

## Liquidator Upheld In Denial of \$35M Asbestos Claim

By Charles Toutant

The Appellate Division on Wednesday affirmed a decision by a liquidator for the insolvent Integrity Insurance Co. to deny a \$35 million asbestos-injury claim.

The state-appointed liquidator acted within his discretion when he rejected the bid for coverage on behalf of 30,000 claimants because of their third-party, contingent status, the appeals court said.

The claimants failed to demonstrate that payment of benefits is mandated by a statute holding that such claims "may be allowed," the appeals court said **In the Matter of the Liquidation of Integrity Insurance Company**, A-4769-10.

David Freeman, who represented the state Department of Banking and Insurance in the case, says the ruling is the first time a New Jersey court has addressed an insurance liquidator's discretion to deny third-party, contingent claims under N.J.S.A. 17:30C-28(b). The statute says a claim can be filed in a liquidation proceeding regardless of whether it is contingent, upon satisfaction of certain conditions.

Integrity, placed in liquidation in 1987 under a load of asbestos injury claims, had \$914 million in assets, but the liquidator has already approved \$1.2 billion in claims.

The parties seeking the \$35 million have brought personal-injury claims against the Robert A. Keasbey Co.,

a distributor and installer of asbestos insulation, which is in bankruptcy.

Integrity issued Keasbey an excess liability policy from March 1984 to March 1985, and the court hearing Keasbey's bankruptcy certified the 30,000 claimants as a class. The claims brought by that group are considered contingent because they have not been resolved by a court judgment or settlement.

In 2005, the Keasbey claimants submitted their \$35 million request to the Integrity estate.

Robert White, appointed by the Department of Banking and Insurance to oversee the liquidation as deputy liquidator, rejected the claim in 2009, based in part on its contingent status.

William Meehan, a retired Bergen County Superior Court judge, appointed special master to hear appeals of White's decisions, upheld the denial in March 2011. He concluded that the liquidator had discretion under the statute to allow or disallow such claims.

The Keasbey claimants' next stop was Superior Court, where Bergen County Judge Robert Wilson upheld the special master's decision.

At the Appellate Division, Judges Edith Payne and Marie Simonelli agreed with the special master and trial judge that the statute gave the liquidator discretion to allow or disallow contingent third-party claims in an insurance liquidation proceeding.

The claimants failed to demonstrate that payment of their claim is mandated by the statute's holding that a third party "shall have the right to file a claim" that "may be allowed," the panel said.

In addition, the Legislature's failure to adopt model language promulgated by the National Association of Insurance Commissioners, which would explicitly allow third-party contingent claims, supports the conclusion that coverage of such claims is up to the liquidator's discretion, the appeals court said.

The liquidator's decision to disallow third-party, contingent claims was not arbitrary, given the amount of time the estate has been open, the panel said.

"[W]e do not find it unreasonable for the liquidator to have made a determination to maximize recovery for known claimants with absolute claims, rather than to delay payments and to dissipate the estate's assets through the accrual of further administrative costs, in order to provide a lesser recovery to a greater number of claimants at some time in the future," Payne and Simonelli wrote.

Freeman, of Mazie, Slater, Katz & Freeman in Roseland, says the ruling means "there's going to be more to spread around to everybody else." He adds that he hopes the liquidation will be wrapped up soon.

The lawyer for the Keasbey claimants, Richard Shore of Gilbert in Washington, D.C., did not return a call. ■