

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

..... X

In the Matter of the

Liquidation of

MIDLAND INSURANCE COMPANY

..... X

Index No. 41294/1986

**REPLY AFFIRMATION**

*Submitted  
@ Rm 130 w/ off of  
service on calendar  
call (#77) @  
10:35 AM - marked  
fully submitted  
refer to Part 7  
4/20/09*

**AFFIRMATION IN FURTHER SUPPORT OF VERIFIED PETITION  
TO ESTABLISH A CUTOFF DATE FOR CLAIMS AGAINST  
MIDLAND INSURANCE COMPANY**

ANDREW J. LORIN, an attorney duly licensed to practice law in the State of New York, affirms the following under the penalties of perjury:

1. I am an Assistant Special Deputy Superintendent and General Counsel for the New York Liquidation Bureau ("Bureau"), the entity that carries out the duties of the Superintendent of Insurance of the State of New York as liquidator ("Liquidator") of Midland Insurance Company ("Midland"), and as such, I am fully familiar with the facts and circumstances of the proceedings herein. The sources of my information are the files maintained by the Bureau and communications made to me by employees of the Liquidator. I submit this affirmation in further support of the Verified Petition to Establish a Cutoff Date for Claims Against Midland Insurance Company dated February 9, 2009 (the "Petition") and in opposition to the objections of Trane U.S. Inc., dated April 9, 2009 (the "Trane Objection"), the Dana Companies, LLC, dated April 8, 2009 (the "Dana Objection"), certain Major Policyholders<sup>1</sup>, dated April 13, 2009 (the "MPH Objection"),

<sup>1</sup> This objection was filed by Gilbert Oshinsky LLP on behalf of The Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust, CertainFeed Corporation, National Service Industries, Pfizer Inc. and Warner-Lambert Company, Inc. (collectively the "MPH").

the Archdiocese of Dubuque, dated April 10, 2009 (the “Dubuque Objection”), and certain state guaranty associations, dated April 8, 2009 (the “Guaranty Association Objection”).<sup>2</sup>

**A. Background**

2. Midland has been in liquidation for more than 23 years, having been placed in liquidation by order of this Court on April 3, 1986 (the “Liquidation Order”). Under the Liquidation Order, claimants were generally required to identify themselves to the Liquidator on or before April 3, 1987 or be forever barred.<sup>3</sup>

3. On February 11, 2009, the Liquidator filed the Petition requesting the Court to set a final date (the “Cutoff Date”) by which Midland’s claimants must provide basic information concerning every claim they assert in this liquidation. In particular, the Liquidator has requested that claimants identify: (i) the event, accident or occurrence giving rise to the claim, (ii) the person or property allegedly injured or damaged and (iii) the nature of the alleged injury or damage.

4. In effect, the Liquidator has requested that claimants provide the basic information required to establish that a claim exists. The requested relief is analogous to a statute of limitations in that claimants must set forth the elements of their claim by the Cutoff Date. However, if a claim is timely filed by the Cutoff Date, claimants can later present evidence establishing their claim to the Liquidator. Accordingly, the Petition

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<sup>2</sup> Trane U.S. Inc. (“Trane”), Dana Companies, LLC (“Dana”), the MPH, the Archdiocese of Dubuque and the various guaranty associations (the “Guaranty Associations”) are referred to herein as the “Objectors.”

<sup>3</sup> Under certain conditions, the Liquidator permitted claimants who had not received a proof of claim form prior to April 3, 1987 to file a proof of claim after that date, provided the claimant appeared on Midland’s books and records as a policyholder or claimant.

would cut off claims which are not known to the claimant on the Cutoff Date. Such losses are commonly referred to as “incurred but not reported claims” or “IBNR.”<sup>4</sup>

**B. Argument**

5. There is abundant authority to support the relief requested by the Liquidator. The relief is authorized by the Liquidation Order and New York Insurance Law (“Insurance Law”) Sections 7419 and 7432(b). Insurance Law Section 7432(b) provides the Liquidator with general authority to prescribe a date certain by which “all persons who may have claims against such insurer shall present the same to the liquidator.” *Id.* As stated above, the Liquidator has historically permitted certain claimants to amend their claims since the original bar date of April 3, 1987. However, he now seeks to establish a firm date by which all claims must be identified, thereby cutting off unknown claims or IBNR.

6. Receivership courts have barred IBNR claims in numerous New York cases. *See, e.g., Matter of Knickerbocker Agency*, 4 N.Y.2d 245, 252 (1958) (“All persons who may have claims against the insolvent insurance company must, in order to share in the assets of such defunct insurance company, file their claims within a specified time in the liquidation proceeding”); *In re Liquidation of U.S. Capital Ins. Co.*, 283 A.D.2d 258, 258 (1st Dep’t 2001) (“we find that the counterclaims are time-barred for defendant’s failure to present them to the Liquidator within four months from the date of entry of the liquidation order”); *Jason v Superintendent of Insurance*, 67 A.D.2d 850, 851 (1st Dep’t 1979) (“While petitioner could not have filed any information respecting the . . . claim by

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<sup>4</sup> The Petition proposes a reasonable period of 90 days following the entry of the Court order in which claimants that have not yet submitted amendments to their proofs of claim may do so before the Cutoff Date takes effect.

the deadline of May 13, 1975, his ignorance of the claim is not recognized by statute to forgive a late filing”), *aff’d*, 49 N.Y.2d 716 (1980); *In the Matter of Ideal Mut. Ins. Co.*, Index No. 40275/85 (Sup. Ct., N.Y. Co., Dec. 9, 2003) (approving cutoff date); *In the Matter of Dominion Ins. Co.*, Index No. 40924/1986 (Sup. Ct., N.Y. Co., Apr. 5, 1999) (same).

