

Mot.

Seq. #134

At IAS Part 3, of the Supreme Court of the
State of New York, County of New
York, at the courthouse, 60 Centre Street,
in the County, City and State of New
York, on the 27 day of April, 2010.

P R E S E N T :

HON. EILEEN BRANSTEN, J.S.C.

-----X

In the Matter of

Index No.: 41292/85

the Liquidation of

AMENDED

ORDER TO SHOW CAUSE

Union Indemnity Insurance Company of New York.

-----X

Based upon the attached affirmation of David Axinn, Deputy General Counsel of the New York Liquidation Bureau ("Bureau"), dated April 19, 2010, and the exhibits thereto ("Axinn Affirmation"), on behalf of James J. Wrynn, Superintendent of Insurance of the State of New York, in his capacity as liquidator ("Liquidator") of Union Indemnity Insurance Company of New York ("Union"), and upon all other papers previously submitted and all proceedings heretofore had herein, and it appearing that the relief sought should be granted;

LET all claimants and parties interested in the affairs of Union show cause before this Court at IAS Part 3, Room 442, at the courthouse located at 60 Centre Street in the City, County and State of New York, on the 15th day of June, 2010 (the "Return Date") at 10 o'clock a.m., or as soon thereafter as counsel may be heard, why an order should not be made: (i) accepting the submission of the Liquidator's proposed revised claims allowance procedure order (copies of which are annexed as Exhibits 3 and 4 to the Axinn Affirmation); and (ii) granting such other relief as this Court deems just and proper; and

LET the Liquidator and all other interested parties appear for argument at IAS Part 3, Room 442, at the courthouse located at 60 Centre Street in the City, County and State of New York, on the 22nd day of June, 2010 at 10 o'clock a.m.;

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

ORDERED, that notice of this Order to Show Cause ("Notice") shall be substantially in the form attached hereto and service shall be made at least 30 days prior to the Return Date by: (i) posting the Notice on the Internet web page maintained by the Bureau at <http://www.nylb.org>; and (ii) sending the Notice by U.S. mail to all known reinsurers that have not rescinded their reinsurance contracts with Union and all creditors designated as Class Two under New York Insurance Law Section 7434 with unadjudicated claims in the Union estate; and it is further

ORDERED, that the form and methods 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 the scheduled Return Date herein and the relief sought therein to all persons and entities entitled to receive such notice; and it is further

ORDERED, that the approved form of notice shall direct that any responsive papers ("Responsive Papers") be served on the Superintendent so as to be received at least seven days prior to the above-scheduled Return Date, and that service on the Superintendent shall be made by first class mail at the following address:

Superintendent of Insurance of the State of New York as
Liquidator of Union Indemnity Insurance Company of New York
123 William Street, Second Floor
New York, New York 10038-3889
Attention: John Pearson Kelly, General Counsel

and by submitting copies of the Responsive Papers, with affidavit of service, upon the this Court, on or before the Return Date; and it is further

ORDERED, that in the absence of Responsive Papers filed pursuant to the previous paragraph on or prior to the date specified, no party shall be entitled to be heard at the hearing; and it is further

ORDERED, that any person or entity that fails to serve Responsive Papers as provided herein shall be deemed to have waived any objections to the relief herein 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 in the absence of Responsive Papers filed pursuant to the previous paragraph on or prior to the date specified, the Court may, in its discretion, enter relief without a hearing.

ENTER:



A handwritten signature in black ink, appearing to read "Eileen Bransten", written over a horizontal line.

J.S.C.

EILEEN BRANSTEN
J.S.C.

All papers with Responsive Papers must be
delivered to the courtroom (442) by 3 pm
on or before 6-15-10

ALL PAPERS WITH RESPONSIVE PAPERS MUST BE
DELIVERED TO THE COURTROOM (442) BY 3 PM
ON OR BEFORE 6-15-10

**IN THE MATTER OF THE LIQUIDATION OF
UNION INDEMNITY INSURANCE COMPANY**

Supreme Court County of New York

Index No.: 41292/1985

NOTICE

By order dated July 16, 1985 ("Liquidation Order"), the Supreme Court of the State of New York, County of New York ("Court"), placed Union Indemnity Insurance Company of New York ("Union") into liquidation and appointed the then-Superintendent of Insurance of the State of New York and his successors in office as liquidator ("Liquidator").

On March 19, 2010, the Court entered an order directing the Liquidator to "submit a proposed order delineating the steps that are to be implemented to conform with *In the Matter of the Liquidation of Midland Ins. Co. (Everest Re)*, 18 Misc.3d 1117(A), 856 N.Y.S.2d 498 (Sup. Ct., N.Y. Co. 2008) ['Midland Decision'] within 30 days of the entry of this order."

On April 19, 2010, the Liquidator submitted to the Court an order to show cause and supporting affirmation seeking an order: (i) accepting the submission of the Liquidator's proposed revised claims allowance procedure order ("Proposed Order"); and (ii) granting such other relief as this Court deems just and proper. The Proposed Order would conform the claims allowance procedure in the Union estate to the Midland Decision.

The return date on the order to show cause is June 15, 2010 ("Return Date"). If you wish to object to the Petition, you must serve a written affidavit or affirmation setting forth your objections and all supporting documentation ("Answering Papers") upon the Liquidator so as to be received by the Liquidator at least seven business days prior to the Return Date, and by submitting copies of the Answering Papers, with affidavits of service on the Liquidator, to the Court at IAS Part 3, Room 442, at the Courthouse located at 60 Centre Street, New York, New York, on or before the Return Date. Service on the Liquidator shall be made by first class mail at the following address:

The Superintendent of Insurance of the State of New York as
Liquidator of Union Indemnity Insurance Company of New York
(Attention: John Pearson Kelly)
123 William Street
New York, New York 10038-3889

The Liquidator and all other interested parties are directed to appear for argument at the Courthouse located at 60 Centre Street, New York, New York, IAS Part 3, Room 442, on June 22, 2010 at 10:00 a.m.

All claimants and parties interested in the affairs of Union are advised to review all available information and to protect their rights accordingly. The Liquidator has posted the Order to Show Cause on its website, www.NYLB.org. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Dated: April 27, 2010

JAMES J. WRYNN
Superintendent of Insurance
of the State of New York as
Liquidator of Union Indemnity Insurance
Company of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 3

----- X

In the Matter of

Index No. 41292/85

the Liquidation of

(Hon. Eileen Bransten)

Union Indemnity Insurance Company of New York.

AFFIRMATION

----- X

David Axinn, an attorney duly admitted to the bar of this State, affirms the truth of the following, subject to the penalties of perjury:

1. I am Deputy General Counsel of the New York Liquidation Bureau, the entity which carries out the duties of the Superintendent of Insurance of the State of New York ("Superintendent") in his capacity as Liquidator of Union Indemnity Insurance Company of New York ("Union Liquidator"). I submit this affirmation in connection with the Order to Show Cause presented to this Court on April 19, 2010, submitting a proposed Revised Claims Allowance Procedure Order ("Proposed Order") in this proceeding.

2. By order, entered March 19, 2010, this Court directed the Union Liquidator to "submit a proposed order delineating the steps that are to be implemented to conform with *In the Matter of the Liquidation of Midland Ins. Co. (Everest Re)*, 18 Misc.3d 1117(A), 856 N.Y.S.2d 498 (Sup. Ct., N.Y. Co. 2008) within 30 days of the entry of this Order."

3. The procedure for allowing claims in the Union estate is currently governed by an order dated, January 3, 1996 ("January 3, 1996 Procedures Order"), a copy of which is attached hereto as Exhibit 1.

