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

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In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY

Index No. 41294/86

Assigned to:
Hon. Michael Stallman

AFFIDAVIT OF SERVICE

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STATE OF NEW JERSEY :
: SS:
COUNTY OF ESSEX :

I, DORCA LIZ PEREZ, being duly sworn, depose and say:

1. I am over 18 years of age and am a secretary with the law firm of Budd Larner, P.C., attorneys for Everest Reinsurance Company.

2. On September 19, 2006, I caused to be served the foregoing Reply Memorandum in Further Support of Everest Reinsurance Company's Motion to Modify the Injunction to Permit Suit against the Liquidator to be served, pursuant to stipulation, by facsimile and by depositing a true copy thereof, contained in a properly addressed, postage pre-paid envelope, into an official U.S. Postal Service depository, addressed to:

James C. Owen, Esq.,
McCarthy, Leonard, Kaemmerer, Owen, McGovern, Striler & Menghini, L.C.
400 South Woods Mill Road
Suite 250
Chesterfield, Missouri 63017

DORCA LIZ PEREZ

Sworn to before me this
19th day of September, 2006.

ROSEMARY A. BONOCORE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 8, 2009

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

In the Matter of the Liquidation of
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Assigned to:
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REPLY MEMORANDUM IN FURTHER SUPPORT OF EVEREST REINSURANCE COMPANY'S MOTION TO MODIFY THE INJUNCTION TO PERMIT SUIT AGAINST THE LIQUIDATOR

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INTRODUCTION

In his opposition brief, the Liquidator repeatedly acknowledges that Everest has the right under its reinsurance agreements with Midland (the "Midland Contracts") to participate in the claims adjustment process and to interpose defenses. Yet, the Liquidator's conduct in his dealings with Everest, as well as the positions he has taken in opposition to Everest's present motion to intervene, confirms that the Liquidator does not have any intention to allow Everest to exercise that right.

Without any support, the Liquidator incorrectly argues that Everest's participation rights are somehow inconsistent with Everest's obligation to follow the settlements and amount to second-guessing of the Liquidator's claims decisions. Based on this faulty premise, the Liquidator erroneously contends that the only forum in which Everest can raise issues in regard to the allowance of claims on behalf of the Midland Estate is a collection action brought by the Liquidator – an action in which the Liquidator would then argue that Everest is bound by follow-the-settlements to pay his billings.

The Liquidator's argument distorts the purpose of the reinsurer's right to participate, which is to allow the reinsurer to take part in the defense and control of a claim before a decision is made to resolve the claim, whether through a settlement, a denial of coverage, or otherwise. The follow-the-settlements doctrine, on the other hand, comes into play after the ceding company settles or pays a claim and prohibits the reinsurer from challenging the ceding company's reasonable, good faith claims-handling decisions. The follow-the-settlements doctrine does not, in any way, override the reinsurer's right to participate, which arises before the follow-the-settlements doctrine is even implicated.

The Liquidator has blocked Everest from exercising its participation rights in myriad ways. He has failed to provide timely notice of claims and to keep Everest abreast of developments as they occur. As a result, Everest typically does not receive a claim report of any substance until the Liquidator already has expressed an intention to its policyholder to allow a claim. On paper, the claim report purports to recognize Everest's right to inspect the claim files and to participate and interpose defenses. Yet, Everest is offered a mere 30 days in which to exercise its rights – a window that the Liquidator knows it is not in a position to accommodate because it requires access to the files and reinsurers other than Everest are also asserting their inspection rights. And, as set forth herein, in instances where Everest did attempt to interpose defenses, the Liquidator ignored the defenses raised by Everest. The end result is that the Liquidator proceeds to perfect the allowance of the claim while Everest's efforts to participate and interpose defenses are disregarded with impunity.

The Liquidator's resistance to Everest's participation is troubling in light of Everest's allegations that he is seeking to unfairly maximize the Midland Estate's assets by pushing unworthy claims through the allowance process. Indeed, the Liquidator's papers are silent in

response to Everest's specific allegations of improper claims handling, including the failure to independently investigate claims, the failure to conduct claim audits, and the reliance on analyses that are outdated or that were prepared for another insolvent insurer. The Liquidator's silence on these and other important issues raised by Everest and his staunch resistance to Everest's participation only serve to heighten Everest's concerns about the Liquidator's administration of this insolvency and should compel this Court to permit Everest's intervention.

ARGUMENT

THE COURT SHOULD EXERCISE ITS BROAD DISCRETION TO MODIFY THE INJUNCTION AND PERMIT EVEREST TO BRING DIRECT SUIT AGAINST THE LIQUIDATOR.

The Liquidator and Everest agree that a liquidation court has the discretion, "in the interest of justice," to vacate or modify the injunction prohibiting direct suit against the liquidator of an insolvent insurer. See Bean v. Stoddard, 207 A.D. 276, 280 (4th Dep't 1923). The Court should exercise that discretion here because the Liquidator's mishandling of MPH claims threatens to dissipate estate assets by foreclosing access to available reinsurance coverage. If Everest's contractual rights to associate in the claims adjustment process and to interpose defenses are enforced, the Midland Estate, and its creditors and policyholders, will ultimately benefit because the Midland Estate's limited assets will not be wasted on the payment of non-covered or inflated claims and the likelihood of successful recoveries from Everest and other reinsurers will be greatly enhanced.

A. The Reinsurer's Right to Associate or to Interpose Defenses Necessarily Applies Before the Cedent Decides to Allow Coverage.

The Liquidator acknowledges that Everest has the contractual right under the Midland Contracts to participate in the claims handling process. Midland Br. at 4, 18. However, the Liquidator then asserts that Everest cannot exercise its right to participate because that right is

somehow trumped by the follow-the-settlements doctrine. Id. at 19. The Liquidator's assertion is incorrect because there is no conflict between these two basic reinsurance principles.

A reinsurer's right to interpose defenses is triggered when the ceding company provides notice of a claim that may involve the parties' reinsurance contract. As such, the reinsurer's right to interpose defenses arises, by its very nature, before the ceding company makes a settlement or coverage decision that may invoke the application of the follow-the-settlements doctrine. See Unigard Sec. Ins. Co. v. North River Ins. Co., 79 N.Y.2d 576, 584 (N.Y. 1992) ("The 'right to associate' involves the right to consult with and advise the reinsured in its handling of a claim") (hereinafter, "Unigard I"); Black's Law Dictionary 824 (7th ed. 1999) (To "interpose" is to "submit[] something (such as a pleading or motion) as a defense to an opponent's claim"). By contrast, the follow-the-settlements doctrine applies after the cedent decides to settle or pay a claim and, if appropriate, binds the reinsurer to the cedent's reasonable, good faith coverage decisions. See, e.g., Christiania Gen. Ins. Corp. v. Great Am. Ins. Co., 979 F.2d 268, 274 (2d Cir. 1992). For example, the standard follow-the-settlements clauses cited at pages 7-8 of Midland's opposition brief focus on Everest's obligations in response to the settlement and payment of claims by Midland. The two concepts are not conflicting, but work in tandem: a reinsurer who has associated with its cedent in defending or controlling a claim will be hard pressed to challenge the cedent's handling of that claim; and a reinsurer who declines to exercise the right to associate is not permitted to second guess its cedent's reasonable, good faith coverage decisions.

Moreover, the right of reinsurers to associate in the defense and control of claims is valid and enforceable. For instance, in Keehn v. Excess Ins. Co., 129 F.2d 503, 505 (7th Cir. 1942), the court held that "the failure to give notice deprived [the reinsurer] of the right and opportunity

to associate with [the cedent] in defense and control of the Snow suit [the liability action against the original policyholder]." Even though the failure to give notice occurred before the cedent became insolvent, the consequences of that failure could not be avoided by the statutory receiver. Id. at 506.[1] Also, in Unigard Sec. Ins. Co. v. North River Ins. Co., 4 F.3d 1049, 1065 (2d Cir. 1993) (hereinafter, "Unigard II"), the Second Circuit emphasized that one purpose of prompt notice provisions in reinsurance contracts is to "enable the reinsurer to associate in the defense and control of underlying claims."