7. There can be little doubt that this is an appropriate time in the Midland liquidation to bar IBNR claims. In every estate, the payment of creditors and ultimate closure of proceedings require that at some point unknown claims (*i.e.*, IBNR) must be cut off. The Liquidator has made two interim distributions in this case, but cannot make more interim distributions due to the uncertainty surrounding the estate’s ultimate liability for claims.<sup>5</sup> The Liquidator has determined that after 23 years, it is time to cut off IBNR and file a plan to make final distributions.

8. In this respect, the Liquidator’s judgment as to the appropriate time to cut off IBNR is entitled to deference unless his decisions are irrational. *See, e.g., Matter of Liquidation of Consolidated Mut. Ins. Co.*, 60 N.Y.2d 1, 8 (1983) (“the superintendent’s determination does not run counter to the clear wording of a statutory provision. He is, moreover, vested by sections 10 and 21 of the Insurance Law with broad power to

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<sup>5</sup> Dana supports its opposition to the imposition of a Cutoff Date with an incomplete quotation from a report made to this Court in October of 2005 on the status of the Midland liquidation referencing “creditors whose claims have yet to be reported” (Dana Objection ¶¶ 7, 10). The complete quotation explains exactly why the Cutoff Date is so vital:

In order to calculate a feasible distribution percentage, the Liquidator must determine Midland’s distributable assets and make a conservative estimate of Midland’s outstanding liabilities. This approach is necessary to insure that there will be sufficient assets to pay all creditors within a class, including creditors whose claims have yet to be adjudicated or reported.

Report on the Status of the Liquidation of Midland Insurance Company and a Proposal for the Distribution of Assets to Class Two Creditors Pursuant to Insurance Law Section 7434 dated October 13, 2005 at 26.

interpret, clarify, and implement the legislative policy embodied in that law) (citations omitted); *Mills v. Florida Asset Fin. Corp.*, 31 A.D.3d 849, 850 (3d Dep't 2006) ("courts will generally defer to the rehabilitator's business judgment and disapprove the rehabilitator's actions only when they are shown to be arbitrary, capricious or an abuse of discretion").

### **C. Trane and Dana Objections**

9. Trane and Dana contend that the Court should not cutoff IBNR at this time. As discussed above, this position is not supported by New York law.

10. The Objectors rely on Insurance Law Section 7434(a)(1), which provides: "Upon the recommendation of the superintendent and under the direction of the court, distribution payments shall be made in a manner that ensures the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims." *Id.* (emphasis added). However, this liquidation case has been pending for 23 years. It is not open to policyholders, at this point, to argue that the Liquidator has unreasonably sacrificed their interests at the expense of "expeditious completion" of the case.

11. Certain Objectors also complain that imposing a Cutoff Date is not necessary to achieve a sale of Midland's assets. (Trane Obj. at 4; Guaranty Association Obj. ¶ 15). The Liquidator believes that the Cutoff Date would assist in such a sale. However, the Petition states that irrespective of the proposed sale, "[t]he Cutoff Date also represents an important step toward bringing the liquidation to its conclusion," and notes that the failure to cutoff IBNR would complicate efforts to determine Midland's liabilities, which "could delay closure of the estate." (Petition ¶ 10). Accordingly, the Cutoff Date is

an important component in the Liquidator's efforts to conclude the estate, and such Cutoff Date would have value to the proceedings even in the absence of the proposed sale.

12. Trane relies on the practice in the United Kingdom of propounding schemes of arrangement for insolvent insurers, which are based upon permitting the insurer to pay estimates of IBNR claims. Trane argues that the existence of actuarial methods to estimate IBNR "draws into question the necessity of imposing a cutoff date in the Midland liquidation." (Trane Obj. at 4). Put simply, however, the practice of estimating IBNR is not authorized by Insurance Law Article 74 or employed in New York liquidations, and, therefore, does not support Trane's contention that the Cutoff Date is unnecessary.

13. Both Trane and Dana object that the Cutoff Date "would deprive policyholders . . . of the benefit of the coverage that they purchased from Midland" (Trane Obj. at 5; *see also* Dana Obj. ¶ 12). However, the Objectors misapprehend the effect of Article 74, which is to supersede common law contractual rights governing solvent insurers with a statutory scheme for determining claims and paying distributions for insolvent insurers in receivership. *See, e.g., Knickerbocker*, 4 N.Y.2d at 251 ("It was at that time that the provisions of article XVI [now Article 74] of the Insurance Law came into operation, and it was at that time that the contractual provision relating to arbitration became of no effect"). Within the statutory scheme of Article 74, the Liquidator is clearly authorized to cut off unknown or IBNR claims as part of the administration of the proceeding. *See* Insurance Law §§ 7419, 7432(b).

