

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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	:	Index No. 8023/91
In the Matter of the Rehabilitation of	:	
EXECUTIVE LIFE INSURANCE	:	Hon. John M. Galasso
COMPANY OF NEW YORK.	:	
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**VERIFIED PETITION FOR ORDER OF LIQUIDATION
AND APPROVAL OF RESTRUCTURING AGREEMENT**

James J. Wrynn, Superintendent of Insurance of the State of New York (the "Superintendent"), respectfully petitions this Court, upon information and belief, pursuant to Article 74 of the New York Insurance Law (the "Insurance Law") and on motion of Eric T. Schneiderman, Attorney General of the State of New York, on behalf of the Superintendent, requesting the issuance of an order of liquidation: (i) converting this rehabilitation proceeding to a liquidation proceeding on the basis that Executive Life Insurance Company of New York ("ELNY") is insolvent and further efforts to rehabilitate ELNY would be futile pursuant to Section 7403(c) of the New York Insurance Law ("Insurance Law"); (ii) appointing the Superintendent and his successors in office as liquidator (the "Liquidator") of ELNY, and directing the Superintendent to liquidate the business and affairs of ELNY; (iii) approving the provisions, terms, and conditions of the Agreement of Restructuring in Connection with the Liquidation of ELNY, by and among the Superintendent, as Receiver of ELNY, the National Organization of Life and Health Insurance Guaranty Associations, and the Participating Guaranty Associations, and joined by NEWCO and the Life Insurance Guaranty Corporation existing under Insurance Law Article 75, including all Exhibits and Schedules thereto (the "Restructuring Agreement"), in substantially the form attached hereto as Exhibit D; and (iv) for such other relief specified below as is provided for in Article 74 of the Insurance Law.

The Superintendent also respectfully petitions this Court, pursuant to Article 74 of the Insurance Law, requesting the issuance of a show cause order (the "Order to Show Cause"); (a) setting a hearing to be had before this Court on this Petition (the "Hearing"); (b) approving a briefing schedule that provides for service of answering papers by any interested party upon the Superintendent by January 16, 2012, and filing of reply papers by the Superintendent on March 1, 2012; (c) approving the form of notice to be given to ELNY's policyholders and creditors regarding this Petition and the Hearing (the "Notice"); (d) approving the method of service of the Notice; (e) ordering that except as expressly modified, the Order of Rehabilitation entered on April 23, 1991 and the December 16, 1992 Order approving the Plan of Rehabilitation in this proceeding are continued in force and effect, including the provisions providing for payments to structured settlement and other annuitants pursuant to the terms of the approved Plan of Rehabilitation; and (f) continuing the injunctions provided for in the Order of Rehabilitation entered by this Court on April 23, 1991.

In support of this Petition, the Superintendent respectfully alleges and sets forth, upon information and belief, the following:

ELNY

1. ELNY was a life insurance company that issued life insurance policies and single premium deferred and immediate annuity contracts. It was incorporated under the laws of the State of New York on October 24, 1935, and licensed in March 1937. ELNY was and remains covered by the Insurance Law, subject to supervision and examination thereunder, and subject to rehabilitation or liquidation under Article 74 thereof.

2. ELNY received considerable adverse publicity in 1991 as a result of the financial difficulties of its parent, Executive Life Insurance Company ("ELIC"). This negative publicity intensified after ELIC was placed into conservation by the California Department of

Insurance and led to a loss of confidence by ELNY's policyholders, creditors, and the public, as indicated by a dramatic increase in surrenders of ELNY insurance policies. This "run" on ELNY and the resulting material erosion of its assets ultimately led to the Rehabilitation Order that placed ELNY into rehabilitation and the appointment of the then-Superintendent of Insurance of the State of New York (and his successors in office) as Rehabilitator.

3. ELNY entered rehabilitation under Section 7402 of the Insurance Law pursuant to an order of the Supreme Court, Nassau County, entered April 23, 1991 (the "Rehabilitation Order"). A copy of the Rehabilitation Order is attached hereto as Exhibit A.

4. As set forth in the Rehabilitation Order, this Court determined that ELNY "is in such condition that the further transaction of its business will be hazardous to its policyholders, its creditors and to the public." (Rehabilitation Order at 2.) The Rehabilitation Order appointed the Superintendent as Rehabilitator of ELNY and directed the Rehabilitator to take possession of ELNY's property and conduct ELNY's business under and pursuant to Article 74 of the Insurance Law, and to take such steps as he deemed wise and expedient toward the removal of the causes and conditions that made the rehabilitation proceeding necessary. (*Id.* at 3.) The Rehabilitation Order also enjoined all persons, other than the Rehabilitator, from dealing with, disposing of, or wasting ELNY's assets and from commencing actions or proceedings against the company or the Rehabilitator under Section 7419 of the Insurance Law. (*Id.* at 4-6.)

