

FILED IN THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLA.

AUG -- 8 2012

PATRICIA BURNLEY, COURT CLERK
By _____ DEPUTY

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel.)
JOHN DOAK, Insurance Commissioner,)
Plaintiff,)
v.)
PEGASUS INSURANCE COMPANY,)
In Receivership,)
Defendant.)**

**Case No. CJ-2010-5131
Judge Bill Graves**

**RECEIVER'S SECOND REPORT ON CLAIMS EVALUATION AND REQUEST
FOR CONFIRMATION OF RECEIVER'S RECOMMENDATIONS**

The State of Oklahoma, ex rel., John Doak, Insurance Commissioner, as statutory receiver of and for Pegasus Insurance Company, Inc., in liquidation, ("Pegasus") pursuant to the Order entered on September 24, 2010, files this Second Report on Claims Evaluation and Request for Confirmation of Receiver's Recommendations ("Receiver's Second Report") and shows the Court as follows:

BACKGROUND

1. On June 22, 2010, Pegasus consented to Rehabilitation, with a finding of Insolvency, and was placed into Receivership. On August 12, 2010, the Court issued an Order of Liquidation with a Finding of Insolvency ("Liquidation Order").
2. The Liquidation Order required the Receiver to notify all persons holding claims against Pegasus to file proofs of claims within 180 days of the date of that Order. Such notice is also mandated under 36 O.S. § 1930.
3. On September 8, 2010, the Receiver filed his Combined Application for Approval of (A) Notices to Potential Claimants & Deadline to File Proof of Claim, (B)

Form of Proof of Claim & Instructions, (C) Unconditional Assignment and Application for Approval of Receiver's Claims Reporting and Evaluation Plan ("Combined Application").

4. On September 24, 2010, the Court entered an Order Approving Receiver's Combined Application ("September 24, 2010 Order"). By the September 24, 2010 Order, the Court approved the Receiver's proposed (a) Notice of Liquidation of Insurer & Deadline to File Proof of Claim, (b) Proof of Claim form and Instructions; (c) Unconditional Assignment form; (d) Notice of Action by Oklahoma Department of Insurance to All Certificate Holders of Insureds form; and (e) and Notice of Action by Oklahoma Department of Insurance to All Clients of Insureds form.

5. In the September 24, 2010 Order, the Court set the following deadlines:

<u>Deadline</u>	<u>Activity to Occur on Before Deadline</u>
2/8/11	Claims Filing Bar Date
4/8/11	Receiver's Report on Timely-Filed Claims Due
2/8/12	Receiver's First Claims Evaluation and Request for Confirmation due (on claims due to be adjudicated).
8/8/12	Receiver's Supplemental Claims Evaluations and Requests for Confirmation (on subsequently evaluated claims ready to [be] adjudicated) will be submitted within every six months thereafter, beginning with 8/8/12.

6. The Receiver took all reasonable efforts to determine the identity of all persons who may have claims against Pegasus and to provide them with notice to allow them the opportunity to file a claim before the February 8, 2011 claims bar date.

7. On April 8, 2011, the Receiver filed the Receiver's Report on Timely Filed Claims ("Receiver's Report"). In the Receiver's Report, the Receiver noted that

he mailed 6,425 Notices. The Receiver received 147 timely filed claims on or before the Bar Date. An additional 10 untimely claims have been presented to the Receiver.

8. The majority of claims filed against the Pegasus Estate consist of Class 3 Claims. Pursuant to 36 O.S. § 1927.1, Class 3 includes:

All claims under policies including claims of the federal or any state or local, government for losses incurred (“loss claims”) including third party claims, claims for unearned premium, all claims of a guaranty association for payment of covered claims or covered obligations of the insurer and all claims of a guaranty association for reasonable expenses other than those included in Class 2. All claims under life and health insurance and annuity policies, whether for death proceeds, health benefits, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities.

