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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.
COMMISSIONER OF INSURANCE OF the STATE of New Jersey, Plaintiff–Respondent,
v.
INTEGRITY INSURANCE COMPANY/W.R. GRACE & CO., Defendant.

Argued Oct. 18, 2011.
Decided Jan. 11, 2012.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket Nos. C–7022–86 and C–63–03.

Kenneth E. Sharperson argued the cause for appellant W.R. Grace & Co. (Anderson Kill & Olick, P.C., attorneys; Mr. Sharperson, Robert M. Horkovich of the New York bar, admitted pro hac vice, and Robert Y. Chung of the New York bar, admitted pro hac vice, on the brief).

David M. Freeman argued the cause for respondent (Mazie Slater Katz & Freeman, L.L.C., attorneys; Mr. Freeman, of counsel and on the brief; John D. Gagnon, on the brief).

Before Judges PAYNE, REISNER and SIMONELLI.

PER CURIAM.

***1** Claimant, W.R. Grace & Co., a company that is presently in Chapter 11 reorganization in bankruptcy, appeals from the denial of its claims for insurance benefits on account of its alleged liability for asbestos-related injuries that were allegedly covered by policies of excess insurance purchased from Integrity Insurance Company, an insurance entity that is presently in liquidation. At issue is whether Grace's proofs of claim met the requirements of the Uniform Insurers Liquidation Act, as codified in New Jersey in *N.J . S.A.* 17:30C–1 to –31, and interpreted by the New Jersey Supreme Court. Determining that those proofs failed to meet the requirements of the Act and precedent, we affirm.

I.

We preface our discussion of the legal issues raised in this appeal with background information regarding the parties and a description of relevant legal precedent.

A. Integrity's Liquidation Proceedings and the Amended Liquidation Closing Plan

In an order of liquidation dated March 27, 1987, Integrity Insurance Company was declared insolvent and placed in liquidation, with the New Jersey Commissioner of Insurance appointed as liquidator pursuant to *N.J.S.A.* 17:30C–9. Initially, all claims against the liquidated estate were to have been filed by a claim bar date of March 25, 1988. However, closure of the estate was complicated by the fact that, in many cases, damages resulting from the risks against which Integrity insured, such as injury as the result of exposure to asbestos as claimed in the present matter, did not manifest until many years after initial exposure—a circumstance leading to a substantial delay in the filing and resolution of claims. In an effort to close the estate, the Commissioner proposed a Final Dividend Plan, dated June 17, 1996, that required the deputy liquidator to

> (1) estimate and allow the present value of all Contingent Claims, including claims for IBNR[FN1] losses; (2) collect from reinsurers the present value of any reinsurance that will be due on such claims; (3) arrive at a final determination of Integrity's assets and liabilities; (4) calculate the percentage to be paid on the Fourth Priority [policyholder] claims; and (5) pay a final di-

videnda on all claims accorded Fourth Priority or higher status.

> FN1. Incurred but not reported losses or claims. Such claims "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." *In re Liquidation of Integrity Ins. Co.*, 193 *N.J.* 86, 92 (2007). The value of such claims is generally determined actuarially by reference, in part, to existing claims experience on the part of the insured and similarly situated companies.

[*In re Liquidation of Integrity Ins. Co*, 165 *N.J.* 75, 80 (2000).]

As the liquidation proceeded, the Chancery court considered whether contingent claims should be recognized, as proposed in the Final Liquidation Plan. In reaching a conclusion on the issue, the court reviewed three options presented by the liquidator: (1) holding the liquidation open until all contingent claims had become absolute—a very lengthy process; (2) establishing a cut-off date at which time the right to collect on contingent losses would terminate—a process that would deprive some injured persons of any recovery; and (3) permitting the estimation of contingent, future claims at their net present value. *In re Liquidation of Integrity Ins. Co.*, 299 *N.J.Super*. 677, 680–81 (Ch. Div.1996), *rev'd*, 193 *N.J.* 86 (2007). The court chose the third alternative. *Id.* at 692.

***2** In 2004, the Chancery court approved Integrity's fourth amended final dividend plan, which included IBNR claims, thereby obligating Integrity's reinsurers to pay an estimated $876 million on contingent claims; sums that could be used to enhance Integrity's estate. *In re Liquidation of Integrity Ins. Co., supra*, 299 *N .J.Super.* at 680, 690–92. On appeal, we reversed in an unreported opinion, *In re Liquidation of Integrity Insurance Company*, No. A–6972–03 (App.Div. October 2, 2006), and the matter was appealed further to the Supreme Court.