5. Subsequent to the entry of the Rehabilitation Order, the Rehabilitator took steps to protect ELNY's assets and to reduce its expenses, including obtaining a moratorium on the surrender of ELNY policies for cash, hiring various financial advisors, and instituting enhanced financial controls within ELNY's operations. The Rehabilitator also deemed it vital to develop a plan of rehabilitation that would eliminate ELNY's reliance on ELIC and allow ELNY

to operate as a viable insurance company. A plan of rehabilitation was submitted to the Court on or about March 26, 1992 (the "Rehabilitation Plan"), and approved by an order of the Court dated December 16, 1992 (the "Rehabilitation Plan Order"). A copy of the Rehabilitation Plan is attached hereto as Exhibit B. A copy of the Rehabilitation Plan Order is attached hereto as Exhibit C.

6. The Rehabilitation Plan permitted the sale of ELNY's existing policies to Metropolitan Life Insurance Company ("MetLife"), except for structured settlement annuities and certain other non-surrenderable contracts (collectively, "annuities"), which remained with ELNY under the supervision of the Rehabilitator. (Rehabilitation Plan at 5-6.) The Rehabilitator, in consultation with his advisors, expected that ELNY would be able to earn a sufficient return on its investments to satisfy these remaining obligations. The Rehabilitation Plan also provided that certain ELNY policyholders whose policies were transferred to MetLife and who surrendered their MetLife policies before the applicable MetLife surrender charges decreased to zero would be allowed a claim against ELNY in respect of such surrender charge (the "Claim-Overs"). (*Id.* at 13.) The Rehabilitation Plan Order continued the deferral of notice by the Rehabilitator to all creditors to present their claims, extending the deferral through the term of the Plan. (Rehabilitation Plan Order at 3.)

7. ELNY retained certain assets (including the ceding commission received from MetLife) and, pursuant to the Rehabilitation Plan, the annuities retained by ELNY were serviced and paid in accordance with their terms out of such assets and the investment income earned thereon. MetLife administered these ELNY policies pursuant to a separate administration agreement. (Rehabilitation Plan at 11-13.)

8. The Rehabilitation Plan directed that ELNY would remain in rehabilitation under the supervision of the Rehabilitator until such time as, *inter alia*, “the Rehabilitator consider[ed] it appropriate to convert to a liquidation proceeding” or such time as ELNY could otherwise be released from rehabilitation and returned to its shareholders. (*Id.* at 13-14.)

9. As of January 1, 2012, ELNY will have obligations to an estimated approximately 9,700 policyholders.

I. GROUNDS FOR LIQUIDATION

10. The Superintendent had believed that rehabilitation was the best possible way to preserve the value and goodwill of ELNY for the benefit of its policyholders and creditors. Since this Court’s approval of the Rehabilitation Plan, the Rehabilitator has been directing the affairs of ELNY pursuant to the terms of the Rehabilitation Plan and has made full and timely payments on all annuities according to their terms. While efforts to rehabilitate ELNY have been ongoing for the past 20 years, during which time ELNY has timely and fully made all annuity benefit payments, ELNY’s financial condition is progressively deteriorating. The Rehabilitator has determined that ELNY will be unable to pay its outstanding lawful obligations as they mature in the regular course of business and that further efforts to rehabilitate ELNY are futile. Petitioner submits that ELNY is insolvent and must be placed into liquidation.

11. As further discussed in the attached Affidavit of Ivy Chang, sworn to on August 30, 2011 (“Chang Aff.”), ELNY experienced financial difficulties because of unfavorable investment results, with sustained low interest rates and poor capital market performance during significant periods. (Chang Aff. ¶ 4.) The Rehabilitator began negotiating with various life insurance industry parties, and in 2007, he announced that he had secured a commitment, in principle, of funds that would permit the continuation of full benefit payments

for all ELNY policyholders. Until the financial crisis of 2008, it appeared that such a restructuring of the Rehabilitation Plan would be possible.

12. Unfortunately, the unprecedented global economic crisis and resulting market collapse of late 2008 had a significant negative impact on ELNY's retained assets and made continued implementation of the Rehabilitation Plan without a liquidation unfeasible. The market value of ELNY's investments fell from approximately \$1.38 billion as of December 31, 2006, to a low of approximately \$980 million as of December 31, 2009, reflecting both the continued payment of benefits and reductions in asset value. Although the value of ELNY's assets fluctuates with market conditions, that value as of December 31, 2010, had been further reduced to approximately \$906 million. (Chang Aff. ¶¶ 6-7.)

13. To understand fully ELNY's financial condition, the Rehabilitator also commissioned its actuarial consultant for ELNY, Milliman, Inc., to update ELNY's mortality assumptions and to analyze ELNY's projected liability payouts under the annuities.

14. According to ELNY's most recent audited financial statements, the company has a net capital deficiency and cannot continue as a going concern. ELNY's assets as of December 31, 2010 totaled approximately \$906 million, but the value of ELNY's liabilities as of December 31, 2010, determined using economically reasonable assumptions, is approximately \$2.47 billion. As such, ELNY cannot continue to pay 100% on all annuities indefinitely under the Rehabilitation Plan. This problem is not a temporary one. (Chang Aff. ¶ 11.)

15. Among the grounds for liquidation of a domestic insurer under Sections 7404 and 7402 of the Insurance Law is that the insurer is insolvent, such that it is "unable to pay its outstanding lawful obligations as they mature in the regular course of business" as shown by an excess of liabilities over admitted assets. N.Y. Ins. Law § 1309; *id.* § 7402(a). An additional

ground for seeking an order of liquidation is when an insurer “[i]s found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, creditors, or the public.” Id. § 7402(e).

