



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

November 4, 2013

RECEIVED & FILED  
COMMONWEALTH COURT  
OF PENNSYLVANIA  
2013 NOV -11 A 9:35

Michael F. Krimmel, Chief Clerk  
Commonwealth Court of Pennsylvania  
601 Commonwealth Avenue, Suite 2100  
P.O. Box 69185  
Harrisburg, PA 17120-9185

***Re: In Re: First Sealord Surety, Inc. (In Liquidation)  
No. 1 FSS 2012***

Dear Mr. Krimmel:

Attached please find an original and two copies of the Liquidator's Application to Establish a Claims Bar Date and Approve the Notice of an Estimated Claim Value Process with regard to the above-referenced liquidation.

As directed by the Court's Order, we are also enclosing copies of the documents on a computer disk.

Thank you for your assistance in this matter.

Very truly yours,

Preston M. Buckman  
Insurance Department Counsel

PMB:drh

Enclosures

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: First Sealord Surety, Inc., :  
In Liquidation : No. 1 FSS 2012

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2013, upon consideration of the Application to Establish a Claims Bar Date and Approve the Notice of an Estimated Claim Value Process filed by Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator (“Liquidator”) of First Sealord Surety, Inc., (“FSSI”), the Petition is GRANTED and it is hereby ORDERED as follows:

1. The date forty-five (45) days after the date of this Order is hereby established as a claims bar date (“Bar Date”).
2. Any and all claims against FSSI, against the Liquidator, his agents and representatives, or in any way affecting or seeking to affect any assets of FSSI, wherever or however such assets may be owned or held, directly or indirectly, must be filed with the Liquidator no later than the Bar Date.
3. A claim must be filed by means of a completed Proof of Claim form, together with proper proofs supporting the claim. The form of Proof of Claim attached as Exhibit “C” to the Application to Establish a Claims Bar Date and Approve the Notice of an Estimated Claim Value Process is approved and should be utilized by any claimant who files a claim after the date of this Order. Notwithstanding the foregoing, a Proof of Claim received on the original Proof of

Claim form for the estate shall be reviewed by the Liquidator and will be subject to the terms of this Order.

4. A Proof of Claim shall be deemed filed on the day it is received by the Liquidator, unless first class mail is utilized, in which case it will be deemed filed on the date of the postmark.

5. Any Proof of Claim filed after the Bar Date is untimely and shall be disallowed by the Liquidator without consideration of its merits. This Order bars the filing of any such Proof of Claim after the Bar Date for any reason, including, without limitation, a reason constituting "good cause" under the late claims provisions of Article V of the Insurance Department Act of 1921, the discovery of information not previously known, and the fact that a claim was previously unmatured or contingent. Any claim is barred which does not ripen into a legal cause of action prior to the Bar Date, even though the claimant filed a Proof of Claim before the Bar Date. Notwithstanding the foregoing, if a claim first arises within the thirty (30) days prior to the Bar Date, the filing of a POC should be allowed after the Bar Date but only within thirty (30) days of when the claim arose.

6. The establishment of the Bar Date does not constitute the waiver of any defenses to individual Proofs of Claim. Any and all defenses to such claims remain available to FSSI and the Liquidator, including defenses otherwise based on the untimeliness of the claims.

7. The Bar Date does not apply to, or affect in any way, claims, actions or rights of FSSI or the Liquidator.

8. The establishment of the Bar Date is not an opportunity to refile or reargue a claim previously filed with FSSI, and duplicative Proofs of Claim shall not be submitted. If

duplicative Proofs of Claim are filed contrary to this Order, the Liquidator shall disallow them without further consideration of their merits.

9. The Bar Date shall not apply to routine administrative expense claims.

10. The Bar Date shall not apply to any claim by a guaranty association.

11. The Publication Notice is hereby approved. The Liquidator shall cause a copy of the Publication Notice to be published in the USA Today and the Philadelphia Inquirer, once in each publication within thirty (30) days of the date of this Order.

12. The mailing Notice is hereby approved. The Liquidator shall mail by first class mail, as soon as practicable after receipt of this Order, a copy of the mailing Notice to all insureds of record as of the date of the Liquidation Order (February 8, 2012) and to all other persons or entities that filed a proof of claim as referenced in paragraph 6 of the Liquidator's Application to Establish a Claims Bar Date and Approve the Notice of an Estimated Claim Value Process.

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**BONNIE BRIGANCE LEADBETTER**  
Judge



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OF PENNSYLVANIA  
2013 NOV -4 A 9:35

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: First Sealord Surety, Inc., :  
In Liquidation : No. 1 FSS 2012

**LIQUIDATOR'S APPLICATION TO ESTABLISH A CLAIMS BAR DATE  
AND APPROVE THE NOTICE OF AN ESTIMATED CLAIM VALUE PROCESS**

Michael F. Consedine, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator ("Liquidator") of First Sealord Surety, Inc. ("FSSI"), by his undersigned counsel, respectfully applies to this Court to establish a claims bar date ("Bar Date") and approve the Notice of an estimated claim value process ("Application"). In support of this Application, the Liquidator offers the following:

**Background**

1. FSSI was placed in liquidation by Order of this Court on February 8, 2012 ("the Liquidation Order").
2. The Liquidation Order established October 5, 2012, as the claims filing deadline, and directed the Liquidator to give notice of the Liquidation Order and the claims filing deadline in accordance with Section 524<sup>1</sup> of The Insurance Department Act of 1921, Act of May 17, 1921

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<sup>1</sup> 40 P.S. §221.24

("Act"), P.L. 789, *as amended*, added by the Act of December 14, 1977, P.L. 280, 40 P.S. §§ 221.1- 221.63.

3. Pursuant to the Liquidation Order, the Liquidator noticed all known creditors and potential creditors or claimants of FSSI.

4. In accordance with Section 521<sup>2</sup> of the Act, all policies (surety bonds in the case of FSSI) were cancelled effective 30 days from the date of the Liquidation Order, or March 9, 2012.

5. For purposes of this Application, the Liquidator sets forth the following defined terms. Definitions may include defined terms. Defined terms are capitalized.

**POC** — A "POC" is a proof of claim form distributed by the Liquidator in connection with the liquidation of FSSI. Multiple proofs of claim are designated as "POCs".

**CONTINGENT PROOF OF CLAIM** — A "Contingent POC" is a timely filed POC that includes the following features: (a) the claimant did not provide specific information relating to a claim or cause of action; and (b) the claimant evidences some intent that the POC covers or asserts a claim that might occur or arise after the submission of the POC, including Future Claims.

**FUTURE CLAIM or PROTECTIVE CLAIM**— A "Future Claim" or "Protective Claim" is a claim that may be filed in the future that includes one or more of the following features: (a) the claim arises after the Bar Date; (b) the facts surrounding the claim are presently unknown to the Liquidator and/or the claimant whether or not intended to be set forth within a Contingent POC; (c) demands made on the basis that a demand or claim may mature at some point, where the FSSI insured or Liquidator has received reports or notices, whether or not formal demands for payment were included; (d) demands asserted in litigation with the FSSI insured that are reopened and reported after the Bar Date; and/or (e) the claim has yet to be asserted against a FSSI insured and/or the Liquidator. Future Claims or Protective Claims often appear in the form of long-tail liability claims or, in the case of a surety company like FSSI, latent defect claims and, once asserted, it is

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<sup>2</sup> 40 P.S. §221.21

common for such claims to take many years to develop, through litigation, before damages are determined.