In an opinion by Justice Rivera–Soto, *In re Liquidation of Integrity Insurance Co.*, 193 *N.J.* 86 (2007), a three-person majority of the Court FN2 focused on the proper construction of *N.J.S.A.* 17:30C–28a(1), which provides in relevant part:

> FN2. Justice Long wrote a dissent in which Justice Albin joined.

> a. No contingent claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to [*N.J.S.A.* 17:30C–30a], except that such claims shall be considered, if properly presented, and may be allowed to share where
>
> (1) Such 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[.]

In light of that statutory language, which the Court held to be "unambiguous," *Integrity, supra*, 193 *N.J.* at 95, the Court held that because IBNR claims would not be "absolute" as of the claim bar date, they could not participate in Integrity's fourth amended final dividend plan. The Court reasoned:

> Because the process by which the Liquidator proposes to estimate IBNR claims of necessity entails looking outside of each claim to other similar claims in respect of their very existence, nature, extent, and cost, IBNR claims fail to satisfy that most basic of requirements in order to be "absolute" that in order for a claim to participate in the liquidation of an insolvent insurer's estate, the claim, in each of its fundamental respects, must stand on its own, and not by reference to any other claim.
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> [*Id.* at 96.]

The Court observed:

No doubt our conclusion delays, yet again, the final liquidation of Integrity's estate, which may result in an increase in administrative costs. That result, however, is compelled by our obligation to hew to the Legislature's mandate. The Legislature, in the rational exercise of its discretion, in the future may amend *N .J.S.A.* 17:30C–28 to allow estimated claims to participate in the assets of a liquidated insolvent insurer. As presently written, however, *N.J.S.A.* 17:30C–28 does not permit any claim other than an "absolute" or unconditional claim to share in the estate of an insolvent insurer, and, as written, that statute's mandate must be honored.

[*Id.* at 97.]

The Legislature has declined to amend the statute despite a strong invitation by the dissenting justices to do so.

In response to the Supreme Court's decision, the liquidator submitted an Amended Liquidation Closing Plan (Amended LCP), dated June 12, 2008, that stated in its recitals:

***3** Pursuant to *N.J.S.A.* 17:30C–20(b) and 30, the Liquidation Court set a bar date for the filing of proofs of claim against the Integrity estate, and the Liquidator has processed, reviewed and valued such claims. The Liquidator now proposes to establish procedures pursuant to which (i) all additional Absolute Claims may be allowed; (ii) for the final disbursal of all estate assets; and (iii) for the closing of the Integrity estate.

The Amended LCP called for all claims to be filed with the liquidator by September 30, 2009. Relevant definitional portions of the Amended LCP follow:

1.1 *Absolute Claim:* 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;

....

1.3 *Allowed Claim:* All or that part of a Claim approved by the Liquidator and evidenced by the issuance of a Notice of Determination form;

....

1.14 *Final Bar Date:* No claim will be considered for allowance unless it became absolute on or before June 30, 2009;

1.15 *Final Claims Filing Date:* All supporting claim documentation must be filed by September 30, 2009, for claims that became absolute on or before June 30, 2009.

1.16 *Final Proof of Claim:* A written statement from the claimant, with supporting documentation, in the form annexed hereto as Exhibit A. FN3

FN3. That exhibit does not appear in the record.

The Amended LCP also required the liquidator to provide a claimant with a Notice of Determination (NOD) by January 28, 2010, and it established mechanisms for review of rejected claims first by the liquidator, then through a hearing before a special master, and finally though review of the special master's recommendations by the liquidation court. A right of appeal from a decision of the liquidation court was preserved.

The liquidation court approved the Amended LCP in an order dated June 20, 2008.

B. W.R. Grace and Bankruptcy

Integrity was not alone in facing solvency issues. As acknowledged by Grace, for many years, it was the recipient of "a substantial volume" of asbestos claims that it was able to resolve primarily through negotiated settlements, resulting in pay-

ments and legal costs of over $2 billion over a twenty-year period prior to 2000. However, commencing in 2000, the company "experienced a precipitous increase" in the number of claims and the money required for their resolution. As the result of the threat to Grace's core business operations caused by the asbestos-related litigation, on April 2, 2001, it sought protection under Chapter 11 of the Bankruptcy Code. *See In re W.R. Grace & Co.*, Case No. 01–1139–JFK (Bankr.D.Del.).

