

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 7

*The Supreme Court of the State of
New York, County of New York, at the
Courthouse at 11 Centre Street
3rd Floor, New York, NY
Monday, May 11, 2009
Index No. 41294/86*

In the Matter of

the Liquidation of

Midland Insurance Company

ORDER

Present:
HON. MICHAEL D. STALLMAN, J.

1. ~~On~~ ^{Wk} April 3, 1986, Midland Insurance Company, a New York authorized stock casualty insurer, was declared insolvent and placed into liquidation ("Midland") under the receivership of the Superintendent of Insurance ("Superintendent") of the State of New York as liquidator of Midland ("Liquidator"). Pursuant to Insurance Law Section 7434, payments to be distributed from the Midland estate are made on allowed claims. By order dated January 30, 1997 ("January 1997 Order"), Justice Beverly Cohen approved a procedure for the allowance of claims.

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2. Pursuant to a Decision and Order dated January 14, 2008 (the "Decision"), this Court held that "[t]o give effect to the contractual interposition rights" of Midland's reinsurers, the allowance procedures, in effect pursuant to the January 1997 Order, should be modified. The Decision held that those modifications should: (1) "permit reinsurers to assert defenses available to Midland or to the Liquidator to any claim allowed by the Liquidator that is either partially or wholly reinsured," and (2) "establish a process in which those defenses can be adjudicated as part of the judicial approval process, involving a hearing before a referee equivalent to that provided where an objection is filed to the Liquidator's disallowance of a claim." The Decision found that new procedures should "take into account a reinsurer's contractual right to notice, a right to associate and cooperate with the Liquidator, and/or a right to investigate claims."

3. The Decision also required the Liquidator to "solicit input from reinsurers, major policy holders, and the guaranty associations and any other interested parties about proposed changes," and "report to the Court within 120 days with proposed changes." The 120-day period was extended for 75 days, with the advice and agreement of the reinsurers, major policyholders and the guaranty associations (collectively, the "Interested Parties").¹

4. Since July 2008, the Liquidator and certain of the Interested Parties have apprised the Court of their progress in working with the Liquidator to prepare drafts of this proposed Order over the course of several telephone conference calls. The Interested Parties have provided their input and suggested revisions to the Liquidator's draft of this proposed Order. The Liquidator incorporated many of these revisions into its proposed Order. The submission of this proposed Order is without prejudice to any right to appeal.

5. In accordance with the Decision, and in addition to its draft of this proposed Order, the Liquidator submitted an affirmation which affirms that its draft of this proposed Order and the Liquidator's revised claims procedures for Midland ("Midland Claims Procedures") were circulated to the Interested Parties, that the Liquidator solicited and received input from the Interested Parties, and that some of that input was incorporated into its drafts of this proposed Order and the Midland Claims Procedures.

NOW THEREFORE,
The Court finds that
~~IT IS HEREBY ORDERED THAT:~~

1. The Liquidator has complied with the Decision by modifying his claims allowance procedures and creating the Revised Allowance Procedures described below in

Paragraph 3. *Accordingly, it is ORDERED that:*

¹ This extension was predicated upon the Liquidator providing notice of such extension on the web-site of the New York Liquidation Bureau ("Bureau"). Such Notice was posted on the Bureau's web-site on June 6, 2008. Thereafter, the 75-day period was subsequently extended several times, again, predicated on notice provided by the Liquidator on the Bureau's web-site until such time that this proposed Order was submitted.

2. The Revised Allowance Procedures apply to claims of both Major Policyholders and non-Major Policyholders, as those terms are defined in Midland Claims Procedures. The Liquidator has the right to amend the Midland Claims Procedures so long as any amendments are consistent with the Revised Allowance Procedures contained in this Order.

3. The Revised Allowance Procedures provide, in pertinent part, as follows:

(a) The Liquidator shall, on a periodic basis, prepare a list of any claims that the Liquidator is considering for allowance and that are either partially or wholly reinsured. The Liquidator shall mail a notice setting forth the listed claims ("Pre-Allowance Notice") to all reinsurers entitled to notice pursuant to one or more reinsurance contracts issued by such reinsurers ("Reinsurers"). If the identities of some or all reinsurers that potentially reinsure a particular claim are not known, as in the case of certain non-Major Policyholder claims, a general notice setting forth the applicable rights of the reinsurers shall be mailed to all reinsurers that have not commuted or otherwise compromised such claim with the Liquidator.

(b) If the Liquidator determines that a claim ^{is that of a Major Policyholder or a Major Policyholder} should be allowed, the Liquidator shall mail the claimant a Notice of Determination ("NOD"). The NOD shall advise each such claimant that the claim will be allowed by the Liquidator in the amount set forth therein subject to potential objections and court approval. The NOD shall not be mailed until at least sixty (60) days after the Liquidator's mailing of the Pre-Allowance Notice.

(c) A copy of the NOD shall be mailed to the Reinsurers and also to the applicable State Guaranty Association ("SGA") (or, if not known, to the Midland Coordinating Committee (the "Coordinating Committee") of the National Conference of Insurance Guaranty Funds ("NCIGF")). If the claim does not

involve any reinsurance protection and/or SGA involvement, the NOD shall not be mailed to any Reinsurers, any SGA, or the NCIGF.