**UNEVALUATED CLAIM** — An “Unevaluated Claim” is a demand or right of action reported to the Liquidator under a POC that includes one or more of the following features: (a) demands that are not capable of being Perfected by the Bar Date due to active and/or ongoing procedural or litigation matters; and/or (b) rights of action that have accrued but the liability has not been determined or the amount thereof liquidated and the claimant is therefore unable to perfect the claim by the Bar Date.

**PERFECTED** — “Perfected” means that claimants have provided to the Liquidator sufficient information and documentation describing the facts of the claim, including but not limited to: (a) a detailed statement describing the claim; (b) a detailed statement describing the dollar value of the claim; (c) documents evidencing damage; and (d) all other information or documents helpful to proving the claim, all as required by the Act and the instructions on the POC form. When the POC is perfected, FSSI issues a Notice of Determination.

**Status of the Claims in the FSSI Estate**

6. Between February 8, 2012, and September 30, 2013, the Liquidator has received 1,001 completed POCs. The following graph details when those POCs have been received, and demonstrates that the volume of POCs received has greatly diminished since the end of 2012.

	Received by				Claims Filing Deadline		
	3/31/2012	5/31/2012	7/31/2012	9/30/2012	10/5/2012	12/31/2012	9/30/2013
	253	188	111	148	247	31	23
<b>TOTAL</b>	<b>253</b>	<b>441</b>	<b>552</b>	<b>700</b>	<b>946</b>	<b>977</b>	<b>1001</b>

7. The Liquidator has issued a Notice of Determination (“NOD” or “NODs” for multiple notices of determination) for 836 of the 1001 POCs that have been received (83.5% of those received). 775 of the NODs have been accepted. Of the other 61 POCs where NODs have

been issued, 54 are with the claimant pending acceptance/objection, 7 are the subject of an objection, and none are before a referee. Of the other 165 remaining POCs that have not yet been issued a NOD, 84, or 51%, are Future or Protective Claims, where no true claim has been asserted as of yet. Of the other 81, 22 are claims currently in litigation, 52 are claims being handled by the guaranty associations, and 7 are claims requiring additional information.

8. Regarding the 52 claims being handled by guaranty associations, communications with representatives of those guaranty associations have indicated that based on the information currently available, 46 of the claims should be fully resolved by the guaranty associations. The other 6 claims are subject to statutory coverage defenses, e.g., net worth exclusions, and/or pose an exposure in excess of the respective guaranty association coverage limits. Accordingly, the Liquidator currently anticipates that only 6 of the 52 guaranty association claims could be potentially subject to the proposed estimated claim value process described below, but they will not be impacted by the Bar Date because they assert claims that have ripened into a legal cause of action.

9. As reflected in the graph above, there were 247 POCs received between October 1, 2012 and the claim filing deadline of October 5, 2012. Due to this large influx of claims, the Liquidator filed an Application for Approval to Extend the Time Period for the Liquidator's Issuance of Notices of Determination on Certain Proofs of Claim ("Extension Application") on March 22, 2013. By Order dated May 1, 2013, this Court granted the Extension Application, which allowed an additional 180 days to issue NODs on 141 of the 247 claims received between October 1 and 5, 2012.

10. As of September 30, 2013, NODs have been issued on 92 of the 141 POCs that were the subject of the Extension Application. Of the 49 remaining POCs that still must be

issued NODs, 23 are Future or Protective Claims, where no true claim has been asserted as of yet, 6 are currently in litigation, 18 are claims being handled by the guaranty associations, and 2 are claims requiring additional information. The 18 claims being handled by the guaranty associations are included in the 52 claims discussed in paragraphs 7 and 8 above.

### **Claims Arising From Surety Bonds**

11. FSSI limited its coverage to surety bonds. Most of these were performance and payment bonds covering construction projects. FSSI also wrote some license, permit and union benefit bonds.

12. The largest number of claims filed against FSSI, the surety, arise from payment bonds. These claims are usually filed by material suppliers, subcontractors and equipment renters, who are seeking monies as a result of a default by bond principals, such as general contractors, on their financial obligations. Many of the applicable FSSI bond forms, as well as federal and state bond schemes, follow a one year suit limitation rule, whereby suit cannot be brought against the surety after one year from the last day the claimant provided material or labor on the project. Some forms dictate that the suit limitation period will run from substantial completion or final acceptance of the project. In either case, this time frame makes it reasonable to expect that payment bond claims will be filed within a year of the day they arise.

13. Most of the other claims filed against FSSI arise from performance bonds, which protect an obligee, oftentimes the person or entity that has an ownership interest in the construction project, against a default by the principal. In these situations, the surety will respond under the terms of its bond to complete the project or indemnify the obligee for the completion costs that it incurs. A majority of the defaults occur due to the financial failure of the principal as

evidenced by unpaid subcontractors and material suppliers. Other claims arise from late completion of a project or improper workmanship.

14. These types of problems are readily apparent to an obligee and normally appear during or very soon after the construction process has been completed. Such issues occurring prior to March 9, 2012, (as mentioned above in paragraph 4, the date the bonds were cancelled pursuant to Section 521<sup>3</sup> of the Act) should have been noticed and evaluated by the obligees within months of their occurrence, such that a POC should have been filed by October 5, 2012.

15. There is a small group of potential claims under performance bonds related to latent defects within the completed work of the principal. In these instances, a principal has performed work that is subject to prospective failure after the obligee has made final payment or takes possession of the building. The defect lays dormant and hidden for a period of time, and can lead to belated claims against the surety. The timing of such claims is not predictable and they may not be discovered for years. Although these types of claims can occur, they are relatively rare.

16. FSSI also wrote a small number of miscellaneous bonds, such as license, permit and union benefit bonds. The license and permit bonds are usually for small amounts, such as less than \$50,000, and provide coverage in the event that a contractor fails to comply with a state regulatory scheme for the applicable trade or industry. These are infrequent claims and generally arise following some type of administrative review and ruling.

17. Financial guaranty bonds for union benefits are also limited in amount and produce infrequent claims. These bonds provide coverage in the event of improper reporting of wages and benefits, or payment of benefits, to the union members.

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<sup>3</sup> 40 P.S. §221.21

18. The license, permit and union benefit bonds were also cancelled on March 9, 2012. These types of claims are normally readily discoverable if the obligee exercises reasonable diligence. Thus, it would be realistic to expect these types of claims to be filed within a year of the day they arise.

19. In summary, because of the type of business FSSI wrote, it is reasonable to conclude that most of the FSSI estate's claims have already been filed. Moreover, it is reasonable to expect that the number of claims that may be filed prospectively will be quite limited.

#### **Reasons for Seeking a Bar Date**

20. Although the FSSI estate has been open for less than 2 years, the Liquidator has determined that it is time to seek the Court's approval of a final date after which no POCs will be permitted (i.e., the Bar Date), and the Notice of an estimated claims value process, in order to facilitate an orderly and timely wind up of the affairs of the FSSI estate. Some of the reasons for the Liquidator's determination are unique to a surety company such as FSSI, and the claims that arise from surety bonds, as detailed in paragraphs 12 through 19 above. There are additional reasons as well, which include the following.

21. Notwithstanding the conclusion and expectation mentioned in paragraph 19, unless a Bar Date is established, the Liquidator cannot know, with certainty, at what point in time all Contingent and Future or Protective Claims (which likely would be latent defect claims) have been made, since conceivably, they could be submitted for several years to come. This could result in the FSSI liquidation remaining open indefinitely until all new claims are determined and all litigation is resolved. Moreover, the Liquidator would be unable to calculate the amount of any final pro-rata distribution until the value of all claims was determined.

