

EX PARTE MOTION OFFICE

APPROVED
FOR THE PAYMENT
OF MOTION FEE
ONLY

At IAS Part 21 of the Supreme Court of the State of New York, County of New York at the Courthouse, 80 Centre Street, Borough of Manhattan, City and State of New York on the 9th day of February, 2015.

M.S.# 127
ART 74

PRESENT: HON. MICHAEL D. STALLMAN,
J.S.C.

Index No. 41294/86

..... X
In the Matter of the

Liquidation of

MIDLAND INSURANCE COMPANY
.....

ORDER TO SHOW CAUSE

Based upon the affirmation of Judy H. Kim Esq., ("Kim Aff"), dated February 5, 2015, an attorney with the New York Liquidation Bureau ("Bureau"), the organization that carries out the duties of the Superintendent of Financial Services of the State of New York, as liquidator ("Liquidator") of Midland Insurance Company ("Midland"), the exhibit annexed thereto, the affidavit of Gail Pierce-Siponen, sworn to on February 5, 2015, the Director of the Bureau's Creditor and Ancillary Operations, and upon all other papers previously submitted and all proceedings heretofore had herein, and it appearing that the relief sought should be granted;

NOW, on motion, brought by order to show cause, by the Liquidator, and after due deliberation having been had thereon,

LET the Undetermined POC Claimants (defined below), remaining Midland reinsurers and triggered state guaranty funds, or their attorneys, show cause before this Court at the IAS Motion Submission Part at the Courthouse located at 60 Centre Street, Room 130, New York, New York, on the 22 day of April, 2015 ("Return Date") at 9:30 o'clock a.m. or as soon thereafter as counsel may be heard, why an order should not be made, pursuant to Article

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NEW YORK
COUNTY CLERKS OFFICE
MOFFEE

Notarized
Room 130

74 of the New York Insurance Law and this Court's prior decision and order, entered on July 1, 2011 ("Bar Date Order"):

- Proof of Claim*
- (1) permitting the Liquidator to serve written notice of the Bar Date Order on those remaining Midland policyholders with undetermined ~~POCs~~ (as defined in the Kim Aff.) who have not submitted a Claim Amendment, as defined in the Bar Date Order, or any proof in support of the allowance of their claim, as provided in the Bar Date Order (the "Undetermined POC Claimants");
 - (2) permitting the Undetermined POC Claimants to submit ~~now~~ to the Liquidator any Claim Amendment that was capable of having been submitted by the January 31, 2012 deadline established by the Bar Date Order;
 - (3) permitting the Undetermined POC Claimants to submit ~~now~~ to the Liquidator any proof in support of the allowance of their claims that was capable of having been submitted by the January 31, 2013 deadline established in the Bar Date Order;
 - (4) establishing a new deadline of December 31, 2015 for the submission of such Claim Amendments and supporting proofs by the Undetermined POC Claimants;
 - (5) requiring the Liquidator to recommend allowance or disallowance of the amended claims, if any, of Undetermined POC Claimants as promptly as possible after December 31, 2015, by issuing NODs in accordance with the adjudication procedures adopted for the Midland estate; *(Notice of Determination)*
 - (6) referring any objections to the NODs or other disputes arising from Claim Amendments or submissions of proof in support of allowance by Undetermined POC Claimants to the court-appointed Special Referee to be heard in accordance with existing procedures adopted for the Midland estate; and
 - (7) providing for such other and further relief as this Court deems appropriate;

AND, sufficient cause having been alleged therefor, and the Court having found the form and method of notice specified herein to be the best notice practicable, it is hereby

ORDERED, that notice of the Order to Show Cause and supporting papers shall be made:

- (i) by first class mail at least 45 days in advance of the Return Date on each of the Undetermined POC Claimants, remaining Midland reinsurers and triggered state guaranty funds; and (ii) by posting this order to show cause and supporting papers on the webpage maintained by the

Bureau at <http://www.nylb.org> at least 45 days in advance of the Return Date, and it is further

ORDERED, that the form and method of notice specified herein are hereby approved as in accordance with the law and as the best notice practicable, and shall therefore constitute due and sufficient notice of this Order to Show Cause and supporting papers and the scheduled Return Date herein and the relief sought therein to all persons and entities entitled to received such notice; and it is further

ORDERED, that the form of notice shall direct that all answering papers be served on the Liquidator so as to be received at least seven (7) business days prior to the above-scheduled Return Date, and that service on the Liquidator shall be made by overnight or first-class mail at the following address:

