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	)	SUPERIOR COURT OF NEW JERSEY
	)	LAW DIVISION: BERGEN COUNTY
IN THE MATTER OF:	)	DOCKET NO.: A-004769-10
	)	
THE LIQUIDATION OF	)	Docket No.: C-63-03;
INTEGRITY INSURANCE	)	C-7022-86
COMPANY	)	
	)	Liquidator Claim No: 1187L
	)	Claimant: The Defendant Class
	)	Insured: Robert A. Keasbey Company

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**DEFENDANT CLASS'S OPPOSITION TO INTEGRITY'S MOTION FOR AN ORDER  
CONFIRMING THE FINAL DISTRIBUTION OF ASSETS AND CLOSING THE  
ESTATE, AND MEMORANDUM IN SUPPORT OF DEFENDANT CLASS'S CROSS-  
MOTION TO RESERVE ASSETS TO PAY ITS CLAIM AND DEFER CLOSING OF  
THE ESTATE UNTIL ITS CLAIM IS FINALLY RESOLVED**

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## PRELIMINARY STATEMENT

The Defendant Class hereby opposes the Liquidator's motion to distribute all of Integrity Insurance Company's remaining assets and to close the Integrity estate at this time (the "Motion"). The Defendant Class also hereby moves the Court for an order requiring the Integrity estate to remain open until the Defendant Class's \$35 million priority-four claim against Integrity is fully and finally adjudicated or otherwise resolved, and requiring the Liquidator to reserve sufficient assets to pay the Defendant Class's claim at the same percentage as other priority-four claims upon the final resolution of that claim.

The Liquidator's Motion is premature because the Defendant Class has not yet exhausted its appellate rights on its pending \$35 million priority-four claim, and its claim has not been fully and finally adjudicated or otherwise resolved ("adjudicated"). The Motion violates fundamental principles entitling the Defendant Class to appellate review and to payment of its claim, when finally adjudicated, at the same percentage as all other priority-four claims.

The Liquidator has acknowledged that he has an "obligation to treat all claims in the same class equally." *See* Liquidator's Br. and App. in Opp'n to Mot. for Leave To Appeal (Jul. 31, 2008) (without exhibits), attached as Exhibit 1. And he previously represented to the Appellate Division in these proceedings that he would abide by this requirement, stating that "the liquidator will not be making a final distribution to its claimants until all disputes over the liquidator's denial of a claim have been resolved." *See* Letter from David Freeman, Mazie Slater Katz & Freeman, LLC, to the Honorable Judges of the Appellate Division (May 13, 2011) (emphasis added), attached as Exhibit 2. The Liquidator's Motion is inconsistent with these statements.

For the foregoing reasons and those set forth below, the Defendant Class respectfully submits that the Court should not grant the Liquidator's Motion in its current form. In particular,

the Defendant Class opposes the Liquidator's Motion unless the Liquidator (a) reserves \$35 million<sup>1</sup> to cover the Defendant Class's claim, and (b) provides for the Integrity estate to remain open until the Defendant Class has exhausted its appellate rights and otherwise had its claim fully and finally adjudicated, and received payment on its claim at the same percentage as all other priority-four claimants. The Defendant Class also respectfully moves this Court for an order (a) requiring the Liquidator to reserve \$35 million to cover the Defendant Class's claim, and (b) requiring the Integrity estate to remain open until the Defendant Class has exhausted its appellate rights and otherwise had its claim fully and finally adjudicated, and received payment on its claim at the same percentage as all other priority-four claimants.

#### **PROCEDURAL HISTORY AND STATEMENT OF FACTS**

The Defendant Class consists of more than 20,000 individuals with asbestos-related bodily injury claims against the defunct Robert A. Keasbey Company, which installed, repaired, and removed asbestos-containing insulation materials in the New York area. The Defendant Class timely filed a proof of claim against Integrity for coverage based on these asbestos claims under policy ISX 114656, with a policy period from March 16, 1984 through March 16, 1985. Letter from A. Matteis, Gilbert LLP, to L. Camporeale and K. Kherlopian (Sept. 29, 2009) (without exhibits), attached as Exhibit 3. The proof of claim requested the policy's aggregate limit of \$5 million for products claims and \$30 million for non-products claims, which are not subject to the aggregate limit. (Aa2-Aa13.)