22. If untimely filed claims, including Contingent and Future or Protective Claims, were to be considered and allowed after the Bar Date, it would adversely impact the distribution percentage to be received by claimants who have legitimate, timely filed claims that will receive a distribution from the FSSI estate. Furthermore, the longer the estate remains open, the more administrative expenses are incurred, which further decreases the distribution percentage to be received by those claimants waiting for a distribution from the estate. This consideration is of particular note and concern in the FSSI estate, which is a small estate with very limited assets.

23. The only potential claimants who would not file their claims by the Bar Date, or who will be unable to submit documents supporting their claims by the Bar Date, will be potential claimants who have no legitimate claims by the time of the Bar Date, but who might have Contingent or Future or Protective Claims. It is inequitable to delay for a significant period the distribution to the vast majority of creditors for the benefit of a small number of “potential” future creditors, who may or may not have claims develop after the Bar Date.

24. Moreover, a consideration unique to a surety bond company like FSSI is that finalizing the estate’s liability will allow the release of collateral to principals or payment of collateral to claimants.

25. For these reasons, the order establishing a Bar Date (“the Bar Date Order”) should, with respect to claims to which the Bar Date applies, preclude the filing of claims after the Bar Date for any reason, including, without limitation, a reason constituting “good cause” under Section 537<sup>4</sup> of the Act. This applies to a Future or Protective Claim as described in paragraph 5 above.

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<sup>4</sup> 40 P.S. §221.37

26. If a POC filed before the Bar Date asserts a claim that has not ripened into a legal cause of action (i.e., a Contingent POC as described in paragraph 5 above) prior to the Bar Date, the Bar Date Order should disallow that POC. This does not include a POC that asserts a legal cause of action but where the damages are not yet liquidated (i.e., an Unevaluated Claim as described in paragraph 5 above).

27. The Bar Date should apply to all claims arising out of actions or omissions (including representations concerning surety bonds and otherwise) of FSSI, its officers, employees, agents and representatives prior to liquidation or arising out of contracts (other than surety bonds) entered into by FSSI prior to liquidation. It should further apply to all claims arising out of post-liquidation actions or omissions (including representations concerning surety bonds and otherwise) of FSSI, the Liquidator or their officers, employees, agents and representatives (including, but not limited to, attorneys, auditors, actuaries, accountants, consultants and other professionals, whether employees or independent contractors), or arising out of post-liquidation contracts entered into by FSSI or the Liquidator, as long as those actions, omissions or breaches of contract occurred prior to the Bar Date. If a claim first arises within the thirty (30) days prior to the Bar Date, the filing of a POC should be allowed after the Bar Date but only within thirty (30) days of when the claim arose.

28. The Bar Date should not apply to routine administrative expense claims. However, the claims to which the Bar Date would apply include claims allegedly arising out of or based in any way on the conduct of the liquidation proceedings, and the effects of the Liquidation Order, even if such claims could possibly be characterized as administrative expense claims or policyholder claims.

29. The Bar Date would not apply to, or affect in any way, claims, actions or rights of FSSI or the Liquidator.

30. The Bar Date Order should provide that neither the establishment of a Bar Date nor the recognition of certain exceptions to the preclusive effect of the Bar Date constitutes the waiver of any defenses to individual POCs, including any defenses otherwise based on the untimeliness of the claims.

31. The entry of the Bar Date Order should not be viewed as an occasion for a claimant to refile or reargue a claim that has previously been submitted. Accordingly, the Bar Date Order should provide that the filing of duplicate POCs is neither required nor permitted and that the Liquidator shall disallow duplicative claims without further consideration of their merits.

32. The Bar Date should not apply to any claim by a guaranty association.

33. The Liquidator requests that the Court establish the Bar Date at the earliest possible time and that the Bar Date be no more than forty-five (45) days after the Order setting that date.

34. In support of his request for a Bar Date Order, the Liquidator would note that this Court has approved three prior requests for a Bar Date Order in other liquidation proceedings, specifically the PHICO Insurance Company (“PHICO”) liquidation, the Rockwood Insurance Company (“Rockwood”) liquidation, and the Westmoreland Insurance Company (“Westmoreland”) liquidation. Copies of the PHICO, Rockwood and Westmoreland Bar Date Orders are attached hereto as Exhibit “D”.

#### **The Estimated Claim Value Process**

35. In addition to a Bar Date, the Liquidator also seeks this Court’s approval of the Notice of an estimated claim value process (“ECVP”). If ultimately approved upon subsequent

application by the Liquidator, the Liquidator believes the ECVP will effectively complement a Bar Date and thus allow a more orderly and timely wind up of the FSSI estate.

36. An ECVP applies to any claims that remain unresolved after the Bar Date has passed, and seeks to timely resolve those claims.

37. Typically, the claims that remain unresolved after the Bar Date has passed fall into the following categories: a) timely filed Contingent POCs, many of which are being handled by a state guaranty association, where the claim ripened into a legal cause of action before the Bar Date (“Contingent Claims”); b) the claimant has objected to the Liquidator’s evaluation of the claim, but the matter has not been referred to a referee (“Objection Claims”), or the claimant has objected to the Liquidator’s evaluation and the matter has been referred to a Referee (“Referee Claims”) (collectively known as “Disputed Claims”); and 3) claims where the Liquidator has issued an evaluation and is currently waiting to see whether the claimant will accept or object to his evaluation (“Pending Claims”). The ECVP would only apply to Pending Claims that become the subject of an objection.

38. If approved by this Court, the ECVP would work as follows.

39. This Court would establish a date by which claimants that still have unresolved claims following the passage of the Bar Date must submit to the Liquidator an estimation of the value of their claim (sometimes hereinafter referred to as “estimated value claim” or “EVC”) with documentation in support of the value sought. (Any Referee Claims are addressed separately in paragraph 45 below.) The Liquidator proposes that the date by which estimated value claims must be submitted be 60 days after the date of any Order this Court may enter approving the ECVP. (All Pending Claims that become the subject of an objection after the date of any Order this Court may enter approving the ECVP would receive 60 days from the date of

to submit their EVC). If a claimant with a Contingent or Objection Claim, or Pending Claim that results in an objection, does not submit an estimated value claim by that date, the Liquidator will issue a NOD (for the Contingent Claims), or amended NOD (for the Objection or Pending Claims), evaluating the claims at \$0, to which objections will not be allowed.

40. In making this proposal, the Liquidator recognizes that the claimants with Objection Claims, or Pending Claims that result in an objection, have filed POCs that have already been evaluated, unlike the Contingent Claims, and thus the submission of the EVC will result in the claimant receiving another NOD by the Liquidator. The Liquidator proposes, nonetheless, that the holders of Objection Claims, or Pending Claims that result in an objection, submit an EVC, as it will assure that the Liquidator has updated and current information that can be evaluated in the context of the relief being sought in this Application which may, in some instances, result in resolutions and prevent unneeded referee appointments. Moreover, the submission of an EVC by the holders of Objection Claims, or Pending Claims that result in an objection, provides for uniformity of process and prevents the ECVP from becoming unnecessarily complicated and administratively inefficient.