Superintendent of Financial Services of the
State of New York as Liquidator of
Midland Insurance Company
c/o New York Liquidation Bureau
110 William Street, 15th Floor
New York, New York 10038-3889
Attn: General Counsel


and by submitting copies of the Answering Papers, with an affidavit of service on the Liquidator as above, to the Clerk of the IAS Motion Submission Part on or before the Return Date; and it is further

ORDERED, that in the absence of Answering Papers filed pursuant to the previous paragraph on or prior to the date specified, the Court may enter relief without a hearing and no party shall be entitled to be heard thereon; and it is further

ORDERED, that any person or entity that fails to serve Answering Papers as provided herein shall be deemed to have waived any objections to the relief sought in the Order to Show Cause and supporting papers and shall be barred from raising objections in this or any other proceeding concerning the matters set forth herein; and it is further

ORDERED, that any person or entity that has served Answering Papers as provided herein shall be deemed to have waived any objections that are not otherwise set forth in its Answering Papers. *and it is further*

ORDERED that respondent shall file proof of service of this
Order to show Cause on the ^{ENTER} date.



J.S.C.

HON. MICHAEL D. STANLEY

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

-----X
In the Matter of

the Liquidation of

MIDLAND INSURANCE COMPANY.

-----X

Index No.: 41294/86

AFFIRMATION

Judy H. Kim, an attorney at law, duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am an attorney with the New York Liquidation Bureau ("Bureau"), the organization that carries out the duties of the Superintendent of Financial Services of the State of New York as liquidator ("Liquidator") of Midland Insurance Company ("Midland"). I am familiar with the facts and circumstances of the above-captioned action and the information provided herein is true and correct to the best of my knowledge. The Bureau did not fulfill all of the notice provisions of the Midland Decision and Order, entered July 1, 2011 (the "Bar Date Order"), and now seeks leave of the court to correct that failure and insure that certain Midland policyholders with timely filed (or deemed filed) undetermined¹ proofs of claim² will have received the same opportunity to amend and support their claims as was had by those claimants who amended and supported their POCs in accordance with the Bar Date Order. Specifically, I make this affirmation in support of the Liquidator's application for a court order: (1) permitting the Liquidator to serve written notice of the Bar Date Order on those remaining Midland policyholders with undetermined POCs who have not submitted a Claim Amendment, as defined

¹ An "undetermined" claim is one that has not been the subject of a Notice of Determination ("NOD") by the Liquidator either allowing or disallowing the claim.

² Hereinafter, timely filed or deemed filed proofs of claim will be referred to as "POCs."

in the Bar Date Order, or any proof in support of the allowance of their claim, as provided in the Bar Date Order (the “Undetermined POC Claimants”); (2) permitting the Undetermined POC Claimants to submit now to the Liquidator any Claim Amendment that was capable of having been submitted by the January 31, 2012 deadline established by the Bar Date Order; (3) permitting the Undetermined POC Claimants to submit now to the Liquidator any proof in support of the allowance of their claims that was capable of having been submitted by the January 31, 2013 deadline established in the Bar Date Order; (4) establishing a new deadline of December 31, 2015 for the submission of such Claim Amendments and supporting proofs by the Undetermined POC Claimants; (5) requiring the Liquidator to recommend allowance or disallowance of the amended claims, if any, of Undetermined POC Claimants as promptly as possible after December 31, 2015, by issuing NODs in accordance with the adjudication procedures adopted for the Midland estate; and (6) referring any objections to the NODs or other disputes arising from Claim Amendments or submissions of proof in support of allowance by Undetermined POC Claimants to the court-appointed Special Referee to be heard in accordance with existing procedures adopted for the Midland estate. It is respectfully submitted that these steps will insure that the Undetermined POC Claimants have the same opportunity to have their claims considered as all other Midland claimants whose claims have been amended and supported in accordance with the Bar Date Order.

BACKGROUND

2. Midland was ordered to be liquidated on April 3, 1986. Over 23,000 POCs by Midland policyholders were timely submitted or deemed timely submitted to the Liquidator³ by the April 3, 1987 POC bar date, of which more than 21,500 have been resolved to date through adjudication or withdrawal or were eliminated as duplicative filings. *See* Affidavit of Gail

³ Many thousands of non-policyholder POCs were also submitted to the Liquidator.

Pierce-Siponen, Director of Bureau's Creditor and Ancillary Operations Division, sworn to on February 5, 2015 ("CAO Aff.") at ¶ 4. Allowed policyholder claims in the liquidation proceeding have been paid four *interim* dividends, totaling 25% of the allowed claims. *Id.*

3. In February 2009, the Liquidator brought on an application by order to show cause ("OTSC") seeking the establishment of a cut-off date (a "Bar Date") for the submission of amendments to previously filed POCs and the submission of proof in support of an allowance of those claims. The broad purpose of the Bar Date was to enable the Liquidator to more accurately determine the liabilities of the estate, facilitate distributions to allowed claimants and advance the completion of the liquidation proceeding.

