

At IAS Part 11 Room 351 Supreme Court of the State of New York, County 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 \_\_\_\_\_ day of \_\_\_\_\_, 2002.

PRESENT:

HON.

JUSTICE

*Index No.: 401784/02*

In the Matter of  
the Application of

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

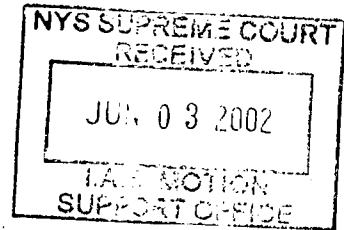
UNITED CAPITOL INSURANCE COMPANY

**ORDER OF CONSERVATION**

**FILED**

JUN 14 2002

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 all trust funds established pursuant to 11 NYCRR §27.13 and §27.14 of the Insurance Law of the State of New York by or on behalf of UNITED CAPITOL INSURANCE COMPANY (hereinafter referred to as "UNITED CAPITOL"), and such motion having come on before this Court on the 16 day of May, 2002;

NOW, upon reading and filing the Order to Show Cause made on the 29th day of April, 2002 by HON. JOAN A. MADDEN, 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 22nd day of March 2002 with exhibits thereto, and due proof of

service of said Order to Show Cause and the papers upon which it was granted upon UNITED CAPITOL and SUN TRUST BANK, formerly Trust Company Bank, by Affidavit of Lorraine F. Johnson sworn to the 30th day of April, 2002, and it appearing to my satisfaction that:

1. UNITED CAPITOL is a corporation organized and existing under the Laws of the State of Illinois to conduct the business of insurance;
2. UNITED CAPITOL is not licensed to conduct such business in the State of New York;
3. UNITED CAPITOL issued insurance policies on an excess and surplus lines 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 in Atlanta, Georgia with SUN TRUST BANK, formerly Trust Company Bank, 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. UNITED CAPITOL is insolvent under the laws of the State of Illinois.
6. Pursuant to Regulation 41 the Superintendent of Insurance of the State of New York should be directed to take possession of the Trust Fund and other Regulation 41 trust funds for the protection of UNITED CAPITOL 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 SPITZER, Attorney General of the State of New York, and due deliberation having been had:

NOW, on the motion of the HON. ELIOT 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 UNITED CAPITOL 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 UNITED CAPITOL 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 SUN TRUST BANK, as trustee, and by publication in the New York Times and the Journal of Commerce, commencing three weeks from the date of entry of this order, once a week for two successive weeks;
5. Because UNITED CAPITOL has no records in the State of New York, and it is involved in a judicial proceeding in Illinois 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 UNITED CAPITOL in the United States;
7. UNITED CAPITOL. 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 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 UNITED CAPITOL, 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 UNITED CAPITOL, 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 fund against UNITED CAPITOL, 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 UNITED CAPITOL, 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 UNITED CAPITOL, 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

UNITED CAPITOL INSURANCE COMPANY”

in place and stead of the caption as heretofore used.

E N T E R

  
\_\_\_\_\_  
J. S./C.

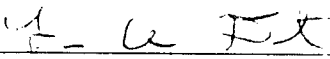
LAD/ma  
L2478/united capitol order

FILED  
JUN 14 2002  
COUNTY CLERK'S OFFICE  
NEW YORK

In accordance with Part 130, I advise that the following papers are attached:

Order of Conservation

Lawrence A. Dinerstein, Esq.  
Senior Attorney  
N.Y. State Dept. of Insurance  
Liquidation Bureau  
123 William Street  
New York, NY 10038  
(212) 341-6638

  
\_\_\_\_\_  
Lawrence A. Dinerstein

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

PRESENT: HON. JOAN A. MADDEN  
J.S.C.  
Justice

PART 11

In Re: United Capital Insurance Co.

- v -

INDEX NO.

401784/02

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

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

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 is granted without opposition in accordance with the annexed order of conservation.

NYS SUPREME COURT  
RECEIVED  
JUN 03 2002  
I.A.S. MOTION  
SUPPORT OFFICE

COUNTY CLERK'S OFFICE  
NEW YORK

FILED  
JUN 14 2002

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 5/15/02

HON. JOAN A. MADDEN  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

*Handwritten signature/initials*

SUPREME COURT: NEW YORK COUNTY

In the Matter of  
The Application of

GREGORY V. SERIO, Superintendent of Insurance of the  
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UNITED CAPITOL INSURANCE COMPANY

ORDER OF CONSERVATION

**ELLIOT SPITZER** Attorney General

Attorney for the Superintendent of  
Insurance

Office and Post Office Address  
120 Broadway, New York, N.Y. 10271  
Tel. (212) 416-8658

Personal service of a copy of

within..... day of

is admitted this..... day of

.....y.....20

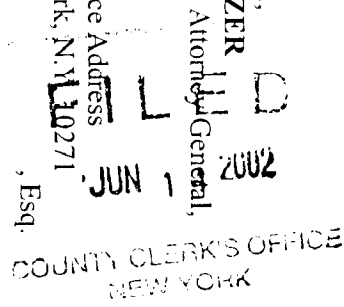
Sir: Please take notice that the within is a true

copy of  
duly filed and entered in the office of the clerk  
of  
the day of 20 County, on

Yours, etc.,  
**ELLIOT SPITZER**  
Attorney General,

Office and Post Office Address  
120 Broadway, New York, N.Y. 10271

To  
Attorney for



Sir  
Please take notice that the within

will be presented for settlement and signature  
herein to the Hon.  
one of the judges of the within named Court, at

in the Borough of  
City of New York, on the day of  
, 20, at M.

Date, N.Y.,  
Yours, etc.,  
**ELLIOT SPITZER**  
Attorney General.

Attorney for  
Office and Post Office Address  
120 Broadway, New York, N.Y. 10271

To  
Attorney for