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At IAS Part 39 of the Supreme Court of the State of New York, County of Queens, at the Courthouse, 25-10 Court Square, in Long Island City New York, on the 14 day of Dec, 2018.

FILED
JAN -7 2019
COUNTY CLERK
QUEENS COUNTY

PRESENT:

HON. LESLIE J. PURIFICACION, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

In the Matter of

the Liquidation of

FIDUCIARY INSURANCE COMPANY OF AMERICA.
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Index No.: 703264/2017

**ORDER APPROVING THE
PROCEDURE FOR THE
SUPERINTENDENT'S
ADJUDICATION OF CLAIMS**

Upon the April 18, 2018, affirmation of Melvin Browning, an attorney with the New York Liquidation Bureau (the "NYLB"), which employs the staff that carries out the duties of Maria T. Vullo, Superintendent of Financial Services of the State of New York in her capacity as liquidator (the "Liquidator") of Fiduciary Insurance Company of America ("Fiduciary") and administrator (the "Administrator") of the New York Public Motor Vehicle Liability Security Fund (the "Security Fund") in connection with the liquidation proceeding of Fiduciary, and its attachments and upon all other papers previously submitted and all proceedings heretofore had herein:

NOW, on motion of the Liquidator, and after due deliberation having been had thereon, it is

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

1. The Adjudication Procedure for (i) claims under Fiduciary policies that are covered by the Security Fund ("Fund Covered Claims") and (ii) claims against the Fiduciary estate that are not covered by the Security Fund ("Estate Claims") is approved.
2. The Adjudication Procedure for Fund Covered Claims is as follows:
 - A. This Adjudication Procedure shall apply to disputes arising out of the issuance of a Denial Letter, Denial of Claim Form and Final Determination Letter to a claimant.
 - B. References to "claimant" shall mean those individuals or entities with the legal standing to maintain a claim under an insurance policy issued by Fiduciary. 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 and Denial of Claim Form.
 - i. The Administrator shall serve a Denial Letter or Denial of Claim Form on each claimant whose coverage for a claim is denied in whole or in part. Service of the Denial Letter or Denial of Claim Form 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 or Denial of Claim Form 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.
 - ii. The Denial Letter or Denial of Claim Form shall advise each claimant of the following:
 - a. 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 or Denial of Claim Form;
 - b. The claimant has the right to object to the Denial Letter or Denial of Claim Form, and can do so by serving a written objection on the Administrator within sixty (60) days after the date of mailing of the Denial Letter or Denial of Claim Form, as set forth in the Denial Letter or Denial of Claim Form;

- c. 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;
- d. The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections; and
- e. Either the claimant or the Administrator may petition the Court supervising the Fiduciary liquidation proceeding (the "Supervising Court"), on notice, for an order confirming or denying the Referee's report.

D. Final Determination Letter.

- i. 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.
- ii. The Final Determination Letter advises each claimant of the following:
 - a. 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;
 - b. 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;

- c. The claimant has the right to object to the Final Determination Letter, and may do so by serving a written objection on the Administrator within sixty (60) days after the date of mailing the Final Determination Letter, as set forth in the Final Determination Letter;
 - d. 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;
 - e. The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections;
 - f. Either the claimant or the Administrator may petition the Supervising Court, on notice, for an order confirming or denying the Referee's report; and
 - g. 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 *ex parte* of the Supervising Court approving denial of the claim.
- 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 Denial of Claim Form 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 Denial of Claim Form or Final Determination Letter is deemed accepted.
- F. In the event that the claimant fails to object to a Denial Letter or Denial of Claim Form or Final Determination Letter within the sixty (60) day period, the claim shall either be denied and subject to approval by the Supervising Court, or the Superintendent shall allow the claim in the amount stated in the Final Determination Letter or seek this Court's approval of the claim in the amount stated in the Final Determination Letter as required by Insurance Law Section 7602(g).
- G. If a claimant fails to take the steps necessary to have its objection heard, the court-appointed Referee may issue a dismissal of the objection and

- deem the Denial Letter or Denial of Claim Form or Final Determination Letter to be accepted.
- H. The Administrator may settle objections in her sole discretion, at any time, 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 New York Insurance Law Section 7602(g).
- I. In the event the Administrator fails to timely meet any of the time periods set for mailing or delivering a notice required by the Order, it shall not affect the validity of the denial/determination but shall entitle the party that did not receive timely notice to toll its further obligations under the Adjudication Procedure until it receives the required notice.
3. The Adjudication Procedure for Estate Claims is as follows:
- A. This Adjudication Procedure shall apply to disputes arising out of the issuance of an NOD and Classification Letter to a claimant.
- B. References to "claimant" shall mean those individuals or entities with the legal standing to maintain a claim against Fiduciary that is not covered by the Security Fund. 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. The Liquidator shall serve either or both a NOD or Classification Letter, as the case may be, on each claimant with a claim timely filed or deemed timely filed in the liquidation proceeding. Service of the NOD and/or Classification Letter will be made by first class mail, return receipt requested, or such other form of communication as may have been agreed to by the Liquidator 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 NOD or Classification 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 Liquidator.
- D. The Classification Letter advises each claimant of the following:
- i. The Liquidator's determination of the specific class of claim under Insurance Law Section 7434 in which the claim falls;
 - ii. No further action by the claimant is required if the claimant accepts the Liquidator's recommendation as set forth in the Classification Letter;

