

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK - QUEENS COUNTY

Present: HONORABLE LOURDES M. VENTURA, J.S.C.

IAS Part 37

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Index

In the Matter of

Number: 703264/2017

The Liquidation of

Motion

FIDUCIARY INSURANCE COMPANY OF AMERICA.

Date: March 13, 2023

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Motion

Seq. No.: 974

The following electronically filed (EF) papers read on this order to show cause by the petitioner Fiduciary Insurance Company of America for an Order pursuant to Article 74 of the New York Insurance Law, inter alia, (1) approving the Initial Report and the financial transactions detailed therein; (ii) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Fiduciary liquidation proceeding; and (iii) authorizing the Liquidator to distribute Fiduciary's assets, consistent with this Court's orders and the priorities set forth in New York Insurance Law Section 7434, to those creditors of Fiduciary with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available.

Order to Show Cause - Affirmation - Exhibits.....

Papers

Numbered

EF 8604-8606

8941

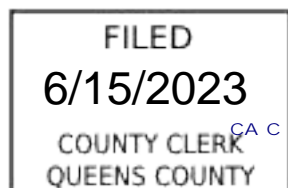
Upon the foregoing documents, it is hereby ORDERED that this order to show cause is GRANTED pursuant to this Court's signed Order dated June 14, 2023.

This shall constitute the Decision and Order of the Court.

Date: June 15, 2023



HON. LOURDES M. VENTURA, J.S.C.



At IAS Part 37 of the Supreme Court of the State of New York, Civil Term, County of Queens, at the Courthouse, 89-17 Sutphin Blvd., Jamaica, in the County of Queens, City and State of New York, on the 14th day of June, 2023.

P R E S E N T :

HON. LOURDES M. VENTURA, J. S. C.

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In the Matter of

Index No.: 703264/2017

the Liquidation of

ORDER

FIDUCIARY INSURANCE COMPANY OF
AMERICA.

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Upon the motion of the Superintendent of Financial Services of the State of New York, as liquidator (“Liquidator”) of Fiduciary Insurance Company of America (“Fiduciary”) for an order, *inter alia*: (a) approving the Liquidator’s report on the status of the Fiduciary liquidation proceeding and the financial transactions detailed in the report (the “Initial Report”), a copy of which is annexed as Exhibit “2” to the affirmation of Melissa A. Pisapia; (b) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Fiduciary liquidation proceeding; and (c) authorizing the Liquidator to distribute Fiduciary’s assets to those creditors of Fiduciary with allowed claims as consistent with this Court’s orders and the priorities set forth in New York Insurance Law Section 7434, to the extent that, in the Liquidator’s discretion, sufficient funds are available.

NOW, on the motion of the Liquidator, and no opposition having been filed with the Court, it is;

ORDERED, that the motion is granted; and it is further

ORDERED, that the Initial Report and the financial transactions detailed in such report are approved; and it is further

ORDERED, that continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Fiduciary liquidation proceeding is authorized; and it is further

ORDERED, that the distribution of Fiduciary's assets, consistent with this Court's orders and the priorities set forth in New York Insurance Law Section 7434, to those creditors of Fiduciary with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available, is authorized.

Dated: June 15, 2023

E N T E R



HON. LOURDES M. VENTURA, J.S.C.

**INITIAL REPORT ON THE STATUS OF
THE LIQUIDATION OF FIDUCIARY INSURANCE COMPANY OF AMERICA
AND REQUEST FOR AUTHORITY TO DISTRIBUTE ASSETS**

Adrienne A. Harris, Superintendent of Financial Services of the State of New York (“Superintendent”) as liquidator (“Liquidator”) of Fiduciary Insurance Company of America (“Fiduciary”) and administrator (“Administrator”) of the New York Public Motor Vehicle Liability Security Fund (“PMV Fund”), by her agent, David Axinn, Special Deputy Superintendent of the New York Liquidation Bureau, submits this report (“Initial Report”) on the status of the Fiduciary liquidation proceeding (“Liquidation Proceeding”) in support of the Liquidator’s motion for an order: (i) approving this Initial Report and the financial transactions detailed herein; (ii) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Liquidation Proceeding; and (iii) authorizing the Liquidator to distribute Fiduciary’s assets, consistent with the orders of the Supreme Court, Queens County (the “Supervising Court”) and the priorities set forth in New York Insurance Law (“Insurance Law”) § 7434, to those creditors of Fiduciary with allowed claims, to the extent that, in the Liquidator’s discretion, sufficient funds are available.