According to its Debtors' Disclosure Statement for the First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, as of the petition date, Grace and certain of its subsidiaries were defendants in 65,656 asbestos-related lawsuits involving 129,191 claims for personal injury and seventeen additional claims for property damage. Upon Grace's filing for bankruptcy protection, all current and future claims against it were automatically stayed, and new lawsuits against Grace were barred. Pursuant to 11 *U.S.C.A.* § 1102, the rights of asbestos claimants as creditors in the bankruptcy proceeding were represented by an Asbestos PI [Personal Injury] Committee, formed on April 13, 2001.

***4** As part of its plan for reorganization in bankruptcy, and while litigation concerning the estimation of Grace's liability for asbestos PI claims was ongoing, Grace entered into an Asbestos PI Settlement with the Asbestos PI Committee and others that provided that, upon entry of an order confirming Grace's plan for reorganization, an Asbestos PI Trust would be created, pursuant to section 524(g) of the Bankruptcy Code, in a manner that would provide reasonable assurance that the Trust could value and be in a financial position to pay present and future asbestos personal injury claims. To that end, various assets were required to be paid into the Trust, and that entity was given the rights to proceeds under Grace's asbestos-related insurance coverage. Upon plan confirmation, the Asbestos PI Trust would be the only entity to which a holder of an asbestos PI claim could look for recovery.

The Bankruptcy Court presided over a confirmation hearing on September 15, 2009, and on January 31, 2011, United States Bankruptcy Judge Judith F. Fitzgerald issued an opinion confirming the plan. However, Grace has not yet emerged from bankruptcy.

C. The Integrity policies and W.R. Grace's insurance coverage

Between 1978 and 1985, Integrity sold eight one-year excess insurance policies with limits ranging from $1 million to $3 million each to Grace for a total of $18 million in coverage. Grace states that the policies "attached at varying amounts from as low as $25 million to as high as $200 million." The Claims Manager for Integrity, Lora Camporeale, certified that four $2 million policies were parts of $25 million layers with attachment points of $50 million; two were $2 million policies that were parts of $50 million layers with attachment points of $25 million; one was a $1 million policy that was part of a $50 million layer with a $200 million attachment point; and the 1982–83 policy was bifurcated with $2 million as part of a $50 million layer, attaching at $25 million, and $3 million as part of a $100 million layer with a $150 million attachment point.

Presumably, the Integrity policies were "follow-form" excess policies, but neither the Integrity policies nor the underlying liability policies are contained in the record. The extent to which underlying coverages have been exhausted is not specified, but instead has been assumed by Grace.

On September 29, 2009, pursuant to Integrity's Amended LCP, Proofs of Claim (POCs) against Integrity's excess insurance policies were submitted to Integrity's liquidator by Grace.[FN4] Attached to the POCs were: (1) the Debtors' Disclosure Statement For The First Amended Joint Plan Of Reorganization; (2) Debtors' Plan Supplement To The First Amended Joint Plan of Reorganization; (3) Notice of First Set of Modifications To Joint Plan

of Reorganization; (4) W.R. Grace Projected Liabilities for Asbestos Personal Injury Claims As of April 2009, Mark A Peterson, Legal Analysis Systems, June 2007; (5) Rebuttal to the Testimony of Peterson; (6) Supporting data for asbestos personal injury claims to be paid by the pending Asbestos PI Trust following confirmation of W.R. Grace's plan of reorganization; (7) a confidential insurance coverage chart; and (8) W.R. Grace's prior correspondence in connection with Integrity Insurance Company in Liquidation. As Grace described its claims in its brief on appeal, it seeks coverage from Integrity in liquidation for "presently existing claims through June 30, 2009.... These individual claimants are not speculative "contingent" claimants, but are actual claimants who will not be able to file their claims until the Bankruptcy approved Plan of Reorganization becomes final and a Trust to process those claims becomes operational."

> FN4. The record contains a form entitled Final Proof of Claim with respect to each policy that lists W.R. Grace & Company as the claimant. The "Absolute Claim Amount" on each is stated to be the face amount of the policy. Claims are described as "Asbestos-related Bodily Injury Claims see Attachments To Final Proofs of Claim." However, the attachments are not part of the record on appeal.