A reinsurer's right to participate and interpose defenses has even greater value when its cedent becomes insolvent. As one commentator has aptly recognized:

> Even before the ceding company is put into liquidation or rehabilitation, there is usually deterioration in claims handling as management priorities and employee concerns are elsewhere. After insolvency, it is not unusual (1) for insureds and claimants to inflate demands in an effort to be compensated out of inadequate assets, (2) for records to be in disarray, [and] (3) for liquidators and guaranty funds to use inexperienced claims staff. Unfortunately, the liquidator and guaranty funds do not have the same motivation as either the ceding company or the reinsurer to minimize the claims amounts.

Martha G. Bannerman, "Rights and Duties of Reinsurance Companies in Cases of Ceding Company Insolvency," 580 PLI/Comm 395, 407 (1991). See also T. Darrington Semple, Jr. & Robert M. Hall, "The Reinsurer's Liability in the Event of the Insolvency of Ceding Property and Casualty Insurer," 21 Tort & Ins. L.J. 407, 419 (1986) ("It is in the interest of the claimant to submit an inflated claim in cases where reinsurance is involved in the hope that reinsurance proceeds will be increased allowing payment of a percentage of the inflated claims which

[1] In Keehn, the Seventh Circuit held that the reinsurer's loss of the right to associate by itself constituted sufficient prejudice to satisfy a late notice defense. 129 F.2d at 505. However, in Unigard I, the Court of Appeals reasoned that the risk of impairment to a reinsurer's right to associate as a result of late notice generally is not "sufficiently grave to warrant applying a presumption of prejudice." 79 N.Y.2d at 584. The Court of Appeals did not consider whether a reinsurer's loss of the right to associate in the context of claims presented to a cedent after its insolvency might warrant a presumption of prejudice.

approximates the true claim value"). It is therefore no accident that the Insolvency Clause in the Midland Contracts expressly provides that "the Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defense or defenses that it may deem available to the Company or their liquidator, receiver, conservator or statutory successor." See Midland Br. at 15.

The Liquidator's conflict argument also must be rejected for the simple reason that it is contrary to the basic rules of contract construction and would render the right-to-participate clause meaningless. Clearly, Midland and Everest could not have intended such an unreasonable result when they entered into their reinsurance relationship.[2]

B. The Liquidator Has No Intention to Afford Everest the Opportunity to Participate or to Interpose Defenses.

A reinsurer has certain rights when it receives timely notice of a claim from a cedent. At base, it may question the cedent about the claim. Second, it may also conduct an inspection or review of the cedent's claim files. Third, the reinsurer may exercise its option to participate in the defense and control of the claim and to interpose defenses. The Liquidator has distorted each of these rights in a feeble attempt to convince the Court that he is somehow affording Everest the opportunity to participate in the defense and control of claims and to interpose defenses when, in fact, he is not.

The Liquidator has identified four distinct groups of claims against the Midland Estate. He characterizes those groups as follows:

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[2] The Liquidator suggests that Everest must present "clear and convincing evidence" to avoid its obligation to follow-the-settlements. Midland Br. at 12. The case law does not support such an elevated standard of proof. Rather, the cases simply require a reinsurer to ultimately prove by a preponderance of the evidence that the cedent failed to act reasonably or in good faith. See, e.g., North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1209-10 (3d Cir. 1995); Suter v. General Accident Ins. Co., No. 01-2686 (WGB), 2006 U.S. Dist. LEXIS 48209 (D.N.J. July 14, 2006).

- "[T]he Asbestos bodily injury (BI) claims that make up well over 50% of Midland's liabilities, which claims are currently involved in proceedings before this Court with a Case Management Order in place (the 'Disputed Claims Proceedings')."

- A "variety of past-due claims that have been billed to Everest Re and remain unpaid."

- "[C]laims that Midland has informed Everest Re and other reinsurers that it intends to allow in the near future but seeks comments from the reinsurers prior to formally allowing the claims and submitting them to the Court for approval."

- "[C]laims upon which Midland has case reserves or Incurred But Not Reported (IBNR) reserves for future claims that may or may not be allowed."

Midland Br. at 1-2. Despite the Liquidator's contrary suggestion, Everest's proposed complaint only concerns the third category of claims. However, as discussed herein, the Liquidator's actions with respect to the first and second categories highlight the need to enforce Everest's contractual rights with respect to the third category.[3]

As to the first category, which involves certain coverage disputes relating to asbestos bodily injury claims, the Liquidator contends that his "actions fly in the face of all of Everest Re's allegations" because he "has invited the reinsurers into the proceedings." Midland Br. at 2. However, this invitation was given after the Liquidator decided to deny coverage for the claims at issue in the Disputed Claims Proceedings. Everest was not invited to participate in the proceedings that took place before the Liquidator decided to deny coverage.

What Everest seeks, and what it is entitled to under the reinsurance agreements with Midland, is involvement in the proceedings that take place before the Liquidator makes a decision to allow or to disallow a claim. If Everest's participation can be restricted to those few

[3] To Everest's knowledge, the fourth category does not involve any claims that have matured to a point at which they would be in need of actual claims adjustment.

instances in which the Liquidator decides to disallow a claim, then Everest's contractual right to participate in the defense and control of claims at its own expense has been rendered a nullity.

That is precisely what has occurred in connection with the second category, claims that have been allowed by the Liquidator and approved the Court. These claims were ushered through the allowance process without affording Everest the opportunity to participate or to interpose defenses. Everest is not even afforded notice of the allowance hearings, which are conducted on an ex parte basis.

The Liquidator notes that issues concerning the second category of claims can be resolved in collection actions brought by the Liquidator if Everest does not pay his billings. The Liquidator states that such "collection actions have been the proper forum for reinsurers to assert [their] defenses for hundreds of years and should not be changed for one reinsurer." Midland Br. at 2. Here, again the Liquidator disregards the basic principle that a reinsurer's right to participate in the claims process and to interpose defenses is independent of its duty to follow the settlements and is enforceable before a cedent or its liquidator decides to allow a claim.

As to the third category – which the Liquidator has defined as consisting of claims that he "intends" to allow – the Liquidator has no intention of actually affording Everest the opportunity to exercise its contractual right to become involved in the claim adjustment process. The Liquidator states as follows with respect to his purported willingness to involve reinsurers in that process:

> The third category involve[s] claims where the Liquidator has specifically asked for the reinsurers input before making an allowance by means of a "Claims Alert" issued to all reinsurers - - hardly a sign of bad faith by the Liquidator. Indeed, as discussed in detail *infra*, this notice from Midland triggers a number of options for the reinsurers, the last resort of which is to object to the allowance when the Liquidator asks for approval by this Court. If an objection is filed, the Court can rule on whether Everest Re (or any other reinsurer) has raised a legitimate defense that should prevent the allowance from going forward.

Midland Br. at 3. This statement merely references requests for reinsurers' "input," i.e., the Liquidator will allow a reinsurer to ask questions or offer suggestions, nothing more. Entirely absent from this statement is any indication that the Liquidator is receptive to allowing Everest to participate in the investigation of claims or to interpose defenses. Indeed, at pages 18-19 of his brief, the Liquidator makes clear that he views a reinsurer's right to interpose defenses as a barrier to his primary goal of freely allowing claims in order to maximize – improperly – the Midland Estate's assets.

The Liquidator's stance is remarkable because when the Liquidator's consultant, Navigant Consulting, Inc. ("Navigant"), advises Everest that a claim is being considered for allowance, it typically quotes the insolvency clause of the reinsurance agreements and states: "Pursuant to your reinsurance contract(s) with Midland, you have a right to intervene in this matter and assert any arguments or defenses you believe may apply." Affidavit of James Wendover ("Wendover Aff."), Exh. A. In other words, the positions taken by the Liquidator in opposition to Everest's motion confirm that the Liquidator and his consultants – as alleged in Everest's proposed complaint – are engaging in a charade; they do not really have any intention of honoring Everest's "right to intervene ... and assert any arguments or defenses."