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<sup>1</sup> The Defendant Class requests a reserve of \$35 million or such other amount as will be sufficient, if the claim of the Defendant Class ultimately is allowed in full, to pay such claim at the same percentage as the claims of all other priority-four claimants<sup>1</sup> to pay the Defendant Class's claim at the same percentage as other priority-four claims upon the final resolution of that claim.

The Liquidator issued a Notice of Determination disallowing the claim. *See Integrity's* Notice of Determination (Dec. 22, 2009), attached as Exhibit 4.<sup>2</sup> The Defendant Class timely objected. *See* Letter from A. Matteis, Gilbert LLP, to L. Camporeale and K. Kherlopian (Feb. 18, 2010), attached as Exhibit 6. The Liquidator declined to amend the disallowance, the dispute was referred to the Special Master, and the Special Master affirmed the Liquidator's decision, in part. *See* Determination of the Special Master (Mar. 7, 2011), attached as Exhibit 7. The Defendant Class appealed the Special Master's decision to this Court, which affirmed. *See* Order (Apr. 15, 2011), attached as Exhibit 8.

The Defendant Class sought leave to file an interlocutory appeal in the Appellate Division, which was granted. *See* Memorandum of Law of Appellant Defendant Class in Support of Its Motion for Leave to File Interlocutory Appeal (May 12, 2011), attached as Exhibit 9; Order On Motion (June 6, 2011), attached as Exhibit 10. The Appellate Division affirmed the ruling of this Court. *See* Appellate Division Decision, attached as Exhibit 11.

The Defendant Class sought leave to appeal the Appellate Division's interlocutory order to the New Jersey Supreme Court. *See* Notice of Motion for Leave to Appeal the April 18, 2012 Order of the Appellate Division (May 25, 2012) and Brief in Support of Motion for Leave to Appeal (May 25, 2012), attached as Exhibit 12. The Supreme Court denied the request for leave

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<sup>2</sup> In disallowing the claim of the Defendant Class, the Liquidator ultimately took the position that he had essentially unfettered discretion to disallow contingent third-party claims. *See* Liquidator's Br. in Opp'n to the Def. Class's Objection to the Notice of Determination at 708 (Sept. 7, 2010) (without exhibits), attached as Exhibit 5. Although the merits of the Defendant Class's claim are not at issue here, the Defendant Class notes its strong disagreement with the Liquidator's position. In addition, the Defendant Class disagrees with the Liquidator's contention in his Motion that the Appellate Division and the Supreme Court have ruled that the Liquidator is not permitted to accept contingent claims. Mot. ¶¶ 34-37. On the contrary, the Supreme Court ruled only that contingent *policyholder* claims are not allowed, but the Court specifically noted that the legislature had designated contingent *third-party* claims, such as those of the Defendant Class, for different treatment. *See In re Liquidation of Integrity Ins. Co.*, 193 N.J. 86 (2007).

and declined to permit an interlocutory appeal, without ruling on the merits of the Defendant Class's claims. Order (July 12, 2012), attached as Exhibit 11.

This Court has not yet issued a final order from which the Defendant Class has a right to a direct appeal. Thus, the Defendant Class has not exhausted its appellate rights with respect to its claim. Its claim has not been fully or finally adjudicated, and it remains pending.

### LEGAL ARGUMENT

**I. THE LIQUIDATOR'S MOTION IS PREMATURE BECAUSE THE DEFENDANT CLASS IS ENTITLED TO PURSUE AN APPEAL FROM A FINAL JUDGMENT OF THIS COURT, ONCE ENTERED, AND TO HAVE ITS CLAIM FULLY AND FINALLY ADJUDICATED BEFORE A FINAL DISTRIBUTION AND CLOSURE OF THE ESTATE.**

The New Jersey Constitution, the New Jersey Rules of Court, and Integrity's Amended Liquidation Closing Plan all require the Liquidator to permit the Defendant Class to exhaust its appellate rights and to have its claim fully and finally adjudicated prior to distributing Integrity's remaining assets and closing the estate.