4. In accordance with the OTSC, notice of the application was posted on the Bureau's website and mailed directly to all known claimants in the Midland estate, including 1,963 policyholder claimants with POCs that then remained open. *See* CAO Aff. at ¶ 5. A number of parties, including eighteen state guaranty funds, appeared and submitted objections to some or all of the Liquidator's application; the Liquidator submitted a reply to the objections; the application was initially submitted to the Court in December 2009; however, supplemental papers were filed during 2010, and the Court issued the Bar Date Order, which was filed on July 1, 2011.

5. The Bar Date Order established January 31, 2012, as the last date on which a Midland claimant (other than a state guaranty association) was permitted to submit an amendment to a previously filed or deemed filed POC, and also established January 31, 2013, as the last date on which a Midland claimant (other than a state guaranty association) was permitted to submit proof in support of the allowance of a previously filed claim against Midland.

6. The Bar Date Order also directed that “the Liquidator shall provide notice of this Order to Midland’s creditors with unadjudicated claims who have filed, or are deemed to have filed, timely claims in this proceeding by mailing a copy of the notice of this Order (Notice) by United States first class mail to the Policyholder’s last known mailing address contained in the Liquidator’s records, by publishing the Notice in Business Insurance, such publication to occur twice in the 30 days following entry of this Order, and by posting the Notice on the internet web page maintained by the New York Liquidation Bureau within 10 days following the entry of this order.”

RECENT DEVELOPMENT AND BASIS FOR THIS APPLICATION

7. The Liquidator has determined that the prescribed notice and the Bar Date Order were posted on the Bureau’s website, but due to an inadvertent failure by the Bureau, notice of the Bar Date Order was not mailed or published as set forth in the order. The Bar Date Order was served with notice of entry on those parties who appeared and were heard on the application. A summary of the Bar Date Order was also published in the July 2011 volume of Mealey’s Litigation Report: Insurance Insolvency (Volume 23, Issue #3). It is also available as an unpublished decision in electronic databases such as Westlaw⁴ and Lexis⁵, and in internet sources such as Google Scholar⁶ and Justia⁷. However, all the forms of notice specified in the Bar Date Order were not provided and it is possible that some Midland policyholders who filed timely POCs and whose claims remained undetermined did not receive notice of the January 31,

⁴ 2011 WL 2652564.

⁵ 2011 N.Y. Misc. LEXIS 3263.

⁶ http://scholar.google.com/scholar_case?case=3848773565951087145&q=%22liquidation+of+midland+insurance+company%22&hl=en&as_sdt=6,33.

⁷ <http://law.justia.com/cases/new-york/other-courts/2011/2011-51261.html>.

2012 and January 31, 2013 deadlines established in the Bar Date Order.

8. Since the filing of the Bar Date Order in July of 2011, the Liquidator has worked to resolve the remaining claims in the Midland estate and has issued NODs recommending for allowance or disallowance the claims of all but two policyholder claimants for which proof was submitted in support of allowance.⁸ *See* CAO Aff. at ¶ 7. These two claims are in the process of being analyzed by the Bureau for recommended allowance or disallowance. *Id.* In addition, the claims of eleven claimants recommended for allowances or disallowances are the subject of objections by the claimants that are in the process of being heard by the court-appointed Special Referee. *Id.* In the course of determining the claims, and at hearings before the Special Referee on claimant objections, claimants have disputed whether Claim Amendments and proofs were timely submitted by the deadlines established in the Bar Date Order; however, with a single exception discussed below, no claimant has asserted that it did not have notice of the Bar Date Order or the deadlines it established. *Id.*

9. The single exception was an Undetermined POC Claimant that advised the Liquidator by letter that it did not receive the notice specified in the Bar Date Order and was unaware of the submission deadlines established in the order. *See* CAO Aff. at ¶ 8. It was through investigating this assertion that the Liquidator discovered that notice had not been fully carried out as prescribed in the Bar Date Order.

10. Due to this discovery, the Liquidator undertook a review of the remaining policyholder POCs that were timely filed, but which were neither amended nor supported by proofs, and which, therefore, remain undetermined. *See* CAO Aff. at ¶ 9. There were 1,050 such undetermined policyholder POCs remaining on July 1, 2011, when the Bar Date Order was filed.

⁸ These two claimants are not within the definition of "Undetermined POC Claimant" as used in this application because they submitted proofs in support of the allowance of their claims in accordance with the Bar Date Order.

