

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. _____

PART 46

In re: Gregory V. Lewis

Justice

INDEX NO.

- 403776/01

MOTION DATE

6/21/01

MOTION SEQ. NO.

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for

order of Conservation

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

all accompanying

~~be denied~~ order

FILED

JUN 25 2001

NEW YORK COUNTY CLERK'S OFFICE

NYS SUPREME COURT RECEIVED

JUN 21 2001

I.A.S. MOTION SUPPORT OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO

JUSTICE

Dated: 6/21/01

NO

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

CASE ALSO

At IAS Part 46 of the Supreme Court of the State of New York, County of New York, at the Courthouse, 60 Centre Street, in the Borough of Manhattan, City and State of New York, on the 21 day JUNE 2001.

P R E S E N T:

HON. NICHOLAS FIGUEROA

JUSTICE

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Index No.: 403776/01

In the Matter of

the Application of

ORDER OF CONSERVATION

GREGORY V. SERIO, as Superintendent of Insurance of the State of New York, for an order to take possession of and to conserve certain trust funds maintained for the benefit of American Policyholders of

HIH CASUALTY & GENERAL INSURANCE LIMITED

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FILED

JUN 25 2001

NEW YORK
COUNTY CLERK'S OFFICE

GREGORY V. SERIO, Superintendent of Insurance, ~~of the~~ State of New York ("Petitioner or Superintendent"), having moved this Court for an order to take possession of and conserve the trust fund dated July 1, 1998 and all other trust funds established by or on behalf of HIH pursuant to 11 NYCRR §27.13 and §27.14 of the Insurance Law of the State of New York by or on behalf of HIH CASUALTY & GENERAL INSURANCE LIMITED (hereinafter referred to as "HIH"), and such motion having come on before this Court on the 21st day of June, 2001; ~~and there being no opposition thereto,~~

NOW, upon reading and filing the Order to Show Cause made on the 19th day of June, 2001 by Nicholas Figueroa, one of the Justices of the Supreme Court of the State of New York and the petition of GREGORY V. SERIO Superintendent of Insurance, ~~of the~~ State of New York,

verified the 24th day of May, 2001 with exhibits thereto, and due proof of service of said Order to Show Cause and the papers upon which it was granted upon HIH and CITIBANK, N.A. a/k/a CITIBANK NEW YORK ("CITIBANK") by Affidavits of Barry Lesser sworn to the 20th day of June, 2001, and it appearing to my satisfaction that:

1. HIH is a corporation organized and existing under the Laws of Australia to conduct the business of insurance;
2. HIH is not licensed to conduct such business in the State of New York;
3. HIH issued insurance policies on an excess and surplus line basis in the United States, and pursuant to 11 NYCRR §§ 27.13 and 27.14 of the Insurance Law (Regulation 41 of the Regulations of the Superintendent of Insurance of the State of New York) established a trust fund with CITIBANK N.A. a/k/a CITIBANK NEW YORK ("CITIBANK") as trustee, for the protection of its policyholders and beneficiaries in the United States (the "Trust Fund").
4. Pursuant to Regulation 41 of the Rules and Regulations of the Superintendent, 11 NYCRR §27.13 and §27.14 and Article 74 of the Insurance Law, the Trust Fund is subject to the jurisdiction of this Court.
5. HIH is insolvent under the laws of Australia.
6. Pursuant to Regulation 41 and Article 74, the Superintendent of Insurance of the State of New York should be directed to take possession of the Trust Fund, for the protection of HIH policyholders and beneficiaries subject to further direction of this Court under and pursuant to the provisions of the Insurance Law of the State of New York.

