

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

-----X
In the Matter of

Index No.: 41294/1986

the Liquidation of

AFFIRMATION

MIDLAND INSURANCE COMPANY.
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Melissa A. Pisapia, an attorney at law, duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I am an attorney with the New York Liquidation Bureau (“NYLB”), which serves as the staff of Adrienne A. Harris, Superintendent of the Department of Financial Services of the State of New York (“Superintendent”), in her capacity as liquidator (“Liquidator”) of Midland Insurance Company (“Midland”). I submit this affirmation upon information and belief, based on my review of the Midland files maintained by the NYLB and the conversations I have had with employees of the Liquidator, in support of the Liquidator’s application for an order approving the Liquidator’s report on the status of the Midland liquidation proceeding (“Interim Report”) and the financial transactions therein detailed.

2. The Interim Report is annexed hereto as Exhibit 1.

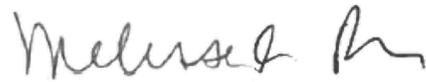
3. A copy of the proposed order is annexed hereto as Exhibit 2.

4. The Liquidator proposes to give notice of the return date of the accompanying Order to Show Cause by posting the Order to Show Cause and its supporting papers on the NYLB Internet web page at <https://www.nylb.org>, under Legal and Estate Notices, within five (5) days following the Liquidator's receipt of a signed copy of the Order to Show Cause.

5. No previous application for the relief sought herein has been made to this or any other court or judge thereof.

WHEREFORE, it is respectfully requested that the Court grant an order substantially in the form of the proposed order annexed hereto as Exhibit 2 (i) approving the Interim Report, annexed hereto as Exhibit 1, and the financial transactions detailed therein; (ii) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Midland liquidation proceeding; (iii) providing for such other and further relief deemed just and proper by this Court.

Dated: New York, New York
 March 20, 2025



Melissa A. Pisapia

REPORT ON THE STATUS OF THE LIQUIDATION PROCEEDING OF MIDLAND INSURANCE COMPANY

INTRODUCTION

Adrienne A. Harris, Superintendent of the Department of Financial Services of the State of New York (“Superintendent”), as liquidator (“Liquidator”) of Midland Insurance Company (“Midland”), submits this report (“Interim Report”) on the status of the liquidation proceeding.¹ A copy of the Interim Report is annexed as Exhibit 1 to the accompanying affirmation of Melissa A. Pisapia (the “Pisapia Aff.”).

In October 2005, the Liquidator submitted to the Court overseeing the liquidation of Midland (“Court”) a Court Report on the Midland liquidation proceeding and sought authority to make distributions to Class Two creditors (“2005 Status Report”). The 2005 Status Report set forth Midland’s financial condition as of August 31, 2005. On December 23, 2005 this Court entered an order approving the 2005 Status Report and granting the Liquidator authority to make distributions.

This Interim Report provides an update on the administration of Midland from September 1, 2005 until the December 31, 2024 (the “Reporting Period”), and reports that the Liquidator has taken the major steps necessary to close the estate. These steps have included (i) establishing deadlines for the submission of claims and supporting data, (ii) engaging in litigation to establish clear guidance on the role of reinsurers’ interposition rights in the allowance of claims and choice of law governing policies for major policyholders, (iii) submitting and taking follow-up steps on a request for a release to the Federal Government, (iv) diligently pursuing all reinsurance claims and other recoverables, and (v) adjudicating all open claims, except for a claim submitted by the

¹ The Liquidator has appointed David Axinn as Special Deputy Superintendent and Agent of the Liquidator with authority to carry out through the staff at the New York Liquidation Bureau the responsibilities of the Liquidator.

Environmental Protection Agency (“EPA”) against Midland (the “EPA Claim”). In addition, during the Reporting Period, the Liquidator has made distributions totaling approximately \$440.7 million (or 25% *pro rata* distribution on total Class Two claims that have been allowed²).

The Liquidator respectfully requests that the Court issue an order, substantially in the form of the proposed order annexed as Exhibit 2 to the Pisapia Aff., approving, *inter alia*, this Interim Report and the financial transactions herein detailed.

BACKGROUND

A. Midland and Its Liquidation

Midland was incorporated under New York law in October 1959 as a stock casualty company. Its charter authorized Midland to conduct business throughout the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Canada. Midland was a multi-line insurance carrier that wrote, among other things, a substantial amount of excess coverage for major Fortune 500 companies. Many of the claims asserted against Midland in liquidation are considered “long-tail,” meaning it can take decades for injuries incurred under a particular policy to manifest, develop and be adjudicated. Such claims include asbestos, environmental pollution, product liability, and other toxic torts.

On April 3, 1986, the Supreme Court of the State of New York, New York County (the “Court”), adjudged Midland to be insolvent and placed it into liquidation. A copy of the Liquidation Order is annexed to the Pisapia Aff. as Exhibit 3. The Liquidation Order appointed the Superintendent of Financial Services of the State of New York (successor to the Superintendent of Insurance) and his successors in office as Liquidator of Midland. Liquidation Order, Ex. A at 2-3. The Liquidation Order charged the Liquidator with, *inter alia*, liquidating Midland’s business,

² In Midland’s financial statements, allowed claims are referred to as “adjudicated claims.”

including adjudication of claims and recovery of assets for creditors primarily through affirmative litigation and reinsurance collections. *Id.*

In 1990, Midland Property and Casualty Insurance Company (“MIDPAC”), a wholly owned subsidiary of Midland, consented to voluntary liquidation. By order of the Court entered on June 1, 1990, MIDPAC was placed into liquidation. By 2012, the Liquidator had adjudicated and paid all claims in the proceeding and sought an order of the Court terminating the liquidation proceeding. By order dated March 12, 2013, the MIDPAC liquidation proceeding was closed.

B. Bar Dates

Because of the nature of Midland’s claims, the Liquidator carefully considered the timing to establish deadlines to submit claims and supporting data, balancing the need to provide claimants with long-tail claims a sufficient period to detect and update their claims against the need of the Liquidator to establish finality and wrap up the affairs of the estate.

The initial Liquidation Order provided that the last day for filing timely proofs of claim in the proceeding was April 3, 1987 (the “Proof of Claim Bar Date”). Throughout the liquidation, creditors who filed or were statutorily deemed to have filed proofs of claim before the Proof of Claim Bar Date were permitted to file evidence or other relevant materials to supplement existing claims or assert new claims under Midland policies that were not known to them when they filed their initial proofs of claim (“Claim Amendments”). In 2009, the Liquidator petitioned this Court for an order establishing a date by which all Claim Amendments must be filed with the Liquidator. By order entered on July 1, 2011, this Court (i) established January 31, 2012, as the last date on which holders of a claim against Midland, except for state guaranty associations, may submit a Claim Amendment to a previously filed or deemed filed proof of claim (the “Claim Amendment Bar Date”), and (ii) established January 31, 2013, as the last date on which the holder of a claim against Midland, except for state guaranty associations, may submit proof in support of allowance

of a previously filed or deemed filed claim (the “Evidentiary Bar Date”), and (iii) held that the Liquidator is not required to consider any proof submitted after this date. A copy of the July 1, 2011 order is annexed to the Pisapia Aff. as Exhibit 4.

In February 2015, the Liquidator moved the Court to extend the deadline for submitting claims amendments and supporting data for approximately 740 of Midland’s policyholders who were determined not to have received proper notice under the July 1, 2011 order.³ The Court granted the motion in an order entered April 30, 2015, and established December 31, 2015, as the date by policyholders must submit amendments to and any data in support of Undetermined Claims (the “Undetermined Claims Amendment Bar Date”, and collectively with the Proof of Claim Bar Date, the Claim Amendment Bar Date, and the Evidentiary Bar Date, the “Bar Dates”). Thus, by the close of 2015, the estate no longer accepted new claims or support and was able to adjudicate all outstanding claims.

C. Classes of Creditors

The priority of distribution of assets from a liquidating insurer is set forth in New York Insurance Law (“Insurance Law”) § 7434, which establishes the following classes:

Class One – Administrative Claims

Claims with respect to the actual and necessary costs and expenses of administration incurred by the Liquidator;

Class Two – Claims and Related Costs

All claims under policies including claims of the federal, state or local government for losses incurred, third-party claims, claims for unearned premiums, and all claims of the security fund guaranty associations, but excluding claims arising under reinsurance contracts;

Class Three – Federal and Government Claims

Claims of the federal government, except those stated above in Class Two;

³ This subset of policyholders had submitted timely claims in the liquidation proceeding, but as of the effective dates of the Claim Amendment Bar Date and Evidentiary Bar Date, had not yet had their claims adjudicated in the liquidation proceeding (“Undetermined Claims”).

Class Four – Employee Claims

Claims for wages owing to employees of an insurer against whom an Article 74 proceeding is commenced and claims for unemployment insurance contributions required by Article 18 of the New York Labor Law;

Class Five – State and Local Government Claims

Claims of state and local governments, except those stated above in Class Two;

Class Six – General Creditor Claims

Claims of general creditors, including, but not limited to, claims under reinsurance contracts;

Class Seven – Late Filed Claims

Claims filed late or any other claims other than claims under Class Eight or Class Nine below;

Class Eight – § 1307 Loans

Claims for advanced or borrowed funds made pursuant to Insurance Law § 1307; and

Class Nine – Shareholder Claims

Claims of shareholders or other owners in their capacity as shareholders.