Id. Today, after eliminating claims that were allowed or disallowed, claims referred to state guaranty funds for processing, duplicative claims and the claims of policyholders that are now out of business, the Liquidator's review shows that 740 policyholder POCs remain undetermined. These are the POCs of the Undetermined POC Claimants. *Id.*

11. The Liquidator's review of remaining policyholder POCs was undertaken as follows: The Bureau started with the list of 1,963 policyholders with timely-filed, undetermined POCs that were served by mail in February 2009 with the original OTSC seeking a Bar Date in the Midland estate. *See* CAO Aff. at ¶ 10. By July 2011, when the Bar Date Order was issued, this number had been reduced to 1,050 because some of the 1,963 claims were determined to be duplicative, some were withdrawn, some were sent to state guaranty funds for handling, and others were able to be recommended for allowance or disallowance after the timely submission of sufficient documentation. *Id.* In preparation for this application, the Bureau's review showed that, for the same reasons already described, the 1,050 number had been reduced to 922, in large part due to handling by state guaranty funds.⁹ *Id.*

12. The Bureau then undertook a further review of the remaining 922 undetermined policyholder POCs and divided this group into two categories: those where mailings in February 2009 were returned as undelivered and those where mailings were not returned. *See* CAO Aff. at ¶ 11. Those claimants whose February 2009 mailings were not returned were retained on the list of Undetermined POC Claimants, and those whose mailings were returned as undelivered were the subject of additional investigation. *Id.*

13. This additional investigation consisted of internet searches and a review of corporate filings, if any, in states in which the claimants were incorporated. *See* CAO Aff. at

⁹ There can be a substantial time lag between claims being sent to state guaranty funds and those claims being marked as resolved and closed in the Liquidator's files. A claim is not closed in the Liquidator's file until a resolution is reported back from the state guaranty fund to which it was sent.

¶ 12. Where mergers were found and where new addresses were located, the Bureau's records were updated to reflect the new information, and those claimants were retained on the list of Undetermined POC Claimants. *Id.* Where it could be conclusively determined that the claimant was no longer in business, the claimant was removed from the list of Undetermined POC Claimants. *Id.* Where any ambiguity as to the status of the claimant remained, the claimant was retained on the list of Undetermined POC Claimants. *Id.* The result of this process was the list of 740 remaining policyholders with undetermined POCs – the Undetermined POC Claimants. *Id.*

14. Of these 740 undetermined POCs, more than two thirds – 505 POCs – relate to primary insurance policies, such as auto, homeowners and commercial general liability policies. *See* CAO Aff. at ¶ 13. Since these POCs were all filed by April 3, 1987, more than 27 years have now passed in which the Liquidator has not received any further communication. It is therefore likely that most, if not all, claims that might have been covered by these primary policies are now time-barred under the applicable statutes of limitation. Moreover, it is likely that most, if not all, of these claims were already time-barred as of the deadlines established in the Bar Date Order.

15. The remaining 235 undetermined POCs relate to umbrella, excess and workers' compensation excess policies. *See* CAO Aff. at ¶ 13. Of these, 107 relate to umbrella policies and are likely time-barred by the statutes of limitation applicable to the primary policies for which they provide such umbrella coverage; 128 relate to excess and workers' compensation excess policies, of which 120 are excess and 8 are workers' compensation excess policies. *Id.* Because of the nature of excess policies (they are reached only when lower policy layers are exhausted), these policies could potentially have given rise to claims that were capable of being

amended and supported in accordance with the deadlines of the Bar Date Order.

16. In summary, based on the Liquidator's review of the types of policies under which the remaining 740 Undetermined POC Claimants submitted their POCs, it appears likely that only those claims under excess and workers' compensation excess policies may have been capable of amendment and proof as of the January 31, 2012 and January 31, 2013 deadlines established by the Bar Date Order. The Liquidator recognizes that some members of this limited category could have suffered prejudice if they did not amend their POCs or submit proof in support of allowance by the Bar Date Order deadlines because they did not have notice of the Bar Date Order.

17. With the single exception noted above, there is no evidence that any of the 740 Undetermined POC Claimants have been prejudiced by not receiving the notice specified in the Bar Date Order. Nevertheless, in order to cure any possible prejudice, the Liquidator proposes to provide all of the 740 Undetermined POC Claimants with the opportunity to submit now any Claim Amendment or proofs in support of their claim that they could have submitted by the January 31, 2012 and January 31, 2013 deadlines established in the Bar Date Order. This proposal insures that all policyholders in the Midland estate who timely filed POCs will receive the same treatment in accordance with the Bar Date Order.

