

At IAS Part 52 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 28 day of SEPTEMBER, 2011.

P R E S E N T:

HON. CYNTHIA S. KERN, J.S.C.
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In the Matter of

Index No. 402246/11

the Application of

ORDER OF CONSERVATION

James J. Wrynn, Superintendent of Insurance of the State of New York, for an order to take possession of and to conserve certain trust funds maintained for the benefit of American Policyholders of

FILED

SEP 29 2011

HIGHLANDS INSURANCE COMPANY
(U.K.) LIMITED.
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NEW YORK
COUNTY CLERK'S OFFICE

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 appointing the Superintendent and his successors in office as conservator ("Conservator") of Highlands Insurance Company (U.K.) Limited ("Highlands") and directing the Conservator forthwith to take possession of the trust fund (the "Trust Fund") established by Highlands as security for its United States policyholders, under 11 NYCRR 27 ("Regulation 41"), specifically §§27.13 and 27.14, with Citibank N.A. ("Citibank") as trustee, pursuant to a trust agreement, effective as of January 1, 1992 ("Trust Agreement"), and to conserve the Trust Fund pursuant to Article 74 of the New York Insurance Law ("Insurance Law") and Regulation 41, subject to the further direction of the Court, and upon reading and filing the petition of the Superintendent, duly verified the 11th day of August, 2011, the affidavit of Eugene Bienskie, sworn on August 10, 2011, and the exhibits annexed thereto, this Court finds that:

1. Highlands is a corporation organized and existing under the laws of United Kingdom, and Highlands' principal place of business is in London, England;
2. At all times material herein, Highlands was not licensed in the State of New York and operated therein on a surplus line or non-admitted basis;
3. Highlands conducted business on an unauthorized basis as an excess and surplus lines insurer in the State of New York and other states in the United States;
4. Under Regulation 41, Highlands and Citibank entered into the Trust Agreement whereby Highlands agreed to establish and maintain the Trust Fund, as security for its United States policyholders, in the minimum amount of \$2,500,000;
5. The Trust Fund presently contains a letter of credit in the amount of \$2,500,000, which is being held in an account with a London, England branch of Citibank;
6. By order of the High Court of Justice, Chancery Division, Companies Court, entered November 1, 2007, Highlands was placed into administration under the U.K. Insolvency Act of 1986 and Dan Yoram Schwarzmann and Mark Charles Batten were appointed joint administrators of Highlands ("Administrators");
7. On December 18, 2007, the Administrators filed a Petition for Recognition of a Foreign Main Proceeding and Motion for Related Relief, under Chapter 15 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). Orders have been issued by the Bankruptcy Court ("Bankruptcy Court Orders") enjoining all persons and entities from, *inter alia*, commencing or continuing any actions against Highlands or any of its property in the United States;

8. Under Section 1501(d) of the Bankruptcy Code, the injunctions set forth in the Bankruptcy Court Orders do not prohibit the commencement of a conservation proceeding pursuant to Article 74 of the Insurance Law;

9. Highlands is subject to the Insurance Law and, particularly, to Article 74 thereof;

10. The Administrators have given their consent for the Superintendent to take the action necessary to place Highlands in conservation, including without limitation, petitioning the court to appoint the Superintendent as Conservator of the Trust Fund;

11. It is in the best interest of all persons concerned that, based upon Article 74 of the Insurance Law, the Trust Agreement and the consent of the Administrators, the Superintendent should be appointed Conservator and directed to take possession and conserve the Trust Fund, subject to the further direction of this Court;

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 conservation (the "Order") is granted;
2. The Superintendent, and his successors in office, are appointed Conservator of Highlands and directed to take possession forthwith of the Trust Fund deposited by Highlands with Citibank as trustee and to conserve the Trust Fund pursuant to Article 74 of the Insurance Law and Regulation 41, subject to the further direction 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 Highlands in the United States pursuant to the Insurance Law and subject to the further order of this Court;
4. All persons are enjoined and restrained from wasting the Trust Fund or any other assets of Highlands and enjoined, and restrained, except as authorized by the Conservator, from disposing the assets of the Trust Fund;

5. All persons are enjoined and restrained from commencing or prosecuting any actions or proceedings, against Highlands, Citibank, the Conservator, or the New York Liquidation Bureau, or their present or former employees, attorneys or agents, with respect to any claims against Highlands, Citibank or the Trust Fund;
6. All persons are enjoined and restrained from interfering with the Conservator or this proceeding, obtaining any preferences, judgments, attachments or other liens, or making any levy against Highlands, Citibank, the Trust Fund, their assets or any part thereof;
7. Judicial immunity is extended to the Superintendent in his capacity as Conservator of Highlands and his successors in office and their 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;
8. Highlands, its officers, directors, stockholders, depositories, trustees, attorneys, managers, agents, servants, employees, policyholders and creditors, and all other persons having any property or records relating to the Trust Fund and any other Regulation 41 trust funds of Highlands are hereby directed to assign, transfer and deliver to the 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 Conservator, or his agents, for examination at all reasonable times;
9. The Conservator is relieved of the responsibilities of notifying all who may have claims pursuant to Section 7432 of the Insurance Law and that the Conservator directed instead to give notice of the making and entry of the Order by: (i) posting the 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 the Order; and (ii) publication in the *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;
10. A copy of the Order shall be served forthwith by first class mail upon: (i) Nicholas R. Williams, Esq., the authorized agent of Highlands for service of process in this conservation proceeding, at Clifford Chance US LLP, 31 West 52nd Street, New York, New York, 10019; and (ii) William Mulrenin, Citibank, N.A., Insurance Trust Department, at 111 Wall Street, New York, New York, 10005;
11. The notice hereinabove prescribed is sufficient notice to all policyholders and beneficiaries of Highlands in the United States;

12. The Conservator, and his successors in office, 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 his possession or which may hereafter come into his possession belonging to Highlands, 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 Highlands, 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;
13. The Conservator may at any time make further application to this Court for such further and different relief as he sees fit;
14. This Court shall retain jurisdiction over this matter for all purposes;
15. The caption to this proceeding is hereby amended as follows:

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

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In the Matter of

the Conservation of the Trust Fund of

HIGHLANDS INSURANCE COMPANY (U.K.) LIMITED.
-----X

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

FILED

ENTER

SEP 29 2011

[Signature]
J.S.C.

9/28/11

NEW YORK
COUNTY CLERK'S OFFICE **CYNTHIA S. KERN**
J.S.C.

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

PRESENT: CYNTHIA S. KERN
KEGSC
Justice

PART 52

JAMES J. WRYNN

INDEX NO.

402246/11

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

- v -

HIGHLANDS INSURANCE COMPANY (UK)
LIMITED

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 decided in accordance
with the annexed order.

FILED

SEP 29 2011

NEW YORK
COUNTY CLERK'S OFFICE

PAPERS RECEIVED

SEP 29 2011

ORDER SECTION - RM 119A

Dated: 9/28/11

CK
CYNTHIA S. KERN

J.S.C.

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):