D. Adjudication Procedures

By orders entered March 10, 1994, and January 31, 1997, this Court established procedures to resolve a claimant's objection to the Liquidator's recommendation to disallow or allow a claim. Pursuant to the procedures, claimants who objected to the Liquidator's determination of their claims were entitled to have their objections referred to the court-appointed referee who would hear and make a recommendation on the dispute. Either the claimant or the Liquidator could petition the Court on notice for an order confirming the referee's recommendation.

The Liquidator reviewed all timely filed claims within a priority class that would receive a distribution, *i.e.*, Class Two claims. All claims that the Liquidator identified as eligible for coverage by the New York State security funds -- the Property/Casualty Insurance Security Fund, the Public Motor Vehicle Liability Security Fund, and the Workers' Compensation Security Fund (collectively, the "New York Security Funds") -- were referred to the appropriate fund for review. All claims of out-of-state policyholders that the Liquidator identified as eligible for coverage by

funds maintained by other states for the payment of claims against insolvent insurance carriers were referred to those funds (“Guaranty Funds”).⁴

E. Loan to Workers’ Compensation Security Fund

In 2005, the New York Legislature adopted a series of measures to facilitate an infusion of money to stabilize the New York Workers’ Compensation Security Fund (“WC Fund”). Loans from liquidation estates, including Midland, were authorized under Insurance Law § 7433-a, and were paid back over time by the WC Fund. A loan of \$3,015,676 was made from the Midland estate to the WC Fund and was repaid in full by July 2007.

F. Reinsurer Litigation

In 2006, Everest Reinsurance Company (“Everest”) moved the Court to commence a breach of reinsurance litigation against Midland, claiming among other things breach of the duty of association and interposition rights. The Court denied Everest’s motion but directed that the claims adjudication procedures be updated to reflect Everest’s and other reinsurers’ contractual rights. The updated Claims Procedure Order, dated June 2, 2009 (the “CPO Order”), required the Liquidator to issue a Pre-Allowance Notice to notify reinsurers of claims that are partially or wholly reinsured and to provide reinsurers with a Notice of Determination when a claim is allowed. Under the CPO Order, Reinsurers were provided 90 days from the date of the Notice of Determination to exercise any contractual rights to challenge the allowed claim.

⁴ The New York Security Funds and Guaranty Funds (collectively, the “Funds”) are statutory funds intended to pay eligible claims of insolvent insurance companies up to a statutory limit. The Funds are funded by assessments on insurers admitted to write insurance within their respective states. The Funds, in turn, are able to seek reimbursement from Midland for the payments they make on its behalf. *See* Insurance Law § 7434(a)(1)(ii).

G. Choice-of-Law Litigation

Midland wrote a substantial amount of excess coverage for major Fortune 500 and other corporate entities across a number of states. In 2006, certain major policyholders (“MPHs”) and Midland’s reinsurers moved the Court to address their choice-of-law objections arising from the Court’s decision in *Matter of Midland Ins. Co. (Claim of Lac D’Amiante du Quebec, Ltee)*, 269 A.D.2d 50 (1st Dept. 2000), holding that New York law applies to claims in New York liquidation proceedings. The Liquidator had denied the policyholders’ claims exclusively applying New York substantive law to the interpretation of their policies. The policyholders disagreed and sought a determination of the law that governs their policies.

The legal issues were divided into two phases. Phase one addressed “whether New York substantive law governs Midland insurance policies at issue in this litigation or whether the Court must conduct an analysis utilizing the New York choice-of-law test to determine which jurisdiction’s or jurisdictions’ law(s) apply.” (CMO No. 1, § III.C.1.); *In re Midland Ins. Co.*, 20 Misc. 3d 488, 492 (N.Y. Sup. Ct. 2008). Phase two addressed the triggers for coverage under certain Midland policies, and “whether the policyholders have any obligation to exhaust other solvent and insolvent coverage prior to accessing its Midland policies.” (CMO No. 1, § III.C.8.); *id.*

The phase one issue on choice-of-law was litigated and appealed to the New York Court of Appeals, which held in a decision dated April 5, 2011, that New York law need not apply and the applicable law is determined under the “grouping of contacts” approach “to establish which State has the most significant relationship to the transaction and the parties.” In most cases, the Court held this will be the State where the insured is incorporated and has a principal place of business. *In re Midland Ins. Co.*, 16 N.Y.3d 536, 543-44 (N.Y. 2011) (quotations and citations omitted).

Both the Reinsurers' and the choice-of-law matters took considerable time and resources to litigate. However, once resolved, these litigations, along with the Bar Dates, provided a framework for the Liquidator to process and finalize the bulk of remaining claims and position the estate for closing.

H. Federal Waiver and Recent Filing of Federal Claims

Obtaining a release from personal liability from the Federal Government is often understood to be the final step in resolving a large receivership. Under the Federal Priority Statute, 31 U.S.C. § 3713(a), the federal government has a priority claim whenever "an act of bankruptcy is committed," which includes state insurance receiverships. Under 31 U.S.C. § 3713(b), if any non-policyholder claim is paid prior a Federal Government claim, the representative of the estate may be personally "liable to the extent of the payment for unpaid claims of the Government." Because of this severe penalty, many modern estates with Federal claims do not close or pay distributions until receiving a release from the Federal Government.⁵

As Midland's claims began to wind down in 2017, the Liquidator submitted a request for a release of the Liquidator's potential personal liability under the Federal Priority Statute for unknown or unasserted claims of the Federal Government. The Federal Government is under no requirement to process the waiver application within a specific time frame and, depending on the volume and complexity of potential claims, obtaining the waiver can take several years. To date, the Federal Government has made multiple information requests to the Liquidator and has indicated that it will not agree to a release until the EPA Claim is resolved.

⁵ Even though Bar Dates are an effective way to achieve finality with regard to filed claims, the Federal Government, relying on *Garcia v. Island Program Designer, Inc.*, 4 F.3d 57 (1st Cir. 1993), takes the position that it is not bound by Bar Dates in state receivership proceedings. Accordingly, as discussed further below, the Liquidator is unable to achieve certainty regarding any unasserted Federal claims without obtaining a Federal release.

In January 2024, the EPA asserted the EPA Claim against the Midland estate involving one insured and one cleanup site, for a total aggregate claim amount of approximately \$51.6 million.⁶ The claim seeks coverage under Midland insurance policies for response costs incurred by the EPA at various cleanup sites designated as Superfund sites under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). Under CERCLA, EPA has the right to collect against potentially responsible parties (“PRPs”) for environmental damage, including the insurance companies, such as Midland which issued general liability policies to the PRP.

The EPA Claim remains open. The EPA notified the Liquidator that it may assert additional EPA claims either against Midland or insureds or both with no indication or estimation of amounts for such claims. The Liquidator has been communicating with the Federal Government and has asserted defenses in connection with the claim asserted against ASARCO, Inc. (a PRP and Midland insured) for the Colorado Smelter Superfund Site in Pueblo, Colorado.⁷

The Liquidator has urged the EPA to file proofs of claim for any remaining claims, so that Midland may achieve finality regarding the EPA Claim and resolve the matter. However, if the EPA Claims cannot be resolved amicably, it may become necessary for the Liquidator to engage in complex litigation involving environmental law, insurance coverage, and federal authority under the McCarran-Ferguson Act, among other issues.

I. Reinsurance

The collection of reinsurance is a major part of the liquidation. The Liquidator's efforts to collect the reinsurance owed to Midland have been largely successful, with \$566.7 million having

⁶ In January 2025 after the Reporting Period, the EPA amended its claim to include two additional sites, one for \$51.6 million and the other for \$45.7 million, for an aggregate total claim amount of approximately \$148.9 million.

⁷ The Liquidator is currently evaluating the other two recently submitted claim amendments.

been recovered during the Reporting Period. These funds were collected through both direct billing of reinsurers and commutations. The Liquidator continues to carry approximately \$77.7 million as a recoverable on its balance sheet; however, the balance sheet records an offsetting reserve of \$72.4 million, reflecting the Liquidator's assessment as to the non-collectability of this amount. The reinsurance recoverables generally involve aged claims with reinsurers that are impaired or insolvent, many of which are located outside the United States. Recovery efforts against these claims have not been cost-effective.

Remaining reinsurance collections include a claim allowance for the Pennsylvania Property & Casualty Insurance Guaranty Association on behalf of Pittsburgh Plate and Glass Industries and may in the future include allowances on the EPA Claim.

CURRENT STATUS OF MIDLAND CLAIMS

A. Claims Submitted

In total, 26,182 claims were on Midland's books and records when the liquidation proceeding began in April 1986 or have been presented to the Liquidator by the applicable Bar Dates. Of the 26,182 claims against the estate, 23,861 are Class Two claims, all of which, except the EPA Claim, have been adjudicated. Because Midland has insufficient assets to pay Class Two claims in full, the Liquidator, in her discretion, has refrained from adjudicating claims below Class Two to avoid incurring unnecessary administrative expense.⁸

B. Class Two Claims

Of the 23,861 Class Two claims: 9,407 claims were duplicative claims; 1,799 claims were withdrawn; 11,097 claims were disallowed; 3 claims were New York Security Fund claims; 55 claims were submitted by Guaranty Funds of other states; and 1,500 claims were non-fund covered

⁸ Approximately 2,321 claims below Class Two have been presented to the Liquidator.