4. Subject to the objections noted below, the Union Liquidator hereby submits a copy of the Proposed Order conforming Union's claims procedures to the claims procedure order entered by Supreme Court, New York County (Stallman J.), in the Midland estate ("Midland Court") on May 31, 2009 ("Midland Order") with some modifications tailored to the Union estate. A copy of the Midland Order is attached hereto as Exhibit 2. Copies of the Proposed Order and a blacklined version of the Proposed Order reflecting modifications made to the Midland Order are collectively attached hereto as Exhibit 3. In addition, as discussed below, the Union Liquidator is submitting in the alternative a simplified amendment to the January 3, 1996 Procedures Order that would avoid many of the costs and delays associated with the Midland Order. A copy of the simplified version of the Proposed Order is attached hereto as Exhibit 4.

5. In *Matter of Liquidation of Midland*, dated January 14, 2008 ("Midland Decision"), the Court supervising the Midland liquidation held that "the current procedure for allowances of claims has not taken into account the contractual rights in agreements between Midland and its reinsurers, like Everest." 18 Misc.3d 1117(A) at *30. Accordingly, the Midland Court directed that:

this Court has exercised its powers under Article 74 of the Insurance Law to direct changes in the Liquidator's procedures for the allowance of claims and in the procedure for court approval of allowed claims, where existing procedures could be viewed as conflicting with rights in reinsurance contracts between Midland and its reinsurers.

18 Misc.3d 1117(A). Pursuant to the Midland Decision, the Midland Court entered the Midland Order, dated May 31, 2009, which set forth a lengthy procedure governing the Midland liquidator's ("Midland Liquidator") allowance of claims and the rights of claimants and reinsurers to object to such recommendations.

6. On July 16, 2009, the Midland Liquidator filed a cross-appeal in the Appellate Division, First Department, from both the Midland Decision and the Midland Order.¹ A copy of the Midland Liquidator's Notice of Cross-Appeal and Pre-Argument Statement without exhibits submitted to the Appellate Division are annexed collectively hereto as Exhibit 5. On appeal, the Midland Liquidator intends to argue that the Midland Court erred by holding that a reinsurer's interposition rights entitle the reinsurer to litigate such defenses in a New York Insurance Law ("Insurance Law") Article 74 proceeding before a referee. The Midland Liquidator will also argue that the interposition rights granted under the Midland Order impose unnecessary burdens and interfere with the Liquidator's discretion to recommend claims for allowances in the Midland proceeding. Rather, the Midland Liquidator contends that a reinsurer's contractual interposition rights entitle the reinsurer to participate in the claims allowance process by advising and informing the Midland Liquidator of its potential defenses to pending claims, but not to adjudicate those defenses in a referee hearing.

7. This Court has directed the Union Liquidator to submit procedures to conform Union's allowance procedures with the Midland Order. The Union Liquidator asserts the same objections to the Proposed Order as are asserted in his cross-appeal from the Midland Order. Specifically, the Union Liquidator objects asserts that reinsurers with contractual interposition rights in this proceeding do not have the right to litigate their defenses in the Article 74 proceeding, but rather are limited to the right to advise and inform the Union Liquidator of such defenses in the claims allowance process. Furthermore, the Court of Appeals' decision in *Liquidation of Union Indem. Ins. Co. of*

¹ Presently, the appeal and various cross-appeals are scheduled for oral argument before the Appellate Division in the September 2010 term.

N.Y. (Michigan Nat'l Bk v. American Centennial Ins. Co.), 89 N.Y.2d 94 (1996), significantly reduced the amount of reinsurance that remains to be collected in the Union estate, such that Union has a far less sizable reinsurance program than Midland. To impose the Midland Order on the Union estate will impose unwarranted costs and delays in the allowance of claims, and impede the expeditious closure of the Union estate.

8. In *Michigan National*, the New York Court of Appeals held that in light of Union's failure to disclose its insolvency, Union's reinsurance contracts were procured by fraud and, therefore, subject to rescission. *Id.* Following the *Michigan National* decision, some of Union's reinsurers affirmatively rescinded their contracts with Union and returned premium payments to Union. Other reinsurers did not expressly rescind their contract and retained Union's premium, and so are presumed to have active contracts. Accordingly, Union's reinsurance program, to the extent it survives the *Michigan National* decision, is more limited than that of Midland, and the Union Liquidator intends to seek reinsurance payments from a smaller group of reinsurers.

9. To conform the Proposed Order to Union's reinsurance program, the Proposed Order contains certain modifications. First, the Proposed Order clarifies in paragraph 1 that the revised allowance procedures will apply prospectively to all claims submitted for allowance following entry of the Proposed Order. Second, the Proposed Order clarifies in paragraph 2(a) that Pre-Allowance Notices to reinsurers need only be sent to those reinsurers to which the Union Liquidator intends to submit reinsurance claims. Such language modifies the requirement in the Midland Order that the Pre-Allowance Notice shall be sent to "all reinsurers entitled to notice pursuant to one or more reinsurance contracts." The modification is to account for the impact of the

Michigan National decision in the Union estate, which would make adopting the Midland Order in its present form impracticable.

10. Paragraph 2(a) of the Proposed Order also clarifies that the Union Liquidator must submit a Pre-Allowance Notice to a reinsurer prior to submitting a reinsurance claim to the reinsurer. However, the Proposed Order provides that the Union Liquidator's failure to submit a Pre-Allowance Notice to a reinsurer would be without prejudice to the Union Liquidator's right to submit such a notice at a later time.

11. Paragraph 3 of the Proposed Order reserves the Union Liquidator's right to appeal, reargue or otherwise seek modification of the Proposed Order. As stated above, the Proposed Order will require the estate to incur significant expense and delay associated with the implementation of the Proposed Order and its various timetables. As an alternative, the Union Liquidator, therefore, proposes that the January 2, 1996 Procedures Order remain in effect, but be amended to provide as follows:

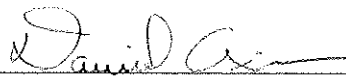
In the event that the Union Liquidator intends to submit a claim to a reinsurer for payment, the Union Liquidator shall, prior to the allowance of the claim, notify the reinsurer of the proposed allowance and provide the reinsurer a reasonable opportunity to interpose any defenses that the reinsurer has the contractual right to interpose, and to be heard on such defenses before a referee.

(See Ex. 4, hereto). Such language would provide a simplified means of conforming Union's revised allowance procedures with the Midland Order, and would avoid many of the administrative complications and delays that would inevitably be associated with the Midland Order.

12. No previous application has been made for the relief requested herein to this or any court.

13. WHEREFORE, the Union Liquidator hereby respectfully submits the attached Proposed Order in compliance with this Court's March 19, 2010 order. However, if granted, the Union Liquidator, reserves his rights to appeal or seek modification of the Proposed Order. In addition, as an alternative, the Union Liquidator proposes a simplified version of the Midland Order, which avoids many of the delays and costs associated with adoption of the Midland Order.

Dated: New York, New York
April 19, 2010



David Axinn

EXHIBIT 1

Union/gen -
No D Allowance
Procedure

At IAS Part of the Supreme
Court of the State of New York,
60 Centre Street, in the Borough
of Manhattan, City and State of
New York, on *2nd* the day
of *January*, 1996.

P R E S E N T :

HON. *Ann Y. ...*

JUSTICE.

-----X Index No.: 41292/85

In the Matter of
the Liquidation of

ORDER APPROVING THE
LIQUIDATOR'S PROPOSED
PROCEDURE FOR JUDICIAL
REVIEW OF RECOMMENDATIONS
FOR ALLOWANCE OF CLAIMS

UNION INDEMNITY INSURANCE COMPANY OF
NEW YORK

-----X

EDWARD J. MUHL, the Superintendent of Insurance of the
State of New York as Liquidator of UNION INDEMNITY INSURANCE
COMPANY OF NEW YORK (the "Liquidator"), having moved this Court
by Petition dated October *25th*, 1996, for approval of a procedure
(the "Procedure") for judicial review of recommendations for
allowance of claims made in this proceeding, and it appearing
from the Petition that the Procedure will best serve the
interests of UNION INDEMNITY INSURANCE COMPANY OF NEW YORK
("UNION"), its creditors, all other interested persons and that
it should be approved and implemented;

IT IS HEREBY ORDERED:

1. The Procedure is approved.

2. The Court finds that the Procedure is required for the orderly administration of the UNION estate. The Procedure will enable the Liquidator to dispose of claims on an ongoing basis while offering due process to all claimants who object to his recommendations.