16. The Superintendent has determined that ELNY is unable to meet its outstanding obligations as they mature in the regular course of business, and the Superintendent has no present expectation that ELNY will have the funds required to meet all of its policyholder obligations. Petitioner submits that ELNY is therefore insolvent.

17. Moreover, the gap between the present value of ELNY’s liabilities and the present value of its assets grows each year and the outlook for ELNY’s financial condition is increasingly worse. Permitting ELNY to continue on its present course would be hazardous to ELNY’s policyholders, its creditors, and the public. As a result, the Superintendent respectfully submits that ELNY must be liquidated.

18. Further, Section 7403(c) of the Insurance Law provides that the Superintendent may seek an order of liquidation once he determines that further efforts to rehabilitate a domestic insurer would be “futile.” The Superintendent has determined that further efforts to rehabilitate ELNY are futile because, among others things, the total value of ELNY’s liabilities is greater than the total market value of its assets and its assets have continued to decline at a faster rate than its liabilities.

19. In the Superintendent’s judgment, it is in the best interests of ELNY policyholders and creditors and the public that ELNY be declared insolvent and that an order of liquidation be granted.

20. Therefore, the Superintendent respectfully requests that this Court convert ELNY’s rehabilitation proceeding into a liquidation proceeding, appoint the

Superintendent and his successors in office as Liquidator of ELNY, and direct the Superintendent to liquidate the business and affairs of ELNY under Section 7405 of the Insurance Law. The Superintendent further requests that the Court continue the injunctions granted under the Rehabilitation Order, as provided for in Insurance Law Section 7419, and permit the Superintendent to continue to direct the full payment of all benefits in respect of ELNY contracts, in accordance with each ELNY contract, until the closing of the Restructuring Agreement.

II. RESTRUCTURING AGREEMENT

21. In light of ELNY's deteriorating financial condition and the necessity of placing ELNY into liquidation, the Superintendent has determined that obtaining approval of a comprehensive Restructuring Agreement in conjunction with an order of liquidation is in the best interests of ELNY's policyholders and creditors because it provides an opportunity to maximize the assets available for distribution and minimizes the risk of disruption of benefit payments to ELNY policyholders.

22. The Rehabilitator has negotiated a Restructuring Agreement, subject to the Court's approval, that likely provides the largest amount of benefits possible for ELNY policyholders and creditors, and uses ELNY's assets in a fair and equitable manner in compliance with the Insurance Law. It is expected that benefits for at least 79% of the ELNY annuity contracts outstanding at the time of liquidation will be fully and timely paid under the Restructuring Agreement.

23. For the reasons stated below, the Rehabilitator has determined that the interests of ELNY's policyholders and creditors will be best served by the Court's approval of the provisions, terms, and conditions of a Restructuring Agreement in substantially the form attached hereto as Exhibit D.

24. Therefore, the Superintendent respectfully requests that the Court find that the Restructuring Agreement and related documents are fair and equitable under the circumstances to ELNY's policyholders and creditors, and comply with and are authorized under applicable law.

A. PREPARATION OF THE RESTRUCTURING AGREEMENT

25. For several years, the Rehabilitator has been working diligently with representatives from, and counsel for, various interested parties, including the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA"), various state insurance guaranty associations with statutory coverage obligations under ELNY contracts, the Life Insurance Guaranty Corporation existing under Article 75 of the Insurance Law (the "Article 75 Guaranty Association"), The Life Insurance Company Guaranty Corporation of New York created under Article 77 of the Insurance Law ("LICGCNY"), and other life insurance companies (collectively, the "Insurance Industry") to reach a consensus on a Restructuring Agreement that is in the best interests of ELNY policyholders and creditors, avoids disruption of annuity payments, and increases the amount of funds available for ELNY policyholders and creditors. The Rehabilitator has also met with representatives from, and counsel for, SSA Owners (defined in paragraph 44 below) to address concerns and issues raised with respect to the Restructuring Agreement.

26. During the process of developing the Restructuring Agreement, the Insurance Industry and SSA Owners have shared information with the Rehabilitator, met separately with the Rehabilitator and his representatives, and collectively had numerous telephonic, in-person, and email communications with each other and with the Rehabilitator concerning the Restructuring Agreement.

27. Additionally, the Rehabilitator and NOLHGA consulted with financial and actuarial advisors.

28. The Restructuring Agreement has been jointly prepared by the Rehabilitator and NOLHGA. The Rehabilitator and NOLHGA have agreed to the form and framework of the Restructuring Agreement and NOLHGA is prepared to move forward with approval and ratification of the Restructuring Agreement by its affected members.

B. TERMS AND CONDITIONS OF THE RESTRUCTURING AGREEMENT

29. The Superintendent believes that an optimal plan of liquidation for ELNY requires the implementation of a liquidation plan in the form of the Restructuring Agreement, to be entered into by the Superintendent as Receiver of ELNY, NOLHGA, and the participating state insurance guaranty associations including LICGCNY ("PGAs"), and joined by NEWCO (defined below) and the Article 75 Guaranty Association.