The Supervising Court placed Fiduciary into liquidation by order (“Liquidation Order”) dated July 12, 2017 (“Liquidation Order Date”). To date, the Liquidator has (i) taken possession of Fiduciary’s business and assets; (ii) transferred all electronic data to the Liquidator’s control; (iii) reviewed all of Fiduciary’s executory contracts; (iv) reviewed first and third-party claims against Fiduciary policies and determined if those claims were covered by the PMV Fund; (v) settled thousands of claims covered by the PMV Fund; (vi) reviewed Fiduciary’s liabilities; (vii) collected monies owed to Fiduciary; (viii) established Court-approved procedures for the adjudication of disputed claims; (ix) obtained Court approval to settle an action against certain

former directors and officers of Fiduciary and Fiduciary's parent (the "D&O Action"); (x) collected \$1,039,133 in reinsurance; and (xi) taken other steps necessary to liquidate Fiduciary's affairs.

BACKGROUND AND COMMENCEMENT OF THE LIQUIDATION PROCEEDING

Fiduciary was incorporated under the laws of the State of New York as a stock accident and health insurance company on October 24, 1977. Fiduciary commenced business on January 1, 1978. On September 24, 1999, Guardian Life Insurance Company of America ("GLIA") acquired all of Fiduciary's outstanding shares. On February 26, 2004, the Transportation Risk Group ("TRG") acquired 100% of Fiduciary's common stock from GLIA. TRG, in turn, transferred ownership of Fiduciary to members of the Kodogiannis family, who, in turn, transferred ownership to Asphalia Holding Company USA, Inc. ("Asphalia Holding"). Asphalia Holding owns Fiduciary's stock.

The New York State Department of Insurance (a predecessor to the Department of Financial Services) converted Fiduciary's license to conduct business in the State of New York from that of an accident and health insurance company to that of a property and casualty insurance company, effective January 1, 2005. Since 2005 Fiduciary had specialized in writing commercial automobile insurance for owners and drivers of for-hire automobiles, such as taxi cabs. Fiduciary's policies provided three types of insurance: (i) liability insurance, which insured the vehicle owner's (or driver's) liability to third parties injured by the operation of the vehicle; (ii) no-fault insurance, which provided first-party medical and basic economic loss benefits to the vehicle's driver and its passengers, as well as pedestrians and other motorists, in the event of an accident, without regard to the driver's degree of fault; and (iii) property-damage insurance. Fiduciary was licensed to underwrite insurance in New York State only.

Based upon, among other things, Fiduciary's insolvency, the Superintendent brought a special proceeding under Article 74 of the Insurance Law to place Fiduciary into liquidation and appoint the Superintendent and all her successors in office as Liquidator of Fiduciary. The Superintendent's application was granted for the reasons set forth in the Supervising Court's July 12, 2017, Memorandum Decision, and was memorialized by the Liquidation Order entered by the Supervising Court on July 31, 2017. (ECF 63.)

THE LIQUIDATOR'S WINDING UP OF FIDUCIARY'S AFFAIRS

A. Fiduciary's Insurance Policies Were Cancelled or Non-Renewed

When liquidating an insurance company, the Liquidator must cancel all insurance policies issued by the insolvent insurer. The Liquidation Order provided that all existing Fiduciary insurance policies were cancelled 60 days after the entry of the Liquidation Order, *i.e.*, September 23, 2017. As of September 23, 2017, no Fiduciary insurance policies were in effect.

