

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

PRESENT: RAKOWER  
Justice

PART 15

INDEX NO.

401644/1

MOTION DATE

MOTION SEQ. NO.

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

MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING ~~MEMORANDUM DECISION~~  
ORDER

FILED

AUG 24 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 8/22/11

HON. EILEEN A. RAKOWER

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

☐ REFERENCE

☐ SUBMIT ORDER/ JUDG.

☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

E  
8/24/11  
OC

At IAS Part 15 of the Supreme Court  
of the State of New York, County of  
New York, at the courthouse, 80  
Centre Street, in the County, City  
and State of New York, on the 22  
day of AUG, 2011.

P R E S E N T :

HON. EILEEN A. RAKOWER, J.S.C.  
-----X

In the Matter of  
  
the Application of

Index No. 401644/11

**ORDER OF LIQUIDATION**

James J. Wrynn, Superintendent of Insurance  
of the State of New York, for an order  
to take possession of, liquidate the business and  
affairs of and dissolve the corporate charters of

ASPEN U.S. INSURANCE COMPANY.  
-----X

**FILED**

**AUG 24 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

Petitioner, James J. Wrynn, Superintendent of Insurance of the State of New York  
(the "Superintendent"), having moved this Court by order to show cause ("Order to Show  
Cause") for an order to take possession of Aspen U.S. Insurance Company ("Aspen"), liquidate  
the Aspen's business and affairs and dissolve Aspen's corporate charter, and upon reading and  
filing the petition of the Superintendent, duly verified the 23<sup>rd</sup> day of May, 2011, the affirmation  
of Nancy Schoep, dated April 19, 2011, and the exhibits annexed thereto, this Court finds that:

1. Aspen was incorporated on or about August 31, 2009. Aspen intended to transact  
the kinds of insurance authorized by paragraphs 3 (accident and health insurance), 4 (fire  
insurance), 5 (miscellaneous property insurance), 6 (water damage insurance), 7 (burglary and  
theft insurance), 8 (glass insurance), 9 (boiler and machinery insurance), 10 (elevator insurance),  
11 (animal insurance), 12 (collision insurance), 13 (personal injury liability insurance),  
14 (property damage liability insurance), 15 (workers' compensation and employers' liability

**RECEIVED**

**AUG 24 2011**

MOTION SUPPORT OFFICE  
NYS CLERK

insurance), 16 (fidelity and surety), 19 (motor vehicle and aircraft physical damage insurance), 20 (marine and inland marine insurance) and 21 (marine protection and indemnity insurance) of New York Insurance Law ("Insurance Law") Section 1113(a). Aspen's proposed principal office was to be located in the County of New York, State of New York. Aspen has not obtained a certificate of authority or license, and any and all extensions to do so have expired.

2. Aspen has not completed its organization or obtained a license or certificate authorizing Aspen to commence the doing of an insurance business within one year from its date of incorporation, and thus, under Insurance Law Section 1203(a), Aspen has forfeited its corporate charter;

3. Aspen is subject to the Insurance Law and, particularly, to Article 74 thereof;

4. It is in the best interest of all persons concerned that the Superintendent be authorized and directed to take possession of Aspen's property, liquidate Aspen's business and affairs, and that Aspen's corporate charter be dissolved;

NOW, on motion of the Honorable Eric T. Schneiderman, Attorney General of the State of New York, it is hereby

ORDERED as follows:

1. The relief requested in the petition for an order of liquidation is granted;
2. The Superintendent, and his successors in office, are appointed liquidator of the Aspen ("Liquidator") and are: (i) vested with all powers and authority expressed or implied under Insurance Law Article 74, in addition to the powers and authority set forth in this Order; (ii) authorized and directed to immediately take possession of Aspen's property, liquidate Aspen's business and affairs, and dissolve Aspen's corporate charter in accordance with Insurance Law Article 74, (iii) vested with title to Aspen's property, contracts, and rights of action; (iv) authorized and directed to take possession of Aspen's books, files, records and other property, wherever located, as of the date of entry of this Order; and (v) authorized and directed, without further notice of this Court, to destroy or otherwise dispose of any and all of Aspen's books, files, records and other

property in the Liquidator's possession when he deems them to be no longer required in connection with the dissolution of Aspen;

