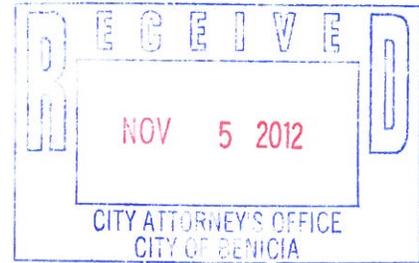


CALIFORNIA INSURANCE GUARANTEE ASSOCIATION

October 31, 2012

Mr. Mark O'Brien  
Environmental Risk Services  
1600 Riviera Avenue, Suite 310  
Walnut Creek, CA 94596



RE: United States Department of the Army Arsenal, Benicia, CA  
Liquidated Insurance Co. Reliance Insurance Company, in Liquidation  
Insured: CITY OF BENICIA  
Policy Number[s]: KLE5973175 [03/03/1985 – 03/03/1986]  
Our Claim Number: 101-V7000101270371  
Claimant[s]: CA Environmental Protection Agency Department of  
Toxic Substances Control

Dear Mr. O'Brien:

This shall acknowledge receipt of your September 21, 2012 notice of claim, which was sent directly to Reliance National Indemnity Company, Philadelphia, PA.

Please be advised that the City of Benicia's insurance carrier, Reliance Insurance Company became insolvent and a liquidator was appointed effective October 3, 2001.

As a result, all California claims are now presented to us, the California Insurance Guarantee Association (CIGA), for review and further handling in accordance with California Insurance Code Section 1063 et seq.

CIGA is not an insurance company.<sup>1</sup> CIGA issues no policies, collects no premiums, makes no profits and assumes no contractual obligations to insureds.<sup>2</sup> CIGA's sole duty is to pay what are defined in Insurance Code Subsections 1063.1 and 1063.2 as "covered claims." CIGA was created to provide only a limited form of protection in the event of insurer insolvency. Furthermore, "covered claims" are not co-extensive with what the insolvent insurer's obligations under the policy would have been.<sup>3</sup>

<sup>1</sup> *Isaacson vs. California Insurance Guarantee Association*, 44 Cal.3d 775 (1988)

<sup>2</sup> *Id.* at 787

<sup>3</sup> *California Insurance Guarantee Association v. Liemsakul*, 193 Cal.App.3d 433 (1987)

Therefore, CIGA does not “stand in the shoes” of the insolvent insurer for all purposes.<sup>4</sup>

This is an alleged hazardous toxic material overflow at a former US Department of the Army Arsenal located in Sacramento, CA. The City of Benicia, which is now the current owner of the former Arsenal has been issued The Imminent and Substantial Endangerment Determination and Remedial Action Order [Order]. It appears the United States Army Corps of Engineers [USACE] has designated the former site as one of the potential responsible parties [PRP]; thereby, requiring the City to participate in the investigation and remediation process.

For your convenience, certain provisions of the Guaranty Act are set forth below; these include provisions discussed in this letter as well as other provisions which may be applicable.

You are advised not to rely simply upon the provisions of the Insurance Code referred to herein but are specifically advised to fully and carefully review Article 14.2 of the Insurance Code.

The following is a partial list of relevant Statutory Provisions:

Please refer to California Insurance Code Section:

1063.1(c)(1) “Covered claims” means the obligations of an insolvent insurer... (A) Imposed by law and within the coverage of an insurance policy of the insolvent insurer;... (C) Which are presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings;...(G)...if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

1063.1(c)(5) “Covered claims” does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim

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<sup>4</sup> Saylin v. California Insurance Guarantee Association, 179 Cal.App.3d 256 (1986)

exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits remaining, where those limits have been diminished by the payment of other claims.

1063.1(c)(7) "Covered claims" does not include that portion of any claim, ... that is in excess of five hundred thousand dollars (\$500,000.00).

1063.1(c)(8) "Covered claims" does not include any amount awarded as punitive or exemplary damages.

**1063.1(c)(9)** "Covered claims" does not include (A) any claim to the extent it is **covered by any other insurance** ... available to the claimant or insured nor (B) any claim by any person other than the original claimant...in his or her own name ... and does not include any claim asserted by an assignee or one claiming by right of subrogation..."

1063.2(a) The association shall pay and discharge covered claims and in connection therewith pay for or furnish loss adjustment services and defenses of claimants when required by policy provisions...

1063.2(b) The association shall be a party in interest in all proceedings involving a covered claim, and shall have the same rights as the insolvent insurer would have had if not in liquidation, including, but not limited to, the right to: (1) appear, defend and appeal a claim in a court of competent jurisdiction; (2) receive notice of, investigate, adjust, compromise, settle, and pay a covered claim; and (3) investigate, handle, and deny a noncovered claim...

1063.2 (c)(1) ... Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured...

1063.2(g) "Covered claims" shall not include any judgments against or obligations or liability of the insolvent insurer or the commissioner, as liquidator, or otherwise resulting from alleged or proven torts, nor shall any default judgment or stipulated judgment against the insolvent insurer, or against the insured of the insolvent insurer, be binding against the association.

1063.2(h) "Covered claims" shall not include any loss adjustment expenses, including adjustment fees and expenses, attorneys fees and expenses, court costs, interest, and bond premiums, incurred prior to the appointment of a liquidator.

1063.6 "All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in the state... be stayed for 60 days from the date that an order of receivership with a finding of insolvency has been entered by a superior court in this state or by a court in the state of domicile of the insurer..."

**CIGA's role is that of the last resort.**<sup>5</sup> If there is any other insurance available to the City of Benicia, statutorily CIGA cannot participate in the defense or settlement of this matter. Other coverage would include primary, excess, umbrella as well as an additional insured.

**If you have not already done so, you must immediately place all other insurance carriers on notice of this claim.**

Please be advised that CIGA, by this letter, and by its investigation and/or activities with respect to the facts and circumstances relating to this matter, does not waive or invalidate any of the other terms, conditions and/or limitations contained within California Insurance Code Section 1063 et. seq., and/or interpretive case law, nor any of the terms, conditions, limitations or exclusions contained in any or all of the policies of insurance issued by Reliance Insurance Co., in Liquidation to any insured or claimant as may be reasonably related to this litigation. CIGA specifically reserves any and all rights to exercise such terms, conditions, limitations and/or exclusions which now exist or may later become apparent.

In the event that you would like to review the CIGA statute (Article 14.2) in its entirety or wish to know more about CIGA, please check our website at <http://www.caiga.org>.

Sincerely,

***California Insurance Guarantee Association***

*Lenie P. Hauerbach*

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<sup>5</sup> *R.J. Reynolds vs. CIGA*, 235 Cal.App.3d 595, 600 (1991)

cc: City of Benicia  
c/o City Attorney's Office  
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Benicia, CA 94510

Mr. Marc A. Evans  
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Philadelphia, PA 19102

LPH:lph