

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

-----X
**In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY**

Index No. 41294/86

**Assigned to:
Hon. Michael
Stallman
I.A.S. Part 7**

-----X
**AFFIDAVIT OF ANDREW STUEHRK IN SUPPORT OF
MIDLAND INSURANCE COMPANY'S
SUPPLEMENTAL REPLY BRIEF**

JAMES C. OWEN, ESQ.

Attorney for Superintendent of Insurance as Liquidator

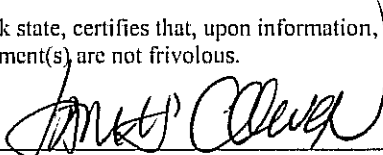
Office and Post Office Address, Telephone

McCARTHY, LEONARD, KAEMMERER, OWEN,
McGOVERN, STRILER & MENGHINI, L.C.
400 SOUTH WOODS MILL ROAD, SUITE 250
CHESTERFIELD, MO 63017

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 20, 2006
New York, New York



James C. Owen

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

-----X

In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY

Index No. 41294/86
Affidavit

Assigned to:
Hon. Michael Stallman
I.A.S. Part 7

-----X

**AFFIDAVIT OF ANDREW STUEHRK IN SUPPORT OF MIDLAND
INSURANCE COMPANY'S SUPPLEMENTAL REPLY BRIEF**

State of New York)
) ss
County of New York)

Andrew Stuehrk, being duly sworn, deposes and says:

1. I, Andrew Stuehrk, am employed by Navigant Consulting Inc., a consultant for the Midland estate at the New York Liquidation Bureau (the "Bureau") and I am fully familiar with the facts set forth herein. The Bureau is the entity which carries out the duties of the Superintendent of Insurance of the State of New York as Liquidator of Midland Insurance Company (the "Liquidator").

2. I currently assist the Reinsurance Department in the collection and commutation of reinsurance balances, including claims

ceded to Everest Reinsurance Company ("Everest Re") by Midland Insurance Company ("Midland").

3. I respectfully submit this affidavit in support of Midland's Supplemental Reply Brief in compliance with to the Receivership Court's November 8, 2006 Interim Order.

4. In my capacity working with the reinsurance department of the Bureau, I have worked with representatives of Everest Re in regard to several issues concerning the collection of Midland's paid loss balances which are ceded to Everest Re.

5. In May 2006, Everest Re reviewed the claims files on recommended allowances, including Bayer, Pfizer and 3M. Everest Re's attorneys met with representatives of Midland to discuss the basis for these allowances and the issues that Everest Re had with the same. Everest's representatives returned for another more extensive audit in June 2006, including the Revlon and Baxter files. Attached to this Affidavit are a series of e-mails between me and James Wendover of Everest Re regarding setting up those Everest Re audits.

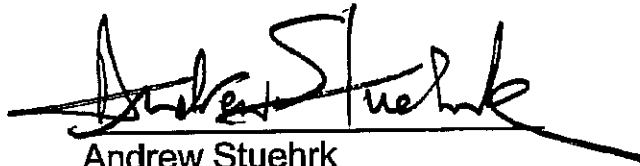
6. Some, although a very few, contracts between Everest and Midland have what is generally referred to as a "cooperation

clause." One such contract is a "Security Guard" general liability contract where Everest reinsures 30% of the risk for night watchman liabilities. Under these specific contracts, therefore, the parties are to adopt a course of conduct in connection with the defense or settlement of claims and Midland cannot litigate without the consent of Everest.

7. There are other "facultative contracts" that have cooperation clauses that are one sentence long and much less detailed.

8. I have never witnessed a reinsurer attempt to utilize a Cooperation Clause in an insolvency in lieu of an Insolvency Clause.

9. In regard to Everest's argument that Midland has a disincentive to properly allow claims based on the fact that insurance insolvencies do not pay out 100% to direct policyholders, I have knowledge that, in New York, there are insurance insolvencies that have paid near to or over 100% to all creditors. In fact, some estates have paid 100% plus interest.