The New Jersey Constitution guarantees litigants the right to appeal from final judgments of the New Jersey Superior Court. It provides, "Appeals may be taken to the Appellate Division of the Superior Court from the law and chancery divisions of the Superior Court . . . ." N.J. Const., Art. VI, § 5, ¶2; *see also Van Duren v. Rzasa-Ormes*, 394 N.J. Super. 254, 262 (App. Div. 2007) ("The right to appeal from final decisions of the Law and Chancery Divisions of the Superior Court is secured in our Constitution."); *Mt. Hope Dev. Assoc. v. Mt. Hope Waterpower Project*, 154 N.J. 141, 147 (N.J. 1998) (same).

Similarly, New Jersey Rule 2:2-3(a)(1) states, "[A]ppeals may be taken to the Appellate Division as of right [] from final judgments of the Superior Court trial divisions"; *see also Van Duren*, 394 N.J. Super. at 262 (same); *CPC Int'l v. Harford Acc. & Indem. Co.*, 316 N.J. Super. 351, 365 (App. Div. 1998) (same); *New Jersey Div. of Youth and Family Servs. v. L.A.*, 357 N.J.

Super. 155, 163 (App. Div. 2003) (same). In addition, litigants are entitled to appeal to the Supreme Court as of right, *see* Rule 2:2-1 or to petition the Supreme Court for certification. *See id.*; *see also* Rule 2:12.

Litigants retain their right to direct appeals from final trial court orders even if they have appealed the same orders on an interlocutory basis prior to a final judgment being entered. *State v. Marrero*, 148 N.J. 469, 481 (N.J. 1997) (permitting direct appeal of order when Appellate Division had considered same order on interlocutory basis and Supreme Court had declined interlocutory review); *see also* *Serbio v. Metairie Corp.*, No. L-336-04, 2009 WL 2426341, at \*1 (App. Div. Aug. 10, 2009) (permitting appeal of final trial court order after denial of leave to appeal by both the Appellate Division and Supreme Court of same order on an interlocutory basis).

In *Marrero*, one party sought leave for an interlocutory appeal to the Appellate Division of an order regarding the admission of certain evidence. *Id.* at 477. The Appellate Division granted the request for an interlocutory appeal and reversed the judgment below. *Id.* at 477-78. As here, the Supreme Court subsequently denied leave for an interlocutory appeal of the decision of the Appellate Division. *Id.* at 477-78. Once a final judgment was entered as to all issues in the case, the party that had lost in the trial court appealed the evidentiary issue to the Appellate Division, which heard the appeal notwithstanding that the party had appealed previously on an interlocutory basis. *Id.* at 478-79. The Supreme Court also heard the appeal from the final judgment and rendered an opinion. *Id.* at 480-81.

Here, however, the Liquidator seeks to distribute Integrity's remaining assets before the Defendant Class has sought appeal from a final order. As noted above, the Defendant Class appealed this Court's denial of its claim to the Appellate Division on an interlocutory basis. *See*



Exhibit 9. As in *Marrero*, the Appellate Division granted the Defendant Class's request for leave to appeal and rendered a substantive decision, *see* Exhibit 11, but the Supreme Court denied the Defendant Class's motion for leave to pursue an interlocutory appeal, without rendering a decision on the merits. *See* Exhibit 13. Because the Defendant Class has not yet pursued an appeal of a final order to either the Appellate Division or the Supreme Court, it may do so upon entry of a final order by this Court. *See, e.g., Marrero*, 148 N.J. at 481.

The Liquidator is fully aware that the Defendant Class has not exhausted its appellate rights. The Liquidator stated in his Motion only that Integrity claimants "have exhausted all of their presently existing appellate rights," without mentioning that the Defendant Class's appellate rights will accrue in the future when this Court issues a final order in these proceedings. Mot. at ¶ 37 (emphasis added). Indeed, the Liquidator in his opposition to the Defendant Class's motion for leave to appeal to the Supreme Court "request[ed] that the matter be reviewed now, rather than at the conclusion of the liquidation" because "[i]f the Defendant Class is compelled to seek this Court's review after the Estate is closed, it could substantially delay the final distribution to claimants." Br. and App. of Respondent the Liquidator of Integrity Insurance Company in Opp'n to Appellant's Mot. for Leave to Appeal (June 4, 2012) (without exhibits), attached as Exhibit 14. In other words, the Liquidator acknowledged that if the Supreme Court denied the Defendant Class's motion for leave to pursue an interlocutory appeal, the Defendant Class could pursue its appeal upon entry of a final order by this Court. The Supreme Court did in fact decline to accept an interlocutory appeal, and the Defendant Class now must have an opportunity to pursue an appeal before the Liquidator can distribute Integrity's remaining assets and close the estate.