41. Following the receipt of an EVC, the Liquidator will provide the claimant with a NOD within 60 days.

42. Upon receipt of the Liquidator's NOD, the claimant will have 30 days to either accept the NOD or object.

43. If the claimant objects and the Liquidator is unable to resolve the claim within 30 days, absent an agreement by the parties to extend the time to negotiate, the Liquidator will ask the Court to appoint a Referee to review the positions of the parties and file a recommendation with the Court. Within 30 days of concluding any process or proceeding established by the

referee to provide him/her with all the information he/she needs to conclude the matter, he/she will file a recommendation with the Court. Referees will be directed by the Court to expedite these proceedings to the extent possible. The parties may file exceptions within 14 days of receiving the referee's recommendation. Responses to exceptions and oral argument will not be permitted, unless requested by the Court. If it appears to be more practicable and administratively efficient, the Liquidator will seek the Court's approval to consolidate claims before one referee or appoint a master to handle all objections.

44. With or without exceptions, the Court will review the referee's recommendation and enter a final order accepting, rejecting or modifying the recommendation, which will finalize the claim.

45. The ECVF also seeks to facilitate the resolution of any Referee Claims within the same time frame as the Contingent, Objection and Pending Claims. To that end, the Court would enter an Order in the form attached hereto as Exhibit E simultaneously with the entry of any Order the Court may enter granting the Liquidator's application seeking approval of the ECVF.

46. The Liquidator recognizes that certain of the proposed steps in paragraphs 42 through 46 differ from the rules governing corresponding steps in the normal course of a liquidation proceeding for claims submission, claims evaluation, acceptance/objection of claim evaluations by claimants, etc., as found in PA.R.A.P. 3771-3784, which were adopted by Order of this Court dated June 8, 2012, to govern insurance rehabilitations and liquidations and all other matters under Article V of the Act. However, by filing this Application, the Liquidator is not seeking to change the rules as found in Pa.R.A.P. 3771-3784 in any way, but rather is seeking this Court's permission to establish a special and discrete process within the FSSI liquidation

proceeding aimed at the timely resolution of unresolved claims that remain following the passage of any Bar Date this Court may establish for the FSSI estate.

47. The Liquidator proposed an ECVF in the PHICO liquidation by filing a Petition to Approve a Plan to Allow the Timely Resolution of Unresolved Claims in Order to Expedite the Closure of the PHICO Estate (“PHICO Plan”), which this Court approved. (See Order Approving the Motion to Approve the Liquidator’s Petition to Approve a Plan to Allow the Timely Resolution of Unresolved Claims in Order to Expedite the Closure of the PHICO Estate, attached hereto as Exhibit F).

48. In the PHICO estate, the Liquidator was left with 59 unresolved claims after the bar date had passed. The Liquidator was concerned that if he simply waited for the contingencies associated with those remaining claims to resolve themselves, the PHICO estate could remain open for many years, to the detriment of the vast majority of claimants whose claims had been resolved and were awaiting the final distribution of the estate’s assets. Thus, the Liquidator formulated and subsequently proposed the PHICO Plan in an attempt to expedite the wind up the PHICO estate.

49. The PHICO bar date was established as of July 31, 2009. After its formulation and development, the Liquidator filed the PHICO Plan on July 6, 2010, and this Court approved the PHICO Plan by Order dated January 28, 2011. (See Exhibit F). On July 24, 2013, the Liquidator filed the final distribution and discharge application for the PHICO estate.

50. The Liquidator believes the PHICO Plan served its purpose by allowing a more expeditious resolution of the claims that remained unresolved following the passage of the Bar Date, which in turn allowed the Liquidator to file the final distribution and discharge application for the PHICO estate earlier than otherwise would have been possible.

51. As noted above, achieving a timely wind up of the liquidation process benefits the claimants by preserving more of the assets that otherwise are used to pay the normal administrative costs that are incurred while an estate remains open. This objective is particularly important in an estate such as FSSI, where the assets are very limited, and thus the Liquidator is attempting to further expedite the wind up of the FSSI liquidation by seeking simultaneous approval of the Bar Date and the scope, form and mailing of the Notice of the proposed ECVP. A more timely wind up of the estate's affairs should also be aided by the fact that the Liquidator will not need the time that was required in the PHICO liquidation to formulate and develop the ECVP. Moreover, because of its small size, the Liquidator anticipates fewer claims that could be subject to the ECVP in the FSSI liquidation than was the case in the PHICO estate.

#### **Notice and Procedure for the ECVP**

52. The Liquidator proposes that within 14 business days after any Bar Date passes that this Court may establish for the FSSI estate, the Notice attached hereto as Exhibit G be sent by first class mail to the holders of Contingent and Disputed Claims, and any Pending Claims that have resulted in an objection, as well as to any Referees who are handling Referee Claims at such time.

53. After service of the proposed Notice, and the resolution of any objections to the establishment of the ECVP, the Liquidator will file an application seeking the Court's entry of an Order approving the ECVP. Upon the entry of any Order this Court may enter approving the ECVP, the Liquidator will serve a copy of the Order on all claimants affected by the ECVP as well as any Referees handling Referee claims at such time.

### Conclusion

54. In making this proposal, the Liquidator is cognizant of Section 546<sup>5</sup> of the Act, which provides in pertinent part: “Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and **a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims**, including third party claims.” (emphasis added) (40 P.S. §221.46).

55. The Liquidator also recognizes that this Court “has held repeatedly that the Liquidator has broad discretion to fix the rights and liabilities of claims as of a date certain and that the Court must defer to the Liquidator’s authority and discretion in the administration of liquidation and rehabilitation proceedings unless there has been an abuse of that discretion.” Koken v. Colonial Assur. Co., 885 A.2d 1078, 1095 (Pa. Commw. Ct. 2005).

56. The Liquidator submits that the relief sought in this Application represents an appropriate exercise of his discretion by striking a reasonable balance between seeking the expeditious completion of the FSSI liquidation, on the one hand, and the protection of contingent claims, on the other hand.

WHEREFORE, the Liquidator respectfully requests the entry of an Order in the form attached hereto establishing a Bar Date, approving the form, scope and mailing of the Notice of the Bar Date Order attached to this Application as Exhibit “A”, approving the form and scope of Publication Notice of the Bar Date Order attached to this Application as Exhibit “B”, and approving the Proof of Claim form that is attached to this Application as Exhibit “C”. The

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<sup>5</sup> 40 P.S. §221.46

Liquidator further requests the Court's entry of an Order in the form attached hereto, approving the form, scope, and mailing of the Notice of the proposed ECVF.