30. Pursuant to the Restructuring Agreement, the Rehabilitator and NOLHGA will determine the present value of ELNY's projected liabilities due and payable under each annuity contract as of the date of liquidation (the "Liquidation Value") using a 4.25% discount rate, with all life contingent benefits for ELNY annuity contracts calculated based upon a jointly-agreed mortality table attached to the Restructuring Agreement. (Restructuring Agmt. § 1.45, Sched. 1.25.) The same set of mortality assumptions and discount rate will apply uniformly across all ELNY contracts. The Liquidation Value will be updated to a final value within 30 days after the Closing Date of the Restructuring Agreement or promptly thereafter. (Restructuring Agmt. § 1.45.)

31. The Liquidation Value assigned to each annuity contract will then be reduced by a percentage reflecting the ratio of the liquidation value of ELNY's assets to the aggregate Liquidation Value for all Contracts. That is, the benefit payments under each contract

will be reduced to a pro rata amount that could be supported by ELNY's assets as of the date of entry of an order of liquidation (the "Restructured Value"). (Restructuring Agmt. § 3.1.)

Because the market value of the current assets of ELNY is significantly lower than the present value of ELNY's annuity obligations, the Restructured Value of each annuity contract is expected to lower benefit payments to approximately 34% of any remaining obligations.

32. After the ELNY contracts are restructured to their Restructured Value, the PGAs will then provide financial support to supplement the ELNY benefit payments and to make additional benefit payments with respect to those annuity contracts or portions of contracts eligible for guaranty association coverage under each state's respective statutes ("Covered Contracts"). (Restructuring Agmt. §§ 1.18, 1.19, 4.2.1, Art. 5, Sched. 3.1.) The PGAs will provide coverage up to the maximum amount allowable by their state laws. Those contracts with values that fall within their respective state's guaranty association limits (usually between \$100,000 and \$500,000) will be paid in full in accordance with their terms.

33. In addition, the Article 75 Guaranty Association has agreed to provide coverage for ELNY contracts on a pro rata basis, up to its full statutory cap of \$50 million (the "Article 75 Enhancement"). The Article 75 Enhancement will apply to all ELNY contracts not otherwise fully covered by the PGAs and issued prior to August 2, 1985, regardless of where the owner, payee, or beneficiary resides, unless the Article 75 Enhancement would, by operation of governing state law, reduce or eliminate a PGA's statutory obligations under a Covered Contract ("Article 75 Contracts"). (Restructuring Agmt. §§ 4.2.3, Art. 7.)

34. If an affected state insurance guaranty association does not participate in the Restructuring Plan, it will by operation of law assume responsibility for paying any statutory

obligations it has in connection with any ELNY contracts covered by it ("Excluded Contracts"). (Restructuring Agmt. § 1.30, Sched. 3.1.)

35. Not all ELNY policyholders are covered by a state insurance guaranty association. The annuity contracts not covered at all by a state insurance guaranty association by operation of law ("Orphan Contracts"), or those portions of contracts not eligible for statutory insurance guaranty association coverage (collectively, "Uncovered Contracts"), are thus subject to some benefit reduction to the extent ELNY's assets and guaranty association coverage do not support the payment of full benefits. (Restructuring Agmt. §§ 1.57, 1.84.)

36. Additionally, the Restructuring Agreement provides for further committed support by a consortium of life insurance companies. This consortium has agreed to supplement and guaranty the benefits under the Uncovered Contracts, including: (a) providing hypothetical guaranty association coverage of up to \$100,000 under Orphan Contracts; and (b) providing an enhancement of benefits to 103% of the amount that otherwise would have been payable under such Uncovered Contract (together, the "Wrapped Obligations"). (Restructuring Agmt. §§ 1.68, 4.2.2, 4.2.4, 6.1, Sched. 3.1, Ex. 6.1.)

37. Moreover, the Rehabilitator and NOLHGA have continued to negotiate with certain of these life insurance companies and have reached an agreement in principle for supplemental benefit enhancements that would increase the percentage of ELNY contracts that will be fully paid under the Restructuring Agreement from 79% to 84% (the "Supplemental Benefit Enhancements"). Implementation of the Supplemental Benefit Enhancements, however, is dependent on the completion of definitive documentation. (Restructuring Agmt. § 4.11, Sched. 4.11.)

38. For the information of all policyholders and interested parties, after ratification of the Restructuring Agreement by the PGAs – which is anticipated to occur by October 1, 2011 – the Rehabilitator will submit to the Court, pursuant to privacy protections, a schedule (Schedule 1.15 of the Restructuring Agreement) that sets forth information reasonably available to the Rehabilitator regarding each ELNY contract and describes, *inter alia*: (a) the ELNY estate assets to be allocated to each contract; (b) the various portions of each contract that qualify as a Covered Contract, an Article 75 Contract, an Uncovered Contract, or an Excluded Contract; (c) for each Covered Contract, the PGA providing coverage and the amount of contribution to be provided; (d) for each Uncovered Contract, the amount of benefits that are part of the Wrapped Obligations; (e) for each Article 75 Contract, the Article 75 Enhancement coverage; and (f) for each Excluded Contract, the non-participating guaranty association expected to provide coverage and the amount expected to be provided. (Restructuring Agmt. § 1.15.)