- (d) If the claimant disputes the amount of the allowance, then the claimant may object to the NOD by serving a written objection on the Liquidator ("Objection"). The Objection must be received by the Liquidator within sixty (60) days of the date of the NOD. The Liquidator shall, within ten (10) business days of the date of the Liquidator's receipt of the Objection, send a copy of the same to any Reinsurer and to any SGA that the Liquidator knows has any involvement with the claimant's claim (or, if not known, to the Coordinating Committee).
- (e) If the claimant does not mail to the Liquidator a notice of acceptance of the NOD within sixty (60) days of the date of the NOD, then the claimant shall be deemed to have accepted the allowance. Within ten (10) business days of the date that the Liquidator has knowledge that the allowance has been accepted or deemed accepted, the Liquidator shall advise the Reinsurers and any affected SGA (or, if not known, to the Coordinating Committee) by mail that the claimant has accepted the allowance.
- (f) To the extent that a Reinsurer has a contractual right to interpose defenses that it in good faith believes are available to Midland or the Liquidator, such Reinsurer, in connection with the allowance, may interpose such defenses on behalf of Midland or the Liquidator. If such Reinsurer elects to exercise such right, it shall mail a "Notice of Intent to Interpose Defenses" to the Liquidator and the claimant within ninety (90) days of the date of the NOD. The Liquidator shall mail a copy of the Reinsurer's Notice of Intent to Interpose Defenses to any applicable SGA (or, if not known, to the Coordinating Committee), within ten (10) business days

of its receipt, and a copy to the claimant if it is received by the Liquidator prior to receipt of any Objection from the claimant. In such cases, the claimant shall mail a copy of its Objection to such Reinsurer contemporaneously with its mailing of the Objection to the Liquidator. Within thirty (30) days of receipt of the Reinsurer's Notice of Intent to Interpose Defenses, the claimant may dispute the amount of the allowance in the NOD as inadequate even where the claimant had previously accepted or been deemed to have accepted the NOD.

(g) If one or more Reinsurers timely files a Notice of Intent to Interpose Defenses, then the objection of the Reinsurer or Reinsurers shall be heard by a referee, as set forth in subparagraph (i) below.

(h) If the claimant accepts or is deemed to have accepted the claim allowance, and no Reinsurer serves a Notice of Intent to Interpose Defenses, then the claimant is not required to take any further action. The Liquidator will submit an *ex-parte* motion to this Court no sooner than ninety-one (91) days after the date of the NOD, seeking an order approving the allowance in the amount set forth on the NOD. If the allowance is approved by the Court, then the claimant will be entitled to share *pro rata* with claimants of the same class in the distribution of assets, if any, to be made by the Liquidator pursuant to New York Insurance Law Article 74.

(i) The Liquidator will refer each claim for which there is a timely objection by a claimant or timely Notice of Intent to Interpose Defenses filed by one or more Reinsurers to the referee appointed by order of this Court to hear and report on whether the claim should be allowed or disallowed, in whole or in part, including ~~timely objections or defenses raised by any party~~ ^{timely objections or defenses raised by the claimant or Reinsurer}. Where more than one

Reinsurer has exercised its contractual right to interpose defenses to the same claim, there will be a single consolidated proceeding before the referee.

- (j) The Liquidator will notify by mail each claimant, Reinsurer, and any applicable SGA (or, if not known, to the Coordinating Committee), of the time and place of the hearing before a referee.
- (k) An SGA shall have a right to notice of and to participate as a party in any judicial or other proceeding, including any proceeding before a referee, concerning: (i) a claim by the SGA, or (ii) a claim by a policyholder or other claimant under a policy where (A) the SGA has paid a claim under such policy and the claim by the SGA has not been finally allowed and approved by the Court; or (B) a claim has been asserted against the SGA under such policy and the SGA has notified the Liquidator that such claim may result in a claim by the SGA against the Liquidator.
- (l) If by no later than thirty (30) days before the Liquidator mails the NOD to the Reinsurer(s), the Liquidator has not provided a Reinsurer with all documents properly requested by such Reinsurer pursuant to a right to any access records clause or similar provision in its reinsurance contract, such Reinsurer shall be entitled to an extension of time to mail a Notice of Intent to Interpose Defenses, but in no event shall such extension of time be more than an additional forty-five (45) days. After service of the NOD, Reinsurers shall be entitled to reasonable access to the Liquidator's claim file as needed. Such access shall be provided within ten (10) business days of the Reinsurer's request for access, provided, however, that all documents previously copied for and provided to the Reinsurer or its agent shall not again be made available.

- (iv) Service or mailing as used anywhere herein refers to first-class mail to the last known address of the party to be served. If the parties agree in writing that service or mailing may be accomplished by means of electronic or facsimile transmission in lieu of mailing, and a copy of such proof of this authorized substitute for mailing is retained for purposes of presenting to the Court, if necessary, such substitute service shall be accepted.
- n) If the Liquidator fails to timely meet any of the time periods set for mailing notices pertaining to an allowance to any party, it shall not affect the validity of the allowance but shall only entitle the party that did not receive timely notice to postpone the approval process until such date as that party's notice rights have been fully protected.

Dated: *May 31, 2009*
New York, New York

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