

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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In the Matter of
the Ancillary Receivership of

INDEX NO. 452249/2020
MOTION DATE 07/20/2023
MOTION SEQ. NO. 002

AMERICAN SERVICE INSURANCE COMPANY

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 74, 75, 76, 77, 78, 79, 80, 81, 82 were read on this motion to/for MISC. SPECIAL PROCEEDINGS.

Upon the foregoing documents, and for the reasons stated on the record at oral argument on September 13, 2023, the motion is hereby granted in accordance with the order, dated September 14, 2023, annexed hereto.

9/14/2023

DATE

[Handwritten Signature]

ARTHUR F. ENGORON, J.S.C.

Form with checkboxes for: CHECK ONE: CASE DISPOSED, GRANTED, DENIED, NON-FINAL DISPOSITION, GRANTED IN PART, OTHER; APPLICATION: SETTLE ORDER, SUBMIT ORDER; CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN, FIDUCIARY APPOINTMENT, REFERENCE.

At IAS Part 37 of the Supreme Court of the State of New York, County of New York, at the Courthouse, 60 Centre Street, in the County, City and State of New York, on the 14th day of September, 2023.

P R E S E N T:

HON. ARTHUR F. ENGORON, J.S.C.

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

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In the Matter of  
  
the Ancillary Receivership of  
  
AMERICAN SERVICE INSURANCE COMPANY

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**Index No.: 452249/2020**

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

Upon the July 19, 2023, affirmation of Yuanzhou Wu, an attorney with the New York Liquidation Bureau (the "NYLB"), which serves as the staff of Adrienne A. Harris, Superintendent of Financial Services of the State of New York, in her capacity as ancillary receiver ("Ancillary Receiver") of the American Service Insurance Company ("ASIC") and administrator ("Administrator") of the New York Property/Casualty Insurance Security Fund and the New York Public Motor Vehicle Liability Security Fund, for an order establishing adjudication procedure ("Adjudication Procedure") in the above ancillary receivership proceeding and upon all other papers previously submitted and all proceedings heretofore had herein;

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

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

1. The Adjudication Procedure is approved.
2. The Adjudication Procedure is as follows:
  - A. This Adjudication Procedure shall apply to disputes arising out of the issuance of a denial letter (“Denial Letter”), no-fault denial of claim form (“Denial of Claim Form”) and a final determination letter (“Final Determination Letter”) to a claimant.
  - B. References to “claimant” shall mean those individuals or entities with the legal standing to maintain a claim under an insurance policy issued by ASIC. 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 and Denial of Claim Form.
    - a) The Administrator shall serve a Denial Letter or Denial of Claim Form on each claimant whose coverage for a claim is denied in whole or in part. Service of the Denial Letter or Denial of Claim Form will be made by First-Class Mail, 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 or Denial of Claim Form 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.
    - b) The Denial Letter or Denial of Claim Form shall advise each claimant of the following:
      - i) No further action by the claimant is required if the claimant accepts the Administrator’s determination as set forth in the Denial Letter or Denial of Claim Form;
      - ii) The claimant has the right to object to the Denial Letter or Denial of Claim Form, and can do so by serving a written objection with supporting documents on the Administrator within sixty (60) days from the date of the Denial Letter or Denial of Claim Form, as set forth in the Denial Letter or Denial of Claim Form;
      - iii) If the claimant makes a timely written objection, the Administrator will contact the claimant to attempt to resolve the objection. If the objection cannot be resolved and the claimant requests a hearing, the

Administrator will contact the claimant and the court-appointed referee (“Referee”) to initiate a pre-hearing conference. If the objection is not resolved, the Referee will set a date for a hearing;

- iv) The Referee thereafter will hear and report on the validity of the claimant’s objections; and
- v) Either the claimant or the Administrator may petition this Court, on notice, for an order confirming or denying the Referee’s report.

D. Final Determination Letter.

- a) The Administrator shall serve a Final Determination Letter on each claimant where the Administrator has determined there is coverage for the claim but 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 Mail, 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.
- b) The Final Determination Letter advises each claimant of the following:
  - i) 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;
  - ii) If the claimant accepts the Administrator’s valuation of the claim as set forth in the Final Determination Letter and returns the settlement documents within sixty (60) days from the date of the Final Determination Letter, application will be made to this Court to allow the claim in the amount specified in the Final Determination Letter or, in accordance with New York Insurance Law (“Insurance Law”) §§ 7428(b) and 7602(g), if the amount of the claim or the compromise between the Administrator’s and the claimant’s valuations of the claim does not exceed \$25,000, application will be made to the Superintendent 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;

- iii) The claimant has the right to object to the Final Determination Letter, and may do so by serving a written objection with supporting documents on the Administrator within sixty (60) days from the date of the Final Determination Letter, as set forth in the Final Determination Letter;
  - iv) If the claimant makes a timely written objection, the Administrator will contact the claimant to attempt to resolve the objection. If the objection cannot be resolved and the claimant requests a hearing, the Administrator will contact the claimant and the Referee to initiate a pre-hearing conference. If the objection is not resolved, the Referee will set a date for a hearing;
  - v) The Referee thereafter will hear and report on the validity of the claimant's objections;
  - vi) Either the claimant or the Administrator may petition this Court, on notice, for an order confirming or denying the Referee's report; and
  - vii) If the claimant fails to object and fails to provide fully executed settlement documents within sixty (60) days from the date of the Final Determination Letter, the Administrator may deem the claim abandoned and may seek an *ex parte* order of this Court approving the denial of the claim.
- E. In the event that a claimant requests a hearing, the Administrator's staff will contact the claimant in writing at the address set forth on the Denial Letter or Denial of Claim Form 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, then the claimant's objection is forfeited and the Denial Letter or Denial of Claim Form or Final Determination Letter is deemed accepted.
- F. In the event that a claimant fails to object to a Denial Letter or Denial of Claim Form or Final Determination Letter within the sixty (60) day period, the claim either shall be denied or allowed in the amount stated in the Final Determination Letter subject to this Court's approval in accordance with Insurance Law §§ 7428(b) and 7602(g).
- G. If a claimant fails to take the steps necessary to have its objection heard, the Referee may issue a dismissal of the objection and deem the Denial Letter or Denial of Claim Form or Final Determination Letter to be accepted.

H. The Administrator may settle objections in her sole discretion, at any time, without the necessity of receiving a report from the Referee; however, any settlement or settlement compromise exceeding \$25,000 is subject to approval by this Court, in accordance with Insurance Law §§ 7428(b) and 7602(g).

I. In the event the Administrator fails to timely meet any of the time periods set for mailing or delivering a notice required by order, it shall not affect the validity of the denial/determination but shall entitle the party that did not receive timely notice to toll its further obligations under the Adjudication Procedure until it receives the required notice.

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

NAME: Alberto Torres, Esq.

ADDRESS: 629 Melrose Avenue, Ground Floor, Bronx, New York 10455

PHONE NO.: 1-718-620-0106

as Referee to hear and take evidence on any issues or objections raised by claimants and report the Referee's findings to this Court. Either the claimant or the Administrator may petition this Court, on notice, for an order confirming or denying the Referee's report.

4. The Referee shall be paid a fee based on an hourly rate of \$200 as a loss adjustment expense of the Security Funds.

5. The Referee appointed to hear and report on objections shall conduct those hearings either virtually or in person at the place of business of the Administrator, currently located at 180 Maiden Lane, Borough of Manhattan, City, County and State of New York.

**SEP 14 2023**

ENTER



**HON. ARTHUR F. ENGORON** J. S. C.