9. Class 6 Claims have also been filed against the Estate. Pursuant to 36 O.S. § 1927.1, Class 6 includes “[c]laims of any person, including claims of state or local governments, except those specifically classified elsewhere in [section 1927.1].”

10. On February 8, 2012, the Receiver filed the First Report on Claims Evaluation and Request for Confirmation of Receiver’s Recommendations (“Receiver’s First Report”). The Receiver’s First Report presented 79 claims for adjudication, including 51 Class 3 Claims and 28 Class 6 Claims. Following a hearing, the Court, by Order dated July 26, 2012, adjudicated the 79 claims presented in the Receiver’s First Report.

11. The Receiver now has evaluated an additional 17 claims and makes his recommendations to the Court as to those claims through this Second Report. The 17 claims consist of 2 Class 3 Claims and 15 Class 6 Claims.

12. The Receiver has not completed marshaling all assets of Pegasus. Therefore, this Report does not address the actual distribution of assets that may ultimately be made to creditors and beneficiaries of Pegasus. Neither the Receiver's recommendation that a claim be allowed in a certain amount, or the Court's Order allowing a claim, ensures that the claim will be paid in whole or in part. Payment of an allowed claim is contingent upon: (a) the assets available to the estate for payment of claims; (b) the class of the claim allowed; and (c) whether the assets of the estate are sufficient to pay in full all allowed claims and all classes of claims.

EXPLANATION OF RECEIVER'S RECOMMENDATION

13. Attached hereto are three reports detailing the Receiver's recommendation on the Class 3 and Class 6 Claims that are ready for adjudication. The amount shown in the "Amount Allowed" column on each of the exhibits is the amount the Receiver recommends be allowed for the particular claim. The table below is a summary of the Receiver's recommendation on the Class 3 and Class 6 Claims that are ready for adjudication.

<u>Class</u>	<u>Claimed</u>	<u>Allowed</u>	<u>Denied</u>
3	\$7,847.53	-0-	\$7,847.53
6	\$67,790.13	\$51,931.40	\$5,858.73

14. The attached Exhibit 1 refers to the Receiver's recommendations as to the 2 Class 3 Claims that are ready for adjudication. These two claims are presented by the same third party medical provider located in California. As to these claims, the Receiver's records do not list either the claimant or the alleged insureds as covered under any policy issued by Pegasus. Additionally, each of these two claims arises from alleged

injuries occurring and medical services allegedly provided in California. Pegasus, however, was not licensed to issue policies in the State of California.

15. On July 19, 2012, the Receiver served a Notice of Determination on each of the two Class 3 claimants and advised them of the Receiver's recommendations that their claims be denied. The Notices provided the claimant a period of 15 days from the date of the mailing of the Notice to submit an objection to the Receiver regarding the recommendation. Such 15-day period ended on August 3, 2012. To date, the Receiver has received no objection to the Receiver's recommendations that the Class 3 Claims be denied. The Receiver recommends that each of these claims be classified as Class 3 Claims and denied in their entirety. Accordingly, the Receiver requests the Court to enter an order confirming the Receiver's recommendations and denying the Class 3 Claims reflected on Exhibit 1.

16. The attached Exhibit 2 refers to the 13 Class 6 Claims that the Receiver recommends be allowed or allowed in part. As to Proof of Claim No. 7, the Claimant seeks payment of \$14,130.00. The Receiver has determined that of that amount, \$25.50 has already been paid, \$116.75 is for claimants unknown to Pegasus, and \$1,462.00 relate to periods after Pegasus' insolvency. Thus, the Receiver recommends a reduced allowed amount of \$12,525.75. As to Proof of Claim No. 59, the Claimant seeks \$13,818.77. The Receiver has determined that of that amount reductions should be made for amounts relating to the period after insolvency in the amount of \$7,180.91, yielding a recommended allowed amount of \$6,637.86. As to Proof of Claim No. 82, the Claimant seeks \$8,524.80. The Receiver has determined that of that amount, reductions should be made for amounts relating to the period after insolvency in the amount of \$6,288.80,