For example, by cover letter dated June 15, 2006, Navigant advised Everest that the Midland Estate was considering a partial allowance of $11.5 million to $12.7 million on claims filed on behalf of Revlon, Inc. ("Revlon"). Wendover Aff., Exh. A. The cover letter contained the stock reference to Everest's right to intervene and purported to offer Everest the opportunity to review the Revlon claim files. Id. However, although the Liquidator had not sent any reports on this claim since his initial notice in June 2004, Navigant informed Everest that it only had 30

days to advise the Midland Estate of its "intention in this matter and interpose any defenses that you believe should be raised in the underlying claim." Id.

The 30-day window imposed by the Liquidator has no basis in the Midland Contracts and is not even remotely accommodating of Everest's interests. The Liquidator's stock cover letter advises that "[t]here is significant additional documentation available at the Midland offices for your review, including but not limited to Audit reports, Allocation reports and previous Captioned Reports that support the proposed allowance." Wendover Aff., Exh. A. However, experience has proven that the Liquidator does not have the wherewithal (or the intent) to accommodate Everest's reasonable efforts to schedule and conduct timely claims audits, let alone the capacity to allow such audits to take place within the arbitrary 30-day window offered by the Liquidator.

The Liquidator attempts to explain his failure to fairly aid Everest's efforts to review the claim files, but his explanation further illustrates that the Midland Estate is not in a position to allow Everest to audit files within the limited 30-day window. Other reinsurers are seeking to exercise their own inspection rights, and the Midland Estate needs access to the claim files for its own purposes. In addition, Everest and other reinsurers are receiving notice of impending allowances from Navigant on multiple claims – each of which purports to allow only 30 days for a response. See Midland Br. at 19-21.

In his opposition brief, the Liquidator states that Everest was "told to reschedule their audit beginning in September [2006]" and that he "will offer to copy or electronically 'image' many or even all of the files in question pursuant to a cost-sharing arrangement." Midland Br. at 20, 21. In response, Everest promptly sought to reschedule its audit and confirmed a start date of September 18, 2006. Wendover Aff., ¶ 3, Exh. B. Navigant later advised that September 18

would not work, and no new date has been offered to Everest. Id. at ¶ 5, Exh. B. The Liquidator also has not made the cost-sharing proposal referenced in his brief. Id. at ¶ 10.

Moreover, the Liquidator has ignored Everest's attempts to interpose defenses. For example, on August 4, 2006, Everest responded in writing to the Liquidator regarding the Revlon claims. Everest requested that the Liquidator delay the allowance until Everest could assert available coverage defenses in direct discussions with Midland and Revlon. Everest then detailed the coverage defenses that it considered to be available in regard to the Revlon claims. Everest also complained that the Liquidator was abandoning his position concerning the application of coverage defenses based on the decision in In re Liquidation of Midland Ins. Co., 709 N.Y.S.2d 24 (1st Dep't 2000), in opposition to what the Liquidator had stated in his initial notice to Everest on the Revlon claims. See Affidavit of James H. Foster ("Foster Aff."), Exh. A.

Neither Navigant nor anyone else acting for the Liquidator responded to Everest's letter. Foster Aff., ¶ 4; Wendover Aff., ¶ 9. Instead, less than two weeks later, Everest received five invoices from the Liquidator on the Revlon claims, demanding the payment of $595,000. Wendover Aff., Exh. C. Thus, the Liquidator sought and obtained approval of an allowance on the Revlon claims in utter disregard of Everest's expressed intention to intervene and interpose defenses. The Liquidator has given every indication that he will follow the same irresponsible and improper course of conduct in regard to other claims in the future.

C. The Liquidator Distorts His Duty to Provide Prompt Notice of Claims to Everest.

At page 17 of his brief, the Liquidator recognizes that the notice provisions of Everest's reinsurance agreements require Midland to provide notice "when there is an indication that the claim would involve possible liability on the part of the Reinsurer." However, the Liquidator

proceeds to mangle the notice requirement by suggesting that "[i]f one believes Everest Re, these claims still do not involve any liability on its part and, therefore, the Liquidator is as yet under no duty to provide it with notice of any claims." Midland Br. at 18 (emphasis in original). The Liquidator further suggests that he can disregard the notice requirement or, at least, delay in providing notice to Everest and other reinsurers, because he "needs to close the estate in due time" – a troubling comment in view of the nearly two decades in which the Midland Estate did little about the substantial exposures presented by MPH claims. Id.

Needless to say, the notice standard suggested by the Liquidator is incorrect. "Prompt notice provisions in reinsurance are designed to: (i) apprise the reinsurer of potential liabilities to enable it to set reserves; (ii) enable the reinsurer to associate in the defense and control of underlying claims; and (iii) assist the reinsurer in determining whether and at what price to renew reinsurance coverage." Unigard II, 4 F.3d at 1065 (citations omitted). The notice provided must be sufficiently "detailed" so that the reinsurer can make a reasoned decision to associate or set adequate reserves. Id. Further, under notice provisions such as those contained in the Everest/Midland reinsurance agreements, the cedent must provide notice if there is merely a "reasonable possibility ... based on an objective assessment of the information available" that a claim will involve the reinsurance. Christiania, 979 F.2d at 276. See also Unigard II, 4 F.3d at 1065. A reasonable possibility "may exist even though there are some factors that tend to suggest the opposite." Christiania, 979 F.2d at 276. Clearly, under this standard, the Liquidator may not withhold or delay notice simply because he believes or expects that Everest will challenge the basis for a proposed allowance.

Moreover, such conduct would violate the Liquidator's duty of utmost good faith to place Everest "'in the same position as himself [and] to give him the same means and opportunity of

judging the value of the risks.'" Christiania, 979 F.2d at 280 (quoting Sun Mut. Ins. Co. v. Ocean Ins. Co., 107 U.S. 485, 510 (1883)). As the Second Circuit stated in Unigard II, "because information concerning the underlying risk lies virtually in the exclusive possession of the ceding insurer, a very high level of good faith ... is required to ensure prompt and full disclosure of material information without causing reinsurers to engage in duplicative monitoring." 4 F.3d at 1069. The Liquidator's breach of this good faith duty can bar his claims for recovery against Everest. Id.

D. Everest's Right to Participate and Interpose Defenses Is Not Contingent on What Other Reinsurers May or May Not Do.

Everest has an express right to participate in the claims handling process under its reinsurance agreements with Midland. There is nothing in those agreements that restricts or otherwise conditions Everest's exercise of that right on whether other reinsurers are seeking to exercise their own right to associate or whether Everest's interests are somehow inconsistent with or divergent from Midland's interests or the interests of such other reinsurers. Yet, the Liquidator improperly seeks to impose such limitations on Everest's contractual rights.

For instance, the Liquidator asserts that "Midland's reinsurers are hardly of one voice" and suggests that some reinsurers might be opposed to raising defenses suggested by Everest: "if Everest Re offers defenses to certain policyholders' claims and the Liquidator chooses to take the advice of Everest Re, what occurs if that advice is inimical to the interest of another reinsurer?" Midland Br. at 5. The question posed by the Liquidator does not make sense.

The assertion of a reasonable, good faith defense to a policyholder claim should not be viewed as "inimical" to the interests of the Midland Estate or its reinsurers. If a valid defense to

a policyholder claim is available to the Midland Estate, that defense should be raised with the policyholder even if some hypothetical reinsurer might object.[4]

Moreover, under the Midland Contracts, Everest has the express contractual right to participate in the claims adjustment process and to interpose defenses to claims against the Midland Estate even if the Liquidator "chooses" not to take Everest's advice. See Midland Br. at 15-16. At page 4 of his opposition brief, the Liquidator makes an odd effort to rewrite the Insolvency Clause, by selectively emphasizing certain phrases, in order to suggest that Everest either needs court approval to interpose defenses or cannot interpose defenses without enlisting the support of other reinsurers. However, the parts of the Insolvency Clause highlighted by the Liquidator actually permit Everest to transfer a portion of the expenses it incurs in interposing defenses to the Midland Estate and other reinsurers. The clause thus provides:

> The expense thus incurred by the Reinsurer shall be chargeable, subject to the approval of the court, against the Company as part of the expense of conservation or liquidation....
>
> When two or more Reinsurers are involved in the same claim and a majority in interest elect[s] to interpose defense to such claims, the expense shall be apportioned in accordance with the terms of the reinsurance Agreement as though such expense had been incurred by the Company.