14. Curiously, Dana relies on an opinion of the New Jersey Superior Court, *Matter of the Liquidation of Integrity Ins. Co.*, 691 A.2d 898, 905 (N.J. Super. 1996), but that decision is not good law in New Jersey or New York. Dana argues that the Superior

Court recognized that a liquidator's payment of estimated IBNR is beneficial to "creditors, as well as the general public." (Dana Obj. ¶ 13). However, Dana fails to recognize that on a later appeal, the New Jersey Appellate Division and New Jersey Supreme Court rejected the Superior Court's holding, finding that New Jersey's liquidation statute prohibits consideration and payment of IBNR by the liquidator. See *Matter of the Liquidation of Integrity Insurance Co.*, 2006 WL 2795343, at \*3 (N.J. App. Div., Oct. 2, 2006), *aff'd*, 193 N.J. 86, 97 (2007) ("If IBNR claims cannot so qualify, they cannot participate in the final dividend plan. To that extent, then, the . . . final dividend plan approved by the Chancery court cannot be sustained"). Furthermore, the Superior Court's decision did not address the issue raised in this Petition, which is whether it is appropriate to cut off IBNR in the interests of resolving an insolvent estate. Accordingly, there is no reason to credit a decision on an unrelated point from an out-of-state court that has been rejected by that state's highest court.

#### **D. MPH Objections**

15. The MPH do not object to cutting off IBNR, but have raised a number of objections based on the Petition's alleged lack of clarity with regard to the documentation that must be submitted as of the Cutoff Date to preserve a claim for allowance. (MPH Obj. ¶ 11). The Liquidator believes that the Petition is clear on this point, stating that a policyholder must identify: (i) the event, accident, or occurrence giving rise to the claim, (ii) the person or property allegedly injured or damaged, and (iii) the nature of the injury or damage. However, in the interests of clarifying the Petition, the Liquidator has held discussions with the MPH and believes that these discussions have resolved or narrowed most of the MPH's objections.

16. As noted above, the Liquidator views the Cutoff Date as an exercise in pleading rather than an exercise in proof. As such, by the Cutoff Date, a policyholder is only required to identify (not prove) the basic elements of its claim, namely the party who was injured, a description of the event, accident or occurrence which triggered coverage under the Midland policy, and a description of the injury. The Petition does not require a claimant to provide evidence to support its claims by the Cutoff Date, such as the indemnity amounts that the claimant has incurred in connection with the covered claim. The claimant will have the opportunity to submit supporting evidence after the Cutoff Date, subject to time limitations established by Insurance Law Article 74 and court order.

17. Nor does the Petition require (or suggest) that policyholders resubmit information that has already been provided to the Liquidator in order to set forth a claim by the Cutoff Date. To be clear, previously filed information will continue to be part of the file and does not need to be resubmitted.

18. While the Liquidator believes that Petition is clear on these subjects, the Liquidator is annexing hereto as Exhibit 1 a revised order and notice that are intended to clarify these issues for the creditors. The Liquidator requests that the Court substitute the revised order and notice in Exhibit 1 in place of the originally proposed order and notice presently attached as Exhibits D and E to the Petition.<sup>6</sup> As noted, the Liquidator expects that the proposed clarifications will resolve most of the MPH objections.

19. The MPH have also objected that the Cutoff Date should not become effective until the order approving the Petition has become final and unappealable. The objection seeking an appellate stay, however, is premature given that the Petition has not

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<sup>6</sup> Redlined versions of the revised order and notice as compared against the originally proposed order and notice are annexed hereto as Exhibit 2.



yet been granted and no appeal has been taken. A stay pending appeal generally cannot issue unless the Appellate Division or trial court determines under CPLR 5519(c) that the appeal: (i) has merit, and (ii) does not result in harm or prejudice to either party. *See Application of Mott*, 123 N.Y.S.2d 603, 608 (Sup. Ct., Oswego Co. 1953). In effect, the MPH are asking the Court to impose an automatic stay upon any appeal of the Court's order. Such an automatic stay, however, would significantly delay the Liquidator's plans to resolve the estate, resulting in potential prejudice to creditors as a whole. Furthermore, the requested automatic stay would place undue leverage in the hands of individual creditors who could invoke the stay upon the filing of even a meritless appeal. Accordingly, this issue should be addressed, if at all, upon the taking of a proper appeal.

20. Lastly, the MPH seek clarification regarding the Liquidator's plans for the consideration and disposition of the claims which they will be filing, including so-called contingent or unliquidated claims. (MPH Obj. ¶¶ 10, 21). This issue is not placed before the Court by the Petition. The procedures governing allowance in this proceeding have been established by Article 74 and by court orders and these procedures will not change as a result of the Cutoff Order. The only substantive effect of the Cutoff Date is that IBNR claims will be barred and therefore not considered for allowance.

#### **E. Guaranty Association Objection**

21. The Guaranty Associations have objected to the Cutoff Date on the grounds that providing the required information places "unreasonable, unnecessary burdensome obligations" upon them. (Guaranty Association Obj. ¶ 11). After discussing the matter with the Guaranty Associations, the Liquidator has submitted a proposed revised order and notice annexed hereto as Exhibit 1. It is expected that the proposed revisions will induce

the Guaranty Associations to withdraw their objections. However, if the matter is not resolved, the Liquidator submits that it is not unreasonable, unnecessary or burdensome to require the Guaranty Associations to “identify the events, accidents or occurrences giving rise to their claims, the persons or property allegedly injured or damaged, and the nature of the alleged injury or damage.” (Petition at 1-2). The Liquidator requires that all creditors submit this bare minimum information, and in this respect the Guaranty Associations are no different than other creditors. Without such minimum information, the Liquidator is unable to distinguish one claim from another and would not know which claims were cut off and which were not.

22. The Guaranty Associations have raised an assortment of issues concerning proof of their claims for purposes of allowance. As noted above, issues concerning the procedures governing allowance, including the sufficiency of evidence required, do not come within the scope of the Petition. Allowance procedures are governed by Article 74 and other orders of this Court.