yielding a recommended amount allowed of \$2,236.00. As to the portion of these claims relating to the period after the insolvency, the Receiver has referred them to the applicable State Guaranty Fund for processing. The Receiver has given notice to the claimant of the recommendation through a Notice of Determination and provided the claimant an opportunity to object to the Receiver's recommendation. None of the Class 6 claimants reflected on Exhibit 2 have presented an objection to the Receiver's recommendation contained in the Notice of Determination.¹ Accordingly, the Receiver asks the Court to enter an order confirming the Receiver's recommendations and allowing the Class 6 Claims as reflected on Exhibit 2.

17. The attached Exhibit 3 refers to the two Class 6 Claims ready for adjudication that the Receiver recommends be denied. As to Proof of Claim No. 91, the Receiver's records do not reflect that Pegasus agreed to purchase the services for which the Claimant seeks payment. As to Proof of Claim No. 100, the Claimant seeks payment of taxes based on insureds' payroll for FY 2011. Pegasus had no policies in effect during FY 2011 and therefore no amount is due under Proof of Claim No. 100. On July 19, 2012, the Receiver mailed a Notice of Determination to each of the claimants setting forth the Receiver's recommendation that the claim be denied. The 15-day period the

¹ The 15-day period the Receiver provided for objecting to the Notice of Determination has expired as to all claims reflected on Exhibit 2 except POC #s 82 and 111. As to POC # 82, the Receiver's Notice of Determination was mailed on August 2, 2012 causing the 15 day period to expire on August 17, 2012. As to POC #111, the claimant, in response to the initial Notice of Determination served on July 19, 2012, notified the Receiver of a typographical error regarding the amount the Receiver recommends be allowed. The Receiver corrected the error and, on July 27, 2012, mailed an Amended Notice of Determination to the claimant reflecting the corrected amount. The period for that claimant to submit an objection to the Amended Notice of Determination expires on August 11, 2012. The Receiver will advise the Court should he receive an objection from either of these claimants following the filing of this Report.

Receiver provided from the date of mailing to object to the recommendations contained in the Notices of Determination has expired. To date, neither of the claimants whose claims are reflected on Exhibit 3 has submitted an objection to the Receiver. The Receiver recommends that the Court deny the Class 6 Claims reflected on Exhibit 3. Accordingly, the Receiver asks the Court to enter an order denying the Class 6 Claims reflected on Exhibit 3.

18. The Proof of Claim form filed by each claimant contains the following language in bold type: **“If you have a change of address, you are required to inform the receiver of the new address in order to receive any payment that might be due.”** Despite having no obligation to locate the new address for a claimant, upon receipt of a returned Notice of Determination, the Receiver seeks to locate the claimant by among other things, searching the internet and local phone books or calling claimant’s attorney, if represented. The addresses to which the Notices of Determination have been mailed represent the most current addresses located by the Receiver for any returned mail. To the extent any Notice of this proceeding is returned as undeliverable, the Receiver asks the Court to find the due process rights of the claimant have not been impaired and order the denial of their claim without actual notice.

19. Each of the claimants identified on the attached Exhibits has been allowed an opportunity to object to the treatment of their claim. However, considering the due process required by the 36 O.S. § 1918, the Receiver requests that the Court set a hearing on the claims and establish a date certain for filing an objection to the Receiver’s recommendations. Attached hereto as Exhibit 4 is the Receiver’s proposed form of notice of hearing to be provided to claimants made the subject of this Report.

20. The denial of any timely filed proof of claim included in the Receiver's Report does not alter the statutory obligation, if any, of the Oklahoma Property and Casualty Insurance Guaranty Association or other applicable state guaranty association, to provide indemnity and defense of a "covered claim" as defined by the Oklahoma Property & Casualty Insurance Guaranty Association Act, 36 O.S. § 2004 (7), or other applicable state statute.