***5** On January 12, 2010, the liquidator issued Notices of Determination (NODs) for each POC, which in sum disallowed all of Grace's POCs. In each NOD the liquidator denied the claims for these reasons: (1) "[i]nsufficient supporting documentation," (2) "[f]ailure to document the exhaustion of limits of coverage of the underlying policy to the Integrity policy," and (3) "[a]llowance of contingent claims is prohibited by New Jersey statute." Each NOD also stated that "[a]dditional documentation is required to support the insured's claim, including but not limited to the following: 1) List of claimants paid as of 6/30/09 and allocated to Integrity including percentage, 2) Supporting documentation for claimants allocated to Integrity's policy, including settlement checks and releases, 3) Proof of exhaustion of underlying limits, 4) Affidavit executed by the insured attesting amounts paid on behalf of Integrity and/or allocated to Integrity's policy."

Grace's formal objections to the NODs were submitted on March 11, 2010. However, the liquidator declined to amend his decisions. The matter was then appealed to the special master who, in a written decision dated October 15, 2010, concluded that the liquidator had made a proper determination based on the facts submitted. The special master held:

> It is clear that the claimant in this matter is Grace, as it was Grace who filed the Final Proofs of Claims for Grace, itself. Grace's submissions pursuant to the Amended LCP were timely made. However, it is also clear that Grace's claims are not "absolute claims" as defined by the Amended LCP and as previously determined by the Supreme Court and the Liquidation Court relative to this Liquidation.
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> ....
>
> It is undisputed that Grace's claims do not have fixed liability, have not been either settled or adjudicated, and thus the amount which Grace will have to pay is not definite or determinable, but estimated. Grace's claims do not fundamentally stand on their own. Liability and value ha[ve] not been fixed by actual payment by the Claimant or by judgment of a court of law, nor has the federal bankruptcy court approved claim resolution procedures. Therefore, based on the law of the case, as set forth in the Supreme Court decision, *In re Liquidation of Integrity Insurance Co., supra*, Grace's claims are clearly not absolute.

The special master rejected the contention that, because the pendency of the bankruptcy proceedings and the automatic stay frustrated the right of claimants to perfect their claims, those claims

should be recognized, noting that the Court had rejected allowance of estimates of claims. *See In re Liquidation of Integrity Ins. Co., supra,* 193 *N.J.* at 97. Additionally, the special master rejected the argument that the claims should be allowed under *N.J.S.A.* 17:30C–28b, which provides that third-party contingent claims "may" be allowed if enumerated conditions were met. The special master noted the applicability of the provision solely to third-party claims, and he determined that "Grace, Integrity's insured, is the claimant in this matter," and that "the Final Proofs of Claims were filed by Grace and not a third party." Thus, he found the argument to have no merit.

***6** A further appeal to the liquidation court was perfected, and on December 3, 2010, that court "confirm[ed] the Special Master's Determination" pursuant to *Rule* 4:41–5(b). In support of its decision, the court noted that the Amended LCP provided that a claim will only be considered if it became absolute on or before June 30, 2009. He then found that the special master had properly determined that the claimant in this matter, W.R. Grace, did not submit absolute claims as defined in the Amended LCP and by the Supreme Court in *In re Liquidation of Integrity Insurance Co.* The court held: "W.R. Grace's claims still do not have fixed liability and have not been settled or adjudicated." Like the special master, the court rejected the argument that the fact of Grace's bankruptcy should be considered in evaluating the nature of the claims, and it rejected the claim that *N.J.S.A.* 17A:30C–28b was applicable to the case on the ground that the claims being asserted were not third-party claims. This appeal followed.

II.

Grace first argues on appeal that the claims for which it has filed timely [FN5] POCs are not "contingent" because, in contrast to the IBNR claims at issue before the Supreme Court in *In re Liquidation of Integrity Insurance Company, supra,* 193 *N.J.* 86, the identity of the claimants is known and the claims would have been asserted but for Grace's bankruptcy and the resultant stay. We reject that argument, noting that the value of the claims at issue has not been fixed by actual payment, settlement, final judgment or a claims resolution procedure approved by the federal bankruptcy court.[FN6]

FN5. We discuss Grace's untimely claims, which it asserts are liquidated, in Section V of this opinion.

FN6. That a future claims resolution procedure adopted by the Trust after its establishment may fix the value of claims pursuant to a claims resolution procedure approved by the federal bankruptcy court does not render such claims "fixed" at the present time. Grace's arguments that claims will be determined by the Trust in accordance with "claim resolution procedures approved by a federal bankruptcy court," and that they are therefore allowable, omits crucial language providing that, describing an "absolute" claim as one for which "the liability and value has been fixed[.]"

