

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FEB - 5 2013

TIM RHODES  
COURT CLERK

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

35 \_\_\_\_\_

Case No. CJ-2010-5131  
Judge Bill Graves

**RECEIVER’S THIRD 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 Third Report on Claims Evaluation and Request for Confirmation of Receiver’s Recommendations (“Receiver’s Third 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 on Timely Claims"). In the Receiver's Report on

Timely Claims, 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. On August 8, 2012, the Receiver filed the Second Report on Claims Evaluation and Request for Confirmation of Receiver's Recommendations and on

October 10, 2012, the Receiver filed the First Amendment to Second Report on Claims and Recommendations as to Proofs of Claim Nos. 7 and 82 (collectively, "Receiver's Second Report"). The Receiver's Second Report presented 17 claims for adjudication, including 2 Class 3 claims and 15 Class 6 claims. Following a hearing, the Court, by Order dated November 8, 2012, adjudicated the 17 claims presented in the Receiver's Second Report.

12. The Receiver has evaluated an additional 10 claims and makes his recommendations to the Court as to those claims in this Receiver's Third Report. The 10 claims consist of two timely Class 6 claims, four untimely Class 3 claims, and four untimely Class 6 claims.

13. 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**

14. The Receiver's recommendations as to the Claims that are ready for adjudication are detailed in the attached Exhibits 1 through 3. The amount the Receiver recommends be allowed for a particular claim is shown in the "Amount Allowed"

column on each of the exhibits. The table below contains a summary of the Receiver's recommendations.

<b>Exhibit</b>	<b>Timely?</b>	<b>Amount Claimed</b>	<b>Amount Allowed</b>	<b>Class</b>
<b>1</b>	<b>Yes</b>	<b>\$ 3,150.00</b>	<b>\$ 0.00</b>	<b>6</b>
<b>2</b>	<b>No</b>	<b>\$ 45,375.78</b>	<b>\$ 0.00</b>	<b>3</b>
<b>3</b>	<b>No</b>	<b>\$ 4,217.59</b>	<b>\$ 4,217.59</b>	<b>6</b>

15. As reflected in the attached Exhibit 1, the Receiver recommends POC Nos. 55 and 127, which were timely filed, each be classified as Class 6 claims and denied. The Receiver recommends POC No. 55 be denied because the affirmation page submitted with the proof of claim is incomplete as it did not state an amount. Mail and phone requests directed to the claimant to submit a completed form generated no response. The Receiver recommends POC No. 127 be denied because the documentation submitted in support of the claim did not include a full invoice necessary for proper determination of the claim. On May 19, 2012, the Receiver instructed claimant to provide a full invoice via mail or facsimile. However, the claimant never provided the Receiver a copy of the full invoice.

16. On January 22, 2013, the Receiver served a Notice of Determination on each of the two timely Class 6 claimants via first class mail and advised them of the Receiver's recommendation that the claim 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 ends on February 6, 2013. To date, the Receiver has received no objection to the Receiver's

recommendations that these timely Class 6 Claims be denied. The Receiver recommends to the Court that each of these claims be classified as Class 6 Claims and denied in their entirety. Accordingly, the Receiver requests the Court to enter an order confirming the Receiver's recommendations and denying the timely Class 6 Claims reflected on Exhibit 1.

17. As reflected in the attached Exhibit 2, the Receiver recommends POC Nos. 144, 148, 149, and 157, which were not timely filed, each be classified as Class 3 claims and denied for the reason that the applicable state guaranty fund is processing or has already processed each of these claims. Accordingly, the Receiver asks the Court to enter an order confirming the Receiver's recommendations and denying the Class 3 Claims as reflected on Exhibit 2.

18. On January 22, 2013, the Receiver served a Notice of Determination on each of the four untimely 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 ends on February 6, 2013. To date, the Receiver has received no objection to the Receiver's recommendations that these untimely Class 3 Claims be denied. The Receiver recommends to the Court 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 2.

19. As reflected in the attached Exhibit 3, the Receiver recommends POC Nos. 145, 152, 153, and 154, which were not timely filed, each be classified as Class 6

claims and allowed. On January 22, 2013, the Receiver mailed a Notice of Determination to each of the claimants setting forth the Receiver's recommendation that the claim be allowed. The 15-day period the Receiver provided from the date of mailing to object to the recommendations contained in the Notices of Determination ends on February 6, 2013. To date, neither of the claimants whose claims are reflected on Exhibit 3 has submitted an objection to the Receiver. The Receiver recommends to the Court that the Class 6 Claims reflected on Exhibit 3 be allowed.

20. The Receiver further recommends the claims identified in Exhibit 3, each of which are untimely, not share in any distribution of the Estate except as allowed under 36 O.S. § 1930. Section 1930 provides as follows:

Proofs of claim may be filed after the date specified in the notice, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before that date, have been paid in full with interest.

36 O.S. § 1930.

21. 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.

22. 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.

23. 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.