39. To administer the payments under ELNY's restructured contracts, the PGAs and life insurance industry will form a new special purpose vehicle, "NEWCO," as a not-for-profit captive insurance company organized under the laws of the District of Columbia. (Restructuring Agmt. § 2.1.) Upon the closing of the Restructuring Agreement, substantially all of ELNY's current assets, along with the PGA coverage funds in the form of cash and notes, the Article 75 Enhancement, and the Wrapped Obligation guarantees, will be pooled in NEWCO. NEWCO will simultaneously assume a defined portion of each annuity contract (which will be 100% for at least 79% of the ELNY contracts) and will replace ELNY as the benefit provider and payor for each annuity contract. (*Id.* § 4.1.)

40. NEWCO will administer the payments on the restructured policies as they become due and payable, except that the non-participating state guaranty associations, if any, will assume responsibility for paying under their statutory obligations with respect to the Excluded Contracts. (Restructuring Agmt. §§ 4.10, 3.4, Ex. 1.73.) Policyholders under ELNY contracts that are fully Covered Contracts will receive their full scheduled annuity payments from NEWCO at the same time and in the same manner as specified in their ELNY contracts. Policyholders under ELNY contracts that include portions that are Uncovered Contracts will also receive their payments from NEWCO according to the same payment schedule as specified in their ELNY contracts, but at a reduced level. Each policyholder will receive an assumption certificate to evidence NEWCO's reinsurance and assumption of all or the appropriate portion of the ELNY contract liabilities. (Id. Ex. 1.6.)

41. Each policyholder of an ELNY annuity contract will receive a NEWCO contract with a value greater than or equal to the pro rata liquidation value of the corresponding ELNY contract. (Restructuring Agmt. § 4.3.)

42. Insurance company professionals and independent directors will operate and manage NEWCO, which will be subject to regulatory supervision by the District of Columbia Department of Insurance, Securities, and Banking. The Liquidator will also exercise additional oversight over NEWCO to monitor and enforce NEWCO's compliance with the provisions, terms, and conditions of the Restructuring Agreement and of the Reinsurance and Assumption Agreement (to be entered into at the closing of the Restructuring Agreement by and among the Superintendent as Liquidator, NOLHGA, the PGAs, the New York Article 75 GA and NEWCO, pursuant to which NEWCO will reinsure and assume the ELNY Restructured Contracts), and NEWCO's obligations to ELNY policyholders. The Liquidator will have the

ability to petition this Court for relief if NEWCO fails to honor such obligations. (Restructuring Agmt. § 2.4.)

43. The Restructuring Agreement affords the Rehabilitator and NOLHGA time to reach agreement with respect to the relevant calculations, including the Liquidation Value and Restructured Value for each ELNY contract and the PGA contribution amounts for the Covered Contracts, prior to the Closing Date of the Agreement. The Restructuring Agreement also requires all parties to cooperate to resolve any calculation errors discovered after the Closing Date. (Restructuring Agmt. § 5.3.) Further, if NEWCO determines after the Closing Date that it needs additional funds to meet its obligations under the Covered Contracts, the PGAs have agreed that they will deliver additional funds to NEWCO to meet such obligations. (Id. § 5.7.)

44. Additionally, the Liquidator and NEWCO will attempt to facilitate the efforts of any structured settlement annuity owners (“SSA Owners”) – primarily property-casualty companies – that wish to provide for additional payments to the beneficiaries of their annuities, by coordinating such payments through NEWCO. This coordination will simplify and streamline annuity payments and minimize delays and disruption of any partial annuity payments. (Restructuring Agmt. §§ 1.31, 2.2, 8.1.)

45. The ELNY estate in liquidation will retain a small amount of assets to preserve sufficient funds to pay Class One, Class Two, and Class Three Claims under Insurance Law § 7435, to fund the liquidation proceedings, and to fund the wind-up of the Superintendent’s receivership. The Liquidator will use these assets to pay the claims entitled to distribution priority senior to policyholders under Section 7435(a) of the Insurance Law. When no longer

needed, any remaining funds will be transferred to NEWCO and allocated on the same basis as all other transferred assets. (Restructuring Agmt. § 4.8.)

46. The Restructuring Agreement contemplates that, at defined points in the future, NEWCO will attempt to consummate a transfer of all of NEWCO's liabilities to a financially strong, third-party commercial life insurer and remit the net proceeds of such transfer back to the ELNY estate. Alternatively, if NEWCO does not consummate a transfer of its liabilities at the time the last remaining obligation under the ELNY contracts is satisfied in full, then to the extent there are remaining assets in NEWCO at such time, such assets will be transferred back to the ELNY estate. In either circumstance, the ELNY estate will then distribute all remaining assets, with the approval of this Court, in accordance with the priorities set forth in the Insurance Law and the Restructuring Agreement. Upon distribution of all of the ELNY estate assets, the Liquidator will petition this Court to close the estate. As a result of the foregoing, ELNY will retain the liability for the Claim-Overs pending such distribution, if any, under the Rehabilitation Plan. (Restructuring Agmt. §§ 4.7, 6.2.)