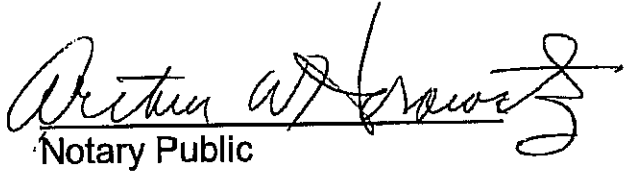


Andrew Stuehrk
Navigant Consulting Inc.
c/o Midland Ins. Co. in Liquidation
New York Liquidation Bureau
123 William St.
New York, New York 10038

Sworn to before me this 20th day of December, 2006

[Seal]

ARTHUR W. BRONSTEIN
Notary Public, State of New York
No. 24-10000-0
Qualified in Richmond County
Commission Expires December 31, 2009



Notary Public

Typed Name of Notary Public

From: Andrew Stuehrk [ASTuehrk@NavigantConsulting.com]
Sent: Thursday, November 30, 2006 8:57 AM
To: rmetzger@nylb.org; dbanks@nylb.org; Owen, James
Subject: Fw: Claim review

----- Forwarded by Andrew Stuehrk/NCI on 11/30/2006 09:29 AM -----

<James.Wendover@everestre.com>

To <ASTuehrk@NavigantConsulting.com>

04/20/2006 04:39 PM

cc <BBarbagallo@navigantconsulting.com>

Subject RE: Claim review

Andrew:

No problem pushing the review to the week of May 1. We would prefer May 1 or May 2 of that week if possible, though. In terms of space, it will be myself and one other person.

Thanks.

Jim

James C. Wendover, CPCU, ARe
908-604-3220

From: Andrew Stuehrk [mailto:ASTuehrk@NavigantConsulting.com]
Sent: Thursday, April 20, 2006 4:01 PM
To: James Foster
Cc: James Wendover; BBarbagallo@navigantconsulting.com
Subject: Re: Claim review

Uh, Jim, can we make it the week of May 1st- meaning the WEEK AFTER next week.? Need more than one day's notice to get files organized, and yes, we want you in.

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12/19/2006

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C. Andrew Stuehrk, Director / 212-341-6261 (New York Liquidation Bureau) / 646-284-7376 (Mobile) / www.navigantconsulting.com

<James.Foster@everestre.com>

04/20/2006 02:39 PM

To <AStuehrk@NavigantConsulting.com>

cc <James.Wendover@everestre.com>

Subject Claim review

Andrew:

We may be able to have a team (of one or two people) in as early as next week to review your files on 3M, Bayer and Pfizer. Jim Wendover, one of our experienced casualty claim managers, will be our lead. Please contact Jim directly to coordinate when we can visit. Jim's contact information is:

Jim Wendover
908-604-3220
james.wendover@everestre.com

Thanks.

ForwardSourceID:NT00005A62

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12/19/2006

From: Andrew Stuehrk [AStuehrk@NavigantConsulting.com]
Sent: Thursday, November 30, 2006 8:57 AM
To: rmetzger@nylb.org; dbanks@nylb.org; Owen, James
Subject: Fw: audit next week.

— Forwarded by Andrew Stuehrk/NCI on 11/30/2006 09:27 AM —

<James.Wendover@everestre.com>

To <AStuehrk@NavigantConsulting.com>

cc

04/26/2006 10:25 AM

Subject RE: audit next week.

Excellent. I will be joined by Anthony Del Guercio if you need to put our names on a list for security purposes.

Look forward to meeting you.

Jim

From: Andrew Stuehrk [mailto:AStuehrk@NavigantConsulting.com]
Sent: Wednesday, April 26, 2006 10:14 AM
To: James Wendover
Cc: Richard Maniurski; Ronald Ryba
Subject: audit next week.

Thank you for your phone call. yes, we look forward to your visit at the NYLB .Tuesday, May 2nd at 9:00 Am, go to 2nd floor at 123 William, and ask for me. Rich Maniurski will be the contact during the audit.