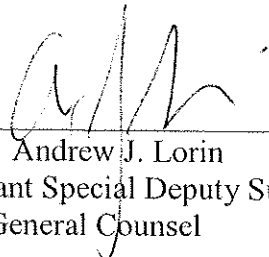
**F. Dubuque Objection**

23. The Dubuque Objection does not address the Petition, but rather appears to seek assurance that the claim of the Archdiocese of Dubuque (“Dubuque”) was not barred by the deadline of April 3, 1987 set forth in the Liquidation Order for submitting proofs of claim. As noted in the Petition, under certain conditions, the Liquidator has permitted a claimant who did not receive a proof of claim form prior to April 3, 1987 to file a proof of claim after that date, provided the claimant appeared on Midland’s books and records as a policyholder or claimant. (Petition ¶ 3). The question of whether Dubuque complied with the Liquidation Order and the Liquidator’s procedures would be properly raised in a

hearing upon the Liquidator's denial of Dubuque's claim, but is not a proper subject for this Petition.<sup>6</sup>

WHEREFORE, the Liquidator respectfully requests that grant the relief sought in the Petition.

Dated: New York, New York  
April 17, 2009

By:   
\_\_\_\_\_  
Andrew J. Lorin  
Assistant Special Deputy Superintendent  
and General Counsel

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<sup>6</sup> The Liquidator has contacted Dubuque's attorney on this issue, and hopes that this conversation will lead Dubuque to withdraw its objection.

**Exhibit 1**

At IAS Part 7 of the Supreme Court of the State of New York, County of New York at the Courthouse, 111 Centre Street, Borough of Manhattan, City and State of New York on the \_\_\_\_th day of \_\_\_\_\_, 2009

PRESENT:

HON. MICHAEL D. STALLMAN

JUSTICE.

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In the Matter of the

Index No. 41294/1986

Liquidation of

MIDLAND INSURANCE COMPANY

..... X

**ORDER ESTABLISHING CUTOFF DATE FOR CLAIMS AGAINST MIDLAND INSURANCE COMPANY**

UPON the petition of MARK G. PETERS, Special Deputy Superintendent and Agent of ERIC R. DINALLO, Superintendent of Insurance of the State of New York as Liquidator (“Liquidator”) of the Midland Insurance Company, a New York insurance company in liquidation (“Midland”), duly verified the 9<sup>th</sup> day of February, 2009, and the exhibits annexed thereto (the “Petition”), and due notice thereof having been given to the parties-in-interest pursuant to an Order to Show Cause signed [\_\_\_\_\_, 2009], it is hereby

ORDERED, that [\_\_\_\_\_, 2009] is hereby established as the last date (“Cutoff Date”) on which the holder of a claim against Midland may submit an amendment (“Claim Amendment”) to a proof of claim, in this liquidation proceeding; and it is further

ORDERED that all Claim Amendments shall be made in writing and sent by first class mail, postage paid and postmarked on or before the Cutoff Date, or by overnight courier service, fees paid and written acknowledgement of receipt by such courier on or before the Cutoff Date, to the Liquidator 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 any Claim Amendment sent after the Cutoff Date shall be barred; and it is further

ORDERED, that any Claim Amendment that does not amend a proof of claim filed, or deemed to be filed, before the April 3, 1987 bar date (“Bar Date”) previously established by this Court shall be barred; and it is further

ORDERED, that as of the Cutoff Date, any timely filed proof of claim or Claim Amendment concerning a claim in “Class two” as set forth in New York Insurance Law Section 7434(a)(1)(ii) that does not include information that specifically 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 alleged injury or damage (e.g. Asbestos-related bodily injury) (collectively the “Basic Information”), shall be barred; and it is further

ORDERED, that where a claimant has submitted an effective Claim Amendment, other documents or materials in addition to the Basic Information may continue to be submitted after

the Cutoff Date until such time as further submission is barred pursuant to applicable law or subsequent court order or agreement; and it is further

ORDERED, that as of the Cutoff Date, any timely filed proof of claim or Claim Amendment concerning a Class Two Claim that does not specifically set forth the Basic Information shall be barred; and it is further

ORDERED, that the filing of a timely Claim Amendment may not by itself provide a sufficient basis to permit allowance of the claims set forth in such Claim Amendment, and the Liquidator, for the Midland estate and any purchaser, shall have any and all defenses and objections to claims under the Insurance Law and other applicable law; and it is further

ORDERED, that the Liquidator may request and consider Claim Amendments submitted after the Cutoff Date consistent with his duties as set forth in the New York Insurance Law and any subsequent Liquidation Plan ordered by this Court.

ORDERED, that notice to the holders of claims shall be given as follows: service of notice of this Order in substantially the form annexed to the Petition as Exhibit D (the "Notice") shall be given to holders of claims with allowed or unadjudicated claims who have filed, or are deemed to have filed, proofs of claim before the Bar Date, by sending a copy of the notice by United States Mail to their last known address in the records of the Liquidator, by publishing the Notice in the national editions of the *Wall Street Journal*, *New York Times* and *Business Insurance*, such publication to occur twice in the 30 days following the Liquidator's receipt of this Order, and by posting the Notice on the Internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org> within ten days following the entry of an order granting the relief sought in this Petition; and it is further

ORDERED, that the form and method of notice specified herein are hereby approved as in accordance with the law and as the best notice practicable, and shall therefore constitute due and sufficient notice of this Order to all persons and entities entitled to receive such notice; and it is further

ORDERED, the Liquidator is hereby authorized to petition the Court without prejudice to vacate or extend the Cutoff Date to permit creditors to submit additional information (including Basic Information) on timely filed proofs of claim in the event that the proposed sale of Midland is not consummated.