The Amended Liquidation Closing Plan specifically provides in connection with the “Adjustment and Allowance of Claims” that “the rights of both parties [i.e., claimants and the Liquidator] to appeal” any claim determinations by the Special Master or this Court “are fully preserved.” Amended Liquidation Closing Plan § 4.7(a) and 4.7(b).

Further, the Amended Liquidation Closing Plan permits the Liquidator to distribute assets only upon the “Distribution Valuation Date,” defined as “[a] date as soon as practicable after the issuance of all Final Notices of Determination.” Amended Liquidation Closing Plan §§ 1.11, 5.1, 5.4 (emphasis added). Thus, the Distribution Valuation Date cannot occur and the Liquidator cannot distribute the remaining assets until the Defendant Class exhausts its appeals and its Notice of Determination is final. The Defendant Class’s Notice of Determination will not become final until it exercises its right to appeal to the Appellate Division and the Supreme Court from a final order of this Court and its claim is fully and finally resolved.<sup>3</sup> The Defendant Class respectfully submits that in the meantime, the Liquidator may not distribute all of Integrity’s remaining assets and close the estate.

**II. THE LIQUIDATOR’S MOTION IS CONTRARY TO HIS AFFIRMATIVE DUTY TO ENSURE THAT ALL PRIORITY-FOUR CLAIMANTS, INCLUDING THE DEFENDANT CLASS, RECEIVE THE SAME PERCENTAGE OF THEIR CLAIMS ONCE FULLY AND FINALLY ADJUDICATED.**

The New Jersey Liquidation Statute provides “for a uniform, orderly and equitable method of processing claims against defunct insurers and provides for a fair procedure to distribute the assets of defunct insurers.” *See* Br. and App. of Respondent The Liquidator of Integrity Insurance Company (Aug. 25, 2011) at 13 (“Integrity’s Appellate Brief”) (citing *Super.*

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<sup>3</sup> The need for an appeal is particularly compelling here, where the Defendant Class has raised an issue of first impression regarding the interpretation of a key provision of the New Jersey Liquidation Statute; the Liquidator’s decision on the Defendant Class’s claim impacts not only the Defendant Class but all parties having third-party contingent claims; the case presents constitutional due process issues; and failure to collect insurance proceeds will leave 20,000 claimants of a defunct company without recourse because they cannot resort to Keasbey to pay their claims.

*of Ins. v. Intern. Equip.*, 247 N.J. Super. 119, 121 (App. Div. 1991)), attached as Exhibit 15. As the Liquidator has noted, “[t]he statute is designed to provide a comprehensive, orderly and efficient procedure for liquidating insurance companies while protecting the rights of all interested parties.” Integrity’s Appellate Brief at 13 (citing *Matter of Liquidation of Integrity Ins. Co.*, 231 N.J. Super. 152, 157 (Ch. Div. 1998) (emphasis added)). Moreover, “[t]he Commissioner and deputy liquidator are subject to a fiduciary obligation to all policyholders and creditors of Integrity.” Integrity’s Appellate Brief at 14 (citing *Matter of Liquidation of Integrity Ins. Co.*, 231 N.J. Super. At 157) (emphasis added).

To achieve this equitable treatment, the New Jersey Liquidation Statute sets forth the order in which the liquidator of an insolvent insurer must pay claims, and it categorizes all claims by policyholders and other beneficiaries of insurance policies as fourth priority claims. N.J.S.A. § 17:30C-26. Prior to distributing any assets, the New Jersey Liquidation Statute requires a liquidator to make a motion to the court that demonstrates, among other things, that the Liquidator has complied with the New Jersey Liquidation Statute’s priority scheme by “[r]eserving amounts for the payment of the expenses of administration and the claims falling within priorities established in section 26 of the act . . . .” N.J.S.A. § 17:30c-31. Thus, under the New Jersey Liquidation Statute, the Liquidator cannot gain court approval of a distribution plan that fails to reserve adequate funds for some claimants, like the Defendant Class.