Class Two claims, of which one remains open. 1,557 Class Two claims have been allowed in the proceeding with a combined allowance amount, to date, of approximately \$1.8 billion.

1. New York Security Fund Claims

Three Class Two claims have been presented by the New York Security Funds and have been allowed, to date, for a total amount of \$94,908,805, including: an allowance of \$73,415,079 for the Property/Casualty Insurance Security Fund; \$7,040,620 for the Public Motor Vehicle Liability Security Fund; and \$14,453,106 for the Workers' Compensation Security Fund. The claims of the Public Motor Vehicle Liability Security Fund and Workers' Compensation Security Fund have been finalized and the claims are closed. The claim of the Property/Casualty Insurance Security Fund remains open with a reserve of \$272,666.

2. Guaranty Funds

55 Guaranty Funds of other States have presented Class Two claims against the Midland estate for a total allowance, to date, of approximately \$538 million. To date, the allowance has been offset by special deposit funds and subrogation and salvage recoveries that have reduced the total claim amount by approximately \$18 million, leaving a net Class Two allowance of approximately \$520 million. 14 claims of Guaranty Funds remain open with reserves of approximately \$17 million to be finalized.

3. Non-Fund Claims

A non-fund claim is a claim not covered by New York Security Funds or other state Guaranty Funds. All 1,499 non-fund claims have been allowed as Class Two claims for a total amount of \$1,172,361,896. There is one non-fund claim that remains open with a reserve of \$27,500,000.

C. Other Claims – Claims Below Class Two

The remaining 2,321 claims fall into classes below Class Two, which the Liquidator has refrained from adjudicating because there are no assets in the estate to pay claims below Class Two. There are no known Class Three (Federal Government) claims⁹ or Class Four (employee) claims. There are 117 Class Five state and local government claims with a total claim amount of \$8,317,574; 1,900 Class Six general creditor claims with a total claim amount of \$96,506,338; and 304 Class Seven late-filed deferred claims with a total claim amount of \$169,550,639. There are no Class Eight (§1307 loans) claims or Class Nine (shareholder) claims.

FINANCIAL REPORT

All financial data presented below is as of December 31, 2024. Midland’s Comparative Statement of Assets, Liabilities (“Balance Sheet”) is attached hereto as Exhibit A. Midland’s Receipts and Disbursements for the Reporting Period (“Cash Flow Statement”) is attached hereto as Exhibit B.

A. Assets

As reflected in the Balance Sheet, Midland’s total assets as of December 31, 2024 were \$401,148,496. This included approximately \$400 million in unrestricted assets and \$1 million in restricted assets.

B. Liabilities

As reflected in the Balance Sheet, Midland’s total liabilities as of December 31, 2024 were \$1,673,784,106.

⁹ The EPA Claim has not yet been classified by the Liquidator under the New York priority scheme.

C. Operating Expenses

As detailed in the Cash Flow Statement, total receipts during the Reporting Period amounted to approximately \$721 million. This consisted primarily of investment income of \$143 million and reinsurance recoveries of \$567 million.

Total operating expenses during the Reporting Period amounted to approximately \$116 million, which included salaries and benefits of liquidation staff employees, overhead, and professional fees. Therefore, during the Reporting Period, the Liquidator's collection efforts added approximately a net \$604 million to Midland's assets.

D. Disbursements

As set forth in the Cash Flow Statement, total disbursements during the Reporting Period amounted to approximately \$445 million. Disbursements consisted primarily of interim distributions of approximately \$440 million to policyholders and early access distributions to Guaranty Funds. These distributions were made under the authority provided in the Court's December 23, 2005 Order approving the 2005 Status Report.

The Liquidator will not increase the distributional percentage until the EPA Claim is resolved and the Liquidator obtains a release from the Federal Government. The Liquidator cannot predict when this will occur but is devoting full efforts to this outstanding item.

RELIEF SOUGHT

The Liquidator submits this Interim Report to inform the Court on the status of the Midland liquidation proceeding and that the affairs of the liquidation proceeding are nearing completion.

Accordingly, the Liquidator respectfully requests that the Court issue an order:

1. Approving this Interim Report and the financial transactions detailed herein;
2. Authorizing the continued payment of actual and necessary administrative expenses; and
3. Providing for such other and further relief as this court deems appropriate and just.

Dated: New York, New York
March 20, 2025



David Axinn
Special Deputy Superintendent and
Agent of Adrienne A. Harris,
Superintendent of the Department of
Financial Services of the State of New York
as Liquidator of Midland Insurance
Company

EXHIBIT A

THE DOMESTIC ESTATES IN LIQUIDATION
 COMBINING SCHEDULES OF ESTATES' ASSETS - MODIFIED CASH BASIS
 AS OF DECEMBER 31, 2021 AND 2020

Midland Insurance Company
Statement of Assets and Liabilities
As Of December 31, 2024

ASSETS--

Cash, Cash Equivalents and Investments

Cash and Cash Equivalents	\$ 88,777,761
Bonds, at fair market value	296,449,406
Total Cash, Cash Equivalents and Investments	<u>385,227,167</u>

Unrestricted Assets

Reinsurance Recoverables on Paid Losses and LAE	77,727,548
Less: Allowance for Uncollectible Reinsurance Recoverables	<u>(72,447,559)</u>
Net Reinsurance Recoverables on Paid Losses and LAE	5,279,989
Reinsurance Recoverables on Unpaid Losses and LAE	33,563,522
Less: Allowance for Uncollectible Reinsurance Recoverables	<u>(29,252,337)</u>
Net Reinsurance Recoverables on Unpaid Losses and LAE	4,311,185
Receivables from Others	3,000,000
Accrued Investment Income	2,267,607
Total Unrestricted Assets	<u>400,085,948</u>

Restricted Assets:

Other Restricted Assets	1,062,548
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Total Assets	<u>\$ 401,148,496</u>
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LIABILITIES--

Secured Claims	\$ 1,033,347
Class I - Administrative Claims	844,951
Class II - Claims and Related Costs:	
Adjudicated claim (Gross)	1,793,930,522
Prior distributions on adjudicated claims	<u>(440,662,986)</u>
Adjudicated claims net of prior distributions	1,353,267,536
Non-Adjudicated	<u>44,263,721</u>
Total Class II - Claims and Related Costs	<u>1,397,531,257</u>
Class III - Federal Government Claims	-
Class IV - Employee Claims	-
Class V - State and Local Government Claims	8,317,574
Class VI - General Creditor Claims	96,506,338
Class VII - Late Filed Claims	169,550,639
Class VIII - Section 1307 (Shareholder) Loans	-
Class IX - Shareholder Claims	-

Total Liabilities	<u>1,673,784,106</u>
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Deficit Liabilities over Assets	(1,272,635,610)
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Total Liabilities	<u>\$ 401,148,496</u>
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EXHIBIT B

Midland Insurance Company
Cash Receipts, Disbursements and Distributions

For The Period
9/1/2005 to 12/31/2024

Receipts--

Investment Income	142,608,979
Reinsurance Recovered	566,687,293
Salvage & Subrogation	75,306
Expense reimbursement Received from Security Funds	641,916
Partial Repayment of Workers Compensation Security Fund Loans	3,151,717
Release from Ancillary Special Deposits	7,059,944
Miscellaneous	423,120
Total Receipts	<u>720,648,275</u>

Operating Expenses--

Salaries	34,822,496
Employee Relations & Welfare	16,621,674
Rent & Rent Items	9,721,267
Professional Fees	47,862,383
General & Administrative Fees	3,326,987
Other Expenses	3,968,055
Total Operating Expenses	<u>116,322,862</u>

Receipts over Operating Expenses,	<u>604,325,413</u>
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Distributions--

Early Access Distributions	440,662,986
Deposit with Central Disbursement Account	1,500,000
Transfer to Segregated Account	431
Claims Paid	449,279
Loss Adjustment Expenses	2,079,728
Refund NY Security Fund	160,474
Salvage & Subrogation	110
Total Distributions	<u>444,853,008</u>

Receipts Over Operating Expenses & Distributions	<u>159,472,405</u>
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Cash and Invested Assets Beginning of Year	225,636,845
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Unrealized Gain (Loss) on Invested Assets	(254,396)
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Foreign Exchange	372,313
Cash End of Year	<u>385,227,167</u>

EXHIBIT 2

At IAS Part 8 of the Supreme Court of the State of New York, County of New York, at the courthouse, 80 Centre Street, in the County, City and State of New York, on the ____ day of _____, 2025.

P R E S E N T:

HON. LYNN R. KOTLER, J.S.C.

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

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In the Matter of

INDEX NO.: 41294/1986

the Liquidation of

ORDER

MIDLAND INSURANCE COMPANY.