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12/19/2006

From: Andrew Stuehrk [AStuehrk@NavigantConsulting.com]
Sent: Thursday, November 30, 2006 2:16 PM
To: rmetzger@nylb.org; dbanks@nylb.org; Owen, James
Subject: Fw: Midland/Everest Re - Request for Information
Attachments: Bayer Audit Report 10.26.05.doc; 3M Audit Report 12.15.05.doc

— Forwarded by Andrew Stuehrk/NCI on 11/30/2006 03:14 PM —

C. Andrew Stuehrk
Sent by: Andrew Stuehrk

To <James.Wendover@everestre.com>
cc BBarbagallo@navigantconsulting.com
Subject Re: Midland/Everest Re - Request for Information [Link](#)

05/24/2006 09:17 AM

Jim: here are 2 of the audit reports
and will send allocation separately.

Pfizer is not finalized.

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<James.Wendover@everestre.com>

05/18/2006 03:18 PM

To <AStuehrk@NavigantConsulting.com>
cc
Subject Midland/Everest Re - Request for Information

12/19/2006

Andrew:

Please provide copies of the audit reports prepared for 3M, Pfizer and Bayer as well as any allocation runs prepared to support the proposed allowances for these three claims. It is our understanding that allowances cannot be proposed without these two items being completed. Everest Re costs consistent with the Liquidator's guidelines.

As you know, Everest has previously reserved its rights under the Midland Contracts as to all reinsurance advices/claims submitted to Everest by Midland to date based on Midland's failure to comply with its obligations under the Midland Contracts, including the MPH claims referenced herein. Everest continues to reserve its rights and Everest's request for information from Midland shall not be deemed to establish a course of conduct, interpretation or waiver by Everest of any rights, obligations, terms or conditions existing and available under the Midland Contracts.

Everest further reserves the right to request further information and to amend, change, modify or supplement its reservation of rights as additional information becomes available.

Thank you for your prompt attention.

Jim

James C. Wendover
Everest Global Services
908-604-3220

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From: Andrew Stuehrk [AStuehrk@NavigantConsulting.com]
Sent: Thursday, November 30, 2006 2:15 PM
To: rmetzger@nylb.org; dbanks@nylb.org; Owen, James
Subject: Fw: Midland/Everest Re - Request for Information
Attachments: 3M ALLOCATION ANALYSIS REPT 01-06.pdf; Bayer Allocation Analysis Report _Siegel_- 9-13-05.pdf

----- Forwarded by Andrew Stuehrk/NCI on 11/30/2006 03:13 PM -----

C. Andrew Stuehrk
Sent by: Andrew Stuehrk

To <James.Wendover@everestre.com>
cc BBarbagallo@navigantconsulting.com

Subject Re: Midland/Everest Re - Request for Information [Link](#)

05/25/2006 01:49 PM

Jim: per your prior request of May 18th, attached allocation reports for 3M and Bayer.

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<James.Wendover@everestre.com>

To <AStuehrk@NavigantConsulting.com>

cc

05/18/2006 03:18 PM

Subject Midland/Everest Re - Request for Information

12/19/2006

Andrew:

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Thank you for your prompt attention.

Jim

James C. Wendover
Everest Global Services
908-604-3220

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From: Andrew Stuehrk [AStuehrk@NavigantConsulting.com]
Sent: Thursday, November 30, 2006 2:26 PM
To: rmetzger@nylb.org; dbanks@nylb.org; Owen, James
Subject: Fw: audit at Midland

----- Forwarded by Andrew Stuehrk/NCI on 11/30/2006 03:16 PM -----

C. Andrew Stuehrk

Sent by: Andrew Stuehrk

To James.Wendover@everestire.com

cc MJLopez@navigantconsulting.com

Subject audit at Midland

05/31/2006 09:51 AM

We are booked with other audits for the next two weeks. Are you available the week of the June 19th. We have expanded the privileging process to accommodate your desire to review files and are up to 34 insureds. Please advise your schedule.