Respectfully submitted:

By: P. M. Buckman

Preston M. Buckman (I.D. No. 57570)  
PA Office of General Counsel  
Pennsylvania Insurance Department  
Office of Liquidations, Rehabilitations  
and Special Funds  
901 North 7<sup>th</sup> Street  
Harrisburg, PA 17102  
(717) 787-6009

Attorney for Applicant, Michael F.  
Consedine, Insurance Commissioner of the  
Commonwealth of Pennsylvania, in his  
Official Capacity as Liquidator of First  
Sealord Surety, Inc. (In Liquidation)

Date: \_\_\_\_\_

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# **EXHIBIT A**

**EXHIBIT A**

**NOTICE OF THE CLAIMS BAR DATE  
FOR FIRST SEALORD SURETY, INC., (IN LIQUIDATION) ("FSSI")**

On \_\_\_\_\_, 2013, the Commonwealth Court of Pennsylvania entered an Order establishing a claims bar date in connection with the liquidation of First Sealord Surety, Inc. The full text of the Court's Order is as follows:

<b><u>ORDER</u></b>
---------------------

1. The date forty-five (45) days after the date of this Order is hereby established as a claims bar date ("Bar Date").
2. Any and all claims against FSSI, against the Liquidator, his agents and representatives, or in any way affecting or seeking to affect any assets of FSSI, wherever or however such assets may be owned or held, directly or indirectly, must be filed with the Liquidator no later than the Bar Date.
3. A claim must be filed by means of a completed Proof of Claim form, together with proper proofs supporting the claim. The form of Proof of Claim attached hereto on Exhibit "C" is approved and should be utilized by any claimant who files a claim after the date of this Order. Notwithstanding the foregoing, a Proof of Claim received on the original Proof of Claim form for the FSSI estate shall be reviewed by the Liquidator and will be subject to the terms of this Order.
4. A Proof of Claim shall be deemed filed on the day it is received by the Liquidator, unless first class mail is utilized, in which case it will be deemed filed on the date of the postmark.

5. Any Proof of Claim filed after the Bar Date is untimely and shall be disallowed by the Liquidator without consideration of its merits. This Order bars the filing of any such Proof of Claim after the Bar Date for any reason, including, without limitation, a reason constituting "good cause" under the late claims provisions of Article V of the Insurance Department Act of 1921, the discovery of information not previously known, and the fact that a claim was previously unmatured or contingent. Any claim is barred which does not ripen into a legal cause of action prior to the Bar Date, even though the claimant filed a Proof of Claim before the Bar Date. Notwithstanding the foregoing, if a claim first arises within the thirty (30) days prior to the Bar Date, the filing of a POC should be allowed after the Bar Date but only within thirty (30) days of when the claim arose.

6. The establishment of the Bar Date does not constitute the waiver of any defenses to individual Proofs of Claim. Any and all defenses to such claims remain available to FSSI and the Liquidator, including defenses otherwise based on the untimeliness of the claims.

7. The Bar Date does not apply to, or affect in any way, claims, actions or rights of FSSI or the Liquidator.

8. The establishment of the Bar Date is not an opportunity to refile or reargue a claim previously filed with FSSI, and duplicative Proofs of Claim shall not be submitted. If duplicative Proofs of Claim are filed contrary to this Order, the Liquidator shall disallow them without further consideration of their merits.

9. The Bar Date shall not apply to routine administrative expense claims.

10. The Bar Date shall not apply to any claim by a guaranty association.

11. The Publication Notice is hereby approved. FSSI shall cause a copy of the Publication Notice to be published in USA Today and the Philadelphia Inquirer once in each publication within thirty (30) days of the date of this Order.

12. The mailing Notice is hereby approved. FSSI shall mail by first class mail, as soon as practicable after receipt of this Order, a copy of the mailing Notice to all insureds of record as of the date of the Liquidation Order (February 8, 2012) and to all other persons or entities that filed a proof of claim as referenced in paragraph 6 of the Liquidator's Application to Establish a Claims Bar Date and Approve the Notice of an Estimated Claim Value Process.

Any claim should be filed on the Court-approved claim form together with proofs supporting the claim. Proofs of Claim will be provided by first class mail and a form may be obtained by sending a request in writing to:

Statutory Liquidator of First Sealord Surety, Inc.  
901 N. 7<sup>th</sup> Street  
Harrisburg, PA 17102

Or call:

717-787-7823

Please request a separate claim form for each claim that you wish to file.

**YOUR COMPLETED PROOF OF CLAIM MUST BE FILED BY \_\_\_\_\_,  
20\_\_\_, OR IT WILL BE FOREVER BARRED UNLESS YOUR CLAIM COMES  
WITHIN AN EXCEPTION PROVIDED FOR IN THE COURT'S ORDER.**

# **EXHIBIT B**

**EXHIBIT B**

**PUBLICATION NOTICE OF THE CLAIMS BAR DATE  
FOR FIRST SEALORD SURETY, INC. (IN LIQUIDATION)**

NOTICE  
TO THE BONDHOLDERS, CLAIMANTS, CREDITORS AND  
ALL OTHER PERSONS INTERESTED IN THE  
AFFAIRS OF  
FIRST SEALORD SURETY, INC. (IN LIQUIDATION)

NOTICE IS HERBY GIVEN THAT:

First Sealord Surety, Inc. (In Liquidation) ("FSSI") was placed into Liquidation by Order of the Commonwealth Court of Pennsylvania, dated February 8, 2012 (the "Liquidation Order"). The Liquidation Order appointed the Insurance Commissioner of the Commonwealth of Pennsylvania as Statutory Liquidator of FSSI and vested him with title to all the property, assets, contracts and rights of action of FSSI.

On \_\_\_\_\_, 2013, the Liquidator filed in the Commonwealth Court of Pennsylvania an Application to Establish a Claims Bar Date and Approve Notice of an Estimated Claims Value Process ("Application"). On \_\_\_\_\_, 2013, the Commonwealth Court entered an Order granting the Application and setting a Claims Bar Date of \_\_\_\_\_, 20\_\_.

Therefore, all persons who may have a claim against FSSI, against the Liquidator, his agents or representatives, or in any way affecting or seeking to affect any of the assets of FSSI, wherever or however such assets may be owned or held, directly or indirectly, whether that claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

disputed, undisputed, legal, equitable, secured or unsecured, must file a Proof of Claim by the Claim Bar Date of \_\_\_\_\_, 20\_\_\_\_, or the claim will be forever barred.

You may obtain a free copy of the Proof of Claim form by writing to the

Statutory Liquidator of First Sealord Surety, Inc.  
901 N. 7<sup>th</sup> Street  
Harrisburg, PA 17102

Or call:

717-787-7823

# **EXHIBIT C**



PROOF OF CLAIM

FIRST SEALORD SURETY, INC. (FSSI) IN LIQUIDATION

ALL CLAIMS MUST BE POSTMARKED BEFORE THE CLAIMS BAR DATE OF -----

Note: Please read carefully the accompanying Notice and instructions on the back before completing this Proof of Claim Form. DO NOT alter this Proof of Claim form or any of the required information. Mark "N/A" or "Not Applicable", if appropriate. Please type or print.

SECTION I

Proof of Claim No. \_\_\_\_\_ (Leave Blank)

Bond Principal \_\_\_\_\_

Bond Obligee \_\_\_\_\_

Bond Type \_\_\_\_\_ Bond No. \_\_\_\_\_ Bond Effective Date \_\_\_\_\_ Bond End Date \_\_\_\_\_

Project Name (If applicable) \_\_\_\_\_

SECTION II

Claimant's Full Name \_\_\_\_\_

Mailing Address \_\_\_\_\_ City, State, Zip Code \_\_\_\_\_

Telephone No. Home \_\_\_\_\_ Tax ID Number: \_\_\_\_\_

Business \_\_\_\_\_ E-Mail \_\_\_\_\_

Claim is for:

- General Creditor (attorney fees, vendors, lessors, consultants, cedents, reinsurers)
Agent Balances (earned commissions)
Other (Describe below)
Claim by performance bond obligee for cost of completion of contract or for defective construction.
Claim by (1) subcontractor, (2) material supplier, or (3) employee who furnished work or rendered services on the project. (Circle 1, 2 or 3)
Claim on bond other than construction performance and/or payment bond.
Claim is for return of collateral posted for the bond principal.
Claim is made for the return of unearned premium due to early cancellation. (if amount is unknown, Liquidator will calculate).
Amount of premium/consideration paid to date. Attach copies of cancelled checks or other proof of payments.
Was premium financed? Yes No. If yes, provide name of premium finance company and details of premium financing.