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Upon the motion of the Superintendent of the Department of Financial Services of the State of New York, as liquidator (“Liquidator”) of Midland Insurance Company (“Midland”), for an order, *inter alia*: (i) approving the Liquidator’s report, dated March 20, 2025, on the status of the Midland liquidation proceeding (“Interim Report”) and the financial transactions detailed therein, annexed as Exhibit 1 to the affirmation of Melissa A. Pisapia accompanying this application; (ii) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Midland liquidation proceeding; and (iii) providing for such other and further relief deemed just and proper by this Court;

NOW, on the motion of the Liquidator, and no opposition having been filed with the Court, it is:

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

ORDERED, that the Interim Report and the financial transactions detailed therein are approved; and it is further

ORDERED, that continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Midland liquidation is authorized.

E N T E R

J.S.C.

EXHIBIT 3

At the Ex-Parte Office of the
Supreme Court of the State of
New York, County of New York,
60 Centre Street, in the Bor-
ough of Manhattan, City and
State of New York, on the 3rd
day of April, 1986.

P R E S E N T :

HON. *Thomas J. Hughes*

JUSTICE.

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In the Matter of
the Application of

Index No. *41294/1986*

ORDER OF LIQUIDATION

JAMES P. CORCORAN, as Superintendent
of Insurance of the State of New York,
for an order to take possession of and
liquidate the business and affairs of

MIDLAND INSURANCE COMPANY

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Now upon reading the Petition of JAMES P. CORCORAN,
Superintendent of Insurance of the State of New York, verified
the *2nd* day of April, 1986 and exhibits annexed thereto in sup-
port of the petition, and it appearing to my satisfaction (i)
that MIDLAND INSURANCE COMPANY (hereinafter referred to as
"MIDLAND") was incorporated under the laws of the State of New
York on October 29, 1959 and licensed as a stock casualty insurer
in the State of New York on December 31, 1959; (ii) that it is

amenable to the Insurance Law of the State of New York and particularly to Article 74 thereof; (iii) that it is impossible to reinsure in whole or in part the existing policy obligations of MIDLAND pursuant to Section 7405 (c) of the Insurance Law; (iv) that the corporate charter as well as any rights and interest in licenses or certificates of authority to write insurance be vested in the Superintendent of Insurance; (v) that MIDLAND is insolvent, that it is in such condition that its further transaction of business would be hazardous to its policyholders, creditors or to the public, that it is to their best interests that this application should be granted and MIDLAND liquidated under and pursuant to Article 74 of the Insurance Law;

NOW, on motion of Hon. ROBERT ABRAMS, Attorney General of the State of New York, it is

ORDERED ~~AND RESOLVED~~, that the petition of the Superintendent is granted; and it is further

ORDERED ~~AND RESOLVED~~, that JAMES P. CORCORAN, the Superintendent, or any successor in office as Superintendent, is hereby appointed Liquidator of MIDLAND, and is hereby authorized and directed forthwith to take possession of the property and liquidate the business and affairs of MIDLAND pursuant to Article 74 of the Insurance Law and to deal with the property and busi-

ness affairs of MIDLAND in his name as Superintendent, and is vested with title to all of the property, licenses, corporate charters, contracts and rights of action of MIDLAND pursuant to Section 7405 of the Insurance Law; and it is further

ORDERED ~~AND RESOLVED~~, that the notice of the aforesaid be given by publication in the national editions of The New York Times and The Journal of Commerce, commencing on or about the 16th day of April, 1936, and thereafter once a week for two successive weeks; and it is further

ORDERED ~~AND RESOLVED~~, that notice of liquidation be given by publication of such notice in one newspaper in Washington, D.C., San Juan, Puerto Rico, the United States Virgin Islands and in all the Capital Cities of the States in the United States and the Capital of Canada, and in the newspapers in other cities to be selected by the Liquidator in his discretion, by publication of such notice once a week for two successive weeks within the period allowed for the filing of claims; and it is further

ORDERED ~~AND RESOLVED~~, that the notice prescribed is sufficient notice to all persons interested in the assets of MIDLAND; and it is further

ORDERED ~~AND RESOLVED~~, that notice of the making and entry of this order be given by the Superintendent, as Liquida-

tor, to the extent it can be reasonably ascertained, by mail to all policyholders, creditors and all other persons having any unsatisfied claims or demands of any character against the corporation in the possession of the Superintendent, as Liquidator, at the last known address of such persons as disclosed by said records and in such other manner and form as he in his discretion may find desirable, demanding that all persons indebted to MIDLAND render accounts of their indebtedness and pay any sums due to the Superintendent, as Liquidator; and giving notice to present proofs of claim with the Superintendent, as Liquidator, at a place specified in such notice within twelve months from the date of the entry of this Order and no later than the *7th* day of *April* 1987; and that such notice may contain such other rules, regulations and information as the Superintendent, as Liquidator, may deem necessary for the purpose of this proceeding in fixing and determining all lawful and valid claims and demands against the corporation; and it is further

ORDERED ~~AND ADVISED~~, that in the event one or more Insurance Departments and/or Guaranty Funds or Associations of foreign States that have adopted the Uniform Insurers Liquidation Act in which respondent was licensed to do business, desire to give formal notice to policyholders and creditors in their respective states to present proofs of claim to the respective State Insurance Department or Guaranty Fund or Association, the Superintendent, as Liquidator, may permit the giving of such

notice as he in his discretion may find desirable; and it is further

ORDERED ~~AND ADJUDGED~~, that all outstanding policy and other insurance obligations as well as surety bonds and obligations thereunder of MIDLAND terminate and all liability thereunder cease and be fixed as of 12:01 A.M. Eastern Daylight Savings Time, 30 days after the signing of this Order, or prior thereto upon the procurement by policyholders of new insurance covering their risks insured thereby, as well as procurement by principals of new surety bonds covering the obligations thereunder and notice thereof shall be given as hereinabove set forth; and it is further

ORDERED ~~AND ADJUDGED~~, that all other subsisting contracts, leases, tax sharing agreements, individual labor contracts and other obligations of MIDLAND and all liability thereunder cease and be fixed as of the date of the entry of this Order; and it is further

ORDERED ~~AND ADJUDGED~~, that the Superintendent, as Liquidator, is relieved of the provisions set forth in Section 7405 (c) of the Insurance Law, to wit: to reinsure in whole or in part the policy obligations of MIDLAND; and it is further

ORDERED ~~AND ADJUDGED~~, that JAMES P. CORCORAN, the Superintendent or any successor in office as Superintendent, is hereby authorized, permitted and allowed to sell, assign and

transfer any and all stocks, bonds and securities in his possession or which may hereafter come into his possession belonging to MIDLAND, in liquidation, at market price or better, or when there is no market price, at the best price obtainable, at private sale and at such times and upon such terms and conditions as in his discretion he deems for the best interests of the creditors of MIDLAND, in liquidation, and that he be authorized, permitted and allowed to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers and assignments; and it is further

ORDERED ~~RECORDED~~, that JAMES P. CORCORAN, the Superintendent or any successor in office as Superintendent, is hereby authorized, permitted and allowed to sell, assign and transfer the Corporate Charter of MIDLAND and any and all insurance licenses or certificates of authority to write insurance in such a method and manner as is to be approved by the Court; and it is further

ORDERED ~~RECORDED~~, that the Superintendent of Insurance, as Liquidator of MIDLAND, be permitted in his discretion to continue contract negotiations for the sale of MIDLAND PROPERTY AND CASUALTY INSURANCE COMPANY in the present manner and format as has been already entered into by MIDLAND prior to this Order and that the consummation of the transaction be subject to a further order of the Court; and it is further

ORDERED ~~AND RECORDED~~ that MIDLAND, its officers, directors, trustees, policyholders, agents and employees and all other persons having any property or records belonging to MIDLAND, are hereby directed to assign, transfer and deliver to the Superintendent, as Liquidator, all of such property in whomsoever the same may be, and that any persons, firms or corporations having any books, papers or records relating to the business of said corporation shall preserve the same and submit them to the Superintendent, as Liquidator, for examination at all reasonable times; and it is further

ORDERED ~~AND RECORDED~~, that the officers, directors, trustees, policyholders, agents and employees of MIDLAND, and all other persons are enjoined and restrained from the further transaction of business or from dealing with or disposing of the property or assets of said corporation, or doing or permitting to be done any act or thing which might waste its property or assets or allow or suffer the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against said corporation, or its estate while in the possession and control of the Superintendent, as Liquidator; and it is further

ORDERED ~~AND RECORDED~~, that the officers, directors, trustees, policyholders, agents and employees of MIDLAND, and all other persons, including but not limited to claimants, plaintiffs and petitioners who have claims against MIDLAND, are per-

manently enjoined and restrained from bringing or further prosecuting any action at law, suit in equity, special or other proceeding against the said corporation or its estate, or the Superintendent and his successors in office, as Liquidator thereof, or from making or executing any levy upon the property or estate of said corporation, or from in any way interfering with the Superintendent, or any successor in office, in his possession or in the discharge of his duties as Liquidator thereof, or in the liquidation of the business of said corporation; and it is further