3. The Procedure is as follows:

- a) The Liquidator shall, on a periodic basis, prepare a list of claims recommended for allowance. The Liquidator shall serve each claimant with a "Notice of Determination". Service shall be made by first class mail to claimant's last known address. The Notice of Determination shall advise each claimant that:
 - i) The claimant's claim has been recommended for allowance by the Liquidator in the amount set forth therein;
 - ii) If the claimant accepts the Liquidator's recommendation, the claimant is not required to take any further action. The Liquidator will submit an ex-parte motion to this Court for an order approving his recommendation for allowance in the amount set forth on the Notice of Determination. The recommendation will be approved by the Court and the claimant will be entitled to share, pro-rata, in distributions of assets, if any, to be made by the Liquidator based on the amount allowed.
 - iii) If the claimant disputes the amount recommended for allowance, the claimant may object to the Notice of Determination by serving a written objection on the Liquidator. The written objection must be received by the Liquidator within sixty days of

the date of the Notice of Determination.

- iv) The Liquidator will refer each claim for which there is a timely objection to the referee appointed by order entered April 26, 1991 to hear and report on the validity of claimants' objections and will notify each claimant of the time and place of the hearing on the claimant's claim.
- b) The Liquidator shall submit an ex-parte order seventy-five days after the date of the Notice of Determination, which shall provide for the approval and confirmation of the Liquidator's recommendations for allowance with respect to each claim for which no objection is received.

E N T E R

S/ _____
J. S. C.

*Filed in
New York
County Clerk's
Jr 3, 1995*

EXHIBIT 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 7

In the Matter of
the Liquidation of

Midland Insurance Company

Present:

HON. MICHAEL D. STALLMAN, J.

W. K. ...
1. On April 3, 1986, Midland Insurance Company, a New York authorized stock casualty insurer, was declared insolvent and placed into liquidation ("Midland") under the receivership of the Superintendent of Insurance ("Superintendent") of the State of New York as liquidator of Midland ("Liquidator"). Pursuant to Insurance Law Section 7434, payments to be distributed from the Midland estate are made on allowed claims. By order dated January 30, 1997 ("January 1997 Order"), Justice Beverly Cohen approved a procedure for the allowance of claims.

2. Pursuant to a Decision and Order dated January 14, 2008 (the "Decision"), this Court held that "[t]o give effect to the contractual interposition rights" of Midland's reinsurers, the allowance procedures, in effect pursuant to the January 1997 Order, should be modified. The Decision held that those modifications should: (1) "permit reinsurers to assert defenses available to Midland or to the Liquidator to any claim allowed by the Liquidator that is either partially or wholly reinsured," and (2) "establish a process in which those defenses can be adjudicated as part of the judicial approval process, involving a hearing before a referee equivalent to that provided where an objection is filed to the Liquidator's disallowance of a claim." The Decision found that new procedures should "take into account a reinsurer's contractual right to notice, a right to associate and cooperate with the Liquidator, and/or a right to investigate claims."

The Supreme Court of the State of New York, County of New York, at the City of New York, on the 31st day of May, 2009
Index No. 41294/86

ORDER

FILED

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NEW YORK

SUPREME COURT CLERK'S OFFICE

3. The Decision also required the Liquidator to "solicit input from reinsurers, major policy holders, and the guaranty associations and any other interested parties about proposed changes," and "report to the Court within 120 days with proposed changes." The 120-day period was extended for 75 days, with the advice and agreement of the reinsurers, major policyholders and the guaranty associations (collectively, the "Interested Parties").¹

4. Since July 2008, the Liquidator and certain of the Interested Parties have apprised the Court of their progress in working with the Liquidator to prepare drafts of this proposed Order over the course of several telephone conference calls. The Interested Parties have provided their input and suggested revisions to the Liquidator's draft of this proposed Order. The Liquidator incorporated many of these revisions into its proposed Order. The submission of this proposed Order is without prejudice to any right to appeal.

5. In accordance with the Decision, and in addition to its draft of this proposed Order, the Liquidator submitted an affirmation which affirms that its draft of this proposed Order and the Liquidator's revised claims procedures for Midland ("Midland Claims Procedures") were circulated to the Interested Parties, that the Liquidator solicited and received input from the Interested Parties, and that some of that input was incorporated into its drafts of this proposed Order and the Midland Claims Procedures.

NOW THEREFORE,
The Court finds that:
~~IT IS HEREBY ORDERED THAT:~~

1. The Liquidator has complied with the Decision by modifying his claims allowance procedures and creating the Revised Allowance Procedures described below in

Paragraph 3. *Accordingly, it is ORDERED that:*

¹ This extension was predicated upon the Liquidator providing notice of such extension on the web-site of the New York Liquidation Bureau ("Bureau"). Such Notice was posted on the Bureau's web-site on June 6, 2008. Thereafter, the 75-day period was subsequently extended several times, again, predicated on notice provided by the Liquidator on the Bureau's web-site until such time that this proposed Order was submitted.

2. The Revised Allowance Procedures apply to claims of both Major Policyholders and non-Major Policyholders, as those terms are defined in Midland Claims Procedures. The Liquidator has the right to amend the Midland Claims Procedures so long as any amendments are consistent with the Revised Allowance Procedures contained in this Order.

3. The Revised Allowance Procedures provide, in pertinent part, as follows:

(a) The Liquidator shall, on a periodic basis, prepare a list of any claims that the Liquidator is considering for allowance and that are either partially or wholly reinsured. The Liquidator shall mail a notice setting forth the listed claims ("Pre-Allowance Notice") to all reinsurers entitled to notice pursuant to one or more reinsurance contracts issued by such reinsurers ("Reinsurers"). If the identities of some or all reinsurers that potentially reinsure a particular claim are not known, as in the case of certain non-Major Policyholder claims, a general notice setting forth the applicable rights of the reinsurers shall be mailed to all reinsurers that have not commuted or otherwise compromised such claim with the Liquidator.

(b) If the Liquidator determines that a claim should be allowed, the Liquidator shall mail the claimant a Notice of Determination ("NOD"). The NOD shall advise each such claimant that the claim will be allowed by the Liquidator in the amount set forth therein subject to potential objections and court approval. The NOD shall not be mailed until at least sixty (60) days after the Liquidator's mailing of the Pre-Allowance Notice.

(c) A copy of the NOD shall be mailed to the Reinsurers and also to the applicable State Guaranty Association ("SGA") (or, if not known, to the Midland Coordinating Committee (the "Coordinating Committee") of the National Conference of Insurance Guaranty Funds ("NCIGF")). If the claim does not

involve any reinsurance protection and/or SGA involvement, the NOD shall not be mailed to any Reinsurers, any SGA, or the NCIGF.