21. The Receiver's characterization of a claim or payment does not constitute an admission of liability by Pegasus for purposes of any litigation.

WHEREFORE, the Receiver requests that this Court:

- a. order that the Receiver provide notice of opportunity to object and be heard to each of the claimants making a claim reflected on the Exhibits attached to this Report;
- b. find that the proposed form of notice attached hereto as Exhibit 4 is proper in all respects;
- c. establish a date for filing an objection to the recommendation of the Receiver;
- d. schedule a hearing of the Receiver's recommendation to the Court and any objections thereto;
- e. upon hearing any objections thereto, enter an order approving the Receiver's Report and confirming the Receiver's recommendations as to each of the claims described herein; and
- f. grant the Receiver such other and further relief as the Court deems appropriate.

Respectfully submitted,



John M. O'Connor, OBA No. 6741
William W. O'Connor, OBA No. 13200
Jon M. Payne, OBA No. 17910
NEWTON, O'CONNOR, TURNER & KETCHUM, P.C.
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-AND-

Mark A. Willingham, OBA # 22769
3613 NW 56th Street, Ste. 330
Oklahoma City, OK 73112
(405) 947-0022 – telephone
(405) 947-0046 – facsimile
mark.willingham@oid.ok.gov

**ATTORNEYS FOR PLAINTIFF, STATE
OF OKLAHOMA, ex rel., JOHN DOAK,
Insurance Commissioner for the State of
Oklahoma, as Receiver for Pegasus
Insurance Company, Inc., in Liquidation**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served via United States mail, postage prepaid and properly addressed, on the 7th day of August, 2012, upon the following:

Oklahoma Receivership Office, Inc.
Donna Wilson / Debra Crowe
3613 NW 56th Street, Ste. 330
Oklahoma City, OK 73112

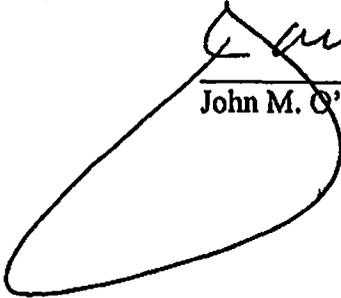
Owen W. Laughlin
Oklahoma Insurance Department
3625 NW 56th, Suite 100
Oklahoma City, OK 73112

Terry K. Smith, Assistant Receiver
4120 E. 51st Street, Suite 100
Tulsa, OK 74135

PIC Holding Company, Inc.
P. O. Box 729
Alexander City, AL 35011



John M. O'Connor



Claims Allowed By Class

Claim Class: 3

POC #	Amount Claimed	Amount Allowed		
26	\$3,318.75	\$0.00	Timely Filed?	<u>Yes</u>
25	\$4,528.78	\$0.00	Timely Filed?	<u>Yes</u>
Class 3 Totals:	\$7,847.53	\$0.00		

Total Claims: \$7,847.53 \$0.00



Claims Allowed By Class

Claim Class: 6

POC #	Amount Claimed	Amount Allowed	Timely Filed?	<u>Yes</u>
7	\$14,130.00	\$12,525.75	Timely Filed?	<u>Yes</u>
106	\$449.50	\$449.50	Timely Filed?	<u>Yes</u>
111	\$4,511.97	\$4,511.97	Timely Filed?	<u>Yes</u>
112	\$4,266.50	\$4,266.50	Timely Filed?	<u>Yes</u>
113	\$1,617.07	\$1,617.07	Timely Filed?	<u>Yes</u>
110	\$57.74	\$57.74	Timely Filed?	<u>Yes</u>
109	\$50.00	\$50.00	Timely Filed?	<u>Yes</u>
108	\$275.93	\$275.93	Timely Filed?	<u>Yes</u>
107	\$731.82	\$731.82	Timely Filed?	<u>Yes</u>
59	\$13,818.77	\$6,637.86	Timely Filed?	<u>Yes</u>
115	\$17,857.04	\$17,857.04	Timely Filed?	<u>Yes</u>
42	\$714.22	\$714.22	Timely Filed?	<u>Yes</u>
82	\$8,524.80	\$2,236.00	Timely Filed?	<u>Yes</u>
Class 6 Totals:	\$67,005.36	\$51,931.40		