18. By providing now an additional, reasonable period of time in which Undetermined POC Claimants may submit Claim Amendments and proofs that they were capable of having made by the deadlines set in the Bar Date Order, any Undetermined POC Claimants who did not have notice of the Bar Date Order will be placed in the same position as other Midland policyholders whose claims were amended and supported in accordance with the Bar Date Order. Moreover, if this application is granted, no claimants who have already

submitted amendments or proofs will be prejudiced, as the deadlines established in the Bar Date Order will continue to be uniformly applied to all claimants whose claims remained undetermined at the time the Bar Date Order was issued. Claim Amendments based on claim development occurring after January 31, 2012, will continue to be barred, just as they have been barred for all claimants whose claims were amended in accordance with the Bar Date Order. Similarly, any proof in support of the allowance of claims that was not capable of having been submitted by the January 31, 2013 deadline will continue to be barred, just as it was for all claimants whose claims have already been supported in accordance with the Bar Date Order. Disputes relating to whether amendments or proofs were capable of being submitted by the deadlines established in the Bar Date Order will be referred to the court-appointed Special Referee for resolution in accordance with procedures previously established by the Court. It is respectfully submitted that any other approach would negate the purpose and benefits of the Bar Date, which has enabled substantial progress over the last three and a half years in moving the estate toward completion.

19. The Liquidator proposes to (1) give notice of the Bar Date Order (a copy of which is available on the Bureau's website) to each of the 740 Undetermined POC Claimants by first class mail at their last known addresses as shown in the Liquidator's records or to such updated addresses as the Liquidator's recent investigations (discussed above) have disclosed; (2) permit the Undetermined POC Claimants to submit now to the Liquidator any Claim Amendment (as defined in the Bar Date Order) that was capable of having been submitted by the January 31, 2012 deadline established by the Bar Date Order; (3) permit the Undetermined POC Claimants to submit now to the Liquidator any proof in support of the allowance of their claims that was capable of having been submitted by the January 31, 2013 deadline established in the Bar Date

Order; (4) establish a new deadline of December 31, 2015 for the submission of such Claim Amendments and proofs by Undetermined POC Claimants; (5) recommend allowance or disallowance of the amended claims, if any, of Undetermined POC Claimants as promptly as possible after December 31, 2015, by issuing NODs in accordance with the adjudication procedures adopted for the Midland estate; and (6) refer any objections to the NODs or any other disputes arising from Claim Amendments or submissions of proof in support of allowances by Undetermined POC Claimants to the court-appointed Special Referee to be heard in accordance with existing procedures adopted for the Midland estate.

20. The Liquidator requests that the Court establish a new deadline of December 31, 2015 for the Undetermined POC Claimants to submit any Claim Amendments and proofs in support of allowance that were capable of having been submitted by the deadlines established in the Bar Date Order. The Liquidator believes this period of time is reasonable under the circumstances and is substantially equivalent to the time period for Claim Amendment that was established in the Bar Date Order when it was entered in July 2011. The Liquidator does not believe separate deadlines are needed for Claim Amendment and submission of proofs because the parameters of any submissions (*i.e.*, any amendments capable of having been made by January 31, 2012, and any proofs capable of having been submitted by January 31, 2013) are now past.

21. Because there have been no communications between the Undetermined POC Claimants and the Liquidator for approximately 27 years (with the sole exception noted above), the Liquidator does not anticipate that the process set forth here will result in a significant number of submissions or will prove burdensome to the estate. However, the Liquidator seeks to insure that all Midland policyholders with timely-filed POCs receive the same treatment under

the Bar Date Order and respectfully submits that the process set forth here will place the Undetermined POC Claimants in the same position they would have been in had all the forms of notice prescribed in the Bar Date Order been provided.

22. No previous application for the relief sought herein has been made to this or any other court or judge thereof.

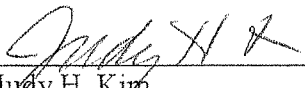
RELIEF SOUGHT

WHEREFORE, it is respectfully requested that this Court grant an order in the form annexed hereto as Exhibit 1: (1) permitting the Liquidator to serve written notice of the Bar Date Order on those remaining Midland policyholders with undetermined POCs who have not submitted a Claim Amendment, as defined in the Bar Date Order, or any proof in support of the allowance of their claim, as provided in the Bar Date Order (the "Undetermined POC Claimants"); (2) permitting the Undetermined POC Claimants to submit now to the Liquidator any Claim Amendment that was capable of having been submitted by the January 31, 2012 deadline established by the Bar Date Order; (3) permitting the Undetermined POC Claimants to submit now to the Liquidator any proof in support of the allowance of their claims that was capable of having been submitted by the January 31, 2013 deadline established in the Bar Date Order; (4) establishing a new deadline of December 31, 2015 for the submission of such Claim Amendments and supporting proofs by the Undetermined POC Claimants; (5) requiring the Liquidator to recommend allowance or disallowance of the amended claims, if any, of Undetermined POC Claimants as promptly as possible after December 31, 2015, by issuing NODs in accordance with the adjudication procedures adopted for the Midland estate; and

(6) referring any objections to the NODs or other disputes arising from Claim Amendments or submissions of proof in support of allowance by Undetermined POC Claimants to the court-appointed Special Referee to be heard in accordance with existing procedures adopted for the Midland estate.