See Midland Br. at 4 (emphasis added).

The Liquidator is not deterred by the lack of support in the Midland Contracts for placing untenable conditions on Everest's right to interpose defenses. With respect to the Pfizer claims pending in the Midland Estate, the Liquidator states in his brief: "If Everest Re has input on the problems with the current, *proposed* allowance of the Pfizer claims, and Midland's other

[4] The Liquidator's reference to the interests of creditors is even more bizarre. Midland Br. at 6. The interests of creditors should have no bearing on the Liquidator's obligation to properly adjust and resolve claims – an obligation that the Liquidator owes to all of Midland's reinsurers, including Everest.

reinsurers agree and should Everest Re's input be supported by the facts and the law, Midland will take that input and use it in the allowance process." Midland Br. at 22 (italics in original, underscoring added). Again, Everest's right to interpose defenses is not conditioned on the support of other reinsurers or the Liquidator's consent. Everest should be allowed to intervene to prevent the Liquidator from committing further breaches of Everest's contractual rights.

E. The Liquidator Has Not Rebutted Everest's Allegation that Claims against the Midland Estate Are Being Mishandled.

Everest is seeking to intervene to enforce its contractual right to participate in the claim handling process because the Liquidator and his representatives are falling drastically short in meeting their obligation to professionally adjust and resolve claims in good faith. The Liquidator's opposition to Everest's motion is notable for the absence of a response to Everest's various concerns.

The Liquidator has not addressed any of the following substantive issues that Everest raised in its moving papers:

- The Liquidator's failure to assert defenses available under In re Liquidator of Midland Ins. Co., 709 N.Y.S. 2d 24 (1st Dep't 2000) ("LAQ"). Everest Br. at 10-11.
- The Liquidator's decision to abandon defenses under LAQ, in contradiction of the position stated in his claim notices to Everest. Everest Br. at 10-11.
- The Liquidator's failure to assert other available coverage defenses. Everest Br. at 12.
- The Liquidator's solicitation of settlement demands from MPHs before investigating the merits and value of MPH claims. Everest Br. at 12.
- The Liquidator's failure to conduct claim audits of MPHs. Everest Br. at 12-13.
- The Liquidator's use of outdated information as support for allowance recommendations. Everest Br. at 13.

- The Liquidator's adoption of analyses prepared for another insolvent insurer. Everest Br. at 13.

- The Liquidator's failure to conduct his own independent investigation of claims. Everest Br. at 13.

- The Liquidator's refusal to avoid the same types of claim-handling errors and omissions as detailed in Suter v. General Accident. Everest Br. at 14-16.

- The conflict raised by McCarthy Leonard's dual role as insurance coverage counsel and reinsurance collection counsel for the Liquidator. Everest Br. at 10.

Rather than address the merits of Everest's concerns, the Liquidators tries to direct the focus to Everest's purported knowledge of MPH claims from other sources, Everest's purported payment of such claims in other contexts, and the purported absence of similar complaints by other Midland reinsurers. See Midland Br. at 1, 5-6, 13. The Liquidator has failed to offer any evidence in support of these contentions, none of which should be entertained by the Court in considering Everest's intervention motion.

His allusions to what Everest learned or paid in other contexts is wholly irrelevant to the issues presented. For instance, while the Liquidator contends that Everest paid other cedents on certain claims that are pending in the Midland Estate, he does not detail such salient information as what claims were paid, how much was paid, when Everest paid, whether Everest paid the full amount billed or a discount based on Everest's defenses, whether Everest reinsured a primary or umbrella policy as opposed to a high-level excess policy, or whether Everest reinsured the ceding company on a quota share basis, an excess of loss basis or under a facultative certificate.

Similarly, the Liquidator does not aver that other Midland reinsurers have simply paid his billings as presented. Instead, he refers to executed or proposed commutation agreements with other reinsurers, i.e., buy-outs of Midland's reinsurance contracts with those reinsurers. Midland

Br. at 5. Such arrangements hardly constitute the ordinary course of acceptance and payment of claims.

F. The Liquidator Is Bound by Midland's Contractual Obligations to Its Reinsurers.

In Fidelity & Deposit Co. v. Pink, 302 U.S. 224, 225 (1937), reh'g denied, 302 U.S. 780 (1938), the Superintendent of Insurance of New York, as the liquidator of an insolvent surety, allowed a claim on a fidelity insurance bond, but did not discharge it. He then demanded that the surety's reinsurer pay half of the amount due on the claim. The reinsurer declined to pay, asserting that it did not have any duty under its reinsurance agreement to indemnify the surety in the absence of proof of payment of the loss by the surety. Id. at 226-27. The United States Supreme Court agreed with the reinsurer and denied the liquidator's claim. Id. at 228-30.

In the aftermath of the Pink decision, New York and other States passed legislation that required reinsurance agreements to contain the now-familiar insolvency clause, which obligates the reinsurer "to pay the liquidator his or her allocated share of any losses due under the reinsurance contract even though the insolvent ceding company has not first made payment to the insureds on the underlying policies." Matter of Liquidation of Midland Ins. Co., 79 N.Y.2d 253, 263, 582 N.Y.S.2d 58, 590 N.E.2d 1186 (1992). While such legislation effectively overturned the result in Pink, it did not otherwise restrict or eliminate the contractual obligations owed by insolvent cedents to their reinsurers. To the contrary, the legislative reversal of the Pink decision merits greater diligence in protecting the interests of reinsurers because the insolvency clause reduces the financial exposure to insolvent ceding companies without reducing the ultimate financial exposure to reinsurers.

It is axiomatic that "liquidation cannot place the liquidator in a better position than the insolvent company he takes over, authorizing him to demand that which the company would not

have been entitled to prior to liquidation." Midland, 79 N.Y.2d at 264-65. See also Bohlinger v. Zanger, 306 N.Y. 228, 234 (1954) (same); Serio v. Hevesi, 9 Misc.3d 835, 841, 804 N.Y.S.2d 571, 578 (Sup. Ct. 2005) ("[T]he general rule is that a Liquidator of an insurance company 'stands in the shoes' of the insolvent...") (citation omitted). Thus, in Midland, the Court of Appeals held that the statutory insolvency clause did not "destroy a reinsurer's right of offset." Midland, 79 N.Y.2d at 263-64. Further, as evidenced by the federal district court's decision in Suter v. General Accident Ins. Co., 2006 U.S. Dist. LEXIS 48209, insolvency does not destroy a reinsurer's right to successfully challenge the liquidator's improvident decision to allow payment of a claim.

Here, Everest has clear contractual rights that cannot be destroyed or neutralized simply because Midland is insolvent. Those rights include (i) the right to participate in the defense and control of policyholder claims and to interpose defenses, (ii) the right to timely and complete notice and reporting of claims, and (iii) the right to inspect the cedent's books and records. The purpose of Everest's proposed suit is to protect and enforce those rights because they are not being respected by the Liquidator.

CONCLUSION

For the foregoing reasons and for the reasons stated in Everest's moving papers, Everest requests that this Court modify the injunction for the limited purpose to permit Everest to file suit against the Liquidator.

Dated: New York, New York
September 19, 2006

BUDD LARNER, P.C.
Attorneys for Everest Reinsurance Company
f/k/a Prudential Reinsurance Company

By: _____
Joseph J. Schiavone
Vincent J. Proto
Nahum A. Kianovsky
11 Penn Plaza, 5th Floor
New York, New York
(212) 946-2798

611964w

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

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In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY

Index No. 41294/86

Assigned to:
Hon. Michael Stallman

----------X

REPLY AFFIRMATION OF VINCENT J. PROTO

Vincent J. Proto, an attorney duly admitted to practice before the Courts of the State of New York, affirms under penalty of perjury as follows:

1. I am a shareholder of the law firm of Budd Larner, P.C., counsel for Everest Reinsurance Company f/k/a Prudential Reinsurance Company ("Everest") in this case.

2. I respectfully submit this affirmation in further support of Everest's Motion to Modify the Injunction to Permit Suit Against the Liquidator.

