

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

PRESENT: WRIGHT  
Justice

PART 47

LAWSKY, BENJAMIN M.

INDEX NO. 452965/15

-v-

DRIVERS INSURANCE COMPANY

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 02

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

*granted without  
opposition as per the attached order.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

*G*  
**GEOFFREY D. WRIGHT**  
**AJSC**

Dated: 2/4/16

\_\_\_\_\_, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

At IAS Part 47 of the Supreme Court of the State of New York, County of New York, at the Courthouse, 80 Centre Street, in the County, City and State of New York, on the 4 day of Feb, 2016.

P R E S E N T:

HON. GEOFFREY D. WRIGHT, J.S.C.

In the Matter of  
the Liquidation of

DRIVERS INSURANCE COMPANY.

Index No.: 452965/2015

**ORDER APPROVING THE  
PROCEDURE FOR THE  
SUPERINTENDENT'S  
ADJUDICATION OF CLAIMS**

Upon the December 29, 2015, affirmation of Lauren M. Reber, an attorney with the New York Liquidation Bureau (the "NYLB"), the organization that carries out the duties of Shirin Emami, Acting Superintendent of Financial Services of the State of New York in her capacity as liquidator (the "Liquidator") of Drivers Insurance Company ("Drivers") and administrator (the "Administrator") of the New York Property/Casualty Insurance Security Fund (the "Security Fund") in connection with the liquidation proceeding of Drivers, and its attachments and upon all other papers previously submitted and all proceedings heretofore had herein;

NOW, on motion of the Liquidator, and after due deliberation having been had thereon, it is

ORDERED, that the application is granted; and it is further

NOW, on the application of the Liquidator, it is ordered that:

1. The Procedure is approved.

2. The Procedure is as follows:

- A. The Procedure shall apply only to the actions set forth herein. Disputes subject to the Procedure and eligible for a hearing before a Referee shall be only those arising out of and after the service by the Administrator on an individual or entity of a Denial Letter and/or a Final Determination Letter.
- B. References herein to "claimant" shall include only those individuals or entities with the legal standing to pursue a claim under Article 76 in respect of an insurance policy issued by Drivers. Nothing contained herein shall or shall be deemed to confer standing upon any individual or entity or expand any right of an individual or entity under applicable law or any provision of an insurance policy or contract.

C. Denial Letter.

- i. The Administrator shall serve a Denial Letter on each claimant whose claim is denied in all respects for any reason. Service of the Denial Letter will be made by first-class, certified mail, return receipt requested, or such other form of communication as may have been agreed to by the Administrator and the claimant, in writing, to the claimant's last known address, and if a representative, such as an attorney or broker, submits a claim on a claimant's behalf, to the address of such representative. The Denial Letter may also be copied to such individuals or entities as may be required by law or as may be deemed advisable in the reasonable opinion of the Administrator.
- ii. The Denial Letter shall advise each claimant of the following:
  - a. No further action by the claimant is required if the claimant accepts the Administrator's grounds for denial as set forth in the Denial Letter;
  - b. The claimant has the right to object to the Denial Letter, and can do so by serving a written objection on the Administrator within sixty (60) days after the date of mailing the Denial Letter, as expressly set forth in the Denial Letter;
  - c. If the claimant makes a timely written objection, the Administrator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
  - d. The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections; and

- e. Either the claimant or the Administrator may petition the Court supervising the Drivers liquidation proceeding (the "Supervising Court"), on notice, for an order confirming the Referee's report.

D. Final Determination Letter.

- i. The Administrator shall serve a Final Determination Letter on each claimant with a claim in respect of which the Administrator and claimant have, in the reasonable opinion of the Administrator, reached an impasse as to the value of such claim. Service of the Final Determination Letter will be made by first-class, certified mail, return receipt requested, or such other form of communication as may have been agreed to by the Administrator and the claimant, in writing, to the claimant's last known address, and if a representative, such as an attorney or broker, submits a claim on a claimant's behalf, to the address of such representative. The Final Determination Letter may also be copied to such individuals or entities as may be required by law or as may be deemed advisable in the reasonable opinion of the Administrator.
- ii. The Final Determination Letter advises each claimant of the following:
  - a. If the claimant accepts the Administrator's valuation of the claim as set forth in the Final Determination Letter the claimant may execute the enclosed settlement documents, including a release of further rights pertaining to the adjudicated claim, and return such documents to the Administrator;
  - b. If the claimant accepts the Administrator's valuation of the claim as set forth in the Final Determination Letter and returns the settlement documents, application will be made to this Court or to the Superintendent, depending upon the agreed amount, to allow the claim in the amount specified in the Final Determination Letter and, upon such allowance, payment will be made as soon as reasonably practical;
  - c. The claimant has the right to object to the Final Determination Letter, and can do so by serving a written objection on the Administrator within sixty (60) days after the date of mailing the Final Determination Letter, as expressly set forth in the Final Determination Letter;

- d. If the claimant makes a timely written objection, the Administrator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
  - e. The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections;
  - f. Either the claimant or the Administrator may petition the Supervising Court, on notice, for an order confirming the Referee's report;
  - g. If the claimant fails to object and fails to provide fully executed settlement documents within ninety (90) days from the date of mailing of the Final Determination Letter, the Administrator may deem the claim abandoned and may seek an order of this Court that the claim is discharged.
- E. In the event that the claimant requests a hearing, the Administrator's staff will contact the claimant in writing at the address set forth on the Denial Letter or Final Determination Letter (or such other address as the claimant has provided to the Administrator in writing for the purpose of providing communications), as applicable, to schedule a pre-hearing conference. If the claimant fails to request an adjournment of the pre-hearing conference in writing at least five (5) business days prior to the pre-hearing conference and the claimant fails to attend such conference, the claimant's objection is forfeited and the Denial Letter or Final Determination Letter is deemed accepted.
- F. In the event that the claimant fails to object to a Denial Letter or Final Determination Letter within the sixty (60) day period, the claim shall either be denied or the Superintendent shall allow the claim in the amount stated in the Final Determination Letter or seek this Court's allowance of the claim in the amount stated in the Final Determination Letter if that amount is in excess of \$25,000, pursuant to Insurance Law Section 7602(g), as applicable.
3. If a claimant fails to take the steps necessary to have its objection heard, the court-appointed Referee may issue a denial of the objection.
  4. In the event that the Administrator fails to timely meet any of the time periods set for mailing or delivering a notice required by this Order, it shall not affect the validity of the

allowance/disallowance but shall entitle the party that did not receive timely notice to toll its further obligations under the Procedure until it receives the required notice.

5. In the course of conducting the liquidation proceeding, the Liquidator shall consider claims, issue Denial Letters and/or NODs and conduct hearings in respect of Class two claims before those of any other class of claims and unless and until it is reasonably determined that funds shall be available to make distributions to any class of claim below Class two, the Liquidator is authorized to defer adjudicating or scheduling a hearing related to any claim below Class two.

6. The Liquidator is authorized to compromise, settle or adjust claims in his sole discretion, at any time during the adjudication process, without the necessity of receiving a report from the referee; however, any settlement above \$25,000 is subject to approval by this Court, in accordance with the dictates of New York Insurance Law Section 7428(b).

ENTER



**GEOFFREY D. WRIGHT**

**AJSC**