- (d) If the claimant disputes the amount of the allowance, then the claimant may object to the NOD by serving a written objection on the Liquidator ("Objection"). The Objection must be received by the Liquidator within sixty (60) days of the date of the NOD. The Liquidator shall, within ten (10) business days of the date of the Liquidator's receipt of the Objection, send a copy of the same to any Reinsurer and to any SGA that the Liquidator knows has any involvement with the claimant's claim (or, if not known, to the Coordinating Committee).
- (e) If the claimant does not mail to the Liquidator a notice of acceptance of the NOD within sixty (60) days of the date of the NOD, then the claimant shall be deemed to have accepted the allowance. Within ten (10) business days of the date that the Liquidator has knowledge that the allowance has been accepted or deemed accepted, the Liquidator shall advise the Reinsurers and any affected SGA (or, if not known, to the Coordinating Committee) by mail that the claimant has accepted the allowance.
- (f) To the extent that a Reinsurer has a contractual right to interpose defenses that it in good faith believes are available to Midland or the Liquidator, such Reinsurer, in connection with the allowance, may interpose such defenses on behalf of Midland or the Liquidator. If such Reinsurer elects to exercise such right, it shall mail a "Notice of Intent to Interpose Defenses" to the Liquidator and the claimant within ninety (90) days of the date of the NOD. The Liquidator shall mail a copy of the Reinsurer's Notice of Intent to Interpose Defenses to any applicable SGA (or, if not known, to the Coordinating Committee), within ten (10) business days

of its receipt, and a copy to the claimant if it is received by the Liquidator prior to receipt of any Objection from the claimant. In such cases, the claimant shall mail a copy of its Objection to such Reinsurer contemporaneously with its mailing of the Objection to the Liquidator. Within thirty (30) days of receipt of the Reinsurer's Notice of Intent to Interpose Defenses, the claimant may dispute the amount of the allowance in the NOD as inadequate even where the claimant had previously accepted or been deemed to have accepted the NOD.

- (g) If one or more Reinsurers timely files a Notice of Intent to Interpose Defenses, then the objection of the Reinsurer or Reinsurers shall be heard by a referee, as set forth in subparagraph (i) below.
- (h) If the claimant accepts or is deemed to have accepted the claim allowance, and no Reinsurer serves a Notice of Intent to Interpose Defenses, then the claimant is not required to take any further action. The Liquidator will submit an *ex-parte* motion to this Court no sooner than ninety-one (91) days after the date of the NOD, seeking an order approving the allowance in the amount set forth on the NOD. If the allowance is approved by the Court, then the claimant will be entitled to share *pro rata* with claimants of the same class in the distribution of assets, if any, to be made by the Liquidator pursuant to New York Insurance Law Article 74.
- (i) The Liquidator will refer each claim for which there is a timely objection by a claimant or timely Notice of Intent to Interpose Defenses filed by one or more Reinsurers to the referee appointed by order of this Court to hear and report on whether the claim should be allowed or disallowed, in whole or in part, including ~~the position of the claimant or Reinsurer~~ timely objections or defenses raised by any party. Where more than one

Reinsurer has exercised its contractual right to interpose defenses to the same claim, there will be a single consolidated proceeding before the referee.

- (j) The Liquidator will notify by mail each claimant, Reinsurer, and any applicable SGA (or, if not known, to the Coordinating Committee), of the time and place of the hearing before a referee.
- (k) An SGA shall have a right to notice of and to participate as a party in any judicial or other proceeding, including any proceeding before a referee, concerning: (i) a claim by the SGA, or (ii) a claim by a policyholder or other claimant under a policy where (A) the SGA has paid a claim under such policy and the claim by the SGA has not been finally allowed and approved by the Court; or (B) a claim has been asserted against the SGA under such policy and the SGA has notified the Liquidator that such claim may result in a claim by the SGA against the Liquidator.
- (l) If by no later than thirty (30) days before the Liquidator mails the NOD to the Reinsurer(s), the Liquidator has not provided a Reinsurer with all documents properly requested by such Reinsurer pursuant to a right to any access records clause or similar provision in its reinsurance contract, such Reinsurer shall be entitled to an extension of time to mail a Notice of Intent to Interpose Defenses, but in no event shall such extension of time be more than an additional forty-five (45) days. After service of the NOD, Reinsurers shall be entitled to reasonable access to the Liquidator's claim file as needed. Such access shall be provided within ten (10) business days of the Reinsurer's request for access, provided, however, that all documents previously copied for and provided to the Reinsurer or its agent shall not again be made available.

- (m) Service or mailing as used anywhere herein refers to first-class mail to the last known address of the party to be served. If the parties agree in writing that service or mailing may be accomplished by means of electronic or facsimile transmission in lieu of mailing, and a copy of such proof of this authorized substitute for mailing is retained for purposes of presenting to the Court, if necessary, such substitute service shall be accepted.
- n) If the Liquidator fails to timely meet any of the time periods set for mailing notices pertaining to an allowance to any party, it shall not affect the validity of the allowance but shall only entitle the party that did not receive timely notice to postpone the approval process until such date as that party's notice rights have been fully protected.

Dated: *May 31, 2009*
New York, New York

ENTER:

[Signature]
J.S.C.

FILED

JUN - 2 2009

NEW YORK
COUNTY CLERK'S OFFICE

EXHIBIT 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 3

----- X

In the Matter of

Index No. 41292/85

the Liquidation of

**REVISED CLAIMS
ALLOWANCE
PROCEDURE ORDER**

Union Indemnity Insurance Company of New York.

----- X

PRESENT: HON. EILEEN BRANSTEN.

WHEREAS, on July 16, 1985, the New York Supreme Court, New York County (“Receivership Court”), entered an order declaring Union Indemnity Insurance Company of New York (“Union”) to be insolvent and placing it into liquidation under the supervision of the Superintendent of Insurance of the State of New York (“Superintendent”) as liquidator (“Liquidator”);

WHEREAS, on January 3, 1996, the Receivership Court entered an Order Approving the Liquidator’s Proposed Procedure for Judicial Review of Recommendations for Allowance of Claims (“Union Claims Procedure Order”), setting forth a procedure for the Liquidator to recommend the allowance of claims and for the Receivership Court to review such recommendations in the Union proceeding;

WHEREAS, on June 2, 2009, the Supreme Court, New York County, entered an order in *In the Matter of the Liquidation of Midland Insurance Company*, Index No. 41294/86, establishing a procedure for the allowance of claims in that proceeding (“Midland Order”).

WHEREAS, the Receivership Court has entered an order, dated March 19, 2010 (“March 19, 2010 Order”), directing the Liquidator with respect to the allowance of claims, to “submit a proposed order delineating the steps that are to be implemented to conform with [the Midland Order] . . . within 30 days of the entry of this [March 19, 2010] Order.”;

IT IS HEREBY ORDERED that:

1. The Union Claims Procedure Order is amended as set forth herein. This amendment to the Union Claims Procedure Order shall apply only to claims submitted to the Receivership Court for allowance on or after the date of entry of this Order. The Liquidator has the right to further amend this Order so long as any amendments are consistent with the revised claims allowance procedures contained in this Order.
2. The revised claims allowance procedures are as follows:
 - (a) The Liquidator shall, on a periodic basis, prepare a list of any claims that the Liquidator is considering for allowance and that are either partially or wholly reinsured. If the Liquidator intends to submit any such claim to a reinsurer for payment, the Liquidator shall mail a notice of the claim ("Pre-Allowance Notice") to the specific reinsurer to which the claim will be made ("Identified Reinsurer"). The Liquidator may not submit a claim to a reinsurer for payment unless it first mails such reinsurer a Pre-Allowance Notice of the claim. The Liquidator's failure to mail a Pre-Allowance Notice to a reinsurer shall be without prejudice to the Liquidator to submit a Pre-Allowance Notice to the reinsurer at a later time.
 - (b) If the Liquidator determines that a claim should be allowed, the Liquidator shall mail the claimant a Notice of Determination ("NOD"). The NOD shall advise each such claimant that the claim will be allowed by the Liquidator in the amount set forth therein subject to potential objections and Receivership Court approval. The NOD shall not be mailed until at least sixty (60) days after the Liquidator's mailing of the Pre-Allowance Notice.