Dated: New York, New York
February 5, 2015

JOHN PEARSON KELLY
Attorney for Benjamin M. Lawskey,
Superintendent of Financial Services
of the State of New York as Liquidator of
Midland Insurance Company

By: 

Judy H. Kim
New York Liquidation Bureau
110 William Street, 15th Floor
New York, New York 10038

At IAS Part 21 of the Supreme Court of the State of New York, County of New York at the Courthouse, 80 Centre Street, Borough of Manhattan, City and State of New York on the ____ day of _____, 2015.

PRESENT: HON. MICHAEL D. STALLMAN,
J.S.C.

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Index No. 41294/86

In the Matter of the

Liquidation of

MIDLAND INSURANCE COMPANY.

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**ORDER ESTABLISHING DECEMBER 31, 2015 AS THE
DEADLINE FOR SUBMISSION OF CLAIM AMENDMENTS AND
PROOFS BY UNDETERMINED POC CLAIMANTS**

UPON the order to show cause, dated February 5, 2015, ("OTSC"), the supporting affirmation of Judy H. Kim, Esq., ("Kim Aff."), also dated February 5, 2015, an attorney with the New York Liquidation Bureau ("Bureau"), the organization that carries out the duties of the Superintendent of Financial Services of the State of New York, as liquidator ("Liquidator") of Midland Insurance Company ("Midland"), the exhibit annexed thereto, and the supporting affidavit of Gail Pierce-Siponen, sworn to on February 5, 2015, Director of the Bureau's Creditor and Ancillary Operations Division, and upon all other papers previously submitted and all proceedings heretofore had herein, and due notice thereof having been given to the Undetermined POC Claimants (as defined in the Kim Aff.), remaining Midland reinsurers and triggered state guaranty funds pursuant to the OTSC signed on _____, 2015, it is hereby

ORDERED, that December 31, 2015 is established as the last date on which an Undetermined POC Claimant may submit to the Liquidator a Claim Amendment, as defined in

the Midland decision and order, entered on July 1, 2011 ("Bar Date Order"), that was capable of having been submitted by the January 31, 2012 deadline established in the Bar Date Order and any proof in support of the allowance of the claim of an Undetermined POC Claimant that was capable of having been submitted by the January 31, 2013 deadline established in the Bar Date Order; and it is further

ORDERED that such Claim Amendments and proofs shall be submitted to the Liquidator in writing either electronically on or before the December 31, 2015 deadline, or by first class mail, postage paid and postmarked on or before the December 31, 2015 deadline, or by overnight courier service, fees paid and with written acknowledgement of receipt by such courier on or before the December 31, 2015 deadline, addressed to:

If submitted electronically: midland@nylb.org

If submitted by first class mail or overnight service:

Superintendent of Financial Services of the State of New York
as Liquidator of Midland Insurance Company
110 William Street, 16th Floor
New York, New York 10038-3889
Attn: Gail Pierce-Siponen, Director
Creditor and Ancillary Operations

and it is further

ORDERED, that the Liquidator shall not consider any submissions by the Undetermined POC Claimants after the December 31, 2015 deadline; and it is further

ORDERED, that if the Liquidator determines that a Claim Amendment submitted in accordance with this order does not amend an undetermined, timely-filed (or deemed filed) proof of claim, the Claim Amendment shall be deemed a proof of claim filed after April 3, 1987. If the Liquidator allows that claim, that claim shall fall under Class Seven in priority of the distribution of assets, unless such claim should fall under Class Eight or Class Nine of the distribution scheme set forth in Insurance Law Section 7434; and it is further

ORDERED, that the Liquidator's determination that a Claim Amendment submitted in accordance with this order does not amend an undetermined, timely- filed (or deemed filed) proof of claim may be challenged before the Special Referee appointed to hear and report on written objections to claims recommended for disallowance in accordance with existing procedures adopted for the Midland estate; and it is further