In the space below, give a brief, concise statement of the particulars of your claim as identified above, including the consideration given for it.

FSSI was, at the time of the Order of Liquidation, and still is indebted (or liable) to this claimant in the sum of \$

In support of this claim, attached is/are true and accurate copies of the following:

- A. Contract, subcontract or purchase order between Claimant and Contractor
B. Unpaid Invoices; receipts
C. Ledger of Contractor's account(s) with claimant;
D. Delivery tickets for unpaid invoices; progress estimates;
E. Any liens filed by the claimant;
F. Correspondence supporting claim;
G. Copy of Bond or written instrument that is foundation of claim;
H. Payment made on debt, if any;
I. Other- please explain

Date when claimant last furnished labor, material, supplies or services in connection with this claim. \_\_\_\_\_



PROOF OF CLAIM (page 2)

FIRST SEALORD SURETY, INC. (FSSI) IN LIQUIDATION

ALL CLAIMS MUST BE POSTMARKED BEFORE THE CLAIMS BAR DATE OF -----

No judgment has been rendered on this claim except (provide judgment amount, judgment date, name and location of court, case number, and name and address of attorney who represented you):

This claim is not subject to any set-off, counterclaim, back charges, credits or defense, nor has the bond principal asserted any such set-off, counterclaim, back charges, credits or defense, except as follows:

The claimant does not assert any right of priority of payment or any other specific right (a) to any security interest in the property of FSSI; (b) to any collateral held by or for the benefit of FSSI in connection with the bonded obligation; or (c) contract funds or other funds held by anyone in connection with the bonded obligation, except:

(If any such interest as is described above is claimed and is evidenced by any writing, attach a copy to this form. Also attach evidence of perfection of any security interest claimed.)

Are you represented by an attorney Yes No If "yes" provide the following: Name of Attorney Telephone No. Name of Law Firm Mailing Address City, State, Zip Code

Has a lawsuit or other legal action been instituted? Yes No If "yes" provide the following: Court where filed Date filed Case No. Plaintiff(s) Defendant(s) Has FSSI moved to stay the above-described proceeding? Yes No If so, what was the disposition of such motion?

Is claim being adjudicated or paid/settled by a State Property & Casualty Insurance Guaranty Fund/Association? Yes No NOTE: If you need additional space to explain a response, please attach a separate sheet to this Proof of Claim.

I certify that the statements made in this proof of claim are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 19 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Claimant Signature Date

# **EXHIBIT D**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rec'd By Legal  
JUN 17 2009

Joel S. Ario, Insurance Commissioner :  
Commonwealth of Pennsylvania, :  
Plaintiff :

v. :

No. 427 M.D. 2001

PHICO Insurance Company, :  
Defendant :

ORDER

AND NOW, this 15<sup>th</sup> day of June, 2009, having considered "Liquidator's Petition to Establish a Claims Bar Date" (Petition), to which the court has received no objection, it is hereby ordered that the Petition is granted. It is further ordered as follows:

1. The date forty-five (45) days after the date of this Order is hereby established as a claims bar date (Bar Date).

2. Any and all claims against PHICO, against the Liquidator, his agents and representatives, or in any way affecting or seeking any assets of PHICO, wherever or however such assets may be owned or held, directly or indirectly, must be filed with the Liquidator no later than the Bar Date.

3. A claim must be filed by means of a completed Proof of Claim form, together with proofs supporting the claim. The form of Proof of Claim attached to the Petition as Exhibit A is approved and should be utilized by any claimant who files a claim after the date of this Order. Notwithstanding the foregoing, a Proof of Claim received on the original Proof of Claim form for the PHICO estate shall be reviewed by the Liquidator and will be subject to the terms of this Order.

4. A Proof of Claim shall be deemed filed on the day it is received by the Liquidator unless first class mail is utilized, in which case it will be deemed filed on the date of the postmark.

5. Any Proof of Claim filed after the Bar Date is untimely and shall be disallowed by the Liquidator without consideration of its merits. This Order bars the filing of any such Proof of Claim after the Bar Date for any reason, including, without limitation, a reason constituting "good cause" under the late claims provisions of Article V of the Insurance Department Act of 1921, the discovery of information not previously known, and the fact that a claim was previously unmatured or contingent. Any claim is barred which does not ripen into a legal cause of action prior to the Bar Date, even though the claimant filed a Proof of Claim before the Bar Date. Notwithstanding the foregoing, if a claim first arises within the thirty (30) days prior to the Bar Date, the filing of a Proof of Claim should be allowed after the Bar Date but only within thirty (30) days of when the claim arose.

6. The establishment of the Bar Date does not constitute the waiver of any defenses to individual Proofs of Claim. Any and all defenses to such claims remain available to PHICO and the Liquidator, including defenses otherwise based on the untimeliness of the claims.

7. The Bar Date does not apply, or affect in any way, claims, actions or rights of PHICO or the Liquidator.

8. The establishment of the Bar Date is not an opportunity to refile or reargue a claim previously filed with PHICO, and duplicative Proofs of Claim shall not be submitted. If duplicative Proofs of Claim are filed contrary to this

Order, the Liquidator shall disallow them without further consideration of their merits.

9. The Bar Date shall not apply to routine administrative expense claims.

10. The Bar Date shall not apply to any claim by a guaranty association.

11. The Publication Notice is hereby approved. PHICO shall cause a copy of the Publication Notice to be published in *USA Today*, *The Wall Street Journal*, the *Philadelphia Inquirer*, and the *Harrisburg Patriot*, twice in each publication over a two-week period, within thirty (30) days of the date of this Order.

12. The mailing Notice is hereby approved. PHICO shall mail by first class mail, as soon as practicable after receipt of this Order, a copy of the mailing Notice to all insureds of record as of the date of the Liquidation Order (February 1, 2002) and to all other persons or entities that filed a proof of claim as referenced in paragraph 7 of the Petition.

  
ROCHELLE S. FRIEDMAN, Senior Judge

Certified from the Record

JUN 16 2009

and Order Exit

AUG 12 2010

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: ROCKWOOD INSURANCE :  
COMPANY :  
: No. 249 M.D. 1990  
:

**ORDER**

AND NOW, this 10<sup>th</sup> day of August, 2010, Liquidator's Petition to Establish a Claims Bar Date is GRANTED and it is hereby ORDERED as follows:

1. September 24, 2010, is hereby established as a claims bar date ("Bar Date").

2. Any and all claims against Rockwood Insurance Company (Rockwood), against Joel S. Ario, Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator (Liquidator) of Rockwood, his agents and representatives, or in any way affecting or seeking to affect any assets of Rockwood, wherever or however such assets may be owned or held, directly or indirectly, must be filed with the Liquidator no later than the September 24, 2010 Bar Date.

3. A claim must be filed by means of a completed Proof of Claim form, together with proper proofs supporting the claim. The form of Proof of Claim attached as Exhibit "A" to the Petition to Establish a Claims Bar Date is

approved and should be utilized by any claimant who files a claim after the date of this Order.

4. A Proof of Claim shall be deemed filed on the day it is received by the Liquidator, unless first class mail is utilized, in which case it will be deemed filed on the date of the postmark.

