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

PRESENT: RAKOWER
Justice

PART 15

LAWSKY, BENJAMIN M.

INDEX NO. 452122/13

MOTION DATE _____

- v -
ICM INSURANCE COMPANY

MOTION SEQ. NO. 01

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

See attached order.

Dated: 12/23/2013


HON. EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

At IAS Part 15 of the Supreme Court of the State of New York, County of New York, at the courthouse located at _____, New York, New York, on the 23 day of December, 2013.

P R E S E N T:

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

In the Matter of

the Application of

Index No. 452122/13

ORDER OF LIQUIDATION

Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York, for an order to take possession and liquidate the business and affairs of

ICM INSURANCE COMPANY.
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Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York (“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 liquidator (“Liquidator”) of ICM Insurance Company (“ICM”) and directing the Liquidator to take possession of the property of ICM and to liquidate its business and affairs, and upon reading and filing the petition of the Superintendent, duly verified the 21st day of November, 2013, the affidavit of Jean Marie Cho, sworn to on November 21, 2013, and the exhibits annexed thereto, this Court finds that:

1. ICM was incorporated under the laws of the State of New York on or about September 23, 1981;

2. ICM is licensed to transact the business of insurance in accordance with paragraphs (4)–(7), (9), (12)–(14), and (19)–(21) of New York Insurance Law Section 1113(a) (“Insurance Law”);

3. ICM’s principal office, as disclosed in its Quarterly Statement as of March 31, 2013, is located at 521 Fifth Avenue, New York, NY 10175;

4. On September 18, 2013, ICM’s Board of Directors unanimously passed a resolution consenting to the entry of a liquidation order pursuant to Insurance Law Article 74;

5. ICM is insolvent;

6. ICM is subject to the Insurance Law and, particularly, to Article 74 thereof;

7. It is in the best interest of all persons concerned that, based upon Article 74 of the Insurance Law, the Superintendent should be appointed Liquidator and directed to take possession of the property of ICM, to liquidate its business and affairs, and be vested with title to all of ICM’s property, contracts and rights of action; and

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 (“Order”) is granted and ICM is declared to be insolvent;
2. The Superintendent is appointed Liquidator of ICM and is: (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) vested with title to ICM’s property, contracts, rights of action and all of its books and records, wherever located, as of the date of entry of this Order; and (iii) directed to liquidate ICM’s business and affairs in accordance with Insurance Law Article 74;
3. The Liquidator may deal with the property and business of ICM in ICM’s name or in the name of the Liquidator;

4. All persons are permanently enjoined and restrained from wasting the assets of ICM and permanently enjoined and restrained, except as authorized by the Liquidator, from disposing of ICM's property;
5. The officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of ICM and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) transacting ICM's business, except as authorized by the Liquidator; or (ii) interfering with this proceeding or the Liquidator in the possession, control and management of ICM's property or in the discharge of his duties;
6. All persons are permanently enjoined and restrained from commencing or prosecuting any action or proceeding against ICM, the Liquidator or the New York Liquidation Bureau ("Bureau"), or their present or former employees, attorneys or agents with respect to this proceeding or the discharge of their duties under Article 74 in relation thereto;
7. All persons are permanently enjoined and restrained from obtaining any preference, judgment, attachment or other lien, or making any levy against ICM, its assets or any part thereof;
8. All parties to actions, lawsuits, and special or other proceedings (other than those brought by ICM) in which ICM, its policyholders or insureds are a party or obligated to defend a party or to provide a defense of any matter insured pursuant to an insurance policy, bond, contract or otherwise are enjoined and restrained from proceeding with any discovery, court proceeding or other litigation task or procedure, including, but not limited to, conferences, trials, applications for judgment or proceedings on settlement or judgment, for a period of 180 days from the date of entry of this Order;
9. All persons who have first party policyholder loss claims are enjoined and restrained from presenting and filing claims with the Liquidator for a period of 90 days from the date of entry of this Order;
10. The Liquidator is vested with all rights in ICM's contracts and agreements, including leases, tax agreements, insurance policies and employment contracts, however described, unless the Liquidator expressly terminates such contracts or agreements, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of termination;
11. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all stocks, bonds or other securities of ICM at the best price obtainable at such times and upon such terms and conditions as, in

his discretion, he deems to be in the best interest of the creditors of ICM, 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 without the further approval of this Court;