ORDERED, that the Liquidator shall recommend allowance or disallowance of the amended claims, if any, of Undetermined POC Claimants as promptly as possible after December 31, 2015, by issuing Notices of Determination ("NODs") in accordance with the adjudication procedures adopted for the Midland estate; and it is further

ORDERED, that any objections to the NODs or any other disputes arising from Claim Amendments or submissions of proof in support of allowances by Undetermined POC Claimants shall be referred to the court-appointed Special Referee to be heard in accordance with existing procedures adopted for the Midland estate; and it is further

ORDERED, that this Order does not amend, modify or supersede the Bar Date Order, except to the extent that it provides Undetermined POC Claimants with the opportunity to submit Claim Amendments and proofs by the December 31, 2015 deadline; and it is further

ORDERED, that the Liquidator shall provide a copy of this Order to the Undetermined POC Claimants, remaining Midland reinsurers and triggered state guaranty funds by first class mail to their last known addresses as shown in the Liquidator's records; by publishing notice of this order in *Business Insurance*, such publication to occur twice in the 30 days following entry of this order, and by posting notice of this order on the internet webpage maintained by the New York Liquidation Bureau at: <http://www.nylb.org> within 10 days following the entry of this order; and it is further

ORDERED, that the Liquidator file an affidavit of service demonstrating that the prescribed form and manner of service upon the Undetermined POC Claimants, remaining Midland reinsurers and triggered state guaranty funds of this Order was completed.

Dated: _____, 2015
New York, New York

E N T E R:

_____,
J.S.C.

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

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In the Matter of the

Index No.: 41294/86

Liquidation of

MIDLAND INSURANCE COMPANY.
-----X

AFFIDAVIT

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

Gail Pierce-Siponen, being duly sworn, deposes and says the following:

1. I am the Director of the Creditor and Ancillary Operations Division ("CAO") and an employee of the New York Liquidation Bureau ("Bureau"), the organization that carries out the duties of the Superintendent of Financial Services ("Superintendent") as liquidator ("Liquidator") of Midland Insurance Company ("Midland"). I am familiar with the facts and circumstances of the above-captioned action and the information provided herein is true and correct to the best of my knowledge.

2. I submit this affidavit in support of the Liquidator's Order to Show Cause and application for relief as set forth in Exhibit 1 (proposed order) to the affirmation of Judy H. Kim, Esq., dated February 5, 2015 ("Kim Aff.").

3. CAO is responsible for managing the affairs of New York domestic receivership estates under the supervision of the Liquidator. CAO is involved in all aspects of receivership administration for the New York domestic estates, including processing claims against the estates' assets, making distributions of estate assets to claimants with allowed claims, and assisting other divisions to recover assets on behalf of the estates.

4. Midland was placed in liquidation and the Superintendent was appointed as receiver by the Court on April 3, 1986. Over 23,000 Proof of Claims (“POCs”)¹ by Midland policyholders were timely submitted or deemed timely submitted to the Liquidator by the April 3, 1987 POC bar date, of which more than 21,500 have been resolved to date through adjudication or withdrawal or were eliminated as duplicative filings. Allowed policyholder claims in the liquidation proceeding have been paid four interim dividends, totaling 25% of the allowed claims.

5. In February 2009, the Liquidator moved, by order to show cause, (“OTSC”), seeking the establishment of a cut-off date (a “Bar Date”) for the submission of amendments to previously filed POCs and the submission of proof in support of an allowance of those claims. *See Kim Aff.* at ¶ 3. In accordance with the OTSC, notice of the application was posted on the Bureau’s website and mailed directly to all known claimants in the Midland estate, including 1,963 policyholder claimants with POCs that then remained open.

6. The Bar Date Order established January 31, 2012, as the last date on which a Midland claimant (other than a state guaranty association) was permitted to submit an amendment to a previously filed or deemed filed POC, and also established January 31, 2013, as the last date on which a Midland claimant (other than a state guaranty association) was permitted to submit proof in support of the allowance of a previously filed claim against Midland.

7. Since the filing of the Bar Date Order in July of 2011, the Liquidator has worked to resolve the remaining claims in the Midland estate and has issued notices of determination (“NODs”) recommending for allowance or disallowance the claims of all but two policyholder claimants for which proof was submitted in support of allowance. These two claims are in the process of being analyzed by the Bureau for recommended allowance or disallowance. In

¹ All terms used herein are defined in the Kim Aff. and have the same meaning.

addition, the claims of eleven claimants issued NODs recommending allowances or disallowances are the subject of objections by the claimants that are in the process of being heard by the court-appointed Special Referee. In the course of determining the claims, and at hearings before the Special Referee on claimant objections, claimants have disputed whether claim amendments and proofs were timely submitted by the deadlines established in the Bar Date Order; however, with a single exception, no claimant has asserted that it did not have notice of the Bar Date Order or the deadlines it established.