3. The Liquidator may deal with the property and business of Aspen in its name or in the name of the Liquidator;
4. The officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of Aspen and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) wasting or permitting to be done any act or thing that might waste Aspen's property; (ii) transacting Aspen's business or disposing of Aspen's property, except as authorized by the Liquidator; (iii) interfering with the Liquidator in the possession, control or management of Aspen's property or in the discharge of his duties, and (iv) disclosing any information that is proprietary to Aspen or not in the public domain, except as authorized by the Liquidator;
5. All persons are enjoined and restrained from commencing or prosecuting any actions or proceedings against Aspen, the Liquidator or the New York Liquidation Bureau, their present or former employees, attorneys or agents with respect to any claims against Aspen;
6. All persons are enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against Aspen's assets or any part thereof;
7. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and stocks, bonds or securities, and any real or other property of Aspen at market price or better, or if there is no market price, at the best price obtainable at private sale at such times and upon such terms and conditions as, in his discretion, he deems is in the best interest of the creditors of Aspen, and he is further authorized 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;
8. In accordance with Insurance Law Section 7405, all in-force contracts, leases, tax sharing agreements, employment contracts, and obligations of Aspen, however described, shall terminate and all liability thereunder shall cease and be fixed as of the date of entry of this Order unless expressly ratified in writing by the Liquidator;
9. Aspen, its officers, directors, shareholders, members, depositories, policyholders, trustees, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations, and other persons or entities having any property and/or information, including, but not limited to, business records, insurance policies, claims files (electronic or paper), software programs, bank records and/or any tangible or intangible items of value, belonging or relating to

Aspen, shall preserve such property and/or information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such property and/or information to the Liquidator or his designees;

10. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to Aspen shall maintain and preserve all information in its possession relating in any way to Aspen, wherever located, including but not limited to all documents, data, electronic files and records, computer equipment (*i.e.*, servers and printers), software programs and software licenses owned by Aspen, and are directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees;
11. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody or control of any of Aspen's funds, accounts or assets shall immediately, upon the Liquidator's request and direction: (i) turn over custody and control of such funds, accounts or assets to the Liquidator; (ii) transfer title of such funds, accounts or assets to the Liquidator; (iii) change the name of such accounts to the name of the Liquidator; (iv) transfer funds from such bank, savings and loan association or other financial institution; or (v) take any other action necessary for the proper conduct of the liquidation proceeding;
12. Judicial immunity is extended to the Superintendent in his capacity as Liquidator of Aspen and his successors in office and their agents and employees and such immunity is extended to them for any cause of action of any nature against them, individually or jointly, for any action or omission when acting in good faith, in accordance with this Order, or in the performance of their duties pursuant to Insurance Law Article 74;
13. In accordance with Insurance Law Section 7432(b), all claims against Aspen must be presented to the Liquidator within four months of the date of entry of this Order;
14. The Liquidator shall provide notice of this Order to all creditors, claimants and other interested persons by: (i) posting this Order on the internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org> within 30 days after the entry of this Order; and (ii) publication of notice of this Order in *Business Insurance* once a week for two consecutive publication weeks, commencing within four weeks of entry of this Order, in a form substantially similar to the one attached hereto;
15. The notice prescribed in decretal paragraph 14 hereof is sufficient notice to all persons interested in Aspen;

16. A copy of this Order shall be served forthwith by first class mail upon the members of Aspen's initial Boards of Directors, at their last known address, and Jonathan Mark Jones, Chief Financial Officer of Aspen U.S. Holdings, Inc., at 175 Capital Boulevard, Suite 300, Rocky Hill, Connecticut 06067; and upon *Shane Leachey, Esq. OMD USA 195 Broadway NY, NY 10007*
17. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74;
18. The corporate charter of Aspen is relinquished, forfeited, surrendered and annulled, and Aspen is dissolved;
19. The Liquidator may at any time make further application to this Court for such further and different relief as he sees fit;
20. This Court shall retain jurisdiction over this matter for all purposes;
21. The caption to this proceeding is hereby amended as follows:

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

-----X  
In the Matter of

the Liquidation of

Aspen U.S. Insurance Company.  
-----X

22. All further papers in this proceeding shall bear the above amended caption.

ENTER



J.S.C.

**HON. EILEEN A. RAKOWER**

**FILED**

AUG 24 2011

NEW YORK  
COUNTY CLERK'S OFFICE

**IN THE MATTER OF THE LIQUIDATION OF  
ASPEN U.S. INSURANCE COMPANY.**

**New York Supreme Court, Index No.: 401644/11**

Notice is Hereby Given:

