

STATE OF NEW YORK
SUPREME COURT
COMMERCIAL DIVISION

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COUNTY OF ALBANY



In the Matter of the Rehabilitation of
FRONTIER INSURANCE COMPANY

**ORDER
APPOINTING
REFEREE**

Index No. 97-06

WHEREAS, on October 10, 2001, Supreme Court, New York County (Lehner, J.) issued an Order of Rehabilitation pursuant to Article 74 of the Insurance Law placing Frontier Insurance Company ("Frontier") into rehabilitation under the supervision and management of the Superintendent of Insurance of the State of New York;

WHEREAS, following a transfer of venue, Supreme Court, Sullivan County (Clemente, J.) issued an Order Approving the Interim Procedure for Judicial Review of the Rehabilitator's Adjudication of Claims ("Interim Procedure Order") on May 10, 2004;

WHEREAS, this proceeding currently is venued in Albany County;

WHEREAS, under the Interim Procedure Order, any objection to the Rehabilitator's initial review of claims shall be referred by the Rehabilitator to a referee appointed by the Court to hear and report on the validity of the claimants' objections;

WHEREAS, the Hon. Robert C. Williams, a retired Justice of the Supreme Court in and for the Third Judicial District, was appointed to serve as referee pursuant to the Interim Procedure Order, and he has served in that capacity with great distinction for many years;

WHEREAS, Referee Williams no longer is able to serve, making it necessary to appoint a successor referee;

WHEREAS, the Hon. Leonard A. Weiss, the former Presiding Justice of the Appellate Division, Third Department, has expressed a willingness to serve as successor referee, and he is highly qualified to do so;

WHEREAS, Judge Weiss is of-counsel to the law firm of McNamee, Lochner, Titus & Williams, P.C. ("the Firm");

WHEREAS, H. Neal Conolly, a former administrator of the Frontier rehabilitation, also is of-counsel to the Firm;

WHEREAS, several other attorneys in the Firm have represented, and may currently be representing, Frontier in discrete litigation matters, none of which appear to be the subject of a claim made pursuant to the Interim Procedure Order or substantially related to any such claim;

WHEREAS, Judge Weiss has had some limited pre-rehabilitation involvement with Frontier with respect to lobbying State government on a discrete issue unrelated to any matters that would come before him as referee;

WHEREAS, Judge Weiss has represented to the Court that he has not had any prior exposure to the Frontier rehabilitation matter, any communications with Mr. Conolly concerning the Frontier rehabilitation, or any known involvement with any of the claims that are subject to the Interim Procedure Order;

WHEREAS, Judge Weiss has further assured the Court that he can preside fairly and impartially over claims that are the subject of the Interim Procedure Order, notwithstanding the foregoing potential conflicts;

WHEREAS, Judge Weiss has expressed his willingness to cause the Firm to establish a "firewall" to prevent any inappropriate intra-Firm contacts or communication regarding the Frontier rehabilitation, to make full disclosure of all potential conflicts of interest to claimants, and, in the interest of ensuring that all parties have full confidence in the adjudication process, to recuse himself from hearing any claim where an objection to his participation is made;

WHEREAS, the Court determines that it is appropriate for Judge Weiss to serve as referee in accordance with the foregoing conditions;

WHEREAS, full disclosure of the foregoing has been made to the Rehabilitator, and the Rehabilitator has given his informed consent in writing to the appointment of Judge Weiss to serve as Referee and has waived any and all conflicts that may have existed due to said appointment;

WHEREAS, given the volume of remaining claims and the substantial legal issues often presented by such claims, it is necessary to authorize the Referee to obtain administrative support and the assistance of a law clerk in carrying out his duties;

WHEREAS, it is further desirable that a roster of Additional Referees be established to assist the Referee in hearing and determining claims in a timely manner and to handle claims from the which the Referee is disqualified or recused;

NOW, therefore, it is hereby ORDERED as follows:

1. The Interim Procedure Order is hereby continued as modified herein and remains in full force and effect.
2. The Hon. Leonard A. Weiss is hereby appointed to serve as Referee (“the Referee”) pursuant to the Interim Procedure Order.
3. All open claims against Frontier, including those that were fully submitted to Referee Williams but for which no report and recommendation has been issued, are referred to Referee Weiss for disposition.
4. The Referee shall cause the Firm to establish a screening mechanism to insulate the Referee and anyone assisting him in the performance of his duties hereunder from receiving any intra-Firm communications or contacts regarding Frontier, the rehabilitation or any related matters.
5. Referee Weiss shall make full disclosure to each claimant regarding any potential conflicts of interest, including: his prior lobbying representation of Frontier; H. Neal Conolly’s relationship with the Firm; and any prior or current representation of Frontier by the Firm.
6. Following such disclosure, a claimant shall either: (a) provide its informed consent in writing to Referee Weiss hearing and reporting on its claim; or (b) decline to provide its informed consent in writing, in which case the Referee shall refer the claim to the Court for reassignment to an Additional Referee, as established below.
7. Notwithstanding the provisions of paragraph five and six, the claims of any self-represented claimants shall be referred to the Court for assignment to an Additional Referee.
8. There is hereby established a panel of Additional Referees, consisting of the Hon. Patrick D. Monseratte, a retired Justice of the Supreme Court and Administrative Judge in and for the Sixth Judicial District, the Hon. T. Anthony Kane, a retired Associate Justice of the Appellate Division, Third Department, and such other Additional Referees as the Court may designate from time to time. The Referee shall allocate claims among himself and the Additional Referees for disposition, except as provided in paragraphs six and seven.
9. The Referee and any Additional Referees shall be compensated at the rate of \$250 per hour by Frontier Insurance Company in Rehabilitation for their work, together with reimbursement for expenses actually and necessarily incurred in the performance of their duties.

10. The Referee shall be authorized to designate specific individuals within the Firm to provide legal and administrative support with respect to the duties prescribed hereunder. Such designation shall be made in a writing filed with the Court. Frontier Insurance Company in Rehabilitation shall provide compensation at the rate of \$75 per hour for such services, together with reimbursement for expenses actually and necessarily incurred in connection with the performance of such duties.
11. The referee assigned to preside over a particular matter shall conduct hearings in the Albany County Courthouse or in any other suitable and convenient court facility within the Third Judicial District.
12. The Referee shall have all powers necessary and proper for the discharge of the foregoing responsibilities and shall report to the Court in writing, no less than quarterly, with respect to activities conducted hereunder.

SO ORDERED!

Dated: Albany, New York
December 15, 2011



RICHARD M. PLATKIN
A.J.S.C.

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