3. Annexed hereto as Exhibit A is the Affidavit of James H. Foster, sworn to on September 19, 2006.

4. Annexed hereto as Exhibit B is the Affidavit of James Wendover, sworn to on September 19, 2006.

Dated: New York, New York
September 19, 2006

VINCENT J. PROTO

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

----------X

Index No. 41294/86

In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY

Assigned to:
Hon. Michael Stallman

----------X

AFFIDAVIT OF JAMES H. FOSTER

STATE OF NEW JERSEY)
) SS.:
COUNTY OF SOMERSET)

JAMES H. FOSTER, being duly sworn, deposes and says:

1. I am a Senior Vice President, Claim, for Everest Reinsurance Company ("Everest"). As such I have personal knowledge of the facts set forth herein.

2. I make this Affidavit in support of Everest's motion to modify the injunction to permit suit against the Liquidator of Midland Insurance Company (the "Liquidator").

3. Attached hereto as Exhibit A is a true and complete copy of my August 4, 2006 letter to Rosanne Metzger, New York Liquidation Bureau, concerning the Revlon, Inc. claim.

4. I never received a response to my August 4, 2006 letter from the Liquidator or any of his representatives.

JAMES H. FOSTER

Sworn to before me this
19th day of September 2006

Notary Public
612403w EILEEN M. FRIEL
Notary Public of New Jersey
My Commission Expires 8/3/2009

James H. Foster
Senior Vice President

Everest Reinsurance Company
Westgate Corporate Center
477 Martinsville Road
P.O. Box 830
Liberty Corner, NJ 07938-0830
Tel: 908.604.3545 Fax: 908.604.3434
e-mail: james.foster@everestre.com

EVEREST.

Via E-Mail

August 4, 2006

Roseanne Metzger
New York Liquidation Bureau
123 William Street
New York, NY 10038

Re:	Ceding Co.:	Midland Insurance Company, in Liquidation ("Midland")
	Contracts:	Various Excess of Loss Treaties from 1974 to 1983 between Midland Insurance Company and Everest Reinsurance Company, formerly known as Prudential Reinsurance Company ("Everest") (the "Midland Treaties") and/or Various Facultative Certificates issued to Midland Insurance Company between 1972 and 1986 (the "Midland Fac Certs.") (collectively, the "Midland Contracts")
	Insured:	Revlon, Inc.

Dear Ms. Metzger:

As you know, by letter dated August 10, 2004, Everest reserved its rights under the Midland Contracts as to all advices/claims submitted to Everest by Midland to date based on Midland's failure to fulfill its obligations to Everest under the Midland Contracts, including Midland's failure to comply with the notice requirements in the Midland Contracts. Everest continues to reserve those rights.

This letter responds to Midland's June 15, 2006 letter enclosing its Supplemental Report – Allowance with respect to the claims filed by Revlon, Inc. ("Revlon") in the Midland liquidation. As set forth herein, Midland has failed to assert certain available coverage defenses in its pre-allowance negotiations with Revlon and it is materially mishandling the Revlon contaminated blood claims. Accordingly, pursuant to its right under the Midland Contracts to interpose a defense on behalf of Midland, Everest requests that Midland not proceed with the allowance of Revlon's claims as set forth in Midland's Supplemental Report unless and until Everest has been given the opportunity to assert those defenses on Midland's behalf in direct discussions between Everest, Midland and Revlon.

In its proposal to settle the Revlon contaminated blood claims, Midland has failed to assert the following coverage defenses: (1) the defense that contaminated blood claims are non-products claims that would not penetrate Midland's policies; (2) requiring Revlon to demonstrate actual claims that occurred during Midland's policy periods rather than adopting a "modified version of the Kroner study"; (3) application of the rulings set forth in *In re Liquidation of Midland Insurance Company*, 709 N.Y.S.2d 24 (2000) ("LAQ") and (4) that in conjunction with (1), (2) and (3) an appropriate allocation of the claims that could affect Midland's policies would yield a claim far smaller than that allowed (if, indeed, the claim had any value). In addition, Midland's Supplemental Report demonstrates that Midland failed to undertake and independent investigation or analysis of the Revlon contaminated blood claims but, instead, relied upon an audit conducted in connection with Transit Casualty. By failing to assert the above defenses and by failing to conduct an independent investigation and analysis of the Revlon contaminated blood claims, Midland has failed to take all proper and businesslike steps in handling these claims.

As for the first coverage defense, Midland recognized in its May 31, 2004 Claim Summary Report on the Revlon claims that following the adoption of blood shield laws by 47 different jurisdictions, furnishing blood products or blood derivatives, etc. is not considered to be a sale of a product but is instead considered the rendition of a service. In almost every case, treating these claims as "non-products" claims would reduce Midland's exposure to Revlon. There is no evidence that this defense was asserted in pre-settlement negotiations with Revlon. Midland's failure to assert this coverage defense constitutes a breach of its duty of utmost good faith to Everest and demonstrates Midland's failure to take all proper and businesslike steps in handling the Revlon claims.

As for the second coverage defense, Midland has advised that it utilized a "modified version of the Kroner study" in allocating losses from contaminated blood claims to Midland policies for claims that are not supported by medical evidence reflecting the date of infection. Midland has acknowledged that the Kroner percentages is not a scientific document or the findings of a court, but, rather, is a negotiated settlement of coverage litigation that did not involve Midland. Since Midland was not a party to that litigation, Midland should have required Bayer to produce data reflecting actual claims that occurred during the Midland policy years and/or should have objected to the use of the Kroner study to allocate losses. Midland's failure to do so is a failure to take all proper and businesslike steps in handling these claims.

As for the third coverage defense Midland failed to assert, Midland has correctly recognized in prior claim summary reports that LAQ "is the controlling case law for the Midland estate." Midland also recognized in its May 31, 2004 Claim Summary Report that under LAQ, Revlon is required to exhaust all underlying coverage by payment of claims involving exposure to Revlon's tainted blood during the Midland policy period and that LAQ requires a showing of actual injury during the policy period. Midland clearly acknowledged the availability and merit of these coverage defenses in May 2004. However, it is clear from Midland's June 15, 2006 Supplemental Allowance Report that Midland abandoned its positions on LAQ and did not assert them in any way in its pre-settlement negotiations with Revlon. Midland's failure to assert LAQ as a defense (and/or Midland's failure to timely advise Everest of its abandonment of LAQ

defenses) constitutes a breach of its duty of utmost good faith to Everest and further demonstrates Midland's failure to take all proper and businesslike steps in handling these claims.

Fourth, after application of the defenses outlined above, Midland's allowance should have taken account of how the Revlon claims that qualified as potentially covered (if any) should be allocated to affected policy years and whether that allocation indicated any exposure to Midland's policies; there is no indication that such an analysis was conducted.

In addition to its failure to assert the foregoing coverage defenses, it is clear from Midland's Supplemental Report that it failed to conduct an independent investigation and analysis of the Revlon claims and, instead, relied upon data produced to and analyzed by Transit Casualty. Midland's failure to conduct an independent investigation and analysis also demonstrates a failure to take all proper and businesslike steps in handling these claims.

Since Midland did not assert the foregoing defenses or conduct an independent investigation analysis of the Revlon contaminated blood claims prior to or in connection with its pre-allowance negotiations with Revlon, Everest requests an opportunity to do so on Midland's behalf. Midland has recognized that Everest has "a right to intervene . . . and assert any arguments or defenses you [Everest] believe may apply" pursuant to the Midland Contracts. In fact, the Midland Contracts specifically address this issue and provide, in pertinent part, that:

> During the pendency of a claim against the Reinsured, the Reinsurer(s) may investigate such claims and interpose, at its own expense, in the proceeding where such a claim is to be adjudicated, any defense or defenses that it may deem available to the Reinsured [or] its liquidator . . .

Accordingly, Everest requests that Midland not proceed with the allowance of Revlon's contaminated blood claims as set forth in Midland's Supplemental Report unless and until Everest has been given the opportunity to exercise its right to assert the defenses outlined above on behalf of Midland in direct discussions involving Everest, Midland and Revlon.

