

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of

the Liquidation of

ATLANTIC MUTUAL INSURANCE COMPANY.  
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**AFFIRMATION**

Index No.: 402424/10

Scott D. Fischer, an attorney at law, duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am the Deputy General Counsel of the New York Liquidation Bureau (“NYLB”), the organization that carries out the duties of the Superintendent of Financial Services of the State of New York as liquidator (the “Liquidator”) of Atlantic Mutual Insurance Company (“Atlantic Mutual”). I make this affirmation (“Affirmation”) upon information and belief, the sources of which are the files maintained by the NYLB and communications made to the affirmant by employees of the Liquidator.

2. On September 16, 2010, the Supreme Court of the State of New York, County of New York issued an order commencing a rehabilitation proceeding in respect of Atlantic Mutual and appointing the then-Superintendent of Insurance of the State of New York and his successors in office as Rehabilitator of Atlantic Mutual. On April 27, 2011, this Court entered an order converting the rehabilitation proceeding into a liquidation proceeding and appointing the then-Superintendent of Insurance of the State of New York and his successors in office as Liquidator of Atlantic Mutual. The Superintendent of Financial Services of the State of New York has succeeded the Superintendent of Insurance as Liquidator of Atlantic Mutual.

3. On December 2, 2013, this Court entered an order establishing December 15, 2013, as the bar date (“Bar Date”) for the presentment to the Liquidator of all claims against Atlantic Mutual or its insureds other than the Liquidator’s claims for administrative expenses.

4. This Affirmation is submitted in support of the Liquidator’s application for a final bar date. I respectfully request, for the reasons set forth herein, that this Court enter an order pursuant to Article 74 of the New York Insurance Law (“Order”): (i) establishing January 16, 2015 as the final date (“Final Bar Date”) by which the Liquidator must actually receive in respect of any claim presented prior to the Bar Date any and all evidence demonstrating (a) that such claim has been liquidated and (b) that there has been actual loss and/or payment in respect of such claim; and (ii) providing for such other and further relief as this Court may deem just and proper.

#### Claims Against the Estate

5. Pursuant to Article 74 of the New York Insurance Law (“Insurance Law”), the Liquidator is responsible for adjudicating all of the claims presented to Atlantic Mutual. A claim is “adjudicated” upon the Liquidator’s recommendation to the Court that the claim be either “allowed” or “disallowed.” An “allowed” claim is one that has been approved by this Court and the claimant is therefore allowed to share in the distribution of assets pursuant to Insurance Law Section 7434. A “disallowed” claim is one that has been rejected and the claimant will not share in any distribution of the estate’s assets. Pursuant to orders issued by this Court setting forth a procedure for adjudication of claims and appointing a referee, claimants who object to the Liquidator’s recommendations are entitled to a hearing before the Court or a court-appointed referee.

6. The priority of distribution of assets from a liquidating insurer to those with allowed claims is set forth in Insurance Law Section 7434, which provides that all members of a senior class be paid in full before members of the next class may receive any payment. The most senior class of claims is class one, which are claims with respect to the actual and necessary costs and expenses of administration incurred by a liquidator or rehabilitator. The claims of policyholders, security funds and guaranty funds come next. The statute then categorizes all other claimants in classes three through nine; class nine claims are the claims of stockholders.

7. As of the Bar Date, 666 claims have been presented to the Liquidator, of which 601 are open claims. Of the 601 open claims, 175 are the class two claims, which include the claims of the New York Property/Casualty Insurance Security Fund, New York Workers' Compensation Security Fund and non-NY Guaranty Funds.<sup>1</sup> The remaining claims fall into classes three, five, six and eight.

#### Purpose of a Final Bar Date

8. As described to this Court in the application for the Bar Date, Insurance Law Article 74 envisions that the distribution of the assets of an insolvent insurer will strike "a reasonable balance between the expeditious completion of the liquidation and protection of unliquidated and undetermined claims." Ins. L. § 7434(a)(1). The Bar Date entered by this Court allows the Liquidator to determine the *maximum number* of all claims against Atlantic Mutual. Establishing the Final Bar Date, by which all claimants who submitted claims prior to the Bar Date are required to provide proof that the claim is liquidated, allowable and in what amount, will provide the Liquidator with the total *amount* and *actual number* of claims eligible

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<sup>1</sup> The Security Funds were established under Insurance Law Article 76 to pay eligible claims remaining unpaid by reason of an insolvent insurer's inability to meet its obligations to policyholders. The guaranty funds of foreign states (*i.e.*, states other than New York) perform the same function pursuant to their respective state laws.

to share in a distribution of estate assets. This additional information will move the estate much further toward completion than the Bar Date alone.

9. The establishment of a bar date is in accordance with Insurance Law Section 7417, which vests courts with authority to grant such relief as the nature of the case and the interests of policyholders, creditors and the public may require. This authority encompasses the establishment of bar dates to facilitate the efficient closure of an estate in order to preserve and maximize the assets available to pay all classes of creditors with allowed claims. *See e.g., In the Matter of Dominion Ins. Co.*, Index No., 40924/1986 (Sup. Ct., N.Y. Co., April 5, 1999) (liquidation court approving bar dates); *In the Matter of Ideal Mutual Ins. Co.*, Index No. 40275/1985 (Sup. Ct. N.Y. Co., Dec. 9, 2003) (same).