- I. James J. Wrynn, Superintendent of Insurance of the State of New York, has been appointed by an order of the Supreme Court of the State of New York, New York County, filed on \_\_\_\_\_, 2011 ("Liquidation Order"), as the liquidator ("Liquidator") of Aspen U.S. Insurance Company ("Aspen") and, as such, has been: (i) vested with all powers and authority expressed or implied under New York Insurance Law ("Insurance Law") Article 74, in addition to the powers and authority set forth the Liquidation Order; (ii) authorized and directed to immediately take possession of Aspen's property, liquidate the Aspen's business and affairs, and dissolve Aspen's corporate charter in accordance with Insurance Law Article 74, (iii) vested with title to Aspen's respective property, contracts, rights of action; (iv) authorized and directed to take possession of Aspen's books, files, records and other property, wherever located, as of the date of entry of the Liquidation Order; and (v) authorized and directed, without further notice of this Court, to destroy or otherwise dispose of any and all of Aspen's books, files, records and other property in the Liquidator's possession when he deems them to be no longer required in connection with the dissolution of Aspen.
- II. In accordance with Insurance Law Section 7432(b), all claims against Aspen must be presented to the Liquidator by \_\_\_\_\_, 2011. Claims presented after \_\_\_\_\_, 2011, will not share in the distribution of assets until all allowed claims that were filed on or before \_\_\_\_\_, 2011 have been paid in full with interest. All claimants who appear on Aspen's books and records as of the date of entry of the Liquidation Order are deemed to have duly filed proofs of claim prior to \_\_\_\_\_, 2011.
- III. The officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of Aspen and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) wasting or permitting to be done any act or thing that might waste Aspen's property; (ii) transacting Aspen's business or disposing of Aspen's property, except as authorized by the Liquidator; (iii) interfering with the Liquidator in the possession, control or management of Aspen's property or in the discharge of his duties, and (iv) disclosing any information that is proprietary to Aspen or not in the public domain, except as authorized by the Liquidator.
- IV. All persons are enjoined and restrained from commencing or prosecuting any actions or proceedings against Aspen, the Liquidator or the New York Liquidation Bureau, their present or former employees, attorneys or agents with respect to any claims against Aspen.
- V. All persons are enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against Aspen's assets or any part thereof.
- VI. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and stocks, bonds or securities, and any real or other property of Aspen at market price or better, or if there is no market price, at the best price obtainable at private sale at such times and upon such terms and conditions as, in his discretion, he deems is in the best interest of the creditors of Aspen, and he is further authorized 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.
- VII. In accordance with Insurance Law Section 7405, all in-force contracts, leases, tax sharing agreements, employment contracts, and obligations of Aspen, however described, shall terminate and all liability thereunder shall cease and be fixed as of the date of entry of this Order unless expressly ratified in writing by the Liquidator.

VIII. Aspen, its officers, directors, shareholders, members, depositories, policyholders, trustees, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations, and other persons or entities having any property and/or information, including, but not limited to, business records, insurance policies, claims files (electronic or paper), software programs, bank records and/or any tangible or intangible items of value, belonging or relating to Aspen, shall preserve such property and/or information and immediately, upon the Liquidator's request and direction, assign, transfer, turn over and deliver such property and/or information to the Liquidator or his designees.

IX. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to Aspen shall maintain and preserve all information in its possession relating in any way to Aspen, wherever located, including but not limited to all documents, data, electronic files and records, computer equipment (*i.e.*, servers and printers), software programs and software licenses owned by Aspen, and are directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees.

X. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody or control of any of Aspen's funds, accounts or assets shall immediately, upon the Liquidator's request and direction: (i) turn over custody and control of such funds, accounts or assets to the Liquidator; (ii) transfer title of such funds, accounts or assets to the Liquidator; (iii) change the name of such accounts to the name of the Liquidator; (iv) transfer funds from such bank, savings and loan association or other financial institution; or (v) take any other action necessary for the proper conduct of the liquidation proceeding.

XI. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74.

XII. The corporate charter of Aspen is relinquished, forfeited, surrendered and annulled, and Aspen is dissolved.

XIII. All communications relating to Aspen and to the liquidation thereof should be addressed to:

New York Liquidation Bureau  
110 William Street  
New York, New York 10038  
(212) 341-6218

JAMES J. WRYNN  
Superintendent of Insurance of  
the State of New York as Liquidator  
of Aspen U.S. Insurance Company

Index No. 401644

Year 2011

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

In the Matter of

the Liquidation of

ASPEN U.S. INSURANCE COMPANY.

ORDER OF LIQUIDATION

**JOHN PEARSON KELLY**

Attorney for Superintendent of Insurance as Liquidator

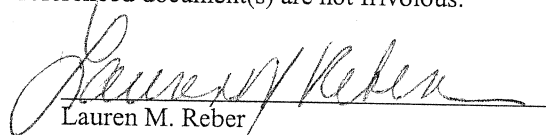
*Office and Post Office Address, Telephone*

New York Liquidation Bureau  
110 William Street  
New York, NY 10038  
(212) 341-6755  
Fax (212) 608-3398

**ATTORNEY CERTIFICATION**

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, belief and reasonable inquiry, the contentions in the above referenced document(s) are not frivolous.

Dated: July 26, 2011  
New York, New York

  
Lauren M. Reber

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on the      day of      2011

☐ NOTICE OF SETTLEMENT

that an order  
for settlement to the HON.

of which the within is a true copy will be presented  
one of the judges of the within named court, at  
2011      at

Dated:

, on

Yours, etc.

**JOHN PEARSON KELLY**

Attorney for Superintendent of Insurance as  
Liquidator

*Office and Post Office Address, Telephone*  
New York Liquidation Bureau  
110 William Street  
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(212) 341-6755  
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