinsurance billings related to various reinsurance contracts.
20 We have obtained an affidavit of a pre-liquidation employee of FIC that provides the underlying
21 support for Frontier Pacific's pre-liquidation billings for ULAE in excess of \$3 million. The
22 affidavit along with supporting documentation for the pre-liquidation ULAE was forwarded to
23 NICO on January 31, 2013.

24 FPIC's post-arbitration billings to NICO continue. Pre-liquidation ULAE (excluded from
25 the arbitration award) and its associated interest along with post-arbitration billings through June
26 30, 2012 amount to \$5,559,967.26 (since the ULAE has been outstanding for nearly 10 years a
27 significant portion of this billing is for interest). As of December 31, 2012, NICO has made
28 payments against these claims amounting to \$431,237.00.

1 The Liquidator is hopeful that with the receipt of the affidavit, NICO will acknowledge
2 that the billing for pre-liquidation ULAE is owed and will honor its contractual obligation and
3 pay the amounts due. In the event NICO refuses to pay FPIC for the pre liquidation ULAE, the
4 Liquidator will have to consider instituting a second round of arbitration to obtain recovery of the
5 unpaid ULAE balance along with interest. If arbitration is necessary, it could be up to a year
6 before any hearing on FPIC's arbitration claim.

7 The Liquidator also obtained information which will allow the estate to bill other
8 reinsurers which may owe money to FPIC. This is an ongoing project and the Liquidator expects
9 to know within the next few months what is left to bill for reinsurance.

10 The Liquidator has determined that Frontier Pacific has excess reinsurance limits under
11 the NICO reinsurance contract which it will not need. Pursuant to Endorsement No. 3 between
12 NICO and Frontier Insurance Company, NICO agreed that if Frontier and FPIC agree to a
13 reallocation of any excess limit to Frontier, NICO will be bound by that determination.
14 Conservatively, the Liquidator believes that it has \$18 million in excess limit and is currently
15 negotiating with Frontier to transfer the excess limit for valuable consideration. If successful,
16 FPIC may have additional funds available for distribution to its creditors.

17 **DISTRIBUTION**

18 At a hearing on June 22, 2012, this Court granted the Commissioner's Application for Early
19 Distribution. The Liquidator made the distributions provided for in the Court's order.

20 It is possible if all ULAE owed is paid and if there is a transfer for consideration of excess
21 reinsurance limits that there will enough assets to honor all policyholder claims and the insurance
22 guaranty association claims in full.

23 In the event there remain additional assets to pay lower class claims, the Liquidator will
24 have to adjudicate all of the class 7 claims of vendors, suppliers, etc. The Liquidator has
25 refrained from incurring the cost of adjudicating these lower priority claims until it is certain that
26 there will be assets remaining in the estate to make a distribution to these lower priority claims.
27 The Liquidator will be in a better position to determine when the estate will be projected to close
28

1 once the issues with NICO are resolved, the bulk of the reinsurance billings paid, and the
2 disposition of the excess NICO reinsurance limit resolved.

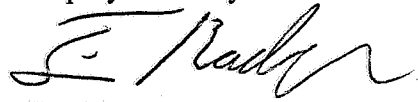
3 **CONCLUSION**

4 Plaintiff requests the Court accept this report and schedule the next status conference.

5 Dated: February 14, 2013

Respectfully Submitted,

6 KAMALA D. HARRIS
7 Attorney General of California
8 FELIX E. LEATHERWOOD
9 Supervising Deputy Attorney General
10 LESLIE BRANMAN SMITH
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Insurance Commissioner of the State of California v. Frontier Pacific Insurance Company, a California Corporation**

No.: **GIC 774028**

I declare:

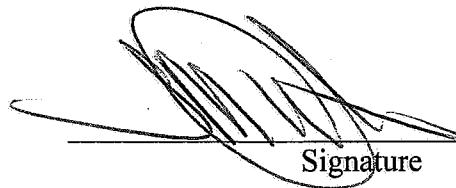
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On February 14, 2013, I served the attached **TWENTY FIRST STATUS CONFERENCE REPORT** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 14, 2013, at San Diego, California.

TINA M. HOUSTON
Declarant


Signature

Case Name: **Insurance Commissioner of the State of California v. Frontier Pacific Insurance Company, a California Corporation**

No.: **GIC 774028**

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