12. ICM and each of its officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations and other persons or entities having any property, papers (including attorney work product) and/or information, including, but not limited to, insurance policies, underwriting data, reinsurance contracts, claims files (electronic or paper), software programs, and/or bank records owned by, belonging to or relating to ICM, 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;
13. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to ICM shall maintain and preserve all information in its possession relating in any way to ICM, 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 or leased by ICM and is directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees;
14. 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 any of ICM's funds, accounts (including escrow 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; and/or (v) take any other action necessary for the proper conduct of the liquidation proceeding;
15. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74;
16. In accordance with Insurance Law Section 7405(f), the Liquidator is hereby permitted to make distributions of ICM's assets to the New York Property/Casualty Insurance Security Fund and similar guaranty funds of other states in accordance with such statute, and any agreement to be

- entered into among the Liquidator and such guaranty fund is hereby approved and the Liquidator is authorized to enter into and perform such agreement;
17. All existing insurance policies of ICM shall terminate at 12:01 A.M. local time on the earliest of 30 days from the entry of this order, 30 days from the giving of notice of such cancellation, if such notice is required by an insurance policy or applicable law, or upon the date and time stated in the policy;
 18. May 16, 2014 is the bar date by which all claims by any claimant against ICM or its insureds, other than the Liquidator's claims for administrative expenses, must be actually received by the Liquidator;
 19. December 31, 2014 is the final date by which evidence supporting the liquidation of any claim presented by the foregoing bar date must be actually received by the Liquidator;
 20. The Liquidator, in his discretion, is authorized to refrain from adjudicating some or all claims falling into Classes three through nine (N.Y. Ins. Law Sec. 7434(a)(1)(iii)-(ix)) unless and until he reasonably believes that adjudication of such claims would be in the best interests of the estate;
 21. Immunity is extended to the Superintendent in his capacity as Liquidator of ICM and his successors in office and their agents and employees, including the Bureau, 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;
 22. The Liquidator may at any time make further application to this Court for such further and different relief as he sees fit;
 23. The Liquidator shall serve the copy of this Order upon: Marc Tract, Katten Muchin Roseman LLP, 575 Madison Ave, New York, NY 10022, attorneys for ICM Insurance Company, by overnight delivery or by certified mail;
 24. The Liquidator shall provide notice of this Order to all creditors, claimants and interested persons by: (i) publication of the notice of this Order in *The New York Times*, National Edition, once a week for two consecutive weeks, commencing within thirty days of entry of this Order in a form substantially similar to the one attached hereto as Exhibit A; and (ii) posting this Order on the Internet web page maintained by the Bureau at <http://www.nylb.org> within 15 days after the entry of this Order;

25. Such notice shall inform all creditors, claimants and other interested persons that this Order has been entered;
26. The notice prescribed in decretal paragraphs 23 and 24 hereof is sufficient notice to all persons interested in ICM;
27. This Court shall retain jurisdiction over this matter for all purposes;
28. The caption for 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

ICM INSURANCE COMPANY.

-----X

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

ENTER



J.S.C.

EXHIBIT A

[Form of Notice]

NEW YORK LIQUIDATION BUREAU
110 WILLIAM STREET
NEW YORK, NEW YORK 10038
(212) 341-6755

To all persons or entities
interested in the affairs of
ICM INSURANCE COMPANY
Notice is Hereby Given:

Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York ("Superintendent"), has been appointed by an order (the "Order") of the Supreme Court of the State of New York, New York County ("Court"), entered _____, 2013, as the liquidator (the "Liquidator") of ICM Insurance Company ("ICM") and, as such, has been: (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 the Order; (ii) vested with title to ICM's property, contracts, rights of action and all its books and records, wherever located, as of the date of entry of the Order; and (iii) directed to liquidate ICM's business and affairs in accordance with Insurance Law Article 74. The Liquidator has, pursuant to Insurance Law Article 74, appointed Michael J. Casey, Acting Special Deputy Superintendent of Insurance (the "Acting Special Deputy") as his agent to carry out his duties as Liquidator. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau ("Bureau"), 110 William Street, New York, New York 10038. The Order provides:

- I. The Liquidator may deal with the property and business of ICM in ICM's name or in the name of the Liquidator.
- II. All persons are permanently enjoined and restrained from wasting the assets of ICM and permanently enjoined and restrained, except as authorized by the Liquidator, from disposing of ICM's property.
- III. The officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of ICM and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) transacting ICM's business, except as authorized by the Liquidator; or (ii) interfering with this proceeding or the Liquidator in the possession, control and management of ICM's property or in the discharge of his duties.
- IV. All persons are permanently enjoined and restrained from commencing or prosecuting any action or proceeding against ICM, the Liquidator or the New York Liquidation Bureau ("Bureau"), or their present or former employees, attorneys or agents with respect to this proceeding or the discharge of their duties under Article 74 in relation thereto.
- V. All persons are permanently enjoined and restrained from obtaining any preference, judgment, attachment or other lien, or making any levy against ICM, its assets or any part thereof.
- VI. All parties to actions, lawsuits, and special or other proceedings (other than those brought by ICM) in which ICM, its policyholders or insureds are a party or obligated to defend a party or to provide a defense of any matter insured pursuant to an insurance policy, bond, contract or otherwise are enjoined and restrained from proceeding with any discovery, court proceeding or other litigation task or procedure, including, but not limited to, conferences, trials, applications for judgment or proceedings on settlement or judgment, for a period of 180 days from the date of entry of this Order.
- VII. All persons who have first party policyholder loss claims are enjoined and restrained from presenting and filing claims with the Liquidator for a period of 90 days from the date of entry of this Order.