24. 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 this Court to:

- 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 recommendations of the Receiver;
- d. schedule a hearing of the Receiver's recommendations 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,

By: 

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.  
15 West Sixth Street, Suite 2700  
Tulsa, Oklahoma 74119  
Telephone: (918) 587-0101  
Facsimile: (918) 587-0102  
[joconnor@newtonoconnor.com](mailto:joconnor@newtonoconnor.com)

-AND-

William G. Combs, OBA # 30849  
3613 NW 56<sup>th</sup> Street, Ste. 330  
Oklahoma City, Oklahoma 73112  
(405) 947-0022 – telephone  
(405) 947-0046 – facsimile

**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**

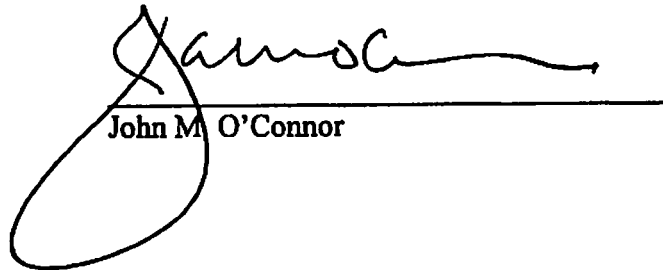
This is to certify that a true and correct copy of the foregoing was served via United States mail, postage prepaid and properly addressed, on the 5<sup>th</sup> day of February, 2013, upon the following:

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

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

Terry K. Smith, Assistant Receiver  
4120 E. 51<sup>st</sup> 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: 6

POC #	Amount Claimed	Amount Allowed		
55	\$1,300.00	\$0.00	Timely Filed?	<u>Yes</u>
127	\$1,850.00	\$0.00	Timely Filed?	<u>Yes</u>
<b>Class 6 Totals:</b>	<b>\$3,150.00</b>	<b>\$0.00</b>		

**Total Claims:**            \$3,150.00            \$0.00



# Claims Allowed By Class

Claim Class: 3

POC #	Amount Claimed	Amount Allowed		
157	\$1,404.00	\$0.00	Timely Filed?	<u>No</u>
149	\$4,446.08	\$0.00	Timely Filed?	<u>No</u>
144	\$19,762.85	\$0.00	Timely Filed?	<u>No</u>
148	\$19,762.85	\$0.00	Timely Filed?	<u>No</u>
<b>Class 3 Totals:</b>	<b>\$45,375.78</b>	<b>\$0.00</b>		
<b>Total Claims:</b>	<b>\$45,375.78</b>	<b>\$0.00</b>		

EXHIBIT  
2

# Claims Allowed By Class NOT TIMELY FILED

Claim Class: 6

POC #	Amount Claimed	Amount Allowed	Timely Filed?	<u>No</u>
145	\$947.25	\$947.25	Timely Filed?	<u>No</u>
154	\$1,150.00	\$1,150.00	Timely Filed?	<u>No</u>
153	\$1,725.00	\$1,725.00	Timely Filed?	<u>No</u>
152	\$395.34	\$395.34	Timely Filed?	<u>No</u>
<b>Class 6 Totals:</b>	<b>\$4,217.59</b>	<b>\$4,217.59</b>		

**Total Claims:**            \$4,217.59            \$4,217.59



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

<b>STATE OF OKLAHOMA, et rel.</b>	)	
<b>JOHN DOAK, Insurance Commissioner,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CJ-2010-5131</b>
	)	<b>Judge Bill Graves</b>
<b>PEGASUS INSURANCE COMPANY, INC.</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**NOTICE OF OBJECTION DEADLINE AND HEARING ON THE  
RECEIVER'S THIRD REPORT ON CLAIMS EVALUATION AND  
REQUEST FOR CONFIRMATION OF RECEIVER'S RECOMMENDATIONS**

You are hereby notified that on [date, time], a hearing will be held before the Honorable Bill Graves, District Court Judge of Oklahoma County, Oklahoma, at which time the Receiver's Third Report on Claims Evaluation and Receiver's Request for Confirmation of Receiver's Recommendations ("the Receiver's Report") shall be heard. The hearing will be conducted at the Oklahoma County Courthouse, 321 Park Avenue, Room # 315, Oklahoma City, Oklahoma.

You are receiving this Notice because the Receiver has evaluated your claim and such claim is ready for adjudication. The document accompanying this Notice sets forth the Receiver's recommendations to the Court in relation to your claim.<sup>1</sup> Your claim has been assigned the Proof of Claim number ("POC #") indicated on the accompanying document. The accompanying document also provides information specific to your claim, including the amount of your claim, the Receiver's recommendation as to the amount of your claim to be allowed, if

<sup>1</sup> The Receiver's recommendations to the Court regarding your claim and other claims set for hearing on the referenced hearing date are set forth in the Receiver's Report, which was filed in the above-entitled matter on February 5, 2013. A copy of the Receiver's Report is available on the website for the Oklahoma Receivership Office at [www.okaro.org](http://www.okaro.org).



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 legal 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 distribution. If your claim is allowed but was filed untimely (i.e. after February 8, 2011), it is given a lower priority in any distribution of the estate in accordance with Oklahoma law. 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 56<sup>th</sup>, Suite 330  
Oklahoma City, OK 73112  
Phone: (405) 947-0022  
Fax: (405) 947-0046;

**Receiver's Legal 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).