ORDERED ~~AND FURTHER~~, that all parties to law suits in this State and all other states and territories of the United States, are hereby enjoined and restrained from proceeding with any pre-trial conference, trial, application for judgment, or proceeding on judgments or settlements in such actions at law, suits in equity, special or other proceedings in which MIDLAND is obligated to defend a party insured or any other persons it is legally obligated to defend by virtue of its insurance contract for a period of 180 days from the date hereof; and it is further

ORDERED ~~AND FURTHER~~, that those persons who may have first party or New York Comprehensive Automobile Insurance Reparations Act (No-Fault) policyholder loss claims against MIDLAND coming within the purview of Article 76 of the Insurance Law,

are enjoined for 90 days from the date hereof from presenting and filing such formal claims in this proceeding pursuant to Section 7432 of the Insurance Law; and it is further

ORDERED ~~MIDLAND~~, that all parties to Administration Hearings before the Workers' Compensation Board coming within the purview of Article 76 of the Insurance Law (Property and Casualty Security Fund) and Section 107 of the Workers' Compensation Law (Stock Workers' Compensation Security Fund) are hereby enjoined and restrained from proceeding with conferences, hearings, applications for judgments or proceedings on said judgments or other proceedings in which MIDLAND is legally obligated to defend an insured employer or any other person by virtue of their Workers' Compensation Contract for a period of 90 days from the date hereof; and it is further

ORDERED ~~MIDLAND~~, that all parties to conferences before the Commissioner of the United States Department of Labor at various district offices in the United States, or Hearings before Administrative Law Judges of the Department of Labor and any ensuing appeals therefrom are hereby enjoined and restrained from proceeding with conferences, hearings, applications for judgments or proceedings on said judgments or other proceedings in which MIDLAND is legally obligated to defend or represent an insured employer or any other persons by virtue of their Longshore and Harbor Workers' Compensation Contract for a period of

90 days from the date hereof; and it is further

ORDERED ~~AND ADJUDGED~~, that all further papers in this proceeding shall bear the caption and be entitled:

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

In the Matter of
the Liquidation of
MIDLAND INSURANCE COMPANY"

in place and stead of the caption as heretofore used; and it is further

ORDERED ~~AND ADJUDGED~~, that the Superintendent, as Liquidator, may at any time make further application for such further and different relief as he sees fit.

E N T E R

151 T. J. H.
J. S. C.

Filed
4/13/86
New York County

DATE

I hereby certify that the foregoing paper is a true copy of the original thereof, filed in my office on the

3rd day of *April*, 1986

[Signature]

County Clerk and Clerk of the
Supreme Court New York County
NO FEE - OFFICIAL USE

EXHIBIT 4

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

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY

INDEX NO. 041294/1986
MOTION DATE 3/24/11
MOTION SEQ. NO. 080

The following papers, numbered 1 to 18 were read on this application

- Order to Show Cause— Verified Petition — Exhibits A-E _____ | No(s). 1-2
- Affirmation; Affidavit—Exhibit A; Objection — Affidavit; _____ | No(s). 3; 4; 5-6; 7; 8; 9; 10
Response and Statement of Opposition; Addendum to Response and Statement of
Opposition; Affirmation; Affidavit in Opposition _____
- Affirmation in Further Support — Exhibits 1, 2 _____ | No(s). 11
- Supplemental Affirmation in Further Support — Exhibits 1-3 _____ | No(s). 12
- Affirmation—Affidavit; Affirmation; _____ | No(s). 13-14; 15; 16
Supplemental Affirmation in Support of Opposition _____
- Supplemental Affirmation in Further Support of Objection _____ | No(s). 17
- Stipulation — Attachment A _____ | No(s). 18

Upon the foregoing papers, this application (denominated as a petition), by order to show cause, is decided in accordance with the annexed memorandum decision and order.

FILED

JUL 01 2011

NEW YORK
COUNTY CLERK'S OFFICE

HON. MICHAEL D. STALLMAN

Dated: 6/27/11
New York, New York


_____, J.S.C.

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

1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
2. Check if appropriate:..... MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. Check if appropriate:..... SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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

Index No. 41294/1986

Decision and Order

FILED

-----X
JUL 01 2011

HON. MICHAEL D. STALLMAN, J.:

The Superintendent of Insurance, as Liquidator of Midland Insurance Company, moves for an order establishing a deadline for claimants in this insurance liquidation proceeding to amend proofs of claims filed or deemed to have been filed with the Liquidator. Those litigants who have submitted papers in this application do not object to the concept of implementing a deadline for amendments. However, disagreements arise over the details of implementing the deadline, and the amount of information that claimants would be required to submit to the New York Liquidation Bureau.

BACKGROUND

The Court of Appeals succinctly summarized the relevant background of Midland Insurance Company (Midland) and this liquidation proceeding:

“Headquartered in Lower Manhattan, Midland was incorporated under New York law in October 1959 as a stock casualty insurer. Its charter authorized Midland to conduct business throughout the United States and in Canada. Midland carried multiline insurance, a type of insurance that typically bundles together different exposures to risks. During its existence, Midland transacted with Fortune 500 companies nationwide, underwriting a substantial amount of excess coverage policies.

In 1985, the New York State Insurance Department (the Insurance Department) commenced an investigation into Midland's financial condition. The Insurance Department's analysis of Midland's financial condition revealed that the company's liabilities exceeded its assets. On March 7, 1986, the Insurance

Department warned Midland that it would seek an order placing Midland into receivership if Midland was unable to get its financial affairs in order. Midland could not comply with the Insurance Department's directives and, by a unanimous vote of its board of directors, consented to liquidation.

By order dated April 3, 1986 (the Liquidation Order), Supreme Court adjudged Midland insolvent and placed it into liquidation pursuant to article 74 of the New York Insurance Law. As of this date, Midland's financial records showed that its assets totaled approximately \$307 million while its liabilities totaled approximately \$354 million, making it insolvent by about \$47 million. The Liquidation Order authorized the Superintendent of the Insurance Department (the Liquidator) to take possession of Midland's property and to sell or otherwise dispose of it at the best obtainable price.

Matter of Liquidation of Midland Ins. Co., 16 NY3d 536, 540-541 (2011).

Pursuant to Insurance Law § 7433 (b) (2), upon liquidation of a domestic insurer, the Liquidator must prepare a list of all persons whose names appear on the books and records of the insolvent insurance company as policyholders or claimants within 30 days of the last day for filing claims. The statute states that "Each person whose name appears upon such list shall be deemed to have duly filed a proof of claim prior to the last day set for the filing of claims."

"Following the entry of the Liquidation Order in Supreme Court, the Liquidator began the statutorily mandated process of notifying all persons with potential claims against Midland. To that end, the Liquidator mailed out over 38,000 proof of claim forms to known Midland policyholders, and other creditors. In addition to providing Midland's policyholders and creditors with notice of Midland's insolvency, the Liquidator informed them of their obligation to present their claims by filing the requisite proof of claim forms with the Insurance Department no later than April 3, 1987.¹"

Matter of Liquidation of Midland Ins. Co., 16 NY3d at 541.

¹ "The Liquidator was unable to identify every Midland creditor prior to the filing deadline. Creditors who returned their proof of claim forms after the filing deadline, but within four months of the Liquidator's mailing, were deemed to have timely filed." *Matter of Midland Ins. Co.*, 16 NY3d at 541 n 1.

Insurance Law § 7433 (a) (1) states that “[a] proof of claim shall consist of a written statement subscribed and affirmed by the claimant as true under the penalties of perjury, settling forth the claim, the consideration therefor, any securities held therefor, any payments made thereon, and that the sum is justly owing from the insurer to the claimant.” A claim may be allowed if, among other things, “it may be reasonably inferred from the proof presented that such person would be able to obtain judgment upon such cause of action against such insured.” Insurance Law § 7433 (d) (2) (A).

In this liquidation proceeding, the Liquidator permitted policyholders to submit a “Policyholder Protection” proof of claim. According to the Liquidator’s Report on the Status of the liquidation of Midland Insurance Company (Liquidator’s Report), approved by the Court on October 17, 2005, “[a] ‘policyholder protection’ proof of claim does not seek payment of a particular, known claim. Rather, it provides the policyholder with the right to present claims covered by policies issued by Midland that are presented after the claim filing deadline.” Report, at 11. Indeed, as seen in an example of a “Proof of Claim Acknowledgment” that Dana Corporation submitted to the Liquidation Bureau, a policyholder needs only to check off a box where the “Claim is made for policyholder protection up to the limits of the policy.” Lavella Aff., Ex A. By contrast, other claimants making a claim under their policies are instructed to “give a concise statement below of the facts constituting the claim and the total amount claimed.” *Id.*

The Liquidator maintains that the Policyholder Protection proof of claim was justified “given the complex nature of Midland’s claims, including its many long-tail claims for asbestos, environmental and other matters.” Liquidator Suppl. Mem. at 4. Given that a Policyholder Protection proof of claim does not provide any specifics about a claim against the estate, the

Policyholder Protection proof of claim is no more informative than if a proof of claim had been deemed filed pursuant to Insurance Law § 7433 (a) (1). It gives the Liquidator notice of little more than an intent to preserve an opportunity to make a specific claim at a later unspecified time.