Be advised that, having failed to properly assert the basic defenses to the Revlon claims outlined above and having failed to conduct an independent investigation and analysis of those claims, any allowance of the Revlon contaminated blood claims by Midland as set forth in its Supplement Report would constitute a failure by Midland to take all proper and businesslike steps in handling these claims, and it would constitute a breach of Midland's duty of utmost good faith to Everest and render any such allowance *ex gratia* and not covered by the Midland Contracts. Indeed, any such allowance would be "grossly incompetent" in accordance with the recent decision in the United States District Court for the District of New Jersey in *Suter v. General Accident Insurance Company of America*, Civ. No. 01-2686 (WGB), 2006 U.S. Dist. LEXIS 48209 (D.N.J. July 14, 2006).

No actions taken by Everest Re in the handling of this matter shall be construed as a waiver of any of the rights available to it under the terms, conditions and exclusions contained in the

Midland Contracts. Everest Re reserves the right to raise additional issues that may arise in the future in connection with this claim.

Very truly yours,

James Foster
Senior Vice President, Claim

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

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Index No. 41294/86

In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY

Assigned to:
Hon. Michael Stallman

----------X

AFFIDAVIT OF JAMES WENDOVER

STATE OF NEW JERSEY)
) SS.:
COUNTY OF SOMERSET)

JAMES WENDOVER, being duly sworn, deposes and says:

1. I am a Manager, Claims, for Everest Reinsurance Company ("Everest"). I am responsible for the handling of claims presented under Everest's reinsurance agreements with Midland Insurance Company. As such I have personal knowledge of the facts set forth herein.

2. I make this Affidavit in support of Everest's motion to modify the injunction to permit suit against the Liquidator of Midland Insurance Company (the "Liquidator").

3. In August 2006, I communicated with Mary Jo Lopez of Navigant Consulting Inc. ("Navigant") to schedule Everest's continued review of claim files at the offices of the New York Liquidation Bureau ("NYLB"). Ms. Lopez confirmed that Everest could return to the NYLB's offices on September 18, 2006.

4. Attached hereto as Exhibit A is a true and complete printout of several e-mails between Ms. Lopez and me concerning Everest's claim review.

5. On September 8, 2006, Ms. Lopez advised me for the first time that Everest would not be able to begin its review on September 18, 2006. Although she indicated that

someone would contact me with a new date, no one has.

6. Everest always has been willing to accommodate the Liquidators' interest in having the claim files available for the Midland estate's own purposes, as well as for review by other reinsurers. I have expressed to Navigant that Everest will promptly scan and return claim files on a rolling basis.

7. Attached hereto as Exhibit B is a true and complete copy of a June 15, 2006 letter from Andrew Stuehrk, Consultant, to Everest in regard to claims on behalf of Revlon, Inc.

8. Attached hereto as Exhibit C are true and complete copies of five invoices, dated August 10, 2006, submitted to Everest with respect to the Liquidator's allowance of claims to Revlon, Inc.

9. I am unaware of any response from the Liquidator or any of his representatives to the August 4, 2006 letter from Everest's James H. Foster to the NYLB's Rosanne Metzger concerning the Revlon, Inc. claims.

10. In his brief in opposition to Everest's motion, the Liquidator stated that he "will offer to copy or electronically 'image' many or even all of the files in question pursuant to a cost-sharing arrangement." Midland Br. at 21. No such offer has been conveyed to Everest.

JAMES WENDOVER

Sworn to before me this
19th day of September 2006

Eileen M. Friel
Notary Public

612404w

EILEEN M. FRIEL
Notary Public of New Jersey
My Commission Expires 8/3/2009

James Wendover

From: Mary Jo Lopez [MJlopez@navigantconsulting.com]
Sent: Friday, September 08, 2006 2:30 PM
To: James Wendover
Cc: AStuehrk@NavigantConsulting.com; dbanks@nylb.org
Subject: RE: Everest Scanning Work Plan

jim,

monday the 18th may not be good. someone will be contacting you w/ a new date. sorry for the inconvenience.

mjl

Mary Jo Lopez, Director 212.541.6247 (New York Liquidation Bureau) // 908.433.2222 (Mobile Phone) www.navigantconsulting.com

<James.Wendover@everestre.com>

09/08/2006 01:25 PM

To <MJlopez@navigantconsulting.com>
cc <AStuehrk@NavigantConsulting.com>
Subject RE: Everest Scanning Work Plan

Mary Jo:

Your August 23rd e-mail confirmed that the September 18th start date was acceptable. We have been proceeding on that assumption. If that date is now unworkable for some reason, please advise so that we can coordinate with ACS.

We are also asking NYLB to confirm that the entire file for each of the policyholders will be made available as each file is scheduled for scanning.

My vacation was a washout. It was nice getting away with the family, though.

Thanks.

Jim

As you know, Everest has previously reserved its rights under the Midland Contracts as to all reinsurance advices/claims submitted to Everest by Midland to date based on Midland's failure to comply with its obligations under the Midland Contracts, including any MPH claims referenced herein. Everest continues to reserve its rights

and Everest's request for information from Midland shall not be deemed to establish a course of conduct, interpretation or waiver by Everest of any rights, obligations, terms or conditions existing and available under the Midland Contracts. Everest further reserves the right to request further information and to amend, change, modify or supplement its reservation of rights as additional information becomes available.

From: Mary Jo Lopez [mailto:MJlopez@navigantconsulting.com]
Sent: Friday, September 08, 2006 11:19 AM
To: James Wendover
Cc: Andrew Stuehrk; dbanks@nylb.org
Subject: Re: Everest Scanning Work Plan

jim,

received your phone call this morning. i hope you & your family had a great vacation.

we will be able to confirm next week the start date for your review.

we will be in touch.

mjl

Mary Jo Lopez, Director 212.341.6247 (New York Liquidation Bureau) // 908.433.2222 (Mobile Phone) www.navigantconsulting.com

<James.Wendover@everestre.com>

08/25/2006 03:44 PM

To <MJlopez@navigantconsulting.com>

cc

Subject Everest Scanning Work Plan

Mary Jo:

This confirms that Midland will allow Everest to return to the offices of NYLB, pursuant to its contractual right to access Midland's records, on September 18, 2006.

Everest requests that the complete file for each of the 50 MPHs identified in the attached list (in that order) be made available. The list includes all of the MPH files that were previously made available to Everest in July 2006 but were unable to be scanned by Everest before Midland "discontinued" Everest's access to those records on July 19, 2006, as well as several additional MPH files Everest requests be made available at this time.

Please confirm, as soon as possible, that the complete file for each MPH listed will be made available to Everest beginning on September 18, 2006, including any State Fund files, any associated MIDPAC files, and both current and former outside counsel files.

Although Everest anticipates that it will only require approximately fifteen (15) uninterrupted weeks to scan these files, we fully expect, going forward, that Midland will honor Everest's contractual right to access these documents until they are completely scanned, without interruption.

I will call you after Labor Day to finalize plans. Thank you.

Jim

As you know, Everest has previously reserved its rights under the Midland Contracts as to all reinsurance advices/claims submitted to Everest by Midland to date based on Midland's failure to comply with its obligations under the Midland Contracts, including any MPH claims referenced herein. Everest continues to reserve its rights and Everest's request for information from Midland shall not be deemed to establish a course of conduct, interpretation or waiver by Everest of any rights, obligations, terms or conditions existing and available under the Midland Contracts. Everest further reserves the right to request further information and to amend, change, modify or supplement its reservation of rights as additional information becomes available.