10. Not only is the establishment of a bar date for the presentment of claims necessary to complete the liquidation of an insurer, a final bar date “for the submission of evidence in support of the allowance of a claim” may also be necessary “to prompt claimants to submit detailed claims data to the Liquidator.” *In re Liquidation of Midland Ins. Co.*, 32 Misc.3d 1211(A), 2011 WL 2652564, \*6 (Sup. Ct. N.Y. Co., Jun. 27, 2011). Without the detailed claims data to indicate whether a claim presented has been liquidated and no longer contingent, the Liquidator will not know whether the claimant may share in a distribution of estate assets. If the Liquidator cannot know the total number of claimants and the amount of the claim, he will be unable to distribute all of the estate’s assets to claimants as he will always require some reserve amount to address the unliquidated claims. The result will be an open-ended liquidation proceeding that ignores the requirement of “expeditious completion” and exists solely for the “protection of unliquidated and undetermined claims.”

11. The Liquidator believes that the establishment of a January 16, 2015 Final Bar Date, which will be approximately one year after the established Bar Date, strikes the correct balance between an expeditious completion of the Liquidation Proceeding and the protection of Atlantic Mutual's policyholders, claimants, and creditors.

12. The Liquidator proposes to give notice of the Final Bar Date to all persons having filed proofs of claim or appearing on Atlantic Mutual's books and records as policyholders or claimants by publishing a notice ("Notice"), in substantially the form annexed as Exhibit A, in *Business Insurance* or a another publication of national circulation, once per week for two consecutive publications as soon as practical in light of the publication schedule of such publication. The Liquidator will also post the Notice on the Internet web page maintained by the NYLB at <http://www.nylb.org>, within fifteen (15) days following the entry of an order granting the relief sought in the Affirmation.

13. No previous application for the relief sought herein has been made to this or any court or judge thereof.

WHEREFORE, it is respectfully requested that this Court enter an Order that:

- (i) establishes January 16, 2015 as the Final Bar Date, the final date by which the Liquidator must actually receive in respect of any claim presented prior to the Bar Date any and all evidence demonstrating (a) that such claim has been liquidated and (b) that there has been actual loss and/or payment in respect of such claim; and
- (ii) provides for such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
December 26, 2013

JOHN PEARSON KELLY  
Attorney for Benjamin M. Lawskey,  
Superintendent of Financial Services of the  
State of New York as Liquidator of  
Atlantic Mutual Insurance Company

By:



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Scott D. Fischer  
New York Liquidation Bureau  
110 William Street, 15<sup>th</sup> Floor  
New York, NY 10038

# Exhibit A

**IN THE MATTER OF THE LIQUIDATION OF  
ATLANTIC MUTUAL INSURANCE COMPANY  
Supreme Court County of New York  
Index No.: 402424/10**

**NOTICE**

Pursuant to an order of the Supreme Court of the State of New York, County of New York, entered on April 27, 2011, the Superintendent of Insurance of the State of New York and his successors in office were appointed as liquidator (“Liquidator”) of Atlantic Mutual Insurance Company (“Atlantic Mutual”) and, as such, has been directed to take possession of Atlantic Mutual’s property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law (“Insurance Law”). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Liquidator of Atlantic Mutual. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent (“Acting Special Deputy”), as his agent to liquidate the business of Atlantic Mutual. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038.

PLEASE TAKE NOTICE that the Supreme Court of the State of New York, County of New York, has issued an order, dated \_\_\_\_\_, 2014, establishing January 16, 2015, as the final bar date, the final date by which the Liquidator must actually receive in respect of any claim presented prior to December 15, 2013 (the “Bar Date” established in the proceeding by order of the Court entered on December 2, 2013) any and all evidence demonstrating (a) that such claim has been liquidated and (b) that there has been actual loss and/or payment in respect of such claim.

Requests for further information should be directed to the New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6589.

Dated: \_\_\_\_\_, 201\_\_

Benjamin M. Lawskey  
Superintendent of Financial Services of the  
State of New York as Liquidator of  
Atlantic Mutual Insurance Company



Index No. 402424

Year 2010

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

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**ORDER TO SHOW CAUSE AND AFFIRMATION**

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**JOHN PEARSON KELLY**

Attorney for Superintendent of Financial Services of the State of New York as Liquidator

*Office and Post Office Address, Telephone*

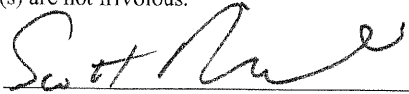
New York Liquidation Bureau  
110 William Street  
New York, NY 10038  
(212) 341-6755  
Fax (212) 608-3398

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**ATTORNEY CERTIFICATION**

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, belief and reasonable inquiry, the contentions in the above referenced document(s) are not frivolous.

Dated: December 16, 2013  
New York, New York

  
Scott D. Fischer

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NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on the      day of      20

NOTICE OF SETTLEMENT

that an order  
settlement to the HON.

of which the within is a true copy will be presented for  
one of the judges of the within named court, at  
20      at

Dated:

, on

Yours, etc.

**JOHN PEARSON KELLY**

Attorney for Superintendent of Financial Services  
of the State of New York as Liquidator

*Office and Post Office Address, Telephone*

New York Liquidation Bureau  
110 William Street  
New York, NY 10038  
(212) 341-6755  
Fax (212) 608-3398