

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: A. Engoron
Justice

PART 37

LACEWELL, LINDA A.

450297-19
INDEX NO.

MOTION DATE 12/20/19

MOTION SEQ. NO. 2

ATLANTIS Health Plan

The following papers, numbered 1 to _____, were read on this motion to approve procedure/Referee
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 0
Answering Affidavits — Exhibits _____ No(s). —
Replying Affidavits _____ No(s). —

Upon the foregoing papers, it is ordered that this motion is granted on
default and on the merits. Order
signed and filed herewith.

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

Dated: 12/20/19

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

- 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 37 of the Supreme Court of the State of New York, County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the 20th day of Dec., 2019.

PRESENT: *A. Engoron*

HON. ARTHUR F. ENGORON, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of

the Liquidation of

Index No.: 450297/2019

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

ATLANTIS HEALTH PLAN, INC.
-----X

Upon the November 18, 2019, motion, brought by order to show cause of Linda A. Lacewell, Superintendent of Financial Services of the State of New York in her capacity as liquidator (the "Liquidator") of Atlantis Health Plan, Inc. ("Atlantis"), for an (1) approving a procedure for judicial review of the Liquidator's recommended classifications and adjudications of claims and (2) appointing a referee to hear and report on any objections to the Liquidator's classifications and determinations of claims (the "Motion") and upon the papers in support of the Motion and all other papers previously submitted and all proceedings heretofore had herein;

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

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

ORDERED, that the procedure for judicial review of the Liquidator's recommended classifications and adjudications of claims in this proceeding is approved; and it is further

ORDERED, that

1. The Adjudication Procedure is as follows:
 - a. This Adjudication Procedure shall apply to disputes arising out of the issuance of a Classification Letter and/or Notice of Determination ("NOD") to a claimant.
 - b. References to "claimant" shall mean those individuals or entities with the legal standing to maintain a claim against Atlantis. 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. 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, or such other form of communication as may have been agreed to by the Liquidator 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 Classification Letter and NOD 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 Liquidator.
 - d. The Classification Letter shall advise 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. 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

- of the Classification Letter, as 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. If the objection is not resolved, the Referee will set a date for a hearing;
 - v. The court-appointed Referee will hear and report on the validity of the claimant's objections; and
 - vi. Either the claimant or the Liquidator may petition the court overseeing the Atlantis liquidation proceeding ("Supervising Court"), on notice, for an order confirming or denying the Referee's report.
- e. The NOD shall advise 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. 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 the 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 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 a 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. If the objection is not resolved, the Referee will set a date for a hearing;
 - vii. The court-appointed Referee will hear and report on the validity of the claimant's objections; and
 - viii. Either the claimant or the Liquidator may petition the Supervising Court, on notice, for an order either confirming or denying the Referee's report.
- f. In the event that a claimant requests a hearing, the Liquidator will contact the claimant in writing at the address set forth on the Classification Letter or 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 Classification Letter or NOD) 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 show up for the pre-hearing conference, then the claimant's objection to the Classification Letter or NOD is forfeited and the Classification Letter or NOD is deemed accepted.
- g. If a claimant fails to take the steps necessary to have its objection heard, the court-appointed Referee may issue a dismissal of the objection and deem the Classification Letter or NOD to be accepted.
- h. The Liquidator may settle objections in her sole discretion, at any time, 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 Insurance Law Section 7428(b).
- i. In the event the Liquidator fails to timely meet any of the time periods set for mailing or delivering a notice required by the 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.

- j. To the extent anything contained herein is inconsistent with the contracts and policies governing the claims, the Adjudication Procedure shall govern.

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

NAME: Edward H. Lehner
 ADDRESS: 180 Cabrini Blvd., NY 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. Either the claimant or the Liquidator may petition this Court, on notice, for an order confirming or denying the Referee's report.

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

4. The Referee appointed to hear and report on objections shall conduct those hearings at the place of business of the Liquidator, currently 180 Maiden Lane, Borough of Manhattan, City, County and State of New York.

ENTER



J. S. C.

12/20/19

HON. ARTHUR F. ENGORON

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