5. Any Proof of Claim filed after the September 24, 2010 Bar Date is untimely and shall be disallowed by the Liquidator without consideration of its merits. This Order bars the filing of any such Proof of Claim after the September 24, 2010 Bar Date for any reason, including, without limitation, a reason constituting "good cause" under the late claims provisions of Article V of the Insurance Department Act of 1921, the discovery of information not previously known, and the fact that a claim was previously unmatured or contingent. Any claim is barred which does not ripen into a legal cause of action prior to the September 24, 2010 Bar Date, even though the claimant filed a Proof of Claim before the Bar Date. Notwithstanding the foregoing, if a claim first arises within the thirty (30) days prior to the September 24, 2010 Bar Date, the filing of a Proof of Claim should be allowed after the September 24, 2010 Bar Date but only within thirty (30) days of when the claim arose.

6. The establishment of the September 24, 2010 Bar Date does not constitute the waiver of any defenses to individual Proofs of Claim. Any and defenses to such claims remain available to Rockwood and the Liquidator, including defenses otherwise based on the untimeliness of the claims.

7. The September 24, 2010 Bar Date does not apply to, or affect in any way, claims, actions or rights of Rockwood or the Liquidator.

8. The establishment of the September 24, 2010 Bar Date is not an opportunity to refile or reargue a claim previously filed with Rockwood, and

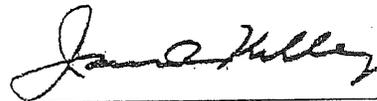
duplicative Proofs of Claim shall not be submitted. If duplicative Proofs of Claim are filed contrary to this Order, the Liquidator shall disallow them without further consideration of their merits.

9. The September 24, 2010 Bar Date shall not apply to routine administrative expense claims.

10. The September 24, 2010 Bar Date shall not apply to any claim by a guaranty association.

11. The Publication Notice is hereby approved. The Liquidator shall cause a copy of the Publication Notice to be published in USA Today, The Wall Street Journal, the Philadelphia Inquirer, and the Harrisburg Patriot, twice in each publication over a two-week period, within thirty (30) days of the date of this Order.

12. The mailing Notice is hereby approved. The Liquidator shall mail by first class mail, as soon as practicable after receipt of this Order, a copy of the mailing Notice to all insureds of record as of the effective date of the Liquidation Order (August 26, 1991) and to all other persons or entities that filed a Proof of Claim as referenced in paragraph 5 of the Liquidator's Petition to Establish a Claims Bar Date.



---

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Constance B. Foster,  
Insurance Commissioner of the  
Commonwealth of Pennsylvania,  
As Statutory Liquidator of  
Westmoreland Casualty Company,  
Plaintiff

No. 2645 C.D. 1987

v.

Westmoreland Casualty Company  
(in Liquidation),  
Defendant

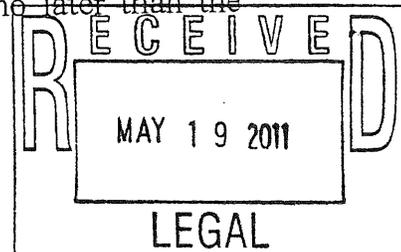
ORDER

**AND NOW**, this 16th day of May, 2011, upon consideration of the Liquidator's Petition to Establish a Claims Bar Date and for approval of the form and the publication of the Notice of the Claims Bar Date, and in the absence of any opposition thereto, the Petition is GRANTED.

Further, the Court hereby Orders as follows:

1. The date forty-five (45) days after the date of the Order is hereby established as the Claims Bar Date.

2. Any and all claims against Westmoreland Casualty Company (Westmoreland), against the Liquidator, his agents and representatives, or in any way affecting or seeking to affect any assets of Westmoreland, wherever or however such assets may be owned or held, directly or indirectly, must be filed with the Liquidator no later than the Claims Bar Date.



3. A claim must be filed by means of a completed Proof of Claim form, together with proper proofs supporting the claim. The form of Proof of Claim attached to the Petition as Exhibit A is approved and should be utilized by any claimant who files a claim after the date of this Order. Notwithstanding the foregoing, a Proof of Claim received on the original Proof of Claim form for the Westmoreland estate shall be reviewed by the Liquidator and will be subject to the terms of this Order.

4. A Proof of Claim shall be deemed filed on the day it is received by the Liquidator, unless first class mail is utilized, in which case it will be deemed filed on the date of the postmark.

5. Any proof of Claim filed after the Claims Bar Date is untimely and shall be disallowed by the Liquidator without consideration of its merits. This Order bars the filing of any such Proof of Claim after the Claims Bar Date for any reason, including, without limitation, a reason constituting "good cause" under the late claims provisions of Article V of the Insurance Department Act of 1921, the discovery of information not previously known, and the fact that a claim was previously unmaturing or contingent. Any claim is barred which does not ripen into a legal cause of action prior to the Claims Bar date, even though the claimant filed a Proof of Claim before the Claims Bar date. Notwithstanding the foregoing, if a claim first arises within thirty (30) days prior to the Claims Bar Date, the filing of a Proof of Claim will be allowed after the Claims Bar Date but only within thirty (30) days of when the claim arose.

6. The establishment of the Claims Bar date does not constitute the waiver of any defenses to individual Proofs of Claim. Any

and all defenses to such claims remain available to Westmoreland and the Liquidator, including defenses otherwise based on the untimeliness of the claims.

7. The Claims Bar Date does not apply to, or affect in any way, claims, actions or rights of Westmoreland or the Liquidator.

8. The establishment of the Claims Bar Date is not an opportunity to refile or reargue a claim previously filed with Westmoreland or the Liquidator, and duplicate Proofs of Claim shall not be submitted. If duplicative Proofs of Claim are filed contrary to this Order, the Liquidator shall disallow them without further consideration of their merits.

9. The Claims Bar Date shall not apply to routine administrative expense claims.

10. The Claims Bar Date shall not apply to any claim by a guaranty association.

11. The proposed Publication Notice of the Claims Bar Date is approved. The Liquidator shall cause a copy of the Publication Notice to be published in the *Pittsburgh Post Gazette*, the *Harrisburg Patriot*, and a newspaper serving each of the capital cities of Delaware, Maryland, Mississippi, New Mexico, and Louisiana, twice in each publication over a two-week period, within thirty (30) days of the date of this Order.

12. The proposed Mailing Notice of the Claims Bar Date is Approved. The Liquidator shall mail by first class mail, as soon as practicable after receipt of this Order, a copy of the Mailing Notice to all insureds of record as of the date of the Liquidation Order (September 27, 1989) and to all other persons or entities that filed a proof of

claim between September 27, 1989 and March 31, 2011, as referenced in paragraph 5 of the Liquidator's Petition to Establish a Claims Bar Date.