- (c) A copy of the NOD shall be mailed to the Identified Reinsurers and also, where applicable, to the state guaranty association (“SGA”) (or, if not known, to the Union Coordinating Committee (the “Coordinating Committee”) of the National Conference of Insurance Guaranty Funds (“NCIGF”)). If the claim does not involve any reinsurance protection and/or SGA involvement, the NOD shall not be mailed to any reinsurers, any SGA, or the Coordinating Committee of the NCIGF.
- (d) If the claimant disputes the amount of the allowance, then the claimant may object to the NOD by serving a written objection on the Liquidator (“Objection”). The Objection must be received by the Liquidator within sixty (60) days of the date of the NOD. The Liquidator shall, within ten (10) business days of the date of the Liquidator’s receipt of the Objection, send a copy of the same to any Identified Reinsurer and to any SGA that the Liquidator knows has any involvement with the claimant’s claim or, if not known, to the Coordinating Committee of the NCIGF.
- (e) If the claimant does not mail to the Liquidator a notice of acceptance of the NOD within sixty (60) days of the date of the NOD, then the claimant shall be deemed to have accepted the allowance. Within ten (10) business days of the date that the Liquidator has knowledge that the allowance has been accepted or deemed accepted, the Liquidator shall advise the Identified Reinsurers and any affected SGA (or, if not known, to the Coordinating Committee of the NCIGF) by mail that the claimant has accepted the allowance.
- (f) To the extent that an Identified Reinsurer has a contractual right to interpose defenses that it in good faith believes are available to Union or the Liquidator,

such Identified Reinsurer, in connection with the allowance, may interpose such defenses on behalf of Union or the Liquidator. If such Identified Reinsurer elects to exercise such right, it shall mail a “Notice of Intent to Interpose Defenses” to the Liquidator and the claimant within ninety (90) days of the date of the NOD. The Liquidator shall mail a copy of the Identified Reinsurer’s Notice of Intent to Interpose Defenses to any applicable SGA (or, if not known, to the Coordinating Committee of the NCIGF), within ten (10) business days of its receipt, and a copy to the claimant if it is received by the Liquidator prior to receipt of any Objection from the claimant. In such cases, the claimant shall mail a copy of its Objection to such Identified Reinsurer contemporaneously with its mailing of the Objection to the Liquidator. Within thirty (30) days of receipt of the Identified Reinsurer’s Notice of Intent to Interpose Defenses, the claimant may dispute the amount of the allowance in the NOD as inadequate even where the claimant had previously accepted or been deemed to have accepted the NOD.

- (g) If one or more Identified Reinsurers timely files a Notice of Intent to Interpose Defenses, then the objection of the Identified Reinsurer or Identified Reinsurers shall be heard by a referee, as set forth in subparagraph (i) below.
- (h) If the claimant accepts or is deemed to have accepted the claim allowance, and no Identified Reinsurer serves a Notice of Intent to Interpose Defenses, then the claimant is not required to take any further action. The Liquidator will submit an *ex-parte* motion to this Receivership Court no sooner than ninety-one (91) days after the date of the NOD, seeking an order approving the allowance in the amount set forth on the NOD. If the allowance is approved by the Receivership Court, then the claimant will be entitled to share *pro rata* with claimants of the

same class in the distribution of assets, if any, to be made by the Liquidator pursuant to New York Insurance Law Article 74.

- (i) The Liquidator will refer each claim for which there is a timely objection by a claimant or timely Notice of Intent to Interpose Defenses filed by one or more Identified Reinsurers to the referee appointed by order of this Receivership Court to hear and report on whether the claim should be allowed or disallowed, in whole or in part, including timely objections or defenses raised by a claimant or the Identified Reinsurer. Where more than one Identified Reinsurer has interposed defenses to the same claim, there will be a single consolidated proceeding before the referee.
- (j) The Liquidator will notify by mail each claimant, Identified Reinsurer, and any applicable SGA (or, if not known, to the Coordinating Committee of the NCIGF), of the time and place of the hearing before a referee.
- (k) An SGA shall have a right to notice of and to participate as a party in any judicial or other proceeding, including any proceeding before a referee, concerning: (i) a claim by the SGA, or (ii) a claim by a policyholder or other claimant under a policy where (A) the SGA has paid a claim under such policy and the claim by the SGA has not been finally allowed and approved by the Receivership Court; or (B) a claim has been asserted against the SGA under such policy and the SGA has notified the Liquidator that such claim may result in a claim by the SGA against the Liquidator.
- (l) If by no later than thirty (30) days before the Liquidator mails the NOD to the Identified Reinsurer(s), the Liquidator has not provided an Identified Reinsurer with all documents properly requested by such Identified Reinsurer pursuant to a

right to any access records clause or similar provision in its reinsurance contract, such Identified Reinsurer shall be entitled to an extension of time to mail a Notice of Intent to Interpose Defenses, but in no event shall such extension of time be more than an additional forty-five (45) days. After service of the NOD, Identified Reinsurers shall be entitled to reasonable access to the Liquidator's claim file as needed. Such access shall be provided within ten (10) business days of the Identified Reinsurer's request for access, provided, however, that all documents previously copied for and provided to the Identified Reinsurer or its agent shall not again be made available, and that the Identified Reinsurer shall agree to reasonable confidentiality restrictions.

- (m) Service or mailing as used anywhere herein refers to first-class mail to the last known address of the party to be served. If the parties agree in writing that service or mailing may be accomplished by means of electronic or facsimile transmission in lieu of mailing, and a copy of such proof of this authorized substitute for mailing is retained for purposes of presenting to the Receivership Court, if necessary, such substitute service shall be accepted.
- (n) If the Liquidator fails to timely meet any of the time periods set for mailing notices pertaining to an allowance to any party, it shall not affect the validity of the allowance but shall only entitle the party that did not receive timely notice to postpone the approval process until such date as that party's notice rights have been fully protected.

3. This Order is without prejudice to the Liquidator's right to appeal or otherwise seek the modification or vacatur of this Order.

ENTER:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 3

In the Matter of

Index No. 41292/85

the Liquidation of

Union Indemnity Insurance Company of New York.

**REVISED CLAIMS
ALLOWANCE
PROCEDURE ORDER**

PRESENT: HON. EILEEN BRANSTEN.

WHEREAS, on July 16, 1985, the New York Supreme Court, New York County ("Receivership Court"), entered an order declaring Union Indemnity Insurance Company of New York ("Union") to be insolvent and placing it into liquidation under the supervision of the Superintendent of Insurance of the State of New York ("Superintendent") as liquidator ("Liquidator");

WHEREAS, on January 3, 1996, the Receivership Court entered an Order Approving the Liquidator's Proposed Procedure for Judicial Review of Recommendations for Allowance of Claims ("Union Claims Procedure Order"), setting forth a procedure for the Liquidator to recommend the allowance of claims and for the Receivership Court to review such recommendations in the Union proceeding;

WHEREAS, on June 2, 2009, the Supreme Court, New York County, entered an order in *In the Matter of the Liquidation of Midland Insurance Company*, Index No. 41294/86, establishing a procedure for the allowance of claims in that proceeding ("Midland Order").

WHEREAS, the Receivership Court has entered an order, dated March 19, 2010 ("March 19, 2010 Order"), directing the Liquidator with respect to the allowance of claims, to "submit a proposed order delineating the steps that are to be implemented to conform with [the Midland Order] . . . within 30 days of the entry of this [March 19, 2010] Order.";

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Midland

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J

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Insurance Company, a

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insurer, was declared

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Section 7434, payments to be distributed
from the Midland estate are made on
allowed claims. By order dated January
30, 1997 ("January 1997 Order"), Justice
Beverly Cohen approved a procedure for
the allowance of claims.