47. In addition to the Restructuring Agreement, the proposed order of liquidation attached hereto as Exhibit E (the "Proposed Liquidation Order") requires, in accordance with Sections 7405 and 7432 of the Insurance Law, that the Liquidator provide notice to all persons who may have claims against ELNY, and requires that all creditors present proofs of their claims to the Liquidator within four months from the date of entry of an order of liquidation. All policyholders who appear on ELNY's books and records, however, will be deemed to have timely filed proofs of claims in the amount of the Liquidation Value under their ELNY contracts as set forth (and updated) in Schedule 1.15 of the Restructuring Agreement, in

accordance with Section 7433(b)(1) of the Insurance Law. Holders of Claim-Overs will also be deemed to have timely filed proofs of claims. (Proposed Liquidation Order ¶ 15.)

48. The Proposed Liquidation Order provides that all distributions of ELNY funds will be made in accordance with Section 7435(a) of the Insurance Law, such that there will be no "subclasses," that all policyholders will receive a pro rata distribution of ELNY's assets available for distribution to Class Four claims, and that every claimant in each class shall be paid in full (or adequate funds retained for such payment) before the members of the next priority class receive any payment. (Proposed Liquidation Order ¶ 17.)

49. If the Restructuring Agreement closes, NEWCO will then assume benefit payment obligations pursuant to the Restructuring Agreement and the Reinsurance and Assumption Agreement as discussed above. To avoid disruption of benefit payments from the date of entry of a liquidation order through the Closing Date of the Restructuring Agreement, the Proposed Liquidation Order provides that during this period the Rehabilitator shall continue to direct the full payment of all benefits in respect of ELNY Contracts, in accordance with the terms of each ELNY Contract. (Proposed Liquidation Order ¶ 11.)

C. THE RESTRUCTURING AGREEMENT AND THE PROPOSED LIQUIDATION ORDER ARE IN THE BEST INTEREST OF ELNY POLICYHOLDERS, OTHER ELNY CREDITORS, AND THE PUBLIC

50. The Superintendent believes that the Restructuring Agreement creates superior results to those likely to be obtained in a statutory liquidation of ELNY. In addition, through the enhanced benefits provided by the Article 75 Enhancement and the Wrapped Obligations, the Restructuring Agreement adds substantial additional value and minimizes the risk of disruption in annuity benefit payments. The combined total of ELNY's assets, the PGAs' statutory coverage amounts, the Article 75 Enhancement, and the Wrapped Obligations will result in the full coverage of at least 79% of ELNY's annuity contracts (and up to 84% if the

Supplemental Benefit Enhancements are implemented) and partial coverage of the remaining contracts.

51. It is the Superintendent's opinion that any alternate restructuring vehicle would not be likely to receive the same level of participation by the guaranty associations or other insurers and thus the proposed Restructuring Agreement likely provides the highest payout on ELNY claims that can be obtained under the circumstances. The participation of the PGAs will also prevent most policyholders from having to affirmatively seek guaranty association coverage to which they are entitled under state statutes. Instead, these obligations will be pooled and added to ELNY's assets for distribution by NEWCO. Further, because NEWCO will assume ELNY's liabilities immediately upon the Closing Date and will make all payments at the same time and in the same manner as provided under the ELNY contracts, and will work with SSA Owners to coordinate the fulfillment of any structured settlement payment obligations, the proposed restructuring best minimizes any disruption in benefit payments to policyholders. Thus, the Restructuring Agreement and all Exhibits and Schedules thereto provide substantial value to the ELNY estate.

52. In the Superintendent's judgment, the approval of the Restructuring Agreement and Proposed Liquidation Order will cause an equitable distribution of ELNY's assets and will best serve the interests of ELNY policyholders, its creditors, and the public.

53. The Superintendent submits that, in light of ELNY's financial condition, the Restructuring Agreement and Proposed Liquidation Order provide for an optimal transition for ELNY from rehabilitation to liquidation. The Restructuring Agreement and Proposed Liquidation Order do not improperly discriminate against any class of ELNY creditors, but rather treat ELNY creditors and all other interested parties fairly and equitably in accordance with the

requirements of Insurance Law Section 7435. Therefore, the Superintendent respectfully requests the Court's approval of the Proposed Liquidation Order and the Restructuring Agreement, including the restructuring of ELNY annuity contracts and NEWCO's assumption and reinsurance of ELNY annuity contract benefit payments in accordance with the Restructuring Agreement.

54. For the information of the Court, the Superintendent, his representatives, and NOLHGA have had discussions with certain life insurance companies providing Wrapped Obligations concerning the possibility that such life insurance companies could establish and fund, separate and distinct from the Restructuring Agreement and the Exhibits and Schedules thereto, a voluntary hardship fund, in the amount of approximately \$100 million, that will provide an opportunity for certain ELNY payees whose total benefits under the Restructuring Agreement will be less than the benefit payments under their original ELNY contracts to obtain additional financial support based on need (the "Hardship Fund"). Any Hardship Fund would be a completely voluntary undertaking by such life insurance companies, and the eligibility and amount of benefits any Hardship Fund would provide will be determined by such life insurance companies. The Superintendent has been advised that such life insurance companies anticipate that any allocation of benefits from the Hardship Fund would be made by an independent fund administrator. The Hardship Fund will not be a component of the Restructuring Agreement or the benefits provided under the Restructuring Agreement. As such, the Rehabilitator, will not seek Court approval of the Hardship Fund, any element thereof, or any allocation of benefits thereunder.