*Bonnie B. Leadbetter*

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**BONNIE BRIGANCE LEADBETTER,  
President Judge**

**Certified from the Record**

**MAY 17 2011**

**And Order Exit**

# **EXHIBIT E**



**EXHIBIT F**

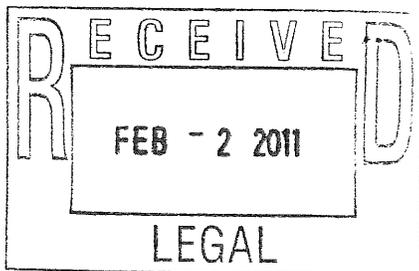
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel S. Ario, Insurance Commissioner :  
Commonwealth of Pennsylvania, :  
Plaintiff :  
v. : No. 427 M.D. 2001  
PHICO Insurance Company, :  
Defendant :

ORDER

AND NOW, this 28th day of January, 2011, upon consideration of the “Motion to Approve the Liquidator’s Petition to Approve a Plan to Allow the Timely Resolution of Unresolved Claims in Order to Expedite the Closure of the PHICO Estate” (Motion), it is hereby ordered that the Motion is granted. The Liquidator is directed to serve this Order on all claimants affected by the “Petition to Approve a Plan to Allow the Timely Resolution of Unresolved Claims in Order to Expedite the Closure of the PHICO Estate” (Petition) as well as the Referees currently handling Referee claims, as referenced in paragraph 11 of the Petition. In addition, the proposed order attached to the Motion as Exhibit H is being simultaneously entered with the entry of this Order, and the Liquidator is directed to serve a copy of the Exhibit H Order on all referees and litigants in disputed claim proceedings as referenced in paragraph 21 of the Petition.

  
ROCHELLE S. FRIEDMAN, Senior Judge



Certified from the Record

JAN 31 2011

And Order Exit

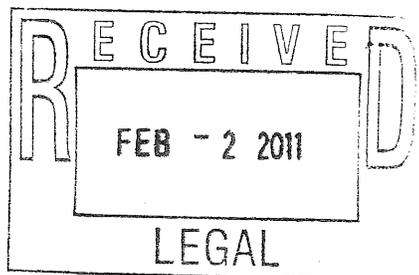
IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joel S. Ario, Insurance Commissioner :  
Commonwealth of Pennsylvania, :  
Plaintiff :  
v. : No. 427 M.D. 2001  
PHICO Insurance Company, :  
Defendant :

ORDER

AND NOW, this 28th day of January, 2011, in light of this court's approval of the Liquidator's "Petition to Approve a Plan to Allow the Timely Resolution of Unresolved Claims in Order to Expedite the Closure of the PHICO Estate" (Petition), the proceedings in all disputed claim matters that are currently before Referees shall be concluded in a time frame that will allow a recommended decision to be submitted to this court within 90 days of the date of this Order. Should either the Referee or the litigants in a disputed claim proceeding contend that this deadline cannot be met, a motion shall be filed within 20 days of the date of this Order showing cause why the Referee or litigant contends that the deadline imposed by this Order cannot be met.

  
ROCHELLE S. FRIEDMAN, Senior Judge



Certified from the Record  
JAN 31 2011  
And Order Exit

# **EXHIBIT G**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

IN RE: First Sealord Surety, Inc., :  
In Liquidation : No. 1 FSS 2012

**NOTICE TO CLAIMANTS  
OF FIRST SEALORD SURETY, INC.  
THAT POSSESS UNRESOLVED CLAIMS**

PLEASE TAKE NOTICE that Michael F. Consedine, in his official capacity as Insurance Commissioner of the Commonwealth of Pennsylvania, and as such, Statutory Liquidator of First Sealord Surety, Inc. (In Liquidation) (“FSSP”) has filed an Application to Establish a Claims Bar Date and Approve Notice of an Estimated Claim Value Process (“Application”).

The Application requests that:

1. Claimants with contingent claims or claims that have been the subject of an objection to the Liquidator’s evaluation, be directed to submit an estimation of the value of their claim, including documentation to support the value sought (hereinafter sometimes referred to as “estimated value claim” or “EVC”) to the Liquidator within 60 days from the date of any Order the Court may enter approving the Application. If a claimant does not submit an estimated value claim by that date, the claim will be evaluated at \$0 and will not be subject to further objection.
2. Following the receipt of an EVC, the Liquidator will provide the claimant with a written evaluation of their claim within 60 days.

3. Upon receipt of the Liquidator's evaluation, the claimant will be given 30 days to either accept the evaluation or object.

4. If the claimant objects and the Liquidator is unable to reach a resolution of the claim within 30 days, absent an agreement by the parties to extend the time to negotiate, the Liquidator will ask the Court to appoint a referee to review the positions of the parties and file a recommendation with the Court. Within 30 days of concluding any process or proceeding established by the referee to provide him/her with all the information he/she needs to conclude the matter, he/she will file a recommendation with the Court. Referees will be directed to expedite the proceedings to the extent possible. The parties may file exceptions within 14 days of receiving the referee's recommendation. Responses to exceptions and oral argument will not be permitted, unless requested by the Court. If it appears to be more practicable and administratively efficient, the Liquidator may seek the Court's approval to consolidate claims before one referee or appoint a master to handle all the objections.

5. With or without exceptions, the Court will review the referee's recommendation (or the recommendations of the master, as applicable) and enter a final order accepting, rejecting or modifying the recommendation, which will finalize the claim.

6. The claims that are currently before Referees are to be concluded in a time frame that will coordinate with the resolution of the EVC by having the Court enter an Order that provides a deadline by which the referee must submit a recommendation to the Court absent good cause shown by the Referee or the litigants.

TAKE FURTHER NOTICE that objections to the Application to Establish a Claims Bar Date and Approve Notice of an Estimated Claim Value Process ("Application") must be filed in writing with the Commonwealth Court of Pennsylvania, Chief Clerk's Office, 601 Commonwealth Avenue, Suite 2100, P.O. Box 69185 Harrisburg, Pennsylvania 17106-9185, or with the Pennsylvania

Insurance Department, Bureau of Liquidations Claims, 901 North 7th Street, Harrisburg, Pennsylvania 17102. In the event of such a filing, please refer to Docket No. 1 FSS 2012.

Objections must be filed within 30 days of the date of this Notice, or they shall be forever barred. Objections must be clearly and concisely written.

Copies of this Petition are available to interested parties for inspection at the Commonwealth Court of Pennsylvania, Chief Clerk's Office, 601 Commonwealth Avenue, Suite 2100, Harrisburg, Pennsylvania 17106-9185; the Insurance Department, 901 North 7th Street, Harrisburg, Pennsylvania 17102. If you have any questions, please call the Bureau of Liquidation Claims, 901 North 7th Street, Harrisburg, Pennsylvania 17102, (717) 787-7823.

---

JOSEPH DIMEMMO,  
Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 1 Pa. Code Chapter 33 in the following manner:

Service by first-class mail, addressed as follows:

Douglas Y. Christian, Esquire  
*christiand@ballardspahr.com*  
Benjamin M. Schmidt, Esquire  
*schmidt@ballardspahr.com*  
Ballard Spahr LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
(215) 665-8500  
(215) 864-8999 (fax)

Jeffrey M. Lesser, Esquire  
*lesser@jeffreymlesser.com*  
39040 West Seven Mile Road  
Livonia, Michigan 48152  
(734) 464-3603  
(734) 464-3605 (fax)

David L. Swimmer, Esquire  
*dls@dlsपालaw.com*  
7990 SW 117<sup>th</sup> Avenue, Suite 100  
Miami, FL 33183  
(305) 274-1222  
(305) 595-0470 (fax)

Christopher J. Azzara, Esquire  
*cazzara@smgglaw.com*  
Strassburger McKenna Gutnick & Gefsky  
Four Gateway Center, Suite 2200  
444 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 281-5423  
(412) 281-8264 (fax)

Daniel C. Hudock, Esquire  
McDonald, Snyder & Lightcap, P.C.  
1004 Ligonier Street, 4<sup>th</sup> Floor  
P.O. Box 758  
Latrobe, PA 15650  
(724) 539-3511  
(724) 539-3527

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