

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BANNON Justice

PART 42

LAWSKY, BENJAMIN M.
-v.
EVEREADY INSURANCE CO.

INDEX NO. 160307/14
MOTION DATE 9/16/15
MOTION SEQ. NO. 02

The following papers, numbered 1 to 2, were read on this motion to for approve the procedure for the liquidator's adjudication of claims
Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s) 1
Notice of Cross-Motion Answering Affidavits - Exhibits No(s) 2
Replying Affidavits No(s)

Upon the foregoing papers, it is ordered that this motion is granted per the attached Order, and it is further
Ordered that the cross-motion is denied without prejudice.

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

Dated: 1/4/16

HON. NANCY M. BANNON, 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 42 of the Supreme Court of the State of New York, County of New York, at the courthouse, 111 Centre Street, in County, City, and State of New York, on the 4th day of JANUARY, 2015. 2016

P R E S E N T :

HON. NANCY M. BANNON, J.S.C.

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In the Matter of

the Liquidation of

EVEREADY INSURANCE COMPANY.
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Index No. 160307/2014

**ORDER APPROVING THE
PROCEDURE FOR
THE LIQUIDATOR'S
ADJUDICATION OF CLAIMS
AND APPOINTING REFEREE**

Mary Jo Marchisello, Assistant Special Deputy Superintendent and Agent of Anthony J. Albanese, Acting Superintendent of Financial Services of the State of New York as liquidator ("Liquidator") of Eveready Insurance Company ("Eveready"), having moved this Court by verified petition dated the 6th day of August, 2015 ("Verified Petition"), for an order: (i) approving a procedure for judicial review of the Liquidator's adjudication and classification of claims in this proceeding ("Procedure"); (ii) appointing a Referee to hear and take evidence on issues raised by the Liquidator's determinations and claimants' objections, and to report thereon; and (iii) granting such other and further relief as this Court may deem just and proper under the circumstances, and it appearing from the Verified Petition that the Procedure and appointment of a Referee will best serve the interests of Eveready, its creditors and all other interested persons;

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

1. The Procedure is approved.
2. The Procedure is required for the orderly administration of the Eveready estate and will enable the Liquidator to resolve claims on an ongoing basis while providing due process to all claimants who object to a classification letter ("Classification Letter") or a notice of

determination ("NOD") regarding their claims that are or are deemed timely filed in the liquidation proceeding.

3. The Procedure is as follows:

- a) The Liquidator shall serve either or both a NOD or Classification Letter, as the case may be, on each claimant with a claim timely filed or deemed timely filed in the liquidation proceeding. Service of the NOD and/or Classification Letter will be made by first class mail 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.
- b) The Classification Letter advises each claimant of the following:
 - (i) The Liquidator's determination of the specific class of claim under Insurance Law Section 7434 in which the claim falls;
 - (ii) No further action by the claimant is required if the claimant accepts the Liquidator's recommendation as set forth in the Classification Letter;
 - (iii) The claimant has the right to object to the Classification Letter, and can do so by serving a written objection on the Liquidator within sixty (60) days after the date of mailing the Classification Letter, as expressly set forth in the Classification Letter;
 - (iv) If the claimant makes a timely written objection, the Liquidator will contact the claimant to attempt to resolve the objection. If the objection cannot be resolved and the claimant requests a hearing, then the Liquidator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
 - (v) The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections; and
 - (vi) Either the claimant or the Liquidator may petition the Supervising Court, on notice, for an order confirming the Referee's report.
- c) The NOD advises each claimant of the following:
 - (i) The Liquidator's determination of the specific class of claim under New York Insurance Law ("Insurance Law") Section 7434 in which the claim falls;
 - (ii) The Liquidator's recommendation that the claim be allowed and the amount of the recommended allowance, or that the claim be disallowed, in whole or in part, and the reason therefor;