Deleted: Pursuant to a Decision and
Order dated January 14, 2008 (the
"Decision"), this Court held that "[t]o
give effect to the contractual interposition
rights" of Midland's reinsurers, the
allowance procedures, in effect pursuant
to the January 1997 Order, should be
modified. The Decision held that
those modifications should: (1) "permit
reinsurers to assert defenses available to
Midland or to the Liquidator to any claim
allowed by the Liquidator that is either
partially or wholly reinsured," and (2)
"establish a process in which those
defenses can be adjudicated as part of the
judicial approval process, involving a
hearing before a referee equivalent to that
provided where an objection is filed to
the Liquidator's disallowance of a claim."
The Decision found that new procedures
should "take into account a reinsurer's
contractual right to notice, a right to
associate and cooperate with the
Liquidator, and/or a right to investigate
claims."§

The Decision also required the
Liquidator to "solicit input from
reinsurers, major policy holders, and the
guaranty associations and any other
interested parties about proposed
changes," and "report to the Court within
120 days with proposed changes." The
120-day period was extended for 75 days,
with the advice and agreement of the
reinsurers, major policyholders and the
guaranty associations (collectively, the
"Interested Parties").¹ §
Since July 2008, the Liquidator and
certain of the Interested Parties have
apprised the Court of their progress in
working with the Liquidator to pre ... [1]

IT IS HEREBY ORDERED that:

1. The Union Claims Procedure Order is amended as set forth herein. This amendment to the Union Claims Procedure Order shall apply only to claims submitted to the Receivership Court for allowance on or after the date of entry of this Order. The Liquidator has the right to further amend this Order so long as any amendments are consistent with the revised claims allowance procedures contained in this Order.
2. The revised claims allowance procedures are as follows:
 - (a) The Liquidator shall, on a periodic basis, prepare a list of any claims that the Liquidator is considering for allowance and that are either partially or wholly reinsured. If the Liquidator intends to submit any such claim to a reinsurer for payment, the Liquidator shall mail a notice of the claim ("Pre-Allowance Notice") to the specific reinsurer to which the claim will be made ("Identified Reinsurer"). The Liquidator may not submit a claim to a reinsurer for payment unless it first mails such reinsurer a Pre-Allowance Notice of the claim. The Liquidator's failure to mail a Pre-Allowance Notice to a reinsurer shall be without prejudice to the Liquidator to submit a Pre-Allowance Notice to the reinsurer at a later time.
 - (b) If the Liquidator determines that a claim should be allowed, the Liquidator shall mail the claimant a Notice of Determination ("NOD"). The NOD shall advise each such claimant that the claim will be allowed by the Liquidator in the amount set forth therein subject to potential objections and Receivership Court approval. The NOD shall not be mailed until at least sixty (60) days after the Liquidator's mailing of the Pre-Allowance Notice.

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Deleted: . The Liquidator has complied with the Decision by modifying his claims allowance procedures and creating the Revised Allowance Procedures described below in Paragraph 3.¶

2. . The Revised Allowance Procedures apply to claims of both Major Policyholders and non-Major Policyholders, as those terms are defined in Midland Claims Procedures.

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Deleted: Revised Allowance Procedures

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Deleted: 3. . The Revised Allowance Procedures provide, in pertinent part, as follows:¶

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Deleted: whether of a Major Policyholder or a non-Major Policyholder

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- (c) A copy of the NOD shall be mailed to the Identified Reinsurers and also, where applicable, to the state guaranty association ("SGA") (or, if not known, to the Union Coordinating Committee (the "Coordinating Committee") of the National Conference of Insurance Guaranty Funds ("NCIGF")). If the claim does not involve any reinsurance protection and/or SGA involvement, the NOD shall not be mailed to any reinsurers, any SGA, or the Coordinating Committee of the NCIGF.
- (d) If the claimant disputes the amount of the allowance, then the claimant may object to the NOD by serving a written objection on the Liquidator ("Objection"). The Objection must be received by the Liquidator within sixty (60) days of the date of the NOD. The Liquidator shall, within ten (10) business days of the date of the Liquidator's receipt of the Objection, send a copy of the same to any Identified Reinsurer and to any SGA that the Liquidator knows has any involvement with the claimant's claim or, if not known, to the Coordinating Committee of the NCIGF.
- (e) If the claimant does not mail to the Liquidator a notice of acceptance of the NOD within sixty (60) days of the date of the NOD, then the claimant shall be deemed to have accepted the allowance. Within ten (10) business days of the date that the Liquidator has knowledge that the allowance has been accepted or deemed accepted, the Liquidator shall advise the Identified Reinsurers and any affected SGA (or, if not known, to the Coordinating Committee of the NCIGF) by mail that the claimant has accepted the allowance.

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- (f) To the extent that an Identified Reinsurer has a contractual right to interpose defenses that it in good faith believes are available to Union or the Liquidator, such Identified Reinsurer, in connection with the allowance, may interpose such defenses on behalf of Union or the Liquidator. If such Identified Reinsurer elects to exercise such right, it shall mail a "Notice of Intent to Interpose Defenses" to the Liquidator and the claimant within ninety (90) days of the date of the NOD. The Liquidator shall mail a copy of the Identified Reinsurer's Notice of Intent to Interpose Defenses to any applicable SGA (or, if not known, to the Coordinating Committee of the NCIGF), within ten (10) business days of its receipt, and a copy to the claimant if it is received by the Liquidator prior to receipt of any Objection from the claimant. In such cases, the claimant shall mail a copy of its Objection to such Identified Reinsurer contemporaneously with its mailing of the Objection to the Liquidator. Within thirty (30) days of receipt of the Identified Reinsurer's Notice of Intent to Interpose Defenses, the claimant may dispute the amount of the allowance in the NOD as inadequate even where the claimant had previously accepted or been deemed to have accepted the NOD.
- (g) If one or more Identified Reinsurers timely files a Notice of Intent to Interpose Defenses, then the objection of the Identified Reinsurer or Identified Reinsurers shall be heard by a referee, as set forth in subparagraph (i) below.
- (h) If the claimant accepts or is deemed to have accepted the claim allowance, and no Identified Reinsurer serves a Notice of Intent to Interpose Defenses, then the claimant is not required to take any further action. The Liquidator will submit an *ex-parte* motion to this Receivership Court no sooner than ninety-one (91) days after the date of the NOD, seeking an order approving the allowance in the

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amount set forth on the NOD. If the allowance is approved by the Receivership Court, then the claimant will be entitled to share *pro rata* with claimants of the same class in the distribution of assets, if any, to be made by the Liquidator pursuant to New York Insurance Law Article 74.

- (i) The Liquidator will refer each claim for which there is a timely objection by a claimant or timely Notice of Intent to Interpose Defenses filed by one or more Identified Reinsurers to the referee appointed by order of this Receivership Court to hear and report on whether the claim should be allowed or disallowed, in whole or in part, including timely objections or defenses raised by a claimant, or the Identified Reinsurer. Where more than one Identified Reinsurer has interposed defenses to the same claim, there will be a single consolidated proceeding before the referee.

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- (j) The Liquidator will notify by mail each claimant, Identified Reinsurer, and any applicable SGA (or, if not known, to the Coordinating Committee of the NCIGF), of the time and place of the hearing before a referee.

- (k) An SGA shall have a right to notice of and to participate as a party in any judicial or other proceeding, including any proceeding before a referee, concerning: (i) a claim by the SGA, or (ii) a claim by a policyholder or other claimant under a policy where (A) the SGA has paid a claim under such policy and the claim by the SGA has not been finally allowed and approved by the Receivership Court; or (B) a claim has been asserted against the SGA under such policy and the SGA has notified the Liquidator that such claim may result in a claim by the SGA against the Liquidator.

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New York, New York
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3. This Order is without prejudice to the Liquidator's right to appeal or otherwise seek the modification or vacatur of this Order.

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J.S.C.