In support of its position, Grace relies on the report of its expert witness, Dr. Mark A. Peterson, who submitted an expert report regarding the valuation of claims dated June 2007, and presented a summary of his conclusions to the bankruptcy court during plan confirmation hearings that included his estimate of the value of claims pending at the time of bankruptcy in the amount of $549 million, consisting of $249 in liability for mesothelioma claims, $86 million in liability for lung cancer claims, $13 million in liability for other cancer claims, and $201 million in liability for nonmalignant claims. It also included Dr. Peterson's estimate of the value of claims arising during the bankruptcy period in the sum of $2.253 billion, consisting of $1.54 billion in liability for mesothelioma claims, $240 million in liability for lung cancer claims, $47 million in liability for other cancer claims and $436 million for claims based on nonmalignant disease.

However, a review of Dr. Peterson's report discloses that the figures he has cited are premised upon estimations based on Grace's prior loss experience, a forecast of future claims handling approaches and their results, and upon the loss experience of comparable asbestos claim defendants such as Johns Manville. As such, the estimates of the value of the claims do not "stand on [their] own," *id.* at 96, but instead, are dependent, among other things, upon values attributed to other claims. As a consequence, the claims are not "absolute" under the standards for absolute claims set forth by the Supreme Court. *Ibid.* The fact that the claimants are known does not change this analysis.

***7** In reaching this conclusion, we reject Grace's argument that, in limiting recovery to claims that were "absolute," the Legislature could not have considered the possibility that bankruptcy of an insured would limit the ability of claimants to fix the amount of their claims, since the wave of corporate bankruptcies did not commence until some time after the Uniform Insurers Liquidation Act was enacted in 1975. Thus, the definition of "absolute" should be judicially modified to encompass claims arising in the new circumstances. As the Supreme Court found, the statutory language at issue unambiguously limits allowable claims to those that are "absolute." *Id.* at 95. No legal basis has been presented that would justify a broadening of that language. Moreover, we note that Grace's bankruptcy commenced in 2001. If the Legislature had wished to amend the statute, there has been ample time to do so. Yet, as we previously stated, no amendment has occurred.

III.

Grace next argues that New Jersey and federal laws require the recognition of its contingent claims so as to prohibit the Integrity estate from receiving a windfall as the result of Grace's bankruptcy. In that regard, Grace cites *N.J.S.A.* 17:28–2, which provides:

> No policy of insurance against loss or damage ... shall be issued or delivered in this state by any insurer authorized to do business in this state, unless there is contained within the policy a provision that the insolvency or bankruptcy of the person insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of the policy, and stating that in case execution against the insured is returned unsatisfied in an action brought by the injured person ... because of the insolvency or bankruptcy, then an action may be maintained by the injured person, or his personal representative, against the corporation under the terms of the policy for the amount of the judgment in the action not exceeding the amount of the policy.

However, this statute, by its terms, limits direct actions by claimants to those who are judgment creditors, a category that is inapplicable to the claimants at issue. The statute does not recognize direct actions by claimants asserting claims that have not been fixed by judgment. Further, it is clear in the present matter that Integrity will not receive a windfall as the result of the disallowance of Grace's contingent claims, since it is uncontested that Integrity's liabilities far exceed its assets and that its already-approved claims exceed assets available for distribution.

Grace asserts additionally that provisions of the Bankruptcy Code preclude Integrity from receiving a windfall as the result of its bankruptcy. In particular, Grace relies on 11 *U.S.C.A.* § 524(g), which permits the creation of a trust to provide compensation for present and future asbestos-related claims and offers injunctive relief to channel such claims away from bankrupt corporations and to the trust as the sole source of compensation. It relies, as well, on 11 *U.S.C.A.* § 524(e), which provides that discharge of a debt of the debtor in bankruptcy "does not affect the liability of any other entity on ... such a debt."

***8** However, Grace does not explain how these provisions of the Bankruptcy Code impact upon the operations of Integrity, the liquidation of which is

governed by state law as the result of the McCarran–Ferguson Act. *See* 15 *U.S.C.A.* 1012(b), which provides: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance[.]"

In the present case, the Uniform Insurers Liquidation Act, as adopted in New Jersey, provides a comprehensive mechanism for the liquidation of insurance companies and for allowance of certain claims against the estates of such companies. Federal bankruptcy law plays no part in this State regulatory scheme.

IV.