III. ORDER TO SHOW CAUSE

55. Pursuant to Sections 7403(c), 7404, and 7417 of the Insurance Law, the Superintendent seeks an order of liquidation by order to show cause, attached hereto as Exhibit F.

56. The Superintendent proposes to give notice of this Petition and the relief requested herein, and to provide copies of all accompanying papers, to ELNY policyholders and creditors, and all other interested parties, to allow such parties the opportunity to present their objections, if any, to the Petition.

57. The Superintendent proposes to notify such interested persons by mailing a notice via regular First Class Mail, to the last known address of each ELNY policyholder as disclosed by ELNY's books and records. The Rehabilitator will also include a letter to each ELNY policyholder that sets forth the projected benefit amounts to be paid under each relevant ELNY contract after being restructured, enhanced, and assumed by NEWCO. The Rehabilitator will calculate such amounts in consultation with ELNY's financial advisors and in accordance with the methodologies provided under the Restructuring Agreement.

58. The Superintendent proposes to mail the Notice and applicable cover letter within 30 days after submission to this Court of Schedule 1.15 to the Restructuring Agreement and a list of the PGAs that have ratified the Restructuring Agreement to afford the Rehabilitator sufficient time to prepare and to mail these documents to ELNY policyholders and to afford such interested parties time to respond, if they so choose, to this Petition in a timely manner.

59. In addition, given the significant number of policyholders, as well as other interested parties, the Superintendent proposes to also serve the Notice by posting it online on the Internet web page maintained by the New York Liquidation Bureau, and by publishing it in the New York Times and the Wall Street Journal, once a week for four (4) consecutive weeks,

within two weeks of submission to this Court of Schedule 1.15 to the Restructuring Agreement and a list of the PGAs that have ratified the Restructuring Agreement.

60. The Superintendent proposes a return date on or near March 15, 2012 for a hearing before this Court on this Petition, as well as a briefing schedule that provides for service of answering papers upon the Superintendent by January 16, 2012, and service of reply papers by the Superintendent by March 1, 2012. Petitioner submits that this schedule provides interested parties with adequate time to object to the Petition, and provides the Superintendent with adequate time to reply to such objections, sufficiently in advance of the Hearing.

61. The Superintendent further requests that the Court order that, except as expressly modified, the provisions and injunctions provided for in the Rehabilitation Order and Rehabilitation Plan shall remain in full force and effect to avoid any disruptions to the current administration of ELNY's contractual benefit payments.

62. Therefore, the Superintendent respectfully requests that the Court issue the Order to Show Cause filed together with this Petition, approving the proposed form and method of notice, approving the proposed return date and briefing schedule, and continuing the injunctions set forth in the Rehabilitation Order.

RELIEF REQUESTED

63. Based on the foregoing, Petitioner respectfully requests that the Court issue an order of liquidation, *inter alia*:

- (1) declaring ELNY to be insolvent;
- (2) converting this rehabilitation proceeding to a liquidation proceeding;
- (3) appointing the Superintendent, and his successors in office, as liquidator of ELNY (the "Liquidator") and:
 - (i) vesting the Liquidator with all powers and authority expressed or implied under Insurance Law Article 74;

- (ii) vesting title to ELNY's property, contracts, rights of action, and books and records with the Liquidator;
 - (iii) authorizing and permitting the Liquidator to conduct the business of ELNY as he deems wise and expedient; and
 - (iv) directing the Liquidator to liquidate ELNY's business and affairs in accordance with Insurance Law Article 74 and in the manner provided in the Restructuring Agreement (defined below);
- (4) fixing, as of the date a liquidation order is entered, the rights and liabilities of ELNY and of its policyholders, creditors, and all other persons interested in the estate of ELNY;
- (5) granting the injunctions provided for in Insurance Law Section 7419, including enjoining and restraining all persons other than the Liquidator and his agents from:
 - (i) dealing with, disposing of, or doing or permitting any act or thing that might waste ELNY's assets;
 - (ii) transacting ELNY's business;
 - (iii) interfering with this proceeding or with the Liquidator in his possession, control, and management of ELNY's property, or in the discharge of his duties under Insurance Law Article 74; and
 - (iv) obtaining any preferences, judgments, attachments, or other liens, and from making any levy against ELNY, its assets, or any part thereof;
- (6) granting injunctions enjoining and restraining all persons from commencing or further prosecuting any actions at law or other proceedings against ELNY or its assets, the Liquidator or the New York Liquidation Bureau, or their present or former employees, attorneys, or agents, with respect to this proceeding or the discharge of their duties under Insurance Law Article 74;
- (7) granting injunctions enjoining and restraining all parties to actions, lawsuits, and special or other proceedings in which ELNY is obligated to defend a party pursuant to an insurance policy, bond, contract, or otherwise, from proceeding with any discovery, court proceedings, or other litigation tasks or procedures, including, but not limited to, conferences, trials, applications for judgment, or proceedings on settlement or judgment, until further order of this Court;
- (8) requiring that all persons or entities having property and/or information, including, but not limited to, insurance policies, claims files (electronic or paper), software programs, and/or bank records owned by, belonging to, or relating to ELNY 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;