I.

“The responsibility for the liquidation is that of the Superintendent of Insurance. He may ask the help of the court in solving the problems which arise from time to time . . .” *Matter of Lawyers Tit. & Guar. Co.*, 254 App Div 491, 494 (1st Dept 1938). Here, the Liquidator admits that Policyholder Protection proofs of claim caused a problem. The Liquidator states that “[t]he Policyholder Protection program preserved a policyholder’s option to file future claims, but established no deadline for doing so.” Liquidator Suppl. Mem. at 4. The Liquidator now moves for an order setting a deadline for amendments to previously filed (or deemed filed) proofs of claim.

Amendment of a proof of claim is not specifically addressed in Article 74 of the Insurance Law, the article that contains New York’s adoption of the Uniform Insurers Liquidation Act (UILA). However, “[o]n this and many other aspects of the liquidation process the [UILA] is silent because it was not intended as a comprehensive scheme displacing all State laws, substantive and procedural, relating to liquidation of insolvent insurance companies.” *Matter of Levin v National Colonial Ins. Co.*, 1 NY3d 350, 359 (2004), quoting *Matter of Transit Cas. Co. (Digirol-Superintendent of Ins.)*, 79 NY2d 13, 20 (1992). Amendment of a proof of claim is necessarily contemplated within the liquidation process, given that policyholders and claimants listed on the books and records of a defunct insurer are deemed to have duly filed proofs of claim prior to the last day set for the filing of claims. *See* Insurance Law § 7433 (b) (2). Amendment of a proof of claim that was deemed duly filed must be permitted so that the Liquidator has notice of the actual particulars of that claim in

order to evaluate it.

Article 74 envisions that the distribution of the assets of a defunct insurer will strike “a reasonable balance between the expeditious completion of the liquidation and protection of unliquidated and undetermined claims.” Insurance Law § 7434 (a) (1). The statute itself does not define unliquidated or undetermined claims, but case law defines an “unliquidated claim” as a claim “where the determinative circumstance has in fact occurred and what remains to be done relates merely to its judicial ascertainment or to the ascertainment of the resultant damages. *Matter of Empire State Surety Co. (In Re People, by Emmet)*, 165 App Div 135, 139 (1st Dept 1914). That is, “if the insolvent insurer’s liability is certain, but the amount of liability is unknown, then the claim is . . . merely unliquidated.” 26-165 Appelman on Insurance § 165.3. For the purposes of this decision, an “undetermined claim” is a claim for which no details about the claim have been provided to the Liquidator, so that the Liquidator cannot determine whether the estate would be liable to pay the claim.

Undetermined claims, as well as unliquidated claims, impede expeditious completion of a liquidation proceeding. Undetermined claims and unliquidated claims lack information about their dollar value. Without such information, the Liquidator is unable to make reasonable estimates of Midland’s liabilities, which prevents the Liquidator from determining whether assets are available for making additional distributions. Liquidator Suppl. Mem. at 6.

Moreover, an undetermined claim could be a contingent claim, i.e., “when it is uncertain whether the insolvent insurer will ever become liable to pay.” 26-165 Appelman on Insurance § 165.3; *Matter of Empire State Surety Co. (In Re People, by Emmet)*, 165 AD at 139 (“claims which are wholly contingent, [have] in fact no basis on which to rest at the time when jurisdiction is

assumed over the fund.”).

Insurance Law § 7433 (c) provides,

“No contingent claim shall share in a distribution of assets of an insurer adjudicated to be insolvent by an order made pursuant to section [7432] of this article except that any such claim shall be considered if properly presented and may be allowed to share if:

(1) it becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim, or

(2) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.”

Here, the Liquidator’s longstanding practice of allowing a Policyholder Protection proof of claim, while arguably fulfilling the aim of “protection of unliquidated and undetermined claims” (*see* Insurance Law § 7434 [a] [1]), nevertheless makes expeditious completion of the liquidation more difficult. The Liquidator asserts that policyholders that filed Policyholder Protection proofs of claim have refused to submit claims data in their possession or control, because the Liquidator did not establish any deadline for submitting details of the claim after filing of the Policyholder Protection proof of claim. The Liquidator asserts that,

“Without full and updated claims data, the Liquidator cannot perform allocation analyses and determine whether and the extent to which Midland’s policies are impacted by potential future claims. This means that policyholder claims cannot be settled or submitted for allowances. Further, without an understanding of how Midland’s policies are impacted, the Liquidator is unable to make reasonable estimates of Midland’s liabilities, which prevents the Liquidator from determining whether assets are available for making additional distributions. The result is that many of Midland’s claims cannot be processed and additional distributions cannot be paid.”

Liquidator Suppl. Mem. At 6.

For the purpose of determining the dollar amount of possible claims against Midland,

Policyholder Protection proofs of claim are considered "Incurred But Not Reported" claims, "defined as claims that were incurred during the coverage period of an insurance policy, but which have not yet been reported to the insurer." Liquidator Suppl. Mem. at 2. The Liquidator identifies two major categories of IBNR claims relevant to this liquidation proceeding:

Classic IBNR: *unknown or latent* injuries or damage that were incurred during the coverage period of a policy, but which have not yet manifested, e.g., asbestos-related diseases that may still remain latent. The Liquidator believes that "classic IBNR" does not make up a significant percent of Midland's liabilities.

Reporting IBNR: *known* claims that have already been submitted to policyholders, *but which have not been reported by the policyholders to Midland.* The Liquidator said this category arises out of the "Policyholder Protection" program.

Liquidator Suppl. Mem. at 3 (emphasis supplied).

The Liquidator believes that setting a deadline for the amendment of a proof of claim that was timely filed or deemed to have been duly filed (a Cutoff Date) would provide an incentive for policyholders to provide full and updated claims data to the Liquidator. The Liquidator proposes that any amendments to a proof of claim after the Cutoff Date "shall be barred." Some policyholders expressed concern about the amount of detail that they would need to provide in any amendment to a proof of claim.²

² The policyholders were The Babcock & Wilcox Company Asbestos PI Trust, CertainTeed Corporation, National Service Industries, Pfizer, Inc., and Warner-Lambert Company, LLC.

Pursuant to an undated stipulation with the Liquidator and these policyholders filed with the County Clerk on November 13, 2009, the Liquidator agreed that, for all Class Two claimants, an amendment to a proof of claim that was filed, or deemed to have been filed prior to April 3, 1987 must include "information that identifies the event, accident, or occurrence giving rise to the claim (e.g. exposure to asbestos), the person or property allegedly injured or damaged, and the nature of the allegedly injury or damage (e.g., asbestos-related bodily injury) (the "Basic Information)."

The Liquidator also agreed that "Where a claimant has submitted an effective Claim Amendment, other documents or materials in addition to Basic Information may continue to be

II.

The Court agrees with the Liquidator that a deadline for the amendments of timely filed (or deemed duly filed) proofs of claims would help the Liquidator to obtain data necessary to complete the allowance/valuation phase of the liquidation, and thereby expedite the completion of this 24 year old proceeding. As discussed above, amendment of a proof of claim is contemplated in the liquidation scheme. Without a definite deadline for amending a proof of a claim, a claimant could potentially amend a proof of claim repeatedly, or a claimant could wait indefinitely to submit a specific amendment. As a result, the Liquidator would not be able to fix the total amount of allowed claims against the estate with reasonable certainty to complete the liquidation. Multiple amendments to the filed (or deemed filed) proofs of claim are likely in this proceeding because the Liquidator permitted a proof of claim to encompass more than one claim against the estate.

The number of *proofs of claim* that were filed (27,168) did not correlate with the actual number of *claims* against the Midland estate. Liquidator's Report, at 11. For Midland's major policyholder claimants (MPHs), "there may be thousands of individual claims for each policy for many of the MPHs (e.g. asbestos claimants of an asbestos manufacturer). These individual claims of the MPHs are not reflected in the number of proofs of claim." *Id.* at 11-12. Therefore, amending a proof of claim could involve adding claims against the Midland estate that were not filed prior to the last day for filing proofs of claim, as opposed to amending the details of a previously timely filed proof of claim.

An amendment to a proof of claim should contain as much detail as is required for a proof

submitted after the Cutoff Date until such time as further submission is barred pursuant to applicable law or subsequent court order or agreement."

This Court did not so-order the stipulation.

of claim. As discussed above, “a proof of claim shall consist of a written statement . . . setting forth the claim, the consideration therefor, any securities held therefor, any payments made thereon, and that the sum is justly owing from the insurer to the claimant.” Insurance Law § 7433 (a) (1). The Liquidator’s rejection of an amendment to a proof of claim may be challenged before the Special Referee appointed to hear and report on written objections to disallowed claims. The procedures for challenging rejected amendments to proofs of claim shall follow, with some minor changes, the disallowance procedures established by Justice Beverly Cohen’s order dated March 10, 1994.

To illustrate, the Liquidator must send a notice of determination to the policyholder of its rejection of the amendment, in the same manner as the Liquidator would have sent a notice of determination of disallowance of a claim.³ The policyholder may file with the Liquidator written objections of the rejection of the amendment within 60 days of the date of the notice of rejection of a claim amendment. The timely objections received by the Liquidator will be referred to the Special Referee to hear and report.