Grace next argues that the liquidation court erred in accepting the special master's conclusion that *N.J.S.A.* 17:30C–28b was inapplicable to Grace's claims because Grace was a first party, and the statutory provision relates solely to third-party claims. That portion of the statute provides that, when specified conditions are met, "any person who has a cause of action against an insured of [an insolvent] insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed." Grace argues that, despite the plain language of its notices of claim, which provide in each that the claimant is W.R. Grace, the true party in interest was the Official Committee of Asbestos Personal Injury Claimants (ACC). Thus, it asserts, the claims were in fact third-party claims, not first-party ones.

We reject Grace's argument. The fact that a committee was established in Grace's bankruptcy proceeding, pursuant to 11 *U.S.C .A.* § 1102(a)(1), to represent the interests of present and future unsecured personal injury claimants does not transform the nature of the claims of those claimants. FN7 It has been recognized that:

> FN7. The record contains no evidence of an assignment of such claims.

To ensure protection for unsecured creditors in Chapter 11 reorganization proceedings, the United States Trustee normally will appoint a committee of creditors holding unsecured claims against the debtor. 11 *U.S.C.* § 1102(a)(1). The committee is intended to be a partisan representative of the different interests and concerns of the creditors. *In re Daig Corp.*, 17 *Bankr.* 41, 43 (Bankr.D.Minn.1981). The committee's primary function is to advise the creditors of their rights and proper course of conduct in the bankruptcy proceedings. *In re Subpoenas Duces Tecum*, 978 *F.*2d 1159, 1161 (9th Cir.1992).

[*In re Nat'l Liquidators*, 182 *B.R.* 186, 191 (Bankr.S.D.Ohio 1995).]

In this matter, the ACC has sought to espouse the interests of the claimants it was created to represent. However, by doing so, it has not established a right by claimants seeking to assert claims against Grace to recovery pursuant to the third-party provisions of *N.J.S.A.* 17:30C–28b. Moreover, even if the ACC were considered a real party in interest and a third-party claimant, as discussed in more detail in Section V, its filings were fatally lacking in factual detail.

***9** Because we find that the claims at issue in the present matter are not cognizable pursuant to *N.J.S.A.* 17:30C–28b, we need not address arguments directed to the proper construction of the statute's permissive language. FN8

> FN8. "... such claim *may* be allowed." (Emphasis supplied.)

As a final matter, we find no precedent to support the proposition that the liquidator should earmark funds to cover contingent and future claims against Grace—a step that has no statutory support and would be contrary to the intent of the majority as set forth in *In re Liquidation of Integrity Insurance Co., supra*, 193 *N.J.* 86.

V.

On February 7, 2011, Grace submitted a supplemental proof of claim for recovery of $641 million allegedly paid on personal injury claims before April 2, 2001,[FN9] the date of Grace's bankruptcy. The data was set forth on a computer disc that was accompanied by a sample summary chart setting forth the case I.D., the claimant I.D., the claimant's name, the claimant type, the disposition date, the manner of disposition, and the indemnity amount.[FN10] The submission occurred more than one year after Grace had been notified that the support for its claims was inadequate. It took place one year and eight months after the bar date; one year and four months after the date that all supporting claim documentation was required to be filed with the liquidator; two months after the liquidation court's decision of December 3, 2010 disallowing Grace's claims; and several weeks after Grace filed its notice of appeal. The supplemental data was the subject of a motion filed by Grace to supplement the record on appeal, which we denied on April 25, 2011.

> FN9. It is unclear why this number differs from the $549 million in pending claims noted by Dr. Peterson.
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> FN10. Both the report of Dr. Peterson and Grace's brief suggest that these claims remain pending and have not been paid.

Despite its lack of timeliness, on appeal, Grace asserts that we should remand the case for consideration of these supplemental POCs by the liquidator. We decline to afford a mechanism that would require the liquidator to consider these proofs of claim, despite the fact that the supporting information that Grace now proffers, which was explicitly required by the Amended LCP to be submitted by a date certain and was noted as absent in the liquidator's NODs, was in Grace's possession prior to its declaration of bankruptcy in 2001. Grace has offered no explanation why this data was not timely furnished. Nor has it offered relevant precedent that would permit it to supplement its POCs, at this time, with information in its possession from the outset and to compel consideration of its untimely POCs by the liquidator.

In summary, we conclude that Grace's claims were properly denied by the liquidator as failing to meet the requirements of *N.J.S.A.* 17:30C–28a and precedent construing that statutory provision.

Affirmed.

N.J.Super.A.D.,2012.
Commissioner of Ins. of State v. Integrity Ins. Company/W.R. Grace & Co.
Not Reported in A.3d, 2012 WL 75097 (N.J.Super.A.D.)

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