- (9) approving the provisions, terms, and conditions of the Agreement of Restructuring in Connection with the Liquidation of ELNY, by and among the Superintendent, as Receiver of ELNY, the National Organization of Life and Health Insurance Guaranty Associations, and the Participating Guaranty Associations, and joined by NEWCO and the Life Insurance Guaranty Corporation existing under Insurance Law Article 75, including all Exhibits and Schedules attached thereto, in substantially the form attached hereto as Exhibit D;
- (10) overruling any comment, suggestion, and/or objection to the extent any such comment, suggestion, and/or objection that was presented regarding the Liquidation or the Restructuring Agreement, and/or any related document, is inconsistent with the Restructuring Agreement and/or any related document, and denying any relief requested therein;
- (11) permitting the Superintendent to continue to direct the full payment of all benefits in respect of ELNY contracts, in accordance with each ELNY contract, until the closing of the Restructuring Agreement;
- (12) extending judicial immunity to the Superintendent in his capacity as Receiver of ELNY and his successors in office, the New York Liquidation Bureau, and their respective attorneys, agents, and employees for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74;
- (13) directing that this Court shall retain subject matter jurisdiction over the Restructuring Agreement;
- (14) permitting the Liquidator to at any time make further application to this Court for such further and different relief as he sees fit;
- (15) directing that, in accordance with Insurance Law Section 7432(b), all claims against ELNY must be presented to the Liquidator within four months of the date of entry of an order of liquidation; however, in accordance with Insurance Law Section 7433(b)(1), all policyholders and holders of Claim-Overs who appear on ELNY's books and records as of the date of entry of an order of liquidation are deemed to have duly filed proofs of claim;
- (16) directing the Liquidator to provide notice of an order of liquidation and approving the form and sufficiency of such notice;
- (17) directing that any distribution of assets shall be in accordance with the priorities applicable to life insurance companies set forth in Section 7435(a) of Insurance Law Article 74 and substantially in accordance with the terms of the Restructuring Agreement;

(18) providing that all further papers in this proceeding shall bear a liquidation proceedings caption; and

(19) granting such other and further relief as the Court may deem just and proper.

64. Petitioner further respectfully requests that the Court issue the attached Order to Show Cause:

a. approving a return date on or about March 15, 2012, for a hearing to be had before this court on this Petition;

b. approving a briefing schedule that provides for service of answering papers upon the Superintendent by January 16, 2012, and service of reply papers by the Superintendent by March 1, 2012;

c. approving the form of notice to be given to ELNY creditors, policyholders, and all other interested parties, regarding the Petition and the Hearing;

d. approving the method of service of the Notice;

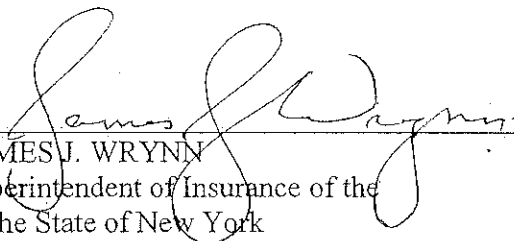
e. ordering that except as expressly modified, the Order of Rehabilitation entered on April 23, 1991 and the December 16, 1992 Order approving the Plan of Rehabilitation in this proceeding are continued in force and effect, including the provisions providing for payments to structured settlement and other annuitants pursuant to the terms of the approved Plan of Rehabilitation; and

f. ordering the continuance of the injunctions provided for in the Rehabilitation Order.

65. The Superintendent has made no previous application for the relief sought herein to this or any court or judge thereof.

WHEREFORE, Petitioner respectfully requests that the Court sign the accompanying Order to Show Cause approving the form and method of notice of this Petition and establishing a briefing schedule and hearing date on the Petition, and that, upon such hearing, the Court issue an order granting the relief sought in this Petition.

Dated: New York, New York
August 31, 2011

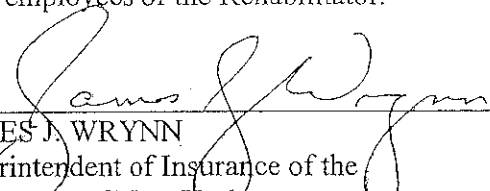

JAMES J. WRYNN
Superintendent of Insurance of the
of the State of New York

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

James J. Wrynn, being duly sworn, deposes and says:

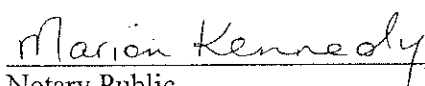
I am the Superintendent of Insurance of the State of New York, I have read and executed the foregoing Verified Petition, I am acquainted with the facts stated in the Verified Petition, and the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters I believe them to be true;

I further state that sources of my information, and the grounds of my belief as to the matters alleged on information and belief, are from or were derived from the records, books and papers of Executive Life Insurance Company of New York in the possession of the Rehabilitator and communications made to me by employees of the Rehabilitator.



JAMES J. WRYNN
Superintendent of Insurance of the
of the State of New York

Sworn to and subscribed to
before me this 31st day of
August, 2011



Notary Public
My Commission expires: 2013

MARION KENNEDY
Notary Public, State of New York
Qualified in Kings County
No. KE6137029
Expires: November 14, 2013