

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy Bannon
Justice

PART 42

MATTER OF EVEREADY INSURANCE
COMPANY

INDEX NO. 1603072014

MOTION DATE 3/16/2016

MOTION SEQ. NO. 003

The following papers were read on this motion to approve the procedure for the liquidator's adjudication of cla and for the appointment of a referee.

- Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) — Exhibits — Memorandum of Law -----
- Answering Affirmation(s) — Affidavit(s) — Exhibits -----
- Replying Affirmation — Affidavit(s) — Exhibits -----

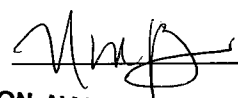
No(s). 1

No(s). _____

No(s). _____

The motion is determined in accordance with the Order Approving the Procedure for the Liquidator's Adjudication of Claims and Appointing Referee dated July 19, 2016, attached.

Dated: 7-19-16

 JSC

HON. NANCY M. BANNON

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

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

At IAS Part 42 of the Supreme Court of the State of New York, County of New York, at the courthouse, 111 Centre Street, in County, City and State of New York, on the 21st day of June, 2016.

19th July

PRESENT:

HON. NANCY M. BANNON, J.S.C.

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In the Matter of
the Liquidation of
EVEREADY INSURANCE COMPANY.

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Index No. 160307/2014

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

Scott D. Fischer, Special Deputy Superintendent and Agent of Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York as liquidator ("Liquidator") of Eveready Insurance Company ("Eveready") and administrator ("Administrator") of the New York Property/Casualty Insurance Security Fund or Public Motor Vehicle Liability Security Fund (collectively, "Security Funds") in connection with the liquidation proceeding of Eveready, having moved this Court by verified petition dated the 21st day of October, 2015 ("Verified Petition"), for an order: (i) approving a procedure for judicial review of the Administrator's rejection of claims under Eveready policies in this proceeding ("Procedure") which are presented for payment from the Security Funds; (ii) appointing a referee to hear and take evidence on issues raised by the claimants' objections, and to report thereon; and (iii) granting such other and further relief, as this Court may deem just and proper under the circumstances, and it appearing from the Verified Petition that the Procedure and appointment of a Referee will best serve the interests of Eveready, its creditors and all other interested persons;

NOW, on the application of the Liquidator, it is ordered that:

1. The Procedure is approved.

2. The Procedure is as follows:

- A. The Procedure shall apply only to the actions set forth herein. Disputes subject to the Procedure and eligible for a hearing before a Referee shall be only those arising out of and after the service by the Administrator on an individual or entity of a Denial Letter and/or a Final Determination Letter.
- B. References herein to "claimant" shall include only those individuals or entities with the legal standing to pursue a claim under Article 76 in respect of an insurance policy issued by Eveready. Nothing contained herein shall or shall be deemed to confer standing upon any individual or entity or expand any right of an individual or entity under applicable law or any provision of an insurance policy or contract.
- C. Denial Letter.
 - a) The Administrator shall serve a Denial Letter on each claimant whose claim is denied in all respects for any reason. Service of the Denial Letter will be made by first-class, certified mail, return receipt requested, or such other form of communication as may have been agreed to by the Administrator and the claimant, in writing, to the claimant's last known address, and if a representative, such as an attorney or broker, submits a claim on a claimant's behalf, to the address of such representative. The Denial Letter may also be copied to such individuals or entities as may be required by law or as may be deemed advisable in the reasonable opinion of the Administrator.
 - b) The Denial Letter shall advise each claimant of the following:
 - i) No further action by the claimant is required if the claimant accepts the Administrator's grounds for denial as set forth in the Denial Letter;
 - ii) The claimant has the right to object to the Denial Letter, and can do so by serving a written objection on the Administrator within sixty (60) days after the date of mailing the Denial Letter, as expressly set forth in the Denial Letter;
 - iii) If the claimant makes a timely written objection, the Administrator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
 - iv) The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections; and
 - v) Either the claimant or the Administrator may petition the Court supervising the Eveready liquidation proceeding (the "Supervising Court"), on notice, for an order confirming the Referee's report.