E N T E R

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J.S.C.



**IN THE MATTER OF THE LIQUIDATION OF  
MIDLAND INSURANCE COMPANY  
Supreme Court County of New York  
Index No.: 41294/1986**

**NOTICE OF CUTOFF DATE FOR CLAIMS  
AGAINST MIDLAND INSURANCE COMPANY**

On April 3, 1986, Midland Insurance Company ("Midland") was placed into liquidation (the "Liquidation Proceeding") and the then-Superintendent of Insurance of the State of New York, James P. Corcoran (and his successors in office), was appointed liquidator ("Liquidator") of Midland ("Liquidation Order"). Pursuant to the New York Insurance Law ("Insurance Law") and the Liquidation Order, the Liquidator was given the responsibility of, among other things, marshalling Midland's assets and adjudicating claims consistent with Article 74 of the Insurance Law.

**PLEASE TAKE NOTICE** that the Supreme Court of the State of New York, County of New York, has issued an order, dated \_\_\_\_\_, 2009, establishing [\_\_\_\_\_, 2009] ("**Cutoff Date**") as the last date for the filing of amendments ("Claim Amendments") to proofs of claim in this liquidation proceeding. The Order further provides as follows:

1. All Claim Amendments must be made in writing and sent to the Liquidator prior to the Cutoff Date by first class mail, postage paid and postmarked on or before the Cutoff Date, or by overnight courier, fees paid and written acknowledgement 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, N.Y. 10038-3889  
Attn: Estates Management, Gail Pierce-Siponen, Director

All Claim Amendments not sent by the Cutoff Date shall be barred.

2. To be effective, a Claim Amendment must: (a) amend or supplement a proof of claim that was filed, or deemed to have been filed, on or before the original bar date of April 3, 1987; and (b) with respect to any claim in "Class two" as set forth in Insurance Law Section 7434(a)(1)(ii) ("Class Two Claim"), 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 alleged injury or damage (*e.g.*, asbestos-related bodily injury) (the "Basic Information"). A Claim Amendment may, but is not required to, include: (a) documents or materials previously submitted to the Liquidator or other documents or information (beyond the Basic Information required above) to support the allowance of such claim; or (b) information as to the liquidated value of the claim, including the amount paid to date or to be paid with respect to such claim and the defense costs in connection with the claim, whether individually or in the aggregate, where available. Where a claimant has submitted an effective Claim Amendment, other documents or materials in addition to the Basic Information may continue to be submitted after the Cutoff Date until such time as further submission is barred pursuant to applicable law or subsequent court order or agreement.

3. As of the Cutoff Date, any timely filed proof of claim or Claim Amendment concerning a Class Two Claim that does not specifically set forth the Basic Information shall be barred. The filing of a timely Claim Amendment may not by itself provide a sufficient basis to permit allowance of the claims set forth in such Claim Amendment, and the Liquidator, for the Midland estate and any purchaser, reserves any and all defenses and objections to claims under the Insurance Law and other applicable law.

4. If the proposed sale of Midland is not consummated, the Liquidator is authorized to petition the Court without prejudice to vacate or extend the Cutoff. In the event that the Cutoff Date is vacated, the Liquidator does not intend to require creditors to resubmit documents and materials already filed in response to this Notice.

5. Further information may be obtained at the web site maintained by the New York Liquidation Bureau at <http://www.nylb.org> or by calling (212) 341-6731.

ERIC R. DINALLO  
Superintendent of Insurance  
of the State of New York as  
Liquidator of Midland Insurance  
Company

**Exhibit 2**

At IAS Part 7 of the Supreme Court  
of the State of New York, County  
of New York at the Courthouse,  
111 Centre Street, Borough of  
Manhattan, City and State of New  
York on the \_\_\_\_th day of  
\_\_\_\_\_, 2009

PRESENT:

HON. MICHAEL D. STALLMAN

JUSTICE.

..... X

In the Matter of the

Index No. 41294/1986

Liquidation of

MIDLAND INSURANCE COMPANY

..... X

**ORDER ESTABLISHING CUTOFF DATE FOR CLAIMS  
AGAINST MIDLAND INSURANCE COMPANY**

UPON the petition of MARK G. PETERS, Special Deputy Superintendent and Agent of ERIC R. DINALLO, Superintendent of Insurance of the State of New York as Liquidator (“Liquidator”) of the Midland Insurance Company, a New York insurance company in liquidation (“Midland”), duly verified the 9<sup>th</sup> day of February, 2009, and the exhibits annexed thereto (the “Petition”), and due notice thereof having been given to the parties-in-interest pursuant to an Order to Show Cause signed [\_\_\_\_\_, 2009], it is hereby

ORDERED, that [\_\_\_\_\_, 2009] is hereby established as the last date (“Cutoff Date”) on which the holder of a claim against Midland may submit a ~~claim~~an amendment to a ~~proof of claim, including any evidence or other relevant documents or materials~~ (“Claim Amendment”)< to a proof of claim >, in this liquidation proceeding; and it is further

ORDERED that all Claim Amendments shall be made in writing and sent by first class mail, postage paid and postmarked on or before the Cutoff Date, or by overnight courier service, fees paid and written acknowledgement of receipt by such courier on or before the Cutoff Date, to the Liquidator 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 any Claim Amendment sent after the Cutoff Date shall be barred; and it is further

