

Not Reported in A.3d, 2013 WL 2922838 (N.J.Super.A.D.)
(Cite as: 2013 WL 2922838 (N.J.Super.A.D.))

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UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.
In the Matter of the LIQUIDATION OF INTEGRITY
INSURANCE COMPANY.

Argued Nov. 28, 2012.
Decided June 17, 2013.

On appeal from Superior Court of New Jersey, Law
Division, Bergen County, Docket No. C-7022-86.
[Robert M. Horkovich](#), of the New York bar, admitted
pro hac vice, argued the cause for appellant The
Congoleum Plan Trust (Anderson Kill & Olick, P.C.,
attorneys; Mr. Horkovich, [Kenneth E. Sharperson](#), and
[Robert Y. Chung](#), of the New York bar, admitted pro
hac vice, on the briefs).

[David M. Freeman](#) argued the cause for respondent
Thomas B. Considine, Commissioner of Banking and
Insurance of the State of New Jersey in his capacity as
Liquidator of Integrity Insurance Company (Mazie
Slater Katz & Freeman, LLC, attorneys; Mr. Freeman,
of counsel and on the brief; John D. Gagnon, on the
brief).

Before Judges [SIMONELLI](#), [KOBLOITZ](#) and [AC-
CURSO](#).

PER CURIAM.

*1 In this appeal, we are once again called upon to
determine whether the special master and liquidation
court correctly disallowed asbestos-related bodily
injury claims made against excess insurance policies

issued by Integrity Insurance Company (Integrity). In
this case, Integrity issued policies to Congoleum
Corporation (Congoleum). Congoleum submitted
timely proofs of claim (POCs) for which it sought
coverage under the policies. Relying on *In the Matter
of the [Liquidation of Integrity Insurance Co.](#), 193 N.J.
86 (2007)*, the liquidator issued seven notices of de-
termination (NODs) disallowing the incurred but not
reported claims for the following reasons:

Insufficient supporting documentation.

Failure to document the exhaustion of limits of
coverage of the underlying policy to the Integrity
policy.

Allowance of contingent claims is prohibited by
New Jersey statute.

The insured failed to provide support for the com-
plete exhaustion of the underlying coverage. In
view of the ongoing coverage litigation, it is as-
sumed that exhaustion of all underlying coverage
has not yet occurred. However, if full exhaustion of
coverage underlying the Integrity policy period has
occurred, a letter from the carriers confirming when
their limits exhausted will suffice. Support for paid
loss was not included. The insured's attachments to
their LPOC refers to a universe of pending claims,
not paid claims. As per Integrity's Liquidation
Closing Plan, only absolute claims may be consid-
ered for an allowance. The definition of an absolute
claim does not include pending claims for which a
value has not yet been fixed by actual payment or by
judgment of a court of law.

As a result of the approval of Congoleum's
bankruptcy plan of reorganization, effective July 1,
2010, appellant The Congoleum Plan Trust (Trust) is

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the successor-in-interest to the policies Integrity issued to Congoleum. The Trust timely filed an objection to the NODs. The liquidator declined to amend his decision and submitted the Trust's objection to the special master for consideration. In a February 25, 2011 written determination, the special master upheld the liquidator's decision. The special master determined that Congoleum's claims could not be allowed because they were not "absolute claims" as defined by the Amended Liquidation Closing Plan (the Amended LCP) and determined in *In the Matter of the Liquidation of Integrity Insurance Co.*, 193 N.J. 86, 97 (2007).^{FN1} The special master concluded as follows:

FN1. The Amended LCP defines an "absolute claim" as

All or that part of any covered claim for which the liability and value has been fixed by actual payment by the Claimant or by judgment of a court of law, including claim resolution procedures approved by a federal bankruptcy court, and has not been previously allowed by the Liquidator.

The Amended LCP also provides that "[n]o claim will be considered for allowance unless it became [a]bsolute on or before June 30, 2009."

It is undisputed that Congoleum's claims do not have fixed liability, have not been either settled or adjudicated, and thus the amount which Congoleum will have to pay is not definite or determinable, but estimated. Congoleum's claims do not fundamentally stand on their own. Liability and value has not been fixed by actual payment by the Claimant or by judgment of a court of law, nor did the federal bankruptcy court approve claim resolution procedures by the bar date, and, in fact, did not approve the claims resolution procedures and create the trust until July, 2010. Therefore, based on the law of the

case, as set forth in [*In the Matter of the Liquidation of Integrity Insurance Co.*, *supra*,] Congoleum's claims are clearly not absolute.

*2 With regard to the Trust's contention that the reason why the claims are not absolute is because of Congoleum's bankruptcy and the resulting stay, I find no merit to said argument. The intent of the Legislature has been determined to be clear and unambiguous in its determination that the liquidator may only accept claims that are absolute in every respect.

The special master rejected Congoleum's contention that its claims were third-party claims allowable under N.J.S.A. 17:30C-28(b), stating:

With regard to the contention that Congoleum's claims should be permitted under N.J.S.A. 17:30C-28(b), I find that that subsection is inapplicable to the case at hand.

....

This subsection provision is applicable when a person has a cause of action against an insured of an insolvent insurance company and files a claim. Therefore, this provision clearly only applies to claims filed by a third party only. [*In the Matter of the Liquidation of Integrity Insurance Co.*, *supra*, 93 N.J. at 96]. As set forth above, Congoleum, Integrity's insured, is the claimant in this matter, as the Final Proofs of Claims were filed by Congoleum and not a third party. Therefore, I do not find any merit in this contention.

The Trust appealed to the liquidation court. In an April 29, 2011 order and written opinion, the court confirmed the special master's determination. The court noted that pursuant to the Amended LCP, a claim would only be considered if it became absolute on or before June 30, 2009. The court found that the special master had properly determined that Congo-

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leum did not submit absolute claims as defined in the Amended LCP and determined in *In the Matter of the Liquidation of Integrity Insurance Co.* The court held: “Congoleum Corporation's claims still do not have fixed liability and have not been settled or adjudicated.” The court rejected Congoleum's argument that its bankruptcy should be considered in evaluating the claims. The court also agreed that [N.J.S.A. 17:30C-28\(b\)](#) did not apply because Congoleum's claims were not third-party claims. This appeal followed.

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On appeal, Congoleum raises the same arguments as those raised and decided in *Commissioner of Insurance of the State of New Jersey v. Integrity Insurance Co./W.R. Grace & Co., (W.R. Grace)*, No. A-2505-10 (App.Div. Jan. 11, 2012) (slip op. 16 to 25), *certif. denied*, [211 N.J. 607 \(2012\)](#). We affirm for the reasons expressed in *W.R. Grace*, and add the following comments.

We reject the Trust's argument that this case differs from *W.R. Grace* because here, the Trust is only seeking approval for claims that were identified, processed and settled prior to the bar date. A claim is not an “absolute claim” unless “liability and value has been fixed by actual payment by the Claimant or by judgment of a court of law” *before* the June 30, 2009 bar date. Although some claims may have been identified and processed before the bar date, liability and value were not fixed by actual payment before that date because Congoleum was in bankruptcy and the bankruptcy court did not approve Congoleum's reorganization plan, which included the settlements, until July 1, 2010.

***3** Affirmed.

N.J.Super.A.D.,2013.

In re Liquidation of Integrity Ins. Co.

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