- (iii) No further action by the claimant is required if the claimant accepts the Liquidator's recommendation as set forth in the NOD;
 - (iv) The claimant has a right to object to the NOD, and can do so by serving a written objection on the Liquidator within sixty (60) days after the date of mailing of the NOD, as expressly set forth in the NOD;
 - (v) Unless the claimant objects, the Liquidator's recommendation in the NOD will be presented to this Court for approval and the claimant's right to share in distribution of assets, if any, pursuant to Insurance Law Section 7434, will be fully and finally determined;
 - (vi) If the claimant makes a timely written objection, the Liquidator will contact the claimant to attempt to resolve the objection and, if resolved, will seek allowance of the agreed upon amount of the claim. If the objection cannot be resolved and the claimant requests a hearing, then the Liquidator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
 - (vii) The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections; and
 - (viii) Either the claimant or the Liquidator may petition the Supervising Court, on notice, for an order confirming the Referee's report.
- d) The Liquidator shall move, ex parte, at least seventy-five (75) days (or a lesser period if agreed upon by the claimant) after the date of the NOD, for an order approving the Liquidator's recommendations for adjudication of all claims for which no objections are timely received.
 - e) In the event that a claimant requests a hearing pursuant to item (c)(vi), the Liquidator will contact the claimant in writing at the address set forth on the NOD (or such other address as the claimant has provided to the Liquidator in writing for the purpose of providing communication in respect of such NOD) to schedule a pre-hearing conference ("Scheduling Notice"). If the claimant fails to request an adjournment of the pre-hearing conference in writing at least five business days prior to the pre-hearing conference and the claimant fails to show up for the pre-hearing conference, then the claimant's objection to the NOD is forfeit and the NOD is deemed accepted as set forth in item (c)(iii).
 - f) If a claimant neglects its claim and fails to take the steps necessary to have its objection heard, the court-appointed Referee may issue a denial of the claimant's objection.

4. In the event that the Liquidator 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, the Liquidator shall consider claims, issue Classification 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).

7. Disputed claims and objections filed by claimants in the within proceeding which have not been settled or compromised are referred to:

NAME: Edward H. Lehner, Esq.

ADDRESS: 180 Cabini Blvd., New York, NY 10033

PHONE NO.: 212-928-4402

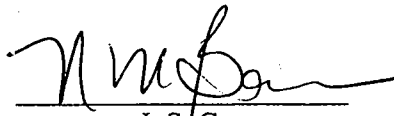
as Referee to hear and take evidence on the factual issues raised by said objections and report thereon with all convenient speed.

8. The Referee shall be paid a fee based on an hourly rate of \$200 as a loss adjustment expense of the Eveready estate.

9. The Referee appointed to hear and report on objections shall conduct those hearings at the place of business of the Superintendent as Liquidator, namely 110 William Street, Borough of Manhattan, City, County and State of New York.

10. The Referee shall take evidence and report to the court his or her recommendations regarding the claims before the referee, so that claims directly against Eveready, in liquidation, may be adjudicated in this proceeding.

ENTER

 1/4/16

J. S/C.

HON. NANCY M. BANNON

Index No. 160307

Year 2014

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

In the Matter of

the Liquidation of

EVEREADY INSURANCE COMPANY.

**ORDER TO APPROVE THE PROCEDURE FOR THE LIQUIDATOR'S
ADJUDICATION OF CLAIMS AND APPOINT A REFEREE**

JOHN PEARSON KELLY

Attorney for Superintendent of Financial Services as Liquidator

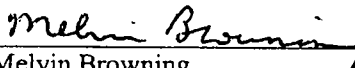
Office and Post Office Address, Telephone

New York Liquidation Bureau
110 William Street
New York, NY 10038-3889
(212) 341-6755
Fax (212) 608-3398

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: _____, 2015
New York, New York


Melvin Browning

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 _____ 201

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
201 _____ at

Dated: _____, on

Yours, etc.

JOHN PEARSON KELLY

Attorney for Superintendent of Insurance as
Liquidator

Office and Post Office Address, Telephone

New York Liquidation Bureau
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New York, NY 10038-3889
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Fax (212) 608-3398