ORDERED, that any Claim Amendment that does not amend a proof of claim filed, or deemed to be filed, before the April 3, 1987 bar date ("Bar Date") previously established by this Court shall be barred; and it is further

ORDERED, that as of the Cutoff Date, any timely filed proof of claim or Claim Amendment concerning a claim in "Class two" as set forth in New York Insurance Law Section 7434(a)(1)(ii) that does not <include information that >specifically identify<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 alleged injury or damage< (e.g. Asbestos-related bodily injury) (collectively the "Basic Information")>, shall be barred; and it is further

<ORDERED, that where a claimant has submitted an effective Claim Amendment, other documents or materials in addition to the Basic Information may continue to be submitted after

the Cutoff Date until such time as further submission is barred pursuant to applicable law or subsequent court order or agreement; and it is further>

<ORDERED, that as of the Cutoff Date, any timely filed proof of claim or Claim Amendment concerning a Class Two Claim that does not specifically set forth the Basic Information shall be barred; and it is further>

<ORDERED, that the filing of a timely Claim Amendment may not by itself provide a sufficient basis to permit allowance of the claims set forth in such Claim Amendment, and the Liquidator, for the Midland estate and any purchaser, shall have any and all defenses and objections to claims under the Insurance Law and other applicable law; and it is further>

ORDERED, that the Liquidator may request and consider Claim Amendments submitted after the Cutoff Date consistent with his duties as set forth in the New York Insurance Law and any subsequent Liquidation Plan ordered by this Court.

ORDERED, that notice to the holders of claims shall be given as follows: service of notice of this Order in substantially the form annexed to the Petition as Exhibit D (the "Notice") shall be given to holders of claims with allowed or unadjudicated claims who have filed, or are deemed to have filed, proofs of claim before the Bar Date, by sending a copy of the notice by United States Mail to their last known address in the records of the Liquidator, by publishing the Notice in the national editions of the *Wall Street Journal*, *New York Times* and *Business Insurance*, such publication to occur twice in the 30 days following the Liquidator's receipt of this Order, and by posting the Notice on the Internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org> within ten days following the entry of an order granting the relief sought in this Petition; and it is further

ORDERED, that the form and method of notice specified herein are hereby approved as in accordance with the law and as the best notice practicable, and shall therefore constitute due and sufficient notice of this Order to all persons and entities entitled to receive such notice; and it is further

ORDERED, the Liquidator is hereby authorized to petition the Court without prejudice to vacate or extend the Cutoff Date to permit creditors to submit additional information <(including Basic Information)> on timely filed proofs of claim in the event that the proposed sale of Midland is not consummated.

E N T E R

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J.S.C.

**IN THE MATTER OF THE LIQUIDATION OF  
MIDLAND INSURANCE COMPANY  
Supreme Court County of New York  
Index No.: 41294/1986**

**NOTICE OF CUTOFF DATE FOR CLAIMS  
AGAINST MIDLAND INSURANCE COMPANY**

On April 3, 1986, Midland Insurance Company ("Midland") was placed into liquidation (the "Liquidation Proceeding") and the then-Superintendent of Insurance of the State of New York, James P. Corcoran (and his successors in office), was appointed liquidator ("Liquidator") of Midland ("Liquidation Order"). Pursuant to the New York Insurance Law ("Insurance Law") and the Liquidation Order, the Liquidator was given the responsibility of, among other things, marshalling Midland's assets and adjudicating claims consistent with Article 74 of the Insurance Law.

**PLEASE TAKE NOTICE** that the Supreme Court of the State of New York, County of New York, has issued an order, dated \_\_\_\_\_, 2009, establishing [\_\_\_\_\_, 2009] ("**Cutoff Date**") as the last date for the filing of amendments to proofs of claim, ~~including any supporting evidence or other relevant documents or materials~~ ("**Claim Amendments**"); ~~to proofs of claim~~ in this liquidation proceeding. The Order further provides as follows:

1. All Claim Amendments must be made in writing and sent to the Liquidator ~~to~~ < prior to the Cutoff Date > by first class mail, postage paid and postmarked on or before the Cutoff Date, or by overnight courier, fees paid and written acknowledgement of receipt by such courier on or before the Cutoff Date, ~~to~~ < at > the following address:

Superintendent of Insurance of the State of New York  
as Liquidator of Midland Insurance Company  
123 William Street  
New York, NY ~~< N.Y. >~~. 10038-3889  
Attn: Estates Management, Gail Pierce-Siponen, Director

All Claim Amendments not sent by the Cutoff Date shall be barred.

2. To be effective, a Claim Amendment must: ~~< (a) amend < or supplement > a proof of claim that was filed, or deemed to have been filed, on or before the original bar date of April 3, 1987.3. As of the Cutoff Date, any timely filed proof of claim or Claim Amendment concerning a < 1987; and (b) with respect to any > claim in "Class two" as set forth in New York Insurance Law Section 7434(a)(1)(ii) that does not specifically identify < ("Class Two Claim"), 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 alleged injury or damage. shall be barred. < (e.g., asbestos-related bodily injury) (the "Basic Information"). A Claim Amendment may, but is not required to, include: (a) documents or materials previously submitted to the Liquidator or other documents or information (beyond the Basic Information required above) to support the allowance of such claim; or (b) information as to the liquidated value of the claim, including the amount paid to date or to be paid with respect to such claim and the defense costs in connection with the claim, whether individually or in the aggregate, where available. Where a claimant has submitted an effective Claim Amendment, other documents or materials in addition to the Basic Information may continue to be submitted after the Cutoff Date until~~



such time as further submission is barred pursuant to applicable law or subsequent court order or agreement. >