D. Final Determination Letter.

- a) The Administrator shall serve a Final Determination Letter on each claimant with a claim in respect of which the Administrator and claimant have, in the reasonable opinion of the Administrator, reached an impasse as to the value of such claim. Service of the Final Determination Letter will be made by first-class, certified mail, return receipt requested, or such other form of communication as may have been agreed to by the Administrator and the claimant, in writing, to the claimant's last known address, and if a representative, such as an attorney or broker, submits a claim on a claimant's behalf, to the address of such representative. The Final Determination Letter may also be copied to such individuals or entities as may be required by law or as may be deemed advisable in the reasonable opinion of the Administrator.
- b) The Final Determination Letter advises each claimant of the following:
 - i) If the claimant accepts the Administrator's valuation of the claim as set forth in the Final Determination Letter the claimant may execute the enclosed settlement documents, including a release of further rights pertaining to the adjudicated claim, and return such documents to the Administrator;
 - ii) If the claimant accepts the Administrator's valuation of the claim as set forth in the Final Determination Letter and returns the settlement documents, application will be made to this Court or to the Superintendent, depending upon the agreed amount, to allow the claim in the amount specified in the Final Determination Letter and, upon such allowance, payment will be made as soon as reasonably practical;
 - iii) The claimant has the right to object to the Final Determination Letter, and can do so by serving a written objection on the Administrator within sixty (60) days after the date of mailing the Final Determination Letter, as expressly set forth in the Final Determination Letter;
 - iv) If the claimant makes a timely written objection, the Administrator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
 - v) The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections;
 - vi) Either the claimant or the Administrator may petition the Supervising Court, on notice, for an order confirming the Referee's report;
 - vii) If the claimant fails to object and fails to provide fully executed settlement documents within ninety (90) days from the date of mailing

of the Final Determination Letter, the Administrator may deem the claim abandoned and may seek an order of this Court that the claim is discharged.

- E. In the event that the claimant requests a hearing, the Administrator's staff will contact the claimant in writing at the address set forth on the Denial Letter or Final Determination Letter (or such other address as the claimant has provided to the Administrator in writing for the purpose of providing communications), as applicable, to schedule a pre-hearing conference. If the claimant fails to request an adjournment of the pre-hearing conference in writing at least five (5) business days prior to the pre-hearing conference and the claimant fails to attend such conference, the claimant's objection is forfeited and the Denial Letter or Final Determination Letter is deemed accepted.
- F. In the event that the claimant fails to object to a Denial Letter or Final Determination Letter within the sixty (60) day period, the claim shall either be denied or the Superintendent shall allow the claim in the amount stated in the Final Determination Letter or seek this Court's allowance of the claim in the amount stated in the Final Determination Letter if that amount is in excess of \$25,000, pursuant to New York Insurance Law Section 7602(g), as applicable.
- G. If a claimant fails to take the steps necessary to have its objection heard, the court-appointed Referee may issue a denial of the objection.

3. In the event that the Administrator fails to timely meet any of the time periods set for mailing or delivering a notice required by this Order, it shall not affect the validity of the allowance/disallowance but shall entitle the party that did not receive timely notice to toll its further obligations under the Procedure until it receives the required notice.

4. In the course of conducting the liquidation proceeding, the Liquidator shall consider claims, issue Denial Letters and/or NODs and conduct hearings in respect of Class two claims before those of any other class of claims and unless and until it is reasonably determined that funds shall be available to make distributions to any class of claim below Class two, the Liquidator is authorized to defer adjudicating or scheduling a hearing related to any claim below Class two.

5. The Liquidator is authorized to compromise, settle or adjust claims in his sole discretion, at any time during the adjudication process, without the necessity of receiving a report

from the referee; however, any settlement above \$25,000 is subject to approval by this Court, in accordance with the dictates of New York Insurance Law Section 7428(b).

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

NAME: HON. JOSEPH COVELLO

ADDRESS: 330 OLD COUNTRY ROAD, SUITE 103, MINEOLA, NY 11501

PHONE NO.: 516 742-6200 JCOVELLO@LGDCLLP.COM

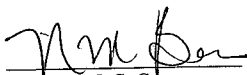
as Referee to hear and take evidence on the factual issues raised by said objections and report thereon with all convenient speed.

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

8. The Referee appointed to hear and report on objections shall conduct those hearings at the place of business of the Superintendent as Liquidator, namely 110 William Street, Borough of Manhattan, City, County and State of New York.

9. The Referee shall take evidence and report to the court his or her recommendations regarding the claims before the referee, so that claims directly against Eveready, in liquidation, may be adjudicated in this proceeding.

ENTER


J. S. C.

7-19-16

HON. NANCY M. BANNON

Index No. 160307

Year 2014

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

In the Matter of

the Liquidation of

EVEREADY INSURANCE COMPANY.

**ORDER TO APPROVE THE PROCEDURE FOR THE LIQUIDATOR'S
ADJUDICATION OF CLAIMS AND APPOINT A REFEREE**

JOHN PEARSON KELLY

Attorney for Superintendent of Financial Services as Liquidator

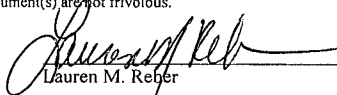
Office and Post Office Address, Telephone

New York Liquidation Bureau
110 William Street
New York, NY 10038-3889
(212) 341-6755
Fax (212) 608-3398

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: MARCH 16, 2016
New York, New York


Lauren M. Reber

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 _____ 201

NOTICE OF SETTLEMENT

that an order
settlement to the HON. _____, on

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

Dated: _____

Yours, etc.

JOHN PEARSON KELLY

Attorney for Superintendent of Insurance as
Liquidator

Office and Post Office Address, Telephone

New York Liquidation Bureau
110 William Street
New York, NY 10038-3889
(212) 341-6755
Fax (212) 608-3398