And Petitioner, having appeared by the HON. ELIOT L. SPITZER, Attorney General of the State of New York, and due deliberation having been had:

NOW, on the motion of the HON. ELIOT L. SPITZER, Attorney General of the State of New York, IT IS ORDERED as follows:

1. The petition is granted.
2. GREGORY V. SERIO, Superintendent of Insurance of the State of New York and his successors in office, as Superintendent are authorized forthwith to take possession of and to conserve the Trust Fund and all other Regulation 41 trust funds established by or on behalf of HIH, until the further order of this Court;
3. The Superintendent as Conservator is directed to take such other and further steps as may be required to protect the policyholders and beneficiaries of HIH in the United States pursuant to the Insurance Law and subject to the further order of this Court;
4. Formal notice of the making and entry of this order be given by the Superintendent, as Conservator, by mail to the Commissioners, Superintendents, or Directors of Insurance of each State, District of Columbia and Puerto Rico, and CITIBANK, as trustee, and by publication in the Journal of Commerce, commencing three weeks from the date of entry of this order, once a week for two successive weeks;
5. Because HIH has no records in the State of New York, and it is involved in a judicial proceeding in Australia where its records are located, the Superintendent of Insurance as Conservator is relieved of notifying claimants and policyholders of this Order except as aforesaid in the preceding paragraph;
6. The notice hereinabove prescribed is sufficient notice to all policyholders and beneficiaries of HIH in the United States;
7. HIH, its officers, directors, stockholders, depositories, trustees, attorney, managers, agents, servants, employees, policyholders and creditors, and all other persons having in the State of New York any property or records relating to the Trust Fund and all other Regulation 41 trust funds of HIH in the State of New York are hereby directed to assign, transfer and deliver to the Superintendent of Insurance, as Conservator, and his successors in office, all of such property in whose ever name the same may be, and that any persons, firms or corporations having any books, papers or records relating to the Trust Fund and all other Regulation 41 trust funds and shall preserve the same and submit them to the Superintendent, as Conservator, or his agents, for examination at all reasonable times;
8. That HIH, its officers, directors, stockholders, depositories, trustees, attorneys, managers, agents, servants, employees, policyholders and creditors, and all other persons, be and they are hereby restrained

from dealing with or disposing of the Trust Fund and all other Regulation 41 trust funds or from doing or permitting to be done any act or thing which might waste said Trust Fund or other Regulation 41 trust funds or allow or suffer the obtaining of preferences, judgments, attachments, garnishments or other liens, or the making of any levy against said Trust Fund or other Regulation 41 trust funds while in the possession or control of the Superintendent, as Conservator;

9. That the officers, directors, stockholders, depositories, trustees, attorneys, managers, agents, servants, employees, policyholders and creditors of said HIH, and all other persons be and they hereby are enjoined and restrained from bringing or further prosecuting any action at law, suit in equity, special or other proceedings with respect to the Trust Fund or any other Regulation 41 trust funds against HIH, its depositories, and the trustees of the Trust Fund or any Regulation 41 trust funds or the Superintendent, individually or as Conservator, or from making or executing any levy or legal process within the State of New York upon the Trust Fund or any Regulation 41 trust funds or from in any way interfering with the Superintendent of Insurance of the State of New York or his successors in office in his or their possession, control, conservation and management of the Trust Fund or any Regulation 41 trust funds in the State of New York or in the discharge of the Insurance Law of the State of New York and any other provision of the Insurance Law of the State of New York (but only with respect to the Trust Fund or Regulation 41 Trust Funds in the State of New York);
10. The Superintendent, as Conservator, and his successors in office as Superintendent be and they are hereby authorized, permitted and allowed to sell, assign and transfer any and all of the stocks, bonds and securities that constitute the Trust Fund or other Regulation 41 trust funds in the State of New York, in his possession or which may hereafter come into his possession belonging to HIH, in conservation, at market price or better, or when there is no market price, at the best price obtainable, at private sale and at such times and upon such terms and conditions as in his discretion he deems for the best interest of the policyholders, and creditors of HIH, in conservation, and in furtherance of the conservation of the Trust Fund and all other Regulation 41 trust funds, and that he be authorized, permitted and allowed to take such steps and to make and execute such agreements and other papers as may be necessary to effect and carry out such sales, transfers and assignments; and

11. That all further papers in this proceeding shall bear the caption and be entitled:

"SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK"

In the Matter of

the Conservation of

the Trust Funds of

HIH CASUALTY & GENERAL INSURANCE LIMITED"

in place and stead of the caption as heretofore used.

E N T E R



J. S. C.

FILED

JUN 25 2001

NEW YORK
COUNTY CLERK'S OFFICE

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