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C. Andrew Stuehrk, Director / 212-341-6261 (New York Liquidation Bureau) / 646-284-7376 (Mobile) / www.navigantconsulting.com

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12/19/2006

From: Andrew Stuehrk [AStuehrk@NavigantConsulting.com]
Sent: Thursday, November 30, 2006 2:26 PM
To: rmetzger@nylb.org; dbanks@nylb.org; Owen, James
Subject: Fw: midland insurance company audit

----- Forwarded by Andrew Stuehrk/NCI on 11/30/2006 03:17 PM -----
<James.Wendover@evereststre.com>

To <AStuehrk@NavigantConsulting.com>

cc

06/01/2006 03:30 PM

Subject RE: midland insurance company audit

I am planning on spending four days that week at NYLB. I have narrowed the list to be reviewed that week to twelve. They are, in order of preference:

1. Dow Chemical
2. GD Searle
3. General Dynamics
4. PPG Industries
5. Armstrong World Industries
6. Eli Lilly
7. Congoleum
8. American Standard
9. International Paper
10. Allied Chemical
11. Pennwalt
12. Wickes Corporation

We plan to start the scanning of the other files on the list of 34 on a simultaneous, parallel track that same week. I do not believe that it makes a difference to us what order those files are produced to the scanners. The 12 referenced above would be added to the end of the initial scanning run.

We have not yet received from Navigant an indication of which policyholders are on the "allowance" track for 2006. The list above may have to change once that information is provided.

Is it possible to get copies of the NODs to the sixteen policyholders?

Thanks.

Jim

As you know, Everest has previously reserved its rights under the Midland Contracts as to all reinsurance advices/claims submitted to Everest by Midland to date based on Midland's failure to comply with its obligations under the Midland Contracts, including the MPH claims referenced herein. Everest continues to reserve its rights and Everest's request for information from Midland shall not be deemed to establish a course of conduct, interpretation or

12/19/2006

waiver by Everest of any rights, obligations, terms or conditions existing and available under the Midland Contracts. Everest further reserves the right to request further information and to amend, change, modify or supplement its reservation of rights as additional information becomes available.

From: Andrew Stuehrk [mailto:ASTuehrk@NavigantConsulting.com]
Sent: Wednesday, May 31, 2006 11:37 AM
To: James Wendover
Subject: Fw: midland insurance company audit

Jim: the sooner you can identify the order of which files you want to see, the better. I suspect all 34 would be difficult to go through in one week. Can you narrow the list to first preferences please?

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----- Forwarded by Andrew Stuehrk/NCI on 05/31/2006 11:31 AM -----

C. Andrew Stuehrk
Sent by: Andrew Stuehrk

To James.Wendover@everestre.com

05/31/2006 11:30 AM

cc vtabone@nylb.org, Mary Jo Lopez/NCI@NAVIGANT
Subject midland insurance company audit

12/19/2006

Jim: here is the list of 34 insureds ready for your review. We will continue to privilege on the other insureds in anticipation of your audit. The insureds on the privilege list who have objected: Babcock, Congoleum, Flintkote, Int'l Paper, Uniroyal, W R Grace, Westinghouse. I will respond to the scanning request once I confirm with NYLB counsel.

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From: Andrew Stuehrk [AStuehrk@NavigantConsulting.com]
Sent: Thursday, November 30, 2006 2:26 PM
To: rmetzger@nylb.org; dbanks@nylb.org; Owen, James
Subject: Fw: Midland/Everest Re - Bristol Myers

----- Forwarded by Andrew Stuehrk/NCI on 11/30/2006 03:18 PM -----

<James.Wendover@everestre.com>

To <AStuehrk@NavigantConsulting.com>

cc

06/06/2006 01:03 PM

Subject Midland/Everest Re - Bristol Myers

Andrew:

Further to my voice mail this morning, Everest would like to add the Bristol Myers file to the list of files being reviewed the week of June 19, 2006. Thank you for your cooperation.

Jim

As you know, Everest has previously reserved its rights under the Midland Contracts as to all reinsurance advices/claims submitted to Everest by Midland to date based on Midland's failure to comply with its obligations under the Midland Contracts, including the MPH claims referenced herein. Everest continues to reserve its rights and Everest's request for information from Midland shall not be deemed to establish a course of conduct, interpretation or waiver by Everest of any rights, obligations, terms or conditions existing and available under the Midland Contracts. Everest further reserves the right to request further information and to amend, change, modify or supplement its reservation of rights as additional information becomes available.

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