III.

Simply setting a deadline for amending a proof of claim alone would not provide a sufficient incentive to policyholders to release claims data. Because the statute does not require detailed claims

³ The procedure for review of claims recommended for disallowance does not set an initial time frame for the Liquidator to notify claimants that their claim was recommended for disallowance. It provides that the Liquidator shall prepare a list of claims recommended for disallowance “on a periodic basis.” This lack of a clear time frame is acceptable because a claim recommended for disallowance that is successfully challenged before the Special Referee could result in the claim being allowed, or being remanded to the Liquidator for further evaluation.

By contrast, the lack of any clear time frame to notify claimants does not adapt well to the situation where the Liquidator rejects a Claim Amendment. The claimant should not have to wait until the original claim is recommended for allowance or disallowance in order to bring up for review a rejected Claim Amendment. Therefore, there should be a set time frame for the Liquidator to notify claimants that a Claim Amendment is rejected.

data to be part of a proof of claim, it follows that an amended proof of claim does not require the submission of detailed claims data.⁴

A claim may be allowed if, among other things, “it may be reasonably inferred from the proof presented that such person would be able to obtain judgment upon such cause of action against such insured.” Insurance Law § 7433 (d) (2) (A). Therefore, a deadline must be set for the submission of evidence in support of the allowance of a claim to prompt claimants to submit detailed claims data to the Liquidator.

The Court is mindful that a deadline for submission of proof in support of a claim will affect mostly the undetermined and unliquidated claims. Indeed, this was the intent of the Liquidator, who believes that “the only substantive effect of the Cutoff Date is that IBNR claims will be barred and therefore not considered for allowance.” Lorin Affirm. in Further Support ¶ 20. Setting a deadline at this time for submitting proof in support of the allowance of a claim strikes the correct balance between expeditious completion of the liquidation and protection of the undetermined and unliquidated claims.

According to the Liquidator, “Midland has a total of \$1.9 billion in allowed and estimated allowed claims.” Liquidator Suppl. Mem. at 7. By contrast, “[t]he Liquidator does not have an actuarial estimate of Midland’s IBNR, but has determined that, at its outermost limit, assuming relevant major policyholder claims reach their policy limits, IBNR would amount to \$605 million.” *Id.* at 7. The Liquidator argues that not setting a deadline for amendment of the proofs of claim means that “IBNR of \$605 million is holding up allowances and distributions of claims totaling more

⁴ Nevertheless, the Court strongly encourages claimants to submit more detailed amended proofs of claim than what the statute requires so as to facilitate expeditious evaluation of a claim by the Liquidator. Indeed, it would be advisable to submit as much information as possible.

than three times the value of the IBNR.” *Id.*

In addition, the Liquidator points out that, once a claim has been allowed, the claim will lose value until it is paid, because Insurance Law § 7434 (b) states that “No creditor shall be entitled to interest on any dividend by reason of delay in payment of such dividend.” “As a general rule, after property of an insolvent passes into the hands of a receiver or of an assignee in insolvency, interest is not allowed on the claims against the funds. The delay in distribution is the act of the law; it is a necessary incident to the settlement of the estate.” *Matter of People (Norske Lloyd Ins. Co.)*, 249 NY 139, 146-147 (1928) (citation omitted). Thus, the longer it takes to complete the liquidation and pay allowed claims, the more value the allowed claims will lose. The Liquidator states that, “after 24 years, the Liquidator has determined that losses to creditors from the time-value of money (*e.g.* inflation) should be reduced and that such losses far outweigh the added marginal value of holding the estate for the filing of future, unknown claims (*ie.*, IBNR).” Liquidator Suppl. Mem. at 6.

Trane U.S. Inc. (*f/k/a* American Standard, Inc.), a policyholder, objects to language in the Liquidator’s proposed orders setting the deadlines that would forever bar a policyholder from offering information to support a future Claim Amendment, if that information “was in its possession or control as of the applicable [Cutoff Date].” Trane Suppl. Mem. at 2. Trane points out that, for many policyholders, Midland was an excess insurer in several layers of insurance. Trane essentially contends that, even if the information about the underlying injury could be in its possession or control, 24 years might be too early to know whether Midland’s excess layer would be reached.

To the extent that Trane appears to discussing a scenario where it is uncertain at this time whether Midland would ever become liable to pay for the loss, this is the scenario of a contingent claim. *See* 26-165 Appleman on Insurance § 165.3, *supra* (“when it is uncertain whether the

insolvent insurer will ever become liable to pay.”). As discussed above, contingent claims could only share in the distribution of the estate if they became absolute on the last day for filing proofs of claim, i.e., April 3, 1987. Insurance Law § 7433 (c) (1). A contingent claim that would become absolute 24 years after April 3, 1987 would not be entitled to share in the distribution of Midland’s assets.

The case law firmly establishes that no exception to the deadlines can be made in the interests of equity or fairness. In *Matter of Professional Ins. Co. of N.Y. (Jason—Superintendent of Ins. of State of N.Y.)* (67 AD2d 850 [1st Dept 1979]), a physician insured for medical malpractice by an insolvent insurer submitted a claim to the Superintendent of Insurance as liquidator, who rejected the proof as untimely. The physician commenced a special proceeding to deem the proof of claim timely filed *nunc pro tunc*. The physician argued that he could not have filed any information about the medical malpractice claim until after the deadline for filing a proof of claim. Special Term granted the application, and the Appellate Division, First Department reversed the decision, ruling, “While petitioner could not have filed any information respecting the [malpractice] claim by the deadline of May 13, 1975, his ignorance of the claim is not recognized by statute to forgive a late filing.” *Id.* at 851. On appeal, the Court of Appeals affirmed the decision of the Appellate Division, for the reasons stated by the Appellate Division. *Matter of Professional Ins. Co. of N.Y. (Jason—Superintendent of Ins. of State of N.Y., 49 NY2d 716 [1980])*.⁵

Therefore, this Court sets herein a deadline for the submission of evidence in support of the allowance of a claim. Any evidence in support of the allowance of a claim submitted after this

⁵ As discussed above, Insurance Law § 7434 (a) (1) prohibits any shareholder, policyholder, or other creditor from circumventing the priority classes “through the use of equitable remedies.”

deadline shall not be considered by the Liquidator, except in support of allowance of the claim as a claim in Class Seven, Eight or Nine of the distribution scheme, as applicable.

If the Liquidator requires more information from a claimant after the deadline to determine whether a claim should be allowed or disallowed, then the Liquidator has the discretion to request that the claimant submit additional information.⁶ In that case, the claimant may submit the requested information notwithstanding that the deadline has passed, and the Liquidator may consider the requested submissions in determining whether to allow or disallow the claim.

IV.

Eighteen Guaranty Associations have submitted papers in partial opposition to the Liquidator's application.⁷ The Guaranty Associations support a deadline for amending the proofs of claim, "because entry of such an order now will expedite the completion of the Midland estate and distributions to the Guaranty Associations and other estate claimants." Guaranty Associations Mem. at 5. However, the Guaranty Associations object to any order that would prejudice their rights to payment pursuant to respective statutes governing Guaranty Associations, and maintain that the information the Liquidator requires would impose unreasonable, unnecessary, and burdensome obligations on Guaranty Associations. The Guaranty Associations request that any order setting

⁶ This would also include the situation where the Liquidator's rejected Claim Amendment was successfully challenged before a Special Referee, who ruled in favor of a claimant after the deadline to submit proof in support of a claim had already passed.

⁷ Counsel to the Guaranty Associations submitted papers on behalf of the 11 Guaranty Associations from the District of Columbia and the states of Connecticut, Florida, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, Texas, Vermont, and Virginia.

Counsel subsequently submitted additional papers on behalf of seven additional Guaranty Associations from the states of California, Colorado, Idaho, Kansas, Montana, Washington, and Wyoming.

deadlines should include language to “make the order clear that any such rights [of a Guaranty Association] are not affected by the order.” Tanski Suppl. Affirm. ¶ 7.

Guaranty Associations are nonprofit statutory entities created and governed by the state laws that created them. Tanski Affirm. ¶ 7. With a few exceptions, the statutes creating and governing Guaranty Associations are based on the National Association of Insurance Commissioners (NAIC) Post-Assessment Property and Liability Guaranty Association Model Act. *Id.* Guaranty Associations provide protection to the public against the hardships of the insolvencies of property and casualty insurers. *Id.*

“In general, under the Guaranty Association Statutes, each Guaranty Association is obligated to pay ‘covered claims’ of the residents of its jurisdiction of organization. As a general matter, ‘covered claims’ are defined in the respective Guaranty Association Statutes as unpaid claims which arise out of and are within the coverage of policies issued by an insolvent insurer. Upon the entry of the liquidation order of Midland, the Guaranty Associations became obligated to pay “covered claims” arising under certain Midland policies subject to the limitations provided in the respective Guaranty Association Statutes.

Generally, under the respective Guaranty Association Statutes, any person recovering on a ‘covered claim’ from a Guaranty Association is deemed to have assigned to the Guaranty Association his or her rights under the policy of the insolvent insurer.”