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Pursuant to a Decision and Order dated January 14, 2008 (the "Decision"), this Court held that "[t]o give effect to the contractual interposition rights" of Midland's reinsurers, the allowance procedures, in effect pursuant to the January 1997 Order, should be modified. The Decision held that those modifications should: (1) "permit reinsurers to assert defenses available to Midland or to the Liquidator to any claim allowed by the Liquidator that is either partially or wholly reinsured," and (2) "establish a process in which those defenses can be adjudicated as part of the judicial approval process, involving a hearing before a referee equivalent to that provided where an objection is filed to the Liquidator's disallowance of a claim." The Decision found that new procedures should "take into account a reinsurer's contractual right to notice, a right to associate and cooperate with the Liquidator, and/or a right to investigate claims."

The Decision also required the Liquidator to "solicit input from reinsurers, major policy holders, and the guaranty associations and any other interested parties about proposed changes," and "report to the Court within 120 days with proposed changes." The 120-day period was extended for 75 days, with the advice and agreement of the reinsurers, major policyholders and the guaranty associations (collectively, the "Interested Parties").¹

Since July 2008, the Liquidator and certain of the Interested Parties have apprised the Court of their progress in working with the Liquidator to prepare drafts of this proposed Order over the course of several telephone conference calls. The Interested

¹ This extension was predicated upon the Liquidator providing notice of such extension on the web-site of the New York Liquidation Bureau ("Bureau"). Such Notice was posted on the Bureau's web-site on June 6, 2008. Thereafter, the 75-day period was subsequently extended several times, again, predicated on notice provided by the Liquidator on the Bureau's web-site until such time that this proposed Order was submitted.

Parties have provided their input and suggested revisions to the Liquidator's draft of this proposed Order. The Liquidator incorporated many of these revisions into its proposed Order. The submission of this proposed Order is without prejudice to any right to appeal.

In accordance with the Decision, and in addition to its draft of this proposed Order, the Liquidator submitted an affirmation which affirms that its draft of this proposed Order and the Liquidator's revised claims procedures for Midland ("Midland Claims Procedures") were circulated to the Interested Parties, that the Liquidator solicited and received input from the Interested Parties, and that some of that input was incorporated into its drafts of this proposed Order and the Midland Claims Procedures.

NOW THEREFORE,

EXHIBIT 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 3

----- X

In the Matter of

Index No. 41292/85

the Liquidation of

Union Indemnity Insurance Company of New York.

**REVISED CLAIMS
ALLOWANCE
PROCEDURE
ORDER**

----- X

PRESENT: HON. EILEEN BRANSTEN.

WHEREAS, on July 16, 1985, the New York Supreme Court, New York County (“Receivership Court”), entered an order declaring Union Indemnity Insurance Company of New York (“Union”) to be insolvent and placing it into liquidation under the supervision of the Superintendent of Insurance of the State of New York (“Superintendent”) as liquidator (“Liquidator”);

WHEREAS, on January 3, 1996, the Receivership Court entered an Order Approving the Liquidator’s Proposed Procedure for Judicial Review of Recommendations for Allowance of Claims (“Union Claims Procedure Order”), setting forth a procedure for the Liquidator to recommend the allowance of claims and for the Receivership Court to review such recommendations in the Union proceeding;

WHEREAS, on June 2, 2009, the Supreme Court, New York County, entered an order in *In the Matter of the Liquidation of Midland Insurance Company*, Index No. 41294/86, establishing a procedure for the allowance of claims in that proceeding (“Midland Order”).

WHEREAS, the Receivership Court has entered an order, dated March 19, 2010 (“March 19, 2010 Order”), directing the Liquidator with respect to the allowance of

claims, to “submit a proposed order delineating the steps that are to be implemented to conform with [the Midland Order] . . . within 30 days of the entry of this [March 19, 2010] Order.”;

IT IS HEREBY ORDERED that the Union Claims Procedure Order is amended as follows:

1. In the event that the Liquidator intends to submit a claim to a reinsurer for payment, the Liquidator shall, prior to the allowance of the claim, notify the reinsurer of the proposed allowance and provide the reinsurer a reasonable opportunity to interpose any defenses that the reinsurer has the contractual right to interpose, and to be heard on such defenses before a referee.

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J.S.C.

EXHIBIT 5

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

-----X	:	Index No. 41294/1986
	:	
In the Matter of the Liquidation of	:	(Hon. Michael D. Stallman)
	:	
MIDLAND INSURANCE COMPANY	:	<u>NOTICE OF CROSS-APPEAL</u>
	:	
-----X	:	

PLEASE TAKE NOTICE, that Kermitt J. Brooks, Acting Superintendent of Insurance of the State of New York, in his capacity as Liquidator ("Liquidator") of Midland Insurance Company, hereby appeals to the Supreme Court of the State of New York, Appellate Division, First Department, from: (1) that portion of the Decision and Order of the Supreme Court, New York County [Stallman, J.] dated January 14, 2008, entered in the Office of the Clerk of the New York County Supreme Court on or about January 15, 2008 and served with Notice of Entry on or about June 30, 2009 (the "January 14, 2008 Order"), to the extent that it directed settlement of an order modifying the Midland claims allowance procedures order dated January 30, 1997 ("Claims Procedures Order"); and (2) that portion of the Order of the Supreme Court, New York County [Stallman, J.] dated May 31, 2009, entered in the Office of the Clerk of the New York County Supreme Court on or about June 2, 2009 and served with the Notice of Entry on or about June 3, 2009 ("May 31, 2009 Order"), to the extent that it modified the Claims Allowance Procedures so as to provide for interposition rights, as defined by the court, which directly interfere with the Liquidator's broad discretion in his determinations and recommendations for the allowance or disallowance of claims. Copies of the January 14, 2008 Order with Notice of Entry and the

May 31, 2009 Order with Notice of Entry are annexed hereto, respectively, as Exhibits A and B.

Dated: New York, New York
July 16, 2009

Respectfully submitted,

ANDREW J. LORIN, ATTORNEY FOR
KERRITT J. BROOKS, AS LIQUIDATOR
OF MIDLAND INSURANCE COMPANY

James E. d'Auguste
Judy H. Kim
New York Liquidation Bureau
123 William Street
New York, New York 10038
(212) 341-6721

McCARTHY, LEONARD &
KAEMMERER, L.C.

By: 

James C. Owen
400 South Woods Mill Rd.,
Suite 250
Chesterfield, Missouri 63017
(314) 392-5200

*Counsel for Plaintiff Kermitt J. Brooks, Acting
Superintendent of Insurance of the State of New
York, in his capacity as Liquidator of Midland
Insurance Company*

TO: See Attached Service List

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

In the Matter of the Liquidation of
MIDLAND INSURANCE COMPANY

Index No.: 41294/86

STATE OF NEW YORK

AFFIDAVIT OF SERVICE

SS:

COUNTY OF NEW YORK

I, JAMES C. OWEN, being duly sworn, depose and say:

1. I am over 18 years of age and am counsel for the Superintendent of Insurance of the State of New York, in his capacity as Liquidator ("Liquidator") of Midland Insurance Company.
2. On July 16, 2009, I served the Notice of Appeal (A) of the Decision and Order of the Supreme Court, New York County [Stallman, J.] dated January 14, 2008, entered in the Office of the Clerk of the New York County Supreme Court on or about January 15, 2009 and served with the Notice of Entry by the attorneys for Everest Reinsurance Company on or about June 30, 2009, and (B) of the Order of the Supreme Court, New York County [Stallman, J.] dated May 31, 2009, entered in the Office of the Clerk of the New York County Supreme Court on or about June 2, 2009 and served with the Notice of Entry by the attorneys for Kermit J. Brooks, Acting Superintendent of Insurance of the State of New York, in his capacity as Liquidator of Midland Insurance Company on or about June 3, 2009, by mailing true copies of the attached papers, enclosed and properly sealed in postpaid envelopes, which I deposited in an official depository under the exclusive care and custody of the United States Postal Services within the State of ^{Missouri} ~~New York~~, addressed to:

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Budd Lerner, P.C.
140 Broadway, 46th Floor
New York, New York 10005-1754

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Judy H. Kim, Esq.
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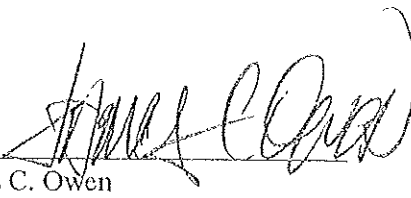
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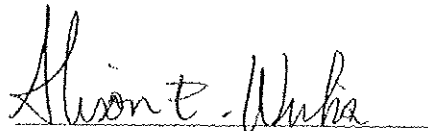
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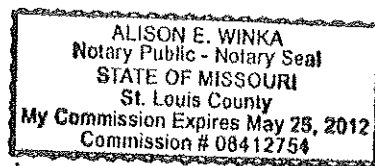
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James C. Owen

Sworn to before me this 16th day of July, 2009.


Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST DEPARTMENT

-----X	:	Index No. 41294/1986
	:	
In the Matter of the Liquidation of	:	<u>PRE-ARGUMENT STATEMENT</u>
MIDLAND INSURANCE COMPANY	:	
	:	Oral Argument Requested
	:	
-----X	:	

Kermitt J. Brooks, Acting Superintendent of Insurance (“Superintendent”) of the State of New York, in his capacity as liquidator (“Liquidator”) of Midland Insurance Company (“Midland”), by his undersigned attorneys, submits this pre-argument statement pursuant to Section 600.17 of the Rules of this Court:

1. Title of the Action: The full title of the action is as set forth in the above caption.
2. Name of the Parties: Full names of original parties and changes in the parties: Kermitt J. Brooks, Acting Superintendent of Insurance of the State of New York, in his capacity as Liquidator of Midland, Everest Reinsurance Company (“Everest Re”), and all noticed policyholders, reinsurers, and other interested parties of Midland.

3. Counsel for Appellant:

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4. Counsel for Cross-Appellant

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6. Court and County From Which Appeal is Taken: This appeal is taken from the Supreme Court of the State of New York, County of New York ("Receivership Court").
7. Nature of the Cause of Action: On April 3, 1986, Midland was declared insolvent and placed into liquidation under the receivership of the Superintendent as receiver pursuant to an "Order of Liquidation" ("Liquidation Order") entered by Justice Thomas Hughes. Amongst other things, the Liquidation Order sets forth procedures regarding the approval by the Receivership Court of the Liquidator's recommendations for the allowance of claims in the Midland proceeding.

On August 10, 2006, Everest Re filed a "Motion to Modify the Injunction to Permit Suit Against the Liquidator" ("Everest Re's Motion") seeking an order lifting the permanent injunction contained in the Liquidation Order which barred actions against Midland and permitting Everest Re to commence an action for declaratory judgment and for injunctive relief based upon the Liquidator's alleged breach of Everest Re's reinsurance contracts with Midland.

Pursuant to an Interim Decision of November 8, 2006, ("Interim Decision"), the Receivership Court ordered the Liquidator and any interested parties to file supplemental briefs to address the issue of "how the provisions of [New York] Insurance Law § 1308 should be interpreted in the context of a liquidation under

Article 74 of the Insurance Law” and directed the parties to answer six specific questions with respect to that issue.

The Receivership Court also directed Everest Re to provide notice of its motion to Midland's major policyholders and reinsurers for the purpose of providing them with the opportunity to respond to Everest Re's Motion. Certain major policyholders and state guaranty funds of Midland submitted affidavits and opposition papers as required by the Interim Decision.

On November 22, 2006, Everest Re filed a motion to vacate the Interim Decision (“Motion to Vacate”) and a motion to modify the injunction to permit suit against the Liquidator (“Motion to Preclude”), both seeking to preclude the Liquidator and the policyholders of Midland from introducing evidence that the Liquidator settled certain claims between Midland's policyholders and Everest Re in good faith. One of Midland's policyholders, Baxter International Inc., also brought a motion for leave to respond to Everest Re's Motion to Vacate (“Motion for Leave”).

8. Result Reached in the Court Below: In a Decision and Order dated January 14, 2008, entered in the Office of the Clerk of the County of New York on January 15, 2008, served with notice of entry on June 30, 2009 (“January 14, 2008 Order” annexed as Exhibit A), the Receivership Court: (1) granted in part the Motion for Leave; (2) denied Everest Re's Motion to Vacate; (3) denied Everest Re's Motion to Preclude; and (4) directed settlement of an order modifying the Order on Claims Allowance Procedures dated January 30, 1997 (“Claims Allowance Procedures Order”). Pursuant to that part of the January 14, 2008 Order directing settlement of an order, the Receivership Court signed the a subsequent order granting the Liquidator's revised allowance procedures dated May 31, 2009 Order (“May 31, 2009 Order” annexed as Exhibit B) which was entered in the Office of the Clerk of the New York County Supreme Court on June 2, 2009 and served with notice of entry on June 3, 2009.
9. Grounds for Seeking Reversal: The Liquidator seeks reversal of only that portion of the January 14, 2008 Order that provided for a procedure for reinsurers to directly litigate Liquidator's determinations and recommendations for the allowance or disallowance of claims; and the Liquidator seeks reversal of the May 31, 2009 Order which provided interposition rights, as defined by the Receivership Court, which directly interfere with the Liquidator's discretion to recommend the allowance or disallowance of claims in the Midland receivership. The Receivership Court committed reversible error when it disregarded relevant, material evidence and misapplied applicable law which lead to these results.
10. Issues Proposed to be Raised on Appeal: The Liquidator intends to present the following issues on appeal:
 - (a) Whether the Receivership Court erred when it directed settlement of an order modifying the Claims Allowance Procedures Order, thereby

providing a procedure for reinsurers to directly litigate the Liquidator's recommendations for allowance or disallowance of claims;

- (b) Whether the Receivership Court erred when it misinterpreted the reinsurers "interposition rights" so as to interfere with the Liquidator's discretion in his determinations and recommendations for the allowance of claims; and
- (c) Whether the Receivership Court failed to give appropriate deference to the Liquidator's administrative determinations and statutory interpretation of New York Insurance Law.

- 11. Related Actions: There are no related actions pending.
- 12. Additional Appeals Pending In This Action: There are no other appeals pending before this Court.

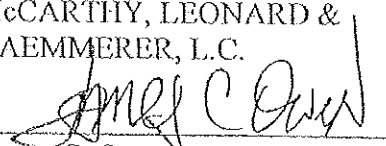
Dated: New York, New York
July 16, 2009

Respectfully submitted,

ANDREW J. LORIN, ATTORNEY FOR
KERMITT J. BROOKS, ACTING
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LIQUIDATOR OF MIDLAND INSURANCE
COMPANY

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*Counsel for Kermitt J. Brooks, Acting Superintendent of
Insurance of the State of New York, in his capacity as
Liquidator of Midland Insurance Company*

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

-----X	:	
In the Matter of the Liquidation of	:	Index No. 41294/1986
	:	
MIDLAND INSURANCE COMPANY	:	
-----X	:	

NOTICE OF CROSS-APPEAL

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

In the Matter of

the Liquidation of

UNION INDEMNITY INSURANCE COMPANY OF NEW YORK.

ORDER TO SHOW CAUSE AND AFFIRMATION

JOHN PEARSON KELLY

Attorney for Superintendent of Insurance as Liquidator


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ATTORNEY CERTIFICATION

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

Dated: April 19, 2010
New York, New York


David Axinn

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on the day of 2010

☐ NOTICE OF SETTLEMENT

that an order
settlement to the HON. of which the within is a true copy will be presented for
one of the judges of the within named court, at
2010 at

Dated:

, on

Yours, etc.

JOHN PEARSON KELLY

Attorney for Superintendent of Insurance as
Liquidator

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