B. Establishment of a Bar Date

The Liquidation Order established September 24, 2018, as the date by which all claims against Fiduciary, including all evidence to establish the existence of an actual loss under a policy, must be presented to the Liquidator (the "Bar Date"). The Bar Date applies to all claims other than the Liquidator's claim for administrative expenses and the PMV Fund's claim for reimbursement of payments and expenses it paid on behalf of Fiduciary policyholders. The Bar Date has enabled the Liquidator to classify and set a reserve for each claim asserted against Fiduciary.

C. The Liquidator's Review of Financial Records

Upon entry of the Liquidation Order, the Liquidator took possession of Fiduciary's property, including all bank accounts, offices and equipment, and all claims records and files, both electronic and paper. The Liquidator transferred Fiduciary's bank accounts and other assets to the

Liquidator's control, prepared an opening balance sheet, and reviewed Fiduciary's records for potential recoverables and causes of action Fiduciary might have against other persons or entities.

D. Adjudication Procedures

On January 7, 2019, the Supervising Court issued an order establishing adjudication procedures ("Adjudication Procedures") for the determination of claims by the Liquidator. (ECF 1383). Under the Adjudication Procedures, claimants are provided the right to object to the Liquidator's recommendations. A court-appointed referee is charged with hearing and reporting on the objection to the Supervising Court, which issues the final order.

As of the date of this Initial Report, all claims have been classified in accordance with the priorities set forth in Insurance Law Section 7434. The Liquidator has refrained from adjudicating claims that fall below Class two (policyholder) claims because it is not anticipated that the estate will have sufficient assets to pay claims falling below Class two claims. Unless it would benefit the estate or it appears that estate assets will be sufficient to pay claims below Class two claims, the Liquidator will continue to exercise her discretion not to expend estate assets adjudicating claims that will not receive a distribution.

All Class two (policyholder) claims have been determined to be covered by the PMV Fund.

E. Claims Handling and Payment by the PMV Fund

Under Insurance Law Article 76, the PMV Fund pays allowed covered claims (up to the lesser of the policy limit or a statutory maximum) on policies that remain unpaid by reason of the insurer's insolvency or inability to meet its insurance obligations. The PMV Fund also covers claims for unearned premium, loss adjustment expenses ("LAE") and the administrative expenses of processing and adjudicating claims covered by the PMV Fund. Claims that are resolved for \$25,000 and less do not require Court approval and are paid through the Superintendent Allowance

process. *See* N.Y. Ins. L §§ 7602(g) and 7428. Claims that are resolved for more than \$25,000 require approval by the Supervising Court. As of April 30, 2022, the Superintendent has issued 3,086 Superintendent Allowances and the Supervising Court has issued 903 orders allowing claims.

The PMV Fund has promptly paid the claims allowed either by Superintendent Allowance or Court Order. Because the PMV Fund has paid obligations of Fiduciary, it has a claim for reimbursement against the Fiduciary estate for the total amount of such payments plus expenses incurred. *See* N.Y. Ins. L §7609(a). The PMV Fund's claim is a Class two priority. *See* N.Y. Ins. L §§7434(a)(1)(ii) and 7609. The PMV Fund is the largest creditor of Fiduciary and the only Class two creditor.

F. The D&O Action

On March 15, 2018, the Liquidator commenced an action against certain directors of Fiduciary and Fiduciary's parent company, Asphalia Holding. The matter was pending before the Honorable Leonard Livote in the Commercial Part of New York State Supreme Court, Queens County (Index No. 703985/2018). The litigation was settled on a confidential basis under a Settlement Agreement, which was approved by the Supervising Court (Hon. L. Purificacion, J.S.C) by order entered on June 2, 2020 (ECF 5412).

G. Marshaling of Assets

To date, marshaled assets consist primarily of reinsurance recoveries, salvage and subrogation recoveries, investment income and litigation awards owed to Fiduciary. The Liquidator commuted all obligations with Munich Re for \$1,039,133. The Supervising Court approved the commutation with Munich Re by Court Order 3975 (ECF 8090).