CONFIDENTIAL PAGES REMOVED

Reserve Cessions Report - Revlon / Armour

Insured	Policy#	Pol. Eff	Pol. Exp	Policy Limit	Part Of	U/L Limit	Claimant	DOL	Claimant Name
Revlon / Armour	XL148331	01/01/1978	01/01/1979	$500,000	$10,000,000	$12,000,000	PROD/ASB	01/01/1978	VARIOUS

Claim No	Contract	Type	Reins. Eff	Reins. Exp	Contract Limit	Attachment Point	Paids	LAE	Case
12101264	10889-7	Quota Share	01/01/1978	12/31/1978	$250,000	$0			$250,000
12101264	SIR A-4	Midland Pure Retention under 1st XOL	06/01/1977	06/30/1983	$250,000	$0			$250,000
						Total:			$500,000

Gross Paid: $0 *Gross Case:* $500,000

Insured	Policy#	Pol. Eff	Pol. Exp	Policy Limit	Part Of	U/L Limit	Claimant	DOL	Claimant Name
Revlon / Armour	XL160301	01/01/1979	01/01/1980	$2,000,000	$10,000,000	$12,000,000	PROD/ASB	01/01/1979	VARIOUS

Claim No	Contract	Type	Reins. Eff	Reins. Exp	Contract Limit	Attachment Point	Paids	LAE	Case
12101267	C-10382	Quota Share	01/01/1979	12/31/1979	$1,000,000	$0			$1,000,000
12101267	SIR A-4	Midland Pure Retention under 1st XOL	06/01/1977	06/30/1983	$250,000	$0			$250,000
12101267	730 - A	1st Casualty XOL	07/01/1978	06/30/1979	$250,000	$250,000			$250,000
12101267	724 - D	2nd Casualty XOL	07/01/1978	06/30/1979	$1,000,000	$500,000			$500,000
						Total:			$2,000,000

Gross Paid: $0 *Gross Case:* $2,000,000

Insured	Policy#	Pol. Eff	Pol. Exp	Policy Limit	Part Of	U/L Limit	Claimant	DOL	Claimant Name
Revlon / Armour	XL706578	01/01/1980	01/01/1981	$2,000,000	$10,000,000	$12,000,000	PROD/ASB	01/01/1980	VARIOUS

Claim No	Contract	Type	Reins. Eff	Reins. Exp	Contract Limit	Attachment Point	Paids	LAE	Case
12101270	90580	Quota Share	01/01/1980	12/30/1980	$1,000,000	$0			$1,000,000
12101270	SIR A-4	Midland Pure Retention under 1st XOL	06/01/1977	06/30/1983	$250,000	$0			$250,000
12101270	730 - B	1st Casualty XOL	07/01/1979	06/30/1980	$250,000	$250,000			$250,000
12101270	724 - E	2nd Casualty XOL	07/01/1979	06/30/1980	$1,000,000	$500,000			$500,000
						Total:			$2,000,000

Gross Paid: $0 *Gross Case:* $2,000,000

Insured	Policy#	Pol. Eff	Pol. Exp	Policy Limit	Part Of	U/L Limit	Claimant	DOL	Claimant Name
Revlon / Armour	XL723714	01/01/1981	04/01/1982	$3,000,000	$30,000,000	$22,000,000	PROD/ASB	01/01/1981	VARIOUS

Claim No	Contract	Type	Reins. Eff	Reins. Exp	Contract Limit	Attachment Point	Paids	LAE	Case
12101272	FC001064	Quota Share	01/01/1981	03/31/1982	$1,000,000	$0			$1,000,000
12101272	91539	Quota Share	01/01/1981	03/31/1982	$1,000,000	$0			$1,000,000
12101272	SIR A-4	Midland Pure Retention under 1st XOL	06/01/1977	06/30/1983	$250,000	$0			$250,000
12101272	730 - C	1st Casualty XOL	07/01/1980	06/30/1982	$250,000	$250,000			$250,000
12101272	724 - F	2nd Casualty XOL	07/01/1980	06/30/1981	$1,000,000	$500,000			$500,000

Gross Paid: $0 *Gross Case:* $3,000,000 *Total:* $3,000,000

Insured: Revlon / Armour

Policy#	Pol. Eff	Pol. Exp	Policy Limit	Part Of	U/L Limit	Claimant	DOL	Claimant Name
XL725150	04/01/1982	04/01/1983	$3,000,000	$30,000,000	$22,000,000	PROD/ASB	04/01/1982	VARIOUS

Claim No	Contract	Type	Reins. Eff	Reins. Exp	Contract Limit	Attachment Point	Paids	LAE	Case
12101273	n/a	Quota Share	04/01/1982	03/31/1983	$1,000,000	$0			$2,000,000
12101273	SIR A-4	Midland Pure Retention under 1st XOL	06/01/1977	06/30/1983	$250,000	$0			$250,000
12101273	730 - C	1st Casualty XOL	07/01/1980	06/30/1982	$250,000	$250,000			$250,000
12101273	724 - G	2nd Casualty XOL	07/01/1981	06/30/1982	$1,000,000	$500,000			$500,000

Gross Paid: $0 *Gross Case:* $3,000,000 *Total:* $3,000,000

Insured: Revlon / Armour

Policy#	Pol. Eff	Pol. Exp	Policy Limit	Part Of	U/L Limit	Claimant	DOL	Claimant Name
XL746829	04/01/1983	04/01/1984	$3,000,000	$30,000,000	$22,000,000	PROD/ASB	04/01/1983	VARIOUS

Claim No	Contract	Type	Reins. Eff	Reins. Exp	Contract Limit	Attachment Point	Paids	LAE	Case
22100472	SIR A-4	Midland Pure Retention under 1st XOL	06/01/1977	06/30/1983	$250,000	$0			$250,000
22100472	730 - D	1st Casualty XOL	07/01/1982	07/01/1983	$750,000	$250,000			$750,000
22100472	724 - H	2nd Casualty XOL	07/01/1982	07/01/1983	$1,000,000	$1,000,000			$551,373
22100472	731 - D	3rd Casualty XOL	07/01/1982	06/30/1983	$3,000,000	$2,000,000			$0

Gross Paid: $0 *Gross Case:* $1,551,373 *Total:* $1,551,373

Insured: Revlon / Armour

Policy#	Pol. Eff	Pol. Exp	Policy Limit	Part Of	U/L Limit	Claimant	DOL	Claimant Name
XL770267	04/01/1984	04/01/1985	$5,500,000	$30,000,000	$22,000,000	PROD/ASB	04/01/1984	VARIOUS

Claim No	Contract	Type	Reins. Eff	Reins. Exp	Contract Limit	Attachment Point	Paids	LAE	Case
22100474	TC 94145	Quota Share	04/01/1984	03/31/1985	$1,000,000	$0			$12,647
22100474	602013	Quota Share	04/01/1984	03/31/1985	$1,500,000	$0			$18,970
22100474	A37363/84A	Quota Share	04/01/1984	03/31/1985	$1,000,000	$0			$12,647
22100474	C-513F841-	Quota Share	04/01/1984	03/31/1985	$1,000,000	$0			$12,647
22100474	SIR A-5	Midland Pure Retention under 1st XOL	07/01/1983	06/30/1984	$500,000	$0			$12,647

Gross Paid: $0 *Gross Case:* $69,558 *Total:* $69,558

NEW YORK
LIQUIDATION BUREAU

123 William Street
New York, NY 10038 - 3889
(212) 341 – 6400
Facsimile (212) 341 – 6647

Howard Mills
Superintendent as Receiver

Jody S. Hall
Special Deputy Superintendent

Invoice Date: 08/10/2006
Invoice #: 9509
DueDate: 09/10/2006

REINSURANCE INVOICE

Reinsurer #: R0103900
EVEREST REINSURANCE COMPANY
Westgate Corporate Center
477 Martinsville Road
Liberty Corner, NJ, 079380830, USA

Intermediary: GUY CARPENTER & CO.- NEW YORK

Estate: Midland Insurance Company

Contract#: 730 - A
Contract: 1st Casualty XOL
Contract Eff: 07/01/1978 to 06/30/1979
Limit: $250,000.00

CLAIM INFORMATION

Cedent/Insured:	Revlon / Armour			Exposure:	PROD
Company Claim(s):	12101267	Liquidator's Claim#:	M-PROD 000615	Claimant(s):	Various
Claim Status:	OPN	Policy Period:	01/01/1979 to 01/01/1980	Policy#:X	L160301
Date of Loss:	01/01/1979	Policy Limits:	$2,000,000.00	Court Order:	0736

Recap of Gross Paid Losses		Total to Contract	Participant Share @ 73.00%
Indemnity:	$2,000,000.00	$250,000.00	$182,500.00
Medical:	$0.00		
Previously Billed - Indemnity:	$0.00		
Expenses:	$0.00	$0.00	$0.00
Total:	$2,000,000.00	$250,000.00	$182,500.00
Amount Due and Payable:			$182,500.00

IMPORTANT NOTICE

For major policyholder losses, attached are copies of a final captioned report and incurred cessions report.