- iii. The claimant has the right to object to the Classification Letter, and may do so by serving a written objection on the Liquidator within sixty (60) days after the date of mailing of the Classification Letter, as set forth in the Classification Letter;
- iv. If the claimant makes a timely written objection, the Liquidator will contact the claimant to attempt to resolve the objection. If the objection cannot be resolved and the claimant requests a hearing, then the Liquidator 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; and
- vi. Either the claimant or the Liquidator may petition the Supervising Court, on notice, for an order confirming or denying the Referee's report.

E. The NOD advises each claimant of the following:

- i. The Liquidator's determination of the specific class of claim under Insurance Law Section 7434 in which the claim falls;
- ii. The Liquidator's recommendation that the claim be allowed and the amount of the recommended allowance, or that the claim be disallowed, in whole or in part, and the reason therefor;
- iii. No further action by the claimant is required if the claimant accepts the Liquidator's recommendation as set forth in the NOD;
- iv. The claimant has the right to object to the NOD, and may do so by serving a written objection on the Liquidator within sixty (60) days after the date of mailing the NOD, as expressly set forth in the NOD;
- v. Unless the claimant objects, the Liquidator's recommendation in the NOD will be presented to this Court for approval and the claimant's right to share in a distribution of assets, if any, pursuant to Insurance Law Section 7434, will be fully and finally determined;
- vi. If the claimant makes a timely written objection, the Liquidator will contact the claimant to attempt to resolve the objection, and, if resolved, will seek allowance of the agreed upon amount of the claim. If the objection cannot be resolved and the claimant

- requests a hearing, then the Liquidator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
- vii. The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections; and
- viii. Either the claimant or the Liquidator may petition the Supervising Court, on notice, for an order either confirming or denying the Referee's report.
- F. The Liquidator shall move, *ex-parte*, at least seventy-five (75) days, or a lesser period if agreed upon by the claimant, after the date of the NOD, for an order approving the Liquidator's recommendations for adjudication of all claims for which no objections are timely received.
- G. In the event that a claimant requests a hearing, the Liquidator will contact the claimant in writing at the address set forth on the Classification Letter or NOD (or such other address as the claimant has provided to the Liquidator in writing for the purpose of providing communication in respect of such Classification Letter or NOD) to schedule a pre-hearing conference. If the claimant fails to request an adjournment of the pre-hearing conference in writing at least five business days prior to the pre-hearing conference and the claimant fails to show up for the pre-hearing conference, then the claimant's objection to the Classification Letter or NOD is forfeited and the Classification Letter or NOD is deemed accepted.
- H. If a claimant fails to take the steps necessary to have its objection heard, the court-appointed Referee may issue a dismissal of the objection and deem the Classification Letter or NOD to be accepted.
- I. The Liquidator may settle objections in her sole discretion, at any time, 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 New York Insurance Law Section 7428(b).
- J. In the event the Liquidator fails to timely meet any of the time periods set for mailing or delivering a notice required by the Order, it shall not affect the validity of the denial/determination but shall entitle the party that did not receive timely notice to toll its further obligations under the Adjudication Procedure until it receives the required notice.

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

NAME: Gregory J. Newman Esq
ADDRESS: 148-55 Hillside Ave. Jamaica, NY 11435
PHONE NO.: 718 523-0108

as Referee to hear and take evidence on any issues or objections raised by holders of Fund Covered Claims or Estate Claims, and report the Referee's findings to the Supervising Court. Either the claimant or the Administrator/Liquidator may petition the Supervising Court, on notice, for an order confirming or denying the Referee's report.

\$250.00 → Jsc

5. The Referee shall be paid a fee based on an hourly rate of ~~\$200~~ as a loss adjustment expense of (i) the Fiduciary estate for Estate Claims or (ii) the Security Fund for Fund Covered Claims.

6. The Referee appointed to hear and report on objections shall conduct those hearings at the place of business of the Administrator and Liquidator, currently located at 110 William Street, Borough of Manhattan, City, County and State of New York.

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J. S. C.
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