8. The single exception was a policyholder with a timely filed POC for which no claim amendment or supporting proofs had been received and to which, therefore, no NOD had been issued. This claimant advised the Liquidator by letter that it did not receive the notice specified in the Bar Date Order and was unaware of the submission deadlines established in the order. It was through investigating this assertion that the Liquidator discovered that notice had not been fully carried out as prescribed in the Bar Date Order.

9. Due to this discovery, the Liquidator undertook a review of the remaining policyholder POCs that were timely filed, but which were neither amended nor supported by proofs, and which, therefore, remain undetermined. There were 1,050 such undetermined policyholder POCs remaining on July 1, 2011, when the Bar Date Order was filed. Today, after eliminating claims that were allowed or disallowed, claims referred to state guaranty funds for processing, duplicative claims and the claims of policyholders that are now out of business, the Liquidator's review shows that 740 policyholder POCs remain undetermined. As defined in the Kim Aff. at ¶1, these are the Undetermined POC Claimants.

10. The Liquidator's review of remaining policyholder POCs was undertaken as follows: The Bureau started with the list of 1,963 policyholders with timely-filed, undetermined POCs that were served by mail in February 2009 with the original OTSC seeking a Bar Date in the Midland estate. By July 2011, when the Bar Date Order was issued, this number had been reduced to 1,050 because some of the 1,963 claims were determined to be duplicative, some were withdrawn, some were sent to state guaranty funds for handling, and others were able to be recommended for allowance or disallowance after the timely submission of sufficient documentation. In preparation for this application, the Bureau's review showed that, for the same reasons already described, the 1,050 number had been reduced to 922, in large part due to handling by state guaranty funds.²

11. The Bureau then undertook a further review of the remaining 922 undetermined policyholder POCs and divided this group into two categories: those where mailings in February 2009 were returned as undelivered and those where mailings were not returned. Those claimants whose February 2009 mailings were not returned were retained on the list of Undetermined POC Claimants, and those whose mailings were returned as undelivered were the subject of additional investigation.

12. This additional investigation consisted of internet searches and a review of corporate filings, if any, in states in which the claimants were incorporated. Where mergers were found and where new addresses were located, the Bureau's records were updated to reflect the new information, and those claimants were retained on the list of Undetermined POC Claimants. Where it could be conclusively determined that the claimant was no longer in business, the claimant was removed from the list of Undetermined POC Claimants. Where any ambiguity as

² There can be a substantial time lag between claims being sent to state guaranty funds and those claims being marked as resolved and closed in the Liquidator's files. A claim is not closed in the Liquidator's file until a resolution is reported back from the state guaranty fund to which it was sent.


to the status of the claimant remained, the claimant was retained on the list of Undetermined POC Claimants. The result of this process was the list of 740 remaining policyholders with undetermined POCs – the Undetermined POC Claimants.

13. Of these 740 undetermined POCs, more than two thirds – 505 POCs – relate to primary insurance policies, such as auto, homeowners and commercial general liability policies. The remaining 235 undetermined POCs relate to umbrella, excess and workers' compensation excess policies. Of these, 107 relate to umbrella policies and are likely time-barred by the statutes of limitation applicable to the primary policies for which they provide such umbrella coverage; 128 relate to excess and workers' compensation excess policies, of which 120 are excess and 8 are workers' compensation excess policies.

14. It is respectfully submitted that the relief requested in the Liquidator's current application will insure that all Midland policyholders with timely-filed POCs will receive the same treatment under the Bar Date Order.


Gail Pierce-Siponen

Sworn to before me this
5 day of February, 2015


Notary Public
IRINA GASTON
Commissioner of Deeds
City of New York No. 2-12204
Certificate Filed in Richmond County
Commission Expires July 1, 2015

Index No.: 41294/86

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

In the Matter of

the Liquidation of

MIDLAND INSURANCE COMPANY.

AFFIRMATION

JOHN PEARSON KELLY

Attorney for the Superintendent of Financial Services of the State of New York as Liquidator

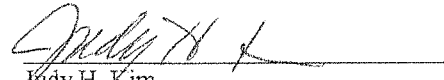
Office and Post Office Address, Telephone

New York Liquidation Bureau
110 William Street
New York, NY 10038
(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: February 6, 2015
New York, New York


Judy H. Kim

☐ 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 20

☐ 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
20 at

Dated:

Yours, etc.

JOHN PEARSON KELLY

Attorney for the Superintendent of Financial Services
of the State of New York as Liquidator

Office and Post Office Address, Telephone

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