H. Distribution of Assets

Claims against an insolvent estate are paid in accordance with the classification scheme set forth in Insurance Law Section 7434. No distributions in a lower class can be paid until claims holding a higher classification has been paid in full:

Upon the recommendation of the Superintendent, and under the direction of the court, distribution payments shall be made in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

I. Current Status of Claims Presented

1. Class One Claim

From the Liquidation Order Date through April 30, 2022, the Liquidator has incurred and paid administrative expenses in the amount of \$7,717,166, which consist of: \$70,785 for salvage and subrogation collection fees; \$2,675,181 for the salaries of the Liquidator's staff; \$1,839,272 for employee relations and welfare (*e.g.*, payroll taxes, health insurance and pension contributions); \$831,629 for rent and related expenses; \$719,445 for general and administrative expenses (*e.g.*, IT services and general office maintenance); \$1,839,272 for professional fees (*e.g.*, attorneys, accountants and other consultants); and \$169,118 for other miscellaneous expenses (*e.g.*, insurance and bank fees). Additionally, as of April 30, 2022, the Liquidator has incurred, but not paid, administrative expenses in the amount of \$183,584 and therefore has set a reserve equal to that amount.

2. Class Two Claims

The PMV Fund is the only Class two creditor, and it has a claim against the estate as of April 30, 2022, in the amount of \$143,770,305, which consists of allowed claims and expenses paid by the PMV Fund as well as reserves established by the Liquidator for claims and expenses not yet fully resolved. The PMV Fund's Class two claim will remain unpaid until a distribution of estate assets is made by the Liquidator in accordance with the authority sought in this application. Due to Fiduciary's insolvency, the PMV Fund's claim will not be paid in full.

FINANCIAL CONDITION OF FIDUCIARY

A. Assets

The Supervising Court, in placing Fiduciary into liquidation, found that Fiduciary was insolvent by \$167,890,356. *See* July 12, 2017, Memorandum Decision of the Supervising Court. As of April 30, 2022, Fiduciary had total assets of \$43,070,580, which consisted of: cash and cash equivalents in the amount of \$1,660,807; bonds at fair market value in the amount of \$40,822,830; accrued investment income in the amount of \$78,050; reinsurance recoverables on paid losses and LAE in the amount of \$30,303; reinsurance recoverables on unpaid losses and unpaid LAE in the amount of \$44,185; and \$434,404 in other assets. Fiduciary's statement of assets, statement of liabilities as of April 30, 2022, and statement of changes in cash and invested assets ("Fiduciary Financial Statements") are annexed hereto as Exhibit "A".

B. Liabilities

As of April 30, 2022, Fiduciary's total liabilities were \$147,360,616, of which \$183,584 were Class one liabilities for operating and administrative expenses; \$143,770,305 were Class two liabilities for policy-related claims; \$1,200 were Class four liabilities for employee claims; \$1,832,190 were Class five liabilities for State and Local Government claims; \$581,140 were Class

six liabilities for general creditor unsecured claims; and \$992,197 were Class eight shareholder loan claims.

i. Collection of Assets - Cash Receipts

As of April 30, 2022, the Liquidator had collected assets in the amount of \$14,921,277 consisting of \$7,000,079 in litigation awards; \$2,734,293 in investment income; \$2,579,541 in reinsurance recoveries; \$1,453,842 in salvage and subrogation recoveries; \$756,096 from the release of statutory deposits held by the Department of Financial Services of the State of New York; and \$397,426 in miscellaneous receipts.

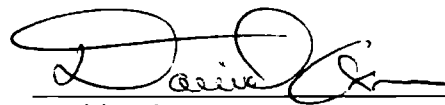
RELIEF SOUGHT

The Liquidator submits this Initial Report to provide a status report on the Liquidation Proceeding and request authorization to distribute Fiduciary's assets to those claimants with allowed Class two claims at such time as the Liquidator determines, in her discretion, that sufficient assets are available. In support of the Liquidator's recommendations herein, the Liquidator has submitted the Affirmation of Melissa A. Pisapia. Based on the facts set forth in the Affirmation and in this Initial Report, the Liquidator requests in the Affirmation that the Court issue an order which:

- a. approves this Initial Report and the financial transactions detailed herein;
- b. authorizes the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Liquidation Proceeding; and

- c. authorizes the Liquidator to distribute Fiduciary's assets, consistent with the priorities set forth in Insurance Law Section 7434, to those creditors of Fiduciary with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available.