Total Claims: \$67,005.36 \$51,931.40



Claims Allowed By Class

Claim Class: 6

POC #	Amount Claimed	Amount Allowed	
91	\$646.00	\$0.00	Timely Filed? <u>Yes</u>
100	\$138.77	\$0.00	Timely Filed? <u>Yes</u>
Class 6 Totals:	\$784.77	\$0.00	

Total Claims: \$784.77 \$0.00

EXHIBIT
3

recommendation as to the amount of your claim to be allowed, if any, and the Receiver's recommendation regarding the classification of your claim, which classification reflects the nature of your claim and the priority the Receiver recommends be given to your claim under Oklahoma law, 36 O.S. § 1927.1.

IF YOU DO NOT WISH TO OBJECT TO THE RECEIVER'S RECOMMENDATION, YOU ARE NOT REQUIRED TO TAKE ANY ACTION AT THIS TIME. IF YOU WISH TO OBJECT TO THE RECEIVER'S RECOMMENDATION, YOU MUST FILE A PROPER, WRITTEN OBJECTION WITH THE COURT NO LATER THAN [DATE]. To be a proper, written objection:

- (1) the objection must contain the case information located at the top of this Notice (State of Oklahoma, ex. rel. John Doak, Insurance Commissioner v. Pegasus Insurance Company, Inc., Case No. CJ-2010-5131, Judge Bill Graves);
- (2) the objection must be filed with the Clerk of the Oklahoma County District Court, 320 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102, and a copy mailed to the Receiver's counsel at the address shown below;
- (3) the objection must be signed by the claimant or the claimant's representative;
- (4) the objection must be typewritten on a good grade of white paper size 8 ½ by 11 inches, give the name, current address and telephone number of the claimant making the objection, including the name and position of the person signing the objection, if the claimant is a business; and
- (5) the objection must state the exact grounds on which the objection is based and be accompanied by a concise brief that contains (a) a written statement of material facts as to which the objecting party contends no genuine issue exists verified by a person with knowledge of the facts; (b) references to supporting documentation submitted with the proof of claim; and (c) citation to applicable authority supporting the objection;
- (6) if you wish to present the Court with oral argument on your objection at the hearing, the objection must indicate your intention to appear at the hearing and make such oral argument. Failure to expressly state an intention to make oral argument in your objection may be deemed by the Court to be a waiver of the right to oral argument.

Failure to file a timely and proper written objection as described above may result in your objection being denied. If the Court approves your claim in whole or in part, it does not mean that you will actually receive the allowed amount as ordered by the Court. The amount of payment on your claim, if any, is dependent upon the class or priority the Court assigns your claim based on Oklahoma law, and the assets in the estate available for payment. Certain legal matters still pending before the Court may prevent the payment of claims for some time. Any questions regarding this Notice, the Receiver's Recommendations as to your claim or any of the other claims to be heard during the hearing on the date referenced above should be directed to the Oklahoma Receivership Office. Contact information for the Oklahoma Receivership Office is set forth below.

Oklahoma Receivership Office

3613 NW 56th, Suite 330
Oklahoma City, OK 73112
Phone: (405) 947-0022
Fax: (405) 947-0046;

Receiver's Counsel Address:

John M. O'Connor
William W. O'Connor
Newton O'Connor Turner & Ketchum
15 West Sixth Street, Suite 2700
Tulsa, OK 74119
(918) 587-0101 (telephone)
(918) 587-0102 (facsimile).