VIII. The Liquidator is vested with all rights in ICM's contracts and agreements, including leases, tax agreements, insurance policies and employment contracts, however described, unless the Liquidator expressly terminates such contracts or agreements, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of termination.

IX. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all stocks, bonds or other securities of ICM at the best price obtainable at such times and upon such terms and conditions as, in his discretion, he deems to be in the best interest of the creditors of ICM, 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 without the further approval of this Court.

X. ICM and each of its officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations and other persons or entities having any property, papers (including attorney work product) and/or information, including, but not limited to, insurance policies, underwriting data, reinsurance contracts, claims files (electronic or paper), software programs, and/or bank records owned by, belonging to or relating to ICM, 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.

XI. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to ICM shall maintain and preserve all information in its possession relating in any way to ICM, 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 or leased by ICM and is directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees.

XII. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to ICM shall maintain and preserve all information in its possession relating in any way to ICM, 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 or leased by ICM and is directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees.

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

XIV. In accordance with Insurance Law Section 7405(f), the Liquidator is hereby permitted to make distributions of ICM's assets to the New York Property/Casualty Insurance Security Fund and similar guaranty funds of other states in accordance with such statute, and any agreement to be entered into among the Liquidator and such guaranty fund is hereby approved and the Liquidator is authorized to enter into and perform such agreement;

XV. ALL EXISTING INSURANCE POLICIES OF ICM SHALL TERMINATE AT 12:01 A.M. LOCAL TIME ON THE EARLIEST OF 30 DAYS FROM THE ENTRY OF THE ORDER, 30 DAYS FROM THE GIVING OF NOTICE OF SUCH CANCELLATION, IF SUCH NOTICE IS REQUIRED BY AN INSURANCE POLICY OR APPLICABLE LAW, OR UPON THE DATE AND TIME STATED IN THE POLICY.

XVI. MAY 16, 2014 IS THE BAR DATE BY WHICH ALL CLAIMS BY ANY CLAIMANT AGAINST ICM OR ITS INSURED, OTHER THAN THE LIQUIDATOR'S CLAIMS FOR ADMINISTRATIVE EXPENSES, MUST BE ACTUALLY RECEIVED BY THE LIQUIDATOR.

XVII. DECEMBER 31, 2014 IS THE FINAL DATE BY WHICH EVIDENCE SUPPORTING THE LIQUIDATION OF ANY CLAIM PRESENTED BY THE FOREGOING BAR DATE MUST BE ACTUALLY RECEIVED BY THE LIQUIDATOR.

XVIII. The Liquidator, in his discretion, is authorized to refrain from adjudicating some or all claims falling into Classes three through nine (N.Y. Ins. Law Sec. 7434(a)(1)(iii)-(ix)) unless and until he reasonably believes that adjudication of such claims would be in the best interests of the estate

XIX. Immunity is extended to the Superintendent in his capacity as Liquidator of ICM and his successors in office and their agents and employees including the Bureau, 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 the Court, or in the performance of their duties pursuant to Insurance Law Article 74.

XX. The Liquidator may at any time make further application to the Court for such further and different relief as he sees fit.

XXI. The court shall retain jurisdiction over this matter for all purposes.

XXII. All communications relating to ICM and to the Liquidation Proceeding thereof should be addressed to:

New York Liquidation Bureau
110 William Street, 15th Floor
New York, New York 10038
(212) 341-6400

BENJAMIN M. LAWSKY
Superintendent of Financial Services of
the State of New York as Liquidator
of ICM Insurance Company

MICHAEL J. CASEY
Acting Special Deputy Superintendent
and Agent for the Superintendent as
Liquidator of ICM Insurance Company

Index no.: 452122/13

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

In the Matter of

the Application of

**Benjamin M. Lawsky, Superintendent of Financial
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ORDER OF LIQUIDATION

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

120 Broadway, 24th Floor New York, NY 10271
Tel: (212) 416-8301
Fax: (212) 416-6009 / 6075 / 6076 (not for service)