<3. As of the Cutoff Date, any timely filed proof of claim or Claim Amendment concerning a Class Two Claim that does not specifically set forth the Basic Information shall be barred. The filing of a timely Claim Amendment may not by itself provide a sufficient basis to permit allowance of the claims set forth in such Claim Amendment, and the Liquidator, for the Midland estate and any purchaser, reserves any and all defenses and objections to claims under the Insurance Law and other applicable law.>

4. If the proposed sale of Midland is not consummated, the Liquidator is authorized to petition the Court without prejudice to vacate or extend the Cutoff Date to permit creditors to submit additional information on timely filed proofs of claim. In the event that the Cutoff Date is vacated, the Liquidator does not intend to require creditors to resubmit documents and materials already filed in response to this Notice.

5. Further information may be obtained at the web site maintained by the New York Liquidation Bureau at <http://www.nylb.org> or by calling (212) 341-6731.

ERIC R. DINALLO  
Superintendent of Insurance  
of the State of New York as  
Liquidator of Midland Insurance  
Company

**AFFIDAVIT OF SERVICE**  
**BY ELECTRONIC MAIL AND FEDEX**

STATE OF NEW YORK    )  
                                  ) SS.:  
COUNTY OF NEW YORK )

David Axinn, being duly sworn, deposes and says:

I am over the age of eighteen years, and am not a party to this action. On the 17<sup>th</sup> day of April, 2009, I served the annexed **REPLY AFFIRMATION** on the below listed attorneys by electronic mail and by depositing same in a properly addressed overnight delivery wrapper, and placing it into the custody of an overnight delivery service at 100 William Street, New York, New York, addressed to the following recipients:

Rachel S. Kronowitz, Esq.  
Gilbert Oshinsky LLP  
1100 New York Avenue, NW, Suite 700  
Washington, DC 20005  
(202) 772-2273  
E-mail address: [kronowitzr@gotofirm.com](mailto:kronowitzr@gotofirm.com)  
Attorneys for Claimants  
The Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust,  
CertainTeed Corporation,  
National Service Industries,  
Pfizer Inc. and  
Warner-Lambert Company, Inc.


Joseph C. Tanski, Esq.  
Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110-2131  
(617) 345-1000  
E-mail address: [jtanski@nixonpeabody.com](mailto:jtanski@nixonpeabody.com)  
Attorneys for Claimants  
Connecticut Insurance Guarantee Association,  
District of Columbia Insurance Guarantee Association,  
Florida Workers' Compensation Insurance Guarantee Association,  
Maine Insurance Guarantee Association,  
Massachusetts Insurers Insolvency Fund,  
New Hampshire Insurance Guarantee Association,  
New Jersey Property Property-Liability Insurance Guarantee Association,  
Rhode Island Insurers' Insolvency Fund,  
Texas Property & Casualty Insurance Guarantee Association,  
Vermont Property and Casualty Insurance Guarantee Association and  
Virginia Property and Casualty Insurance Guarantee Association

Brendan T. Quann, Esq.  
O'Connor & Thomas, P.C.  
700 Locust Street, Suite 200  
Dubuque, IA 52001-6874  
(563) 557-8400  
E-mail address: [bquann@octhomaslaw.com](mailto:bquann@octhomaslaw.com)  
Attorneys for Claimant  
The Archdiocese of Dubuque

Justin F. Lavella, Esq.  
Kelley Drye & Warren LLP  
3050 K. Street, NW, Suite 4700  
Washington, DC 20007  
(202) 342-8400  
E-mail address: [jlavella@kelleydrye.com](mailto:jlavella@kelleydrye.com)  
Attorneys for Claimant  
Dana Companies, LLC f/k/a Dana Corporation

Scott A. Bowan, Esq.  
K&L Gates LLP  
535 Smithfield Street  
Pittsburgh, PA 15222  
(412) 355-6714  
E-mail address: [scott.bowan@klgates.com](mailto:scott.bowan@klgates.com)  
Attorneys for Claimant  
Trane U.S. Inc. f/k/a American Standard Inc.

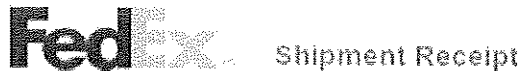
being the mailing and electronic addresses designated by them for that purpose upon the preceding papers in this action.

  
\_\_\_\_\_  
David Axinn

Sworn to before me this  
17<sup>th</sup> of April, 2009

  
\_\_\_\_\_  
Notary Public

**IRINA GASTON**  
Commissioner of Deeds  
City of New York No. 2-12204  
Certificate Filed in Richmond County  
Commission Expires June 1, 2009



### Address Information

#### Ship to:

Scott A. Bowan, Esq.  
K&L Gates LLP

535 SMITHFIELD ST

PITTSBURGH, PA

15222-2393

US

412-355-6714

#### Ship from:

Irina Gaston  
New York Liquidation

Bureau

Legal

123 William Street

New York, NY

10038

US

2123416723

### Shipping Information

Tracking number: 796531007334

Ship date: 04/17/2009

Estimated shipping charges: 21.95

### Package Information

Service type: Priority Overnight

Package type: FedEx Envelope

Number of packages: 1

Total weight: 1LBS

Declared value: 1.00USD

Special Services:

Pickup/Drop-off: Give to scheduled courier at my location

### Billing Information

Bill transportation to: Sender

Your reference: D.Axinn - Midland

P.O. no.:


Invoice no.:

Department no.:

Thank you for shipping online with FedEx ShipManager at [fedex.com](http://fedex.com).

### Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.


**Shipment Receipt**
**Address Information****Ship to:**

Rachel S. Kronowitz, Esq.  
Gilbert Oshinsky LLP

1100 NEW YORK AVE  
NW STE 700

WASHINGTON, DC  
20005-6133  
US  
202-772-2273

**Ship from:**

Irina Gaston  
New York Liquidation

Bureau  
Legal

123 William Street  
New York, NY  
10038  
US  
2123416723

**Shipping Information**

Tracking number: 796530910306

Ship date: 04/17/2009

Estimated shipping charges: 19.10

**Package Information**

Service type: Priority Overnight

Package type: FedEx Envelope

Number of packages: 1

Total weight: 1LBS

Declared value: 1.00USD

Special Services:

Pickup/Drop-off: Give to scheduled courier at my location

**Billing Information**

Bill transportation to: Sender

Your reference: D.Axinn - Midland

P.O. no.:

Invoice no.:

Department no.:

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**FedEx** Shipment Receipt**Address Information****Ship to:**

Joseph C. Tanski, Esq.  
Nixon Peabody LLP

100 Summer Street

Boston, MA

02110-2131

US

617-345-1000

**Ship from:**

Irina Gaston  
New York Liquidation

Bureau

Legal

123 William Street

New York, NY

10038

US

2123416723

**Shipping Information**

Tracking number: 796530940560

Ship date: 04/17/2009

Estimated shipping charges: 19.10

**Package Information**

Service type: Priority Overnight

Package type: FedEx Envelope

Number of packages: 1

Total weight: 1LBS

Declared value: 1.00USD

Special Services:

Pickup/Drop-off: Give to scheduled courier at my location

**Billing Information**

Bill transportation to: Sender

Your reference: D.Axinn- Midland

P.O. no.:

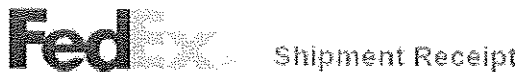
Invoice no.:

Department no.:

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## Address Information

<b>Ship to:</b>	<b>Ship from:</b>
Brendan T. Quann, Esq.	Irina Gaston
O'Connor & Thomas, P.C.	New York Liquidation
	Bureau
700 LOCUST ST STE 200	Legal
	123 William Street
DUBUQUE, IA	New York, NY
52001-6824	10038
US	US
563-557-8400	2123416723

## Shipping Information

Tracking number: 797518806008  
 Ship date: 04/17/2009  
 Estimated shipping charges: 23.15

## Package Information

Service type: Priority Overnight  
 Package type: FedEx Envelope  
 Number of packages: 1  
 Total weight: 1LBS  
 Declared value: 1.00USD  
 Special Services:  
 Pickup/Drop-off: Give to scheduled courier at my location

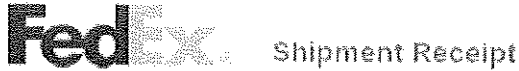
## Billing Information

Bill transportation to: Sender  
 Your reference: D.Axinn - Midland  
 P.O. no.:  
 Invoice no.:  
 Department no.:

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### Address Information

<b>Ship to:</b>	<b>Ship from:</b>
Justin F. Lavella, Esq.	Irina Gaston
Kelley Drye & Warren LLP	New York Liquidation
	Bureau
3050 K ST NW STE 4700	Legal
	123 William Street
WASHINGTON, DC	New York, NY
20007-5108	10038
US	US
202-342-8400	2123416723

### Shipping Information

Tracking number: 796530988564  
 Ship date: 04/17/2009  
 Estimated shipping charges: 19.10

### Package Information

Service type: Priority Overnight  
 Package type: FedEx Envelope  
 Number of packages: 1  
 Total weight: 1LBS  
 Declared value: 1.00USD  
 Special Services:  
 Pickup/Drop-off: Give to scheduled courier at my location

### Billing Information

Bill transportation to: Sender  
 Your reference: D.Axinn - Midland  
 P.O. no.:  
 Invoice no.:  
 Department no.:

Thank you for shipping online with Fedex ShipManager at [fedex.com](http://fedex.com).

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Index No. 41294/86

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

In the Matter of  
the Liquidation of

MIDLAND INSURANCE COMPANY

REPLY AFFIRMATION

**ANDREW J. LORIN**

Attorney for Superintendent of Insurance as Liquidator

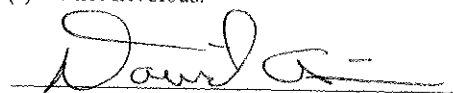
*Office and Post Office Address, Telephone*

New York Liquidation Bureau  
123 William Street  
New York, NY 10038-3889  
(212) 341-6755

**ATTORNEY CERTIFICATION**

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, belief and reasonable inquiry, the contentions in the above referenced document(s) are not frivolous.

Dated: April 17, 2009  
New York, New York

  
David Axinn

NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on the      day of      200

NOTICE OF SETTLEMENT

that an order  
settlement to the HON.

of which the within is a true copy will be presented for  
one of the judges of the within named court, at  
200      at

Dated:

, on

Yours, etc.

**ANDREW J. LORIN**

Attorney for Superintendent  
of Insurance as Liquidator

*Office and Post Office Address, Telephone*

New York Liquidation Bureau  
123 William Street  
New York, NY 10038-3889  
(212) 341-6755