Dated: New York, New York
July 14, 2022



David Axinn
Special Deputy Superintendent and
Agent of Adrienne A. Harris
Superintendent of Financial Services
of the State of New York as Liquidator of
Fiduciary Insurance Company of America

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EXHIBIT A – FINANCIAL STATEMENT

| Fiduciary Insurance Company of America in Liquidation | | |
|---|-------------------------|---|
| Statement of Assets | | |
| | As Of April 30, 2022 | Date of Liquidation July 12, 2017 |
| Unrestricted Assets: | | |
| Cash & Cash Equivalents | \$ 1,660,807 | \$ 4,632,323 |
| Bonds (Fair Market Value) | 40,822,830 | 31,064,001 |
| Total Cash & Invested Assets | 42,483,637 | 35,696,324 |
| Accrued Interest | 78,050 | 183,166 |
| Reinsurance Recoverables on Paid Losses and LAE | 30,303 | - |
| Reinsurance Recoverables on Outstanding Claims & LAE | 44,185 | - |
| Other Assets | 434,405 | 846,476 |
| Total Unrestricted Assets | 43,070,580 | 36,725,966 |
| Restricted Assets: | | |
| Statutory Deposits in New York or Other States | - | 776,949 |
| Total Restricted Assets | - | 776,949 |
| Total Assets | \$ 43,070,580 | \$ 37,502,915 |

| Fiduciary Insurance Company of America in Liquidation | | |
|---|-------------------------|---|
| Statement of Liabilities | | |
| | As Of April 30, 2022 | Date of Liquidation July 12, 2017 |
| Liabilities: | | |
| Class I - Administrative Claims | \$ 183,584 | \$ 139,875 |
| Class II - Claims and Related Expenses | 143,770,305 | 204,261,199 |
| Class III - Federal Government Claims | - | - |
| Class IV - Employee Claims | 1,200 | - |
| Class V - State and Local Government Claims | 1,832,190 | - |
| Class VI - General Creditors | 581,140 | - |
| Class VII - Late Filed Claims | - | - |
| Class VIII - Section 1307 (Shareholder) Loans | 992,197 | 992,197 |
| Class IX - Shareholder Claims | - | - |
| Total Liabilities | 147,360,616 | 205,393,271 |
| Surplus (Deficit) | (104,290,036) | (167,890,356) |
| Total Liabilities and Deficit | \$ 43,070,580 | \$ 37,502,915 |

| Fiduciary Insurance Company of America in Liquidation | | |
|---|----------------|------------|
| Statement of Changes in Cash and Invested Assets | | |
| For the Period July 12, 2017 to April 30, 2022 | | |
| | As Of | |
| | April 30, 2022 | |
| Receipts: | | |
| Litigation Awards | \$ | 7,000,079 |
| Investment Income | | 2,734,293 |
| Reinsurance Recovered | | 2,579,541 |
| Salvage and Subrogation Recoveries | | 1,453,842 |
| Release of Statutory Deposits | | 756,096 |
| Miscellaneous | | 397,426 |
| Total Receipts | | 14,921,277 |
| Disbursements: | | |
| Salaries | | 2,675,181 |
| Professional Fees | | 1,839,272 |
| Employee Relations and Welfare | | 1,411,736 |
| Rent and Related Expenses | | 831,629 |
| General & Administrative Fees | | 719,445 |
| Miscellaneous Expenses | | 169,118 |
| Salvage and Subrogation Fees | | 70,785 |
| Total Disbursements | | 7,717,166 |
| Net Increase in Cash | | 7,204,111 |
| Cash at Liquidation July 12, 2017 | | 35,696,324 |
| Unrealized Loss on Investments | | (416,798) |
| Cash and Invested Assets at April 30, 2022 | \$ | 42,483,637 |