

# New Jersey Law Journal

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## **In the Matter of the Liquidation of Integrity Insurance Co.**

12-13-2007

N.J. Supreme Court

### **INSURANCE - Liquidation - Incurred But Not Yet Reported Claims**

In the Matter of the Liquidation of Integrity Insurance Co.,

A-91 September Term 2006, A-29 September Term 2007; Supreme Court; opinion by **Rivera-Soto**, J.; dissent by **Long**, J.; decided December 13, 2007. On appeal from the Appellate Division. [Sat below: Judges Kestin, Hoens and Seltzer in the Appellate Division.] DDS No. 23-1-9174 [33 pp.]

The issue in this latest chapter of the almost 21-year-old liquidation of Integrity Insurance Company is whether the claims against Integrity's reinsurers that have been incurred but not reported (IBNR) qualify for participation in the final distribution of its liquidated estate pursuant to N.J.S.A. 17:30C-28(a).

Integrity was a property and casualty insurer licensed in every state. Most of its risks were subject to reinsurance. Many were not expected to translate into reportable claims until many years after the policies were issued.

In 1986, the Chancery Division declared Integrity to be insolvent. It directed rehabilitation. In March 1987, the court ordered Integrity into liquidation. The commissioner of the Department of Insurance was directed to marshal Integrity's assets and liquidate its liabilities for the benefit of all claimants against its estate.

Eventually, the Chancery Division concluded that IBNR contingent claims - reduced to present value - could be included as part of a final plan distributing the assets from the estate. It authorized a final dividend plan using actuarial estimates for IBNR claims and allowing for a special master to resolve any disputes regarding them.

The Appellate Division reversed, concluding that IBNR claims are actuarial estimates and are, therefore, not "absolute" and are prohibited by 17:30C-28(a) from sharing in the estate.

**Held:** The plain language of 17:30C-28(a) requires that, to be cognizable in liquidation, a claim against the

liquidated estate must be "absolute." That language does not permit the substitution of estimated claims, even when those estimated claims result from the application of sophisticated actuarial estimation methodologies. Because the claims that would have been subject to the special master dispute resolution process cannot be part of the insolvent insurer's estate, whether that process may override the contractually provided arbitration process is moot.

The Court identifies its task as determining the meaning of 17:30C-28(a)(1). It begins with the plain language of the statute, noting that its analysis is informed by the injunction that words and phrases shall be construed with their context, and shall, unless inconsistent with the manifest intent of the Legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning.

It rejects the argument of the liquidator, intervenor and amicus that, in the context of the statutory scheme governing the liquidation of insolvent insurers, the term "absolute" must also encompass those claims that are the product of generally accepted estimating techniques applied in a commercially reasonable manner, so long as those estimating techniques protect the policyholders, the insureds and the public.

Instead, the Court says that "absolute" means precisely that - absolute - and that the clear legislative choice for those claims cognizable in an insurance company's liquidation must be honored. The unambiguous terms of 17:30C-28(a) demonstrate that the Legislature specifically selected which claims would be honored in the liquidation context. The overarching legislative intent plainly is to bar any contingent claim, with only two exceptions. Only one of them is relevant here: when a contingent claim "becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer."

The Court says the Appellate Division correctly defined IBNR claims as "those that may, by virtue of historical experience, be expected to be filed, although the claimant, the nature of the claim, the responsibility for the claim, and the amount of the claim are all unknown." Thus, given the plain meaning of 17:30C-28, IBNR claims are actuarial estimates and are therefore not absolute.

Further, the Court says "absolute" generally means "something independent of and unrelated to anything else." Because the process by which the liquidator proposes to estimate IBNR claims entails looking outside of each claim to other similar claims regarding their very existence, nature, extent and cost, IBNR claims do not stand on their own, without reference to any other claim. In the end, the vice of IBNR claims is that they are not "absolute" as of the claim bar date. Thus, they cannot participate in the final dividend plan. To that extent, the plan approved by the Chancery Division cannot be sustained.

Because IBNR claims are not cognizable as "absolute" claims under 17:30C-28(a), whether the special master/dispute resolution mechanism for the processing of IBNR claims adopted by the trial court improperly violates the parties' choice of arbitration as their dispute resolution mechanism need not be considered.

The dissent opines that the statute is unclear insofar as IBNR claims are concerned and that the commissioner's plan to rely on estimations of IBNR claims is consistent with the aims underlying the Rehabilitation and Liquidation Act, 17:30C-1 to -31.

Chief Justice **Rabner** and Justice **Wallace** join in Justice **Rivera-Soto's** opinion. Justice **Albin** joins in Justice **Long's** dissent. Justices **LaVecchia** and **Hoens** did not participate.

- By Judith Nallin

For intervenor-appellant American Standard Companies Inc. - Donald W. Kiel (Kirkpatrick & Lockhart Nicholson Graham; Kiel and Mark S. Morgan on the briefs). For appellant Commissioner of the New Jersey Department of Banking and Insurance in his capacity as liquidator of the estate of Integrity Insurance Company - David A. Mazie (Mazie Slater Katz & Freeman; Mazie, David M. Freeman and Beth G. Baldinger on the brief). For respondent Reinsurance Association of America - Michael R. Cole (DeCotiis, FitzPatrick, Cole & Wisler and Budd Lerner; Joseph J. Schiavone, Jeffrey S. Leonard and Christopher P. Anton on the briefs). For amicus curiae Foster Wheeler, L.L.C. - Robert P. Haney Jr.