The Amended Liquidation Closing Plan also makes this point clear, requiring the Liquidator to “determine the proposed amount of General Assets available for disbursement” and “determine . . . the Distributions, if any, payable to Claimants within each level of priority set forth in N.J.S.A. 17:30C-26(c).” Amended Liquidation Closing Plan §§ 5.1-5.2. The Amended Liquidation Closing Plan further provides that claimants who have received early distributions

cannot receive additional distributions “until all other Claimants within the same level of priority have received Distributions the amount of which, when expressed as a percentage of their Allowed Claims, is equal to the percentage tendered to such Claimant.” Amended Liquidation Closing Plan § 5.3. Consistent with these provisions, Integrity acknowledged in a prior pleading that “the Liquidator [has an] obligation to treat all claims in the same class equally.” Liquidator’s Br. and App. in Opp’n to Mot. for Leave To Appeal (Jul. 31, 2008), attached as Exhibit 1.

The Liquidator’s interim distributions have acknowledged this fundamental principle. For example, in the certification accompanying the motion to make a seventh interim distribution, the Liquidator stated that “[i]n view of the Liquidator’s statutory duty to treat all eligible Fourth Priority Claims equally, the Liquidator does not want to make a distribution on reported claims at a rate that he is not certain could be met on” unresolved claims. Certification of Richard L. White in Support of the Liquidator’s Motion to Increase the Distribution Rate on Fourth Priority Claims and Authorize Disbursement of the Sixteenth Early Access Advance and the Seventh Interim Distribution at 9-10 (Mar. 24, 1008). Similarly, the Liquidator’s Motion here provides for all *other* claimants at the Defendant Class’s priority level four to be paid at the same percentage (more than 90%). *See* Mot. at ¶¶ 28, 40. But the Motion does not provide for the estate to remain open for the Defendant Class’s claim to be fully and finally resolved and sets aside no money for the Defendant Class in the event that it is successful on appeal. It thus violates the fundamental requirement of equality of treatment.

The Liquidator has represented in these proceedings that Integrity will not distribute its remaining assets until all pending claims have been resolved. Specifically, the Liquidator stated

in a May 13, 2011 letter to the Appellate Division expressing support for the Defendant Class's motion for leave to seek interlocutory appeal that:

[T]he liquidator will not be making a final distribution to its claimants until all disputes over the liquidator's denial of a claim have been resolved . . . . Obviously, the percentage which each claimant will receive cannot be determined until all of the claim disputes are resolved.

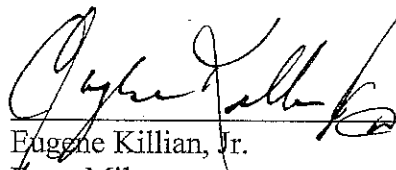
See Exhibit 2.

The Liquidator's motion is flatly inconsistent with his duties under the New Jersey Liquidation Statute and the Amended Liquidation Closing Plan, and with his past representations in these proceedings. For these reasons, the Defendant Class respectfully submits that the Liquidator's Motion may not be granted in its current form, and that the Court should grant the Defendant Class's motion to remedy its flaws.

#### CONCLUSION

For these reasons, the Defendant Class opposes the Liquidator's Motion unless the Court reserves \$35 million for the Defendant Class, should it be successful on appeal. The Defendant Class further moves the Court for an order requiring the Liquidator to reserve \$35 million for the payment of its claim and for closure of the Integrity estate once the Defendant Class's appeal is fully adjudicated or otherwise resolved.

Dated: 3/20/14



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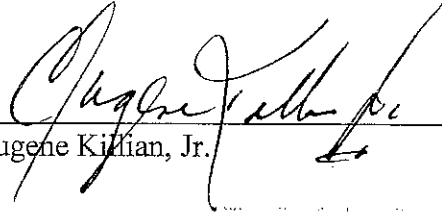
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 21 day of April, 2014, I have caused a copy of the foregoing document to be served upon David M. Freeman, counsel for Integrity.

  
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Eugene Kilian, Jr.