Id. ¶¶ 7-8.

As the Guaranty Associations indicate, the laws of other states and the laws of the District of Columbia require the Guaranty Associations to file periodic “statements” with the receiver or liquidator of an insolvent insurer. These are statements of the Guaranty Associations of covered claims paid by the Guaranty Association and estimates of anticipated claims. Those laws provide that filing these statements “shall preserve the rights of the Association against the assets of the insolvent insurer” (*see e.g.* Colo Rev Stat Ann § 10-4-511 [2]; DC Code § 31-5508 [d]; Conn Gen.

Stat Ann § 38a-844 [c]; Fla Stat Ann § 631.923 [3]; Idaho Code Ann § 41-3611[3]; Kan Stat Ann § 40-2909 [c]; Mont Code Ann § 33-10-114 [4]; Wash Rev Code Ann § 48.32.090 [3]), or similar language. Wyo Stat Ann § 26-31-110 (c) (ii). New York did not enact the NAIC Model Act that contains the language cited by the Guaranty Associations.

In this liquidation proceeding, the Liquidator permitted the Guaranty Associations to submit “blanket” proofs of claim.⁸ The number of blanket proofs of claim “does not reconcile with the number of actual claims made.” Liquidator’s Report at 11. Amendment of the proofs of claim permits the Guaranty Associations to submit additional claims that the Guaranty Associations paid to policyholders since the last time a blanket proof of claim was amended. However, if a deadline for amendment of the blanket proofs of claim of guaranty associations were set, then the Guaranty Associations would not be able to submit any additional claims that they subsequently paid after the deadline for allowance in the liquidation proceeding, except for consideration as a late claim.

Under Insurance Law § 7434, the assets of an insolvent insurance company (other than a life insurance company) are distributed in priority among nine classes of claimants, and those “class nine” are the last in line to receive any distribution, if at all. The statute requires that “[e]very claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment.” Claims under insurance policies and claims of a security fund, guaranty association or the equivalent (except claims arising under reinsurance contracts) fall

⁸ The practice of permitting guaranty associations to submit “blanket” proofs of claim is consistent with the industry practice. In 2005, NAIC adopted a new model act, the Insurer Receivership Model Act (IRMA), which is intended to replace UILA and the Insurers Rehabilitation and Liquidation Model Act of 1995 (IRLMA).

Section 702 (D) of IRMA states, “A guaranty association shall be permitted to file a single omnibus proof of claim for all claims of the association in connection with payment of claims of the insurer.” New York has not adopted either IRMA or IRLMA.

within “class two” of the distribution scheme. Insurance Law § 7434 (a) (ii). The statute prohibits creation of any subclasses within any class, and “[n]o claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority of classes through the use of equitable remedies.” Ins Law § 7434 (a) (1). The Liquidator raised the issue of whether exempting the Guaranty Associations from an order setting a Cutoff Date would amount to creating an impermissible subclass of creditors.

While this application was pending, the Court of Appeals decided the issue of whether the insurance policies issued by Midland must be interpreted under New York substantive law (because Midland was adjudged insolvent and placed into liquidation in New York), rather than following an individual choice-of-law analysis. It was argued that an individual choice-of-law analysis on each of Midland's policies would create “subclasses” among the Major Policyholders in violation of Insurance Law § 7434 (a) (1). The Court of Appeals rejected this argument, ruling, “[t]he purpose in including language proscribing the creation of “subclasses” is to ensure that members within a particular class are not given priority vis-à-vis one another in terms of distribution.” *Matter of Liquidation of Midland Ins. Co.*, 16 NY3d 536, 546 (2011). The rule against creation of subclasses does not apply to the “valuation stage” of the liquidation proceeding. *Id.*

Insofar as deadlines for the amendments of proofs of claim and for the evidence in support of a claim occur during the “valuation stage,” an order setting these deadlines that exempts the Guaranty Associations would therefore not amount to creation of an impermissible subclass of creditors composed only of Guaranty Associations.

In this Court’s view, setting a deadline for the amendment of proofs of claim and a deadline for submitting evidence in support of a claims allowance should not apply to the Guaranty

Associations. The Liquidator intended such deadlines to serve as incentives to policyholders to submit claims data and to bar consideration of IBNR claims for allowance. *Lorin Affirm*, in Further Support ¶ 20. Unlike IBNR claims, the claims of Guaranty Associations do not pose the same kind of obstacles to expeditious completion of the liquidation. A claim paid by a Guaranty Association is, by its nature, a liquidated claim. The dollar amount of such a paid claim is definite and certain. The Liquidator did not articulate any specific concern about whether the Guaranty Associations timely amended their blanket proofs of claim. There is no contention or indication that the Guaranty Associations withheld information from the Liquidator.

In the absence of any contention or evidence that the blanket proofs of claim of the Guaranty Associations are impeding expeditious completion of the liquidation, the Court sees no valid ground to interfere with the established practices of the Guaranty Associations of our sister states. Otherwise, to set deadlines here might make Guaranty Associations of sister states reluctant to pay claims to policyholders of defunct New York insurers residing in their states.

Therefore, the deadlines that the Court sets in this decision and order will not apply to the proofs of claims and the claims of the Guaranty Associations.

Of course, at some point, there must be an order setting a final deadline for submission of all claims for allowance in the liquidation, which would bar any further claims. *See Verified Petition*, Exs B & C. The petition does not seek such an order here. The Court sees no compelling reason to set a deadline barring submission of claims of the Guaranty Associations in advance of such an ultimate deadline.

CONCLUSION

Accordingly, it is hereby

ORDERED that January 31, 2012 is hereby established as the last date (Cutoff Date) on which the holder of a claim against Midland, except a State Guaranty Association, may submit an amendment to a previously filed (or deemed filed) proof of claim, including a policyholder protection proof of claim (Claim Amendment); and it is further

ORDERED that all Claim Amendments shall be made in writing and sent to the Liquidator electronically on or before the Cutoff Date, or by first class mail, postage paid and postmarked on or before the Cutoff Date, or by overnight courier service, fees paid and written acknowledgment of receipt by such courier on or before the Cutoff Date at the following address:

Superintendent of Insurance of the State of New York
as Liquidator of Midland Insurance Company
123 William Street
New York, New York 10038-3889
Attn: Estates Management
Gail Pierce-Siponen, Director

and it is further

ORDERED that if the Liquidator determines that a Claim Amendment does not amend a claim filed or deemed to have been filed on or before April 3, 1987, the Claim Amendment shall be deemed a proof of claim filed after April 3, 1987. If the Liquidator allows that claim, that claim shall fall under Class Seven in priority of the distribution of assets, unless such claim should fall under Class Eight or Class Nine of the distribution scheme set forth in Insurance Law § 7434; and it is further

ORDERED that the Liquidator's determination that a Claim Amendment does not amend a claim filed or deemed to have been filed on or before April 3, 1987 may be challenged before the Special Referee appointed to hear and report on written objections to claims recommended for disallowance; and it is further

ORDERED that, within 30 days after the Liquidator's rejection of a Claim Amendment, the Liquidator shall serve the claimant with a "Notice of Rejection of Claim Amendment" by first class mail to the claimant's last known address. The Notice shall advise each claimant that:

- (i) the Claim Amendment has been rejected by the Liquidator;
- (ii) the claimant may object to the Notice of Rejection of Claim Amendment by serving written objections to the Liquidator that must be received by the Liquidator within 60 days of the date of the Notice of Rejection of Claim Amendment;
- (iii) a timely objection to the Notice of Rejection of Claim Amendment will be referred to the Special Referee appointed by the Court to hear objections to claims recommended for disallowance, to hear and report on the validity of the claimant's objections, and that the Liquidator will notify each claimant of the time and place of the hearing on the objections;

and it is further

ORDERED that January 31, 2013 is hereby established as the last date on which the holder of a claim against Midland, except a State Guaranty Association, may submit proof in support of allowance of a previously filed (or deemed filed) claim against Midland, and the Liquidator shall not consider any proof submitted after January 31, 2013 in support of allowance of the claim; and it is further

ORDERED that, while the Liquidator's evaluation of a claim for allowance or disallowance is pending before the New York Liquidation Bureau, the Liquidator has the discretion to request any claimant to submit additional information and to consider the additional submissions, if the Liquidator requires such additional information to determine whether a claim should be allowed or disallowed, notwithstanding that the additional information is submitted after January 31, 2013; and it is further

ORDERED that the Liquidator shall provide notice of this Order to Midland's creditors with

unadjudicated claims who have filed, or are deemed to have filed, timely claims in this proceeding, by mailing a copy of a notice of this Order (Notice) by United States first class mail to the Policyholder's last known mailing address contained in the Liquidator's records, by publishing the Notice in *Business Insurance*, such publication to occur twice in the 30 days following entry of this Order, and by posting the Notice on the internet web page maintained by the New York Liquidation Bureau within 10 days following the entry of this order.

Dated: June 27, 2011
New York, New York

ENTER:



J.S.C.

HON. MICHAEL D. STALLMAN

FILED

JUL 01 2011

NEW YORK
COUNTY CLERK'S OFFICE