All invoices are subject to interest at 9% per annum if payment is not received within 30 days from the invoice date, which is hereby considered a breach of contract. Interest on additional invoices after this date will be computed on the same basis.

To ensure proper crediting of your payment, please remit at the address shown above and include a copy of this invoice.

Please make your check payable to the Superintendent of Insurance of the State of New York as Liquidator of Midland Insurance Company.

cc: Reinsurance Accounting

Prepared By: *Enrique Taveras*

NEW YORK
LIQUIDATION BUREAU

123 William Street
New York, NY 10038 - 3889
(212) 341 – 6400
Facsimile (212) 341 – 6647

Howard Mills
Superintendent as Receiver

Jody S. Hall
Special Deputy Superintendent

Invoice Date: 08/10/2006
Invoice #: 9538
DueDate: 09/10/2006

REINSURANCE INVOICE

Reinsurer #: R0103900
EVEREST REINSURANCE COMPANY
Westgate Corporate Center
477 Martinsville Road
Liberty Corner, NJ, 079380830, USA

Intermediary: GUY CARPENTER & CO.- NEW YORK

Estate: Midland Insurance Company

Contract#: 730 - B
Contract: 1st Casualty XOL
Contract Eff: 07/01/1979 to 06/30/1980
Limit: $250,000.00

CLAIM INFORMATION

Cedent/Insured:	Revlon / Armour			Exposure:	PROD
Company Claim(s):	12101270	Liquidator's Claim#:	M-PROD 000618	Claimant(s):	Various
Claim Status:	OPN	Policy Period:	01/01/1980 to 01/01/1981	Policy#:X	L706578
Date of Loss:	01/01/1980	Policy Limits:	$2,000,000.00	Court Order:	0736

Recap of Gross Paid Losses		Total to Contract	Participant Share @ 40.00%
Indemnity:	$2,000,000.00	$250,000.00	$100,000.00
Medical:	$0.00		
Previously Billed - Indemnity:	$0.00		
Expenses:	$0.00	$0.00	$0.00
Total:	$2,000,000.00	$250,000.00	$100,000.00
Amount Due and Payable:			**$100,000.00**

IMPORTANT NOTICE

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cc: Reinsurance Accounting

Prepared By: *Enrique Taveras*

NEW YORK
LIQUIDATION BUREAU

123 William Street
New York, NY 10038 - 3889
(212) 341 – 6400
Facsimile (212) 341 – 6647

Howard Mills
Superintendent as Receiver

Jody S. Hall
Special Deputy Superintendent

Invoice Date: 08/10/2006
Invoice #: 9602
DueDate: 09/10/2006

REINSURANCE INVOICE

Reinsurer #: R0103900
EVEREST REINSURANCE COMPANY
Westgate Corporate Center
477 Martinsville Road
Liberty Corner, NJ, 079380830, USA

Intermediary: GUY CARPENTER & CO.- NEW YORK

Estate: Midland Insurance Company

Contract#: 730 - C
Contract: 1st Casualty XOL
Contract Eff: 07/01/1980 to 06/30/1982
Limit: $250,000.00

CLAIM INFORMATION

Cedent/Insured:	Revlon / Armour			Exposure:	PROD
Company Claim(s):	12101273	Liquidator's Claim#:	M-PROD 000621	Claimant(s):	Various
Claim Status:	OPN	Policy Period:	04/01/1982 to 04/01/1983	Policy#:X	L725150
Date of Loss:	04/01/1982	Policy Limits:	$3,000,000.00	Court Order:	0736

Recap of Gross Paid Losses		Total to Contract	Participant Share @ 40.00%
Indemnity:	$3,000,000.00	$250,000.00	$100,000.00
Medical:	$0.00		
Previously Billed - Indemnity:	$0.00		
Expenses:	$0.00	$0.00	$0.00
Total:	$3,000,000.00	$250,000.00	$100,000.00
Amount Due and Payable:			**$100,000.00**

IMPORTANT NOTICE

For major policyholder losses, attached are copies of a final captioned report and incurred cessions report.

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Please make your check payable to the Superintendent of Insurance of the State of New York as Liquidator of Midland Insurance Company.

cc: Reinsurance Accounting

Prepared By: *Enrique Taveras*

NEW YORK
LIQUIDATION BUREAU

123 William Street
New York, NY 10038 - 3889
(212) 341 – 6400
Facsimile (212) 341 – 6647

Howard Mills
Superintendent as Receiver

Jody S. Hall
Special Deputy Superintendent

Invoice Date: 08/10/2006
Invoice #: 9570
DueDate: 09/10/2006

REINSURANCE INVOICE

Reinsurer #: R0103900
EVEREST REINSURANCE COMPANY
Westgate Corporate Center
477 Martinsville Road
Liberty Corner, NJ, 079380830, USA

Intermediary: GUY CARPENTER & CO.- NEW YORK

Estate: Midland Insurance Company

Contract#: 730 - C
Contract: 1st Casualty XOL
Contract Eff: 07/01/1980 to 06/30/1982
Limit: $250,000.00

CLAIM INFORMATION

Cedent/Insured:	Revlon / Armour			Exposure:	PROD
Company Claim(s):	12101272	Liquidator's Claim#:	M-PROD 000620	Claimant(s):	Various
Claim Status:	OPN	Policy Period:	01/01/1981 to 04/01/1982	Policy#:X	L723714
Date of Loss:	01/01/1981	Policy Limits:	$3,000,000.00	Court Order:	0736

Recap of Gross Paid Losses		Total to Contract	Participant Share @ 40.00%
Indemnity:	$3,000,000.00	$250,000.00	$100,000.00
Medical:	$0.00		
Previously Billed - Indemnity:	$0.00		
Expenses:	$0.00	$0.00	$0.00
Total:	$3,000,000.00	$250,000.00	$100,000.00
Amount Due and Payable:			$100,000.00

IMPORTANT NOTICE

For major policyholder losses, attached are copies of a final captioned report and incurred cessions report.

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cc Reinsurance Accounting

Prepared By: *Enrique Taveras*

NEW YORK
LIQUIDATION BUREAU

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New York, NY 10038 - 3889
(212) 341 – 6400
Facsimile (212) 341 – 6647

Howard Mills
Superintendent as Receiver

Jody S. Hall
Special Deputy Superintendent

Invoice Date: 08/10/2006
Invoice #: 9629
DueDate: 09/10/2006

REINSURANCE INVOICE

Reinsurer #: R0103900
EVEREST REINSURANCE COMPANY
Westgate Corporate Center
477 Martinsville Road
Liberty Corner, NJ, 079380830, USA

Intermediary: GUY CARPENTER & CO.- NEW YORK

Estate: Midland Insurance Company

Contract#: 730 - D
Contract: 1st Casualty XOL
Contract Eff: 07/01/1982 to 06/30/1983
Limit: $750,000.00

CLAIM INFORMATION

Cedent/Insured:	Revlon / Armour			Exposure:	PROD
Company Claim(s):	22100472	Liquidator's Claim#:	M-PROD 002215	Claimant(s):	Various
Claim Status:	OPN	Policy Period:	04/01/1983 to 04/01/1984	Policy#:X	L748829
Date of Loss:	04/01/1983	Policy Limits:	$3,000,000.00	Court Order:	0736

Recap of Gross Paid Losses		Total to Contract	Participant Share @ 15.00%
Indemnity:	$1,551,373.00	$750,000.00	$112,500.00
Medical:	$0.00		
Previously Billed - Indemnity:	$0.00		
Expenses:	$0.00	$0.00	$0.00
Total:	$1,551,373.00	$750,000.00	$112,500.00
Amount Due and Payable:			**$112,500.00**

IMPORTANT NOTICE

For major policyholder losses, attached are copies of a final captioned report and incurred cessions report.

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cc: Reinsurance Accounting

Prepared By: *Enrique Taveras*