

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BANNON
Justice

PART 42

BENJAMIN M. LAUSKY

INDEX NO. 160307/14

-v-
EVEREADY INSURANCE COMPANY

MOTION DATE

MOTION SEQ. NO. 01

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).

Answering Affidavits — Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is granted per the attached Order.

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

Dated: 12/3/14

[Signature], J.S.C.
HON. NANCY M. BANNON

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

At IAS Part 42 of the Supreme Court of the State of New York, County of New York, at the courthouse located at 111 Centre Street, New York City, New York, on the 30th day of December, 2014.

P R E S E N T:

HON. NANCY M. BANNON, J.S.C.

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In the Matter of

Index No. 160307/2014

the Application of

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

EVEREADY 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 Eveready Insurance Company (“Eveready”) and directing the Liquidator to take possession of the property of Eveready and to liquidate its business and affairs, and upon reading and filing the petition of the Superintendent, duly verified on October 9, 2014, the affidavit of James Davis, sworn to on October 8, 2014, and the exhibits annexed thereto, this Court finds that:

1. Eveready was incorporated in the State of New York on or about August 8, 1963 and commenced business on May 1, 1965;
2. Eveready is licensed to transact the business of insurance in accordance with paragraphs (13) (Personal Injury Liability), (14) (Property Damage Liability), and (19) (Motor

Vehicle and Aircraft Physical Damage) of Section 1113(a) of the New York Insurance Law (“Insurance Law”) and is licensed to transact the business of insurance only in the State of New York. Eveready writes primarily private-passenger auto liability and physical damage insurance, plus a small amount of commercial auto insurance in downstate New York;

3. Eveready’s statutory office is located at 59 Maiden Lane, New York City, New York 10038-4502;

4. Eveready is insolvent;

5. On July 7, 2014, Eveready’s Board of Directors unanimously passed a written consent for the entry of an order of liquidation pursuant to Insurance Law Article 74;

6. Eveready is subject to the Insurance Law and, in particular, to Article 74 thereof;
and

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 Eveready, to liquidate its business and affairs, and be vested with title to all of Eveready’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;
2. The Superintendent and his successors in office are appointed Liquidator of Eveready;
3. The Liquidator is directed to take possession of Eveready’s property and liquidate Eveready’s business and affairs in accordance with Insurance Law Article 74;

4. The Liquidator is 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 and with title to Eveready's property, contracts, rights of action and all of its books and records, wherever located, as of the date of entry of this Order;
5. The Liquidator may deal with the property and business of Eveready in Eveready's name or in the name of the Liquidator;
6. All persons are permanently enjoined and restrained from wasting the assets of Eveready, and are permanently enjoined and restrained, except as authorized by the Liquidator, from transacting Eveready's business (including the issuance of insurance policies) or disposing of Eveready's property;
7. All parties are permanently enjoined and restrained from interfering with the Liquidator or this proceeding, obtaining any preferences, judgments, attachments or other liens, making any levy against Eveready, its assets or any part thereof, and commencing or prosecuting any actions or proceedings against the Liquidator, Eveready, or the New York Liquidation Bureau, or their present or former employees, attorneys or agents, relating to this proceeding or the discharge of their duties under Article 74 in relation thereto;
8. All parties to actions, lawsuits, and special or other proceedings (other than those brought by Eveready) in which Eveready, its policyholders or insureds are a party or obligated to defend a party or 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 proceedings or other litigation tasks or procedures, 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 Eveready's contracts and agreements, however described, and is permitted to, in his discretion, reject any executory contracts to which Eveready is a party, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of rejection;
11. Any bank, savings and loan association, other financial institution or any other entity or person, that has on deposit or in its possession, custody or control any of Eveready's funds, accounts (including escrow accounts) or assets shall immediately, upon the Liquidator's request and direction: (a) turn over custody and control of such funds, accounts or assets to the Liquidator; (b) transfer title of such funds, accounts or assets to the Liquidator; (c) change the name of such accounts to the name of the Liquidator; (d) transfer funds from such bank, savings

and loan association or other financial institution; and/or (e) take any other action reasonably necessary for the proper conduct of the liquidation proceeding;

12. All persons or entities having property, papers (including attorney work product and documents held by attorneys) and/or information, including, but not limited to, insurance policies, underwriting data, reinsurance policies, claims files (electronic or paper), software programs and/or bank records owned by, belonging to or relating to Eveready 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. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all stocks, bonds, or other securities at the best price reasonably 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 Eveready, and 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;
14. ALL EXISTING INSURANCE POLICIES OF EVEREADY WILL BE CANCELLED AT THE EARLIEST OF: (A) 30 DAYS FROM THE GIVING OF NOTICE OF SUCH CANCELLATION BY EVEREADY, IF SUCH NOTICE IS REQUIRED BY AN INSURANCE POLICY OR APPLICABLE LAW; (B) THE STATED EXPIRATION OR TERMINATION DATE AND TIME OF THE INSURANCE POLICY; (C) THE EFFECTIVE DATE AND TIME OF A REPLACEMENT INSURANCE POLICY OF THE SAME TYPE ISSUED BY ANOTHER INSURER REGARDLESS OF WHETHER THE COVERAGE IS IDENTICAL COVERAGE; (D) THE EFFECTIVE DATE AND TIME THAT THE EVEREADY INSURANCE POLICY OBLIGATION IS TRANSFERRED TO ANOTHER INSURER OR ENTITY AUTHORIZED BY LAW TO ASSUME SUCH OBLIGATION; OR (E) 12:01 A.M. LOCAL TIME ON THE DATE THAT IS 30 DAYS AFTER THE ENTRY OF THIS ORDER;
15. The date that is one year after the entry of this Order is established as the bar date by which all claims by any claimant against Eveready or its insureds, other than the Liquidator's claim for administrative expenses, must be actually be received by the Liquidator, including all evidence supporting the liquidation of such claims;
16. The Liquidator is authorized, in his discretion, 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;
17. Immunity is extended to the Superintendent and his successors in office in his capacity as Liquidator of Eveready, the New York Liquidation Bureau, 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;

18. Eveready is insolvent;
19. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74;
20. In accordance with Insurance Law Section 7432(b), all claims against Eveready must be presented to the Liquidator within four months of the date of entry of this Order;
21. The Liquidator may at any time make further application to this Court for such further and different relief as he sees fit;
22. The Liquidator shall serve a copy of this Order upon: Marc Wollerstein, President, Eveready Insurance Company, 59 Maiden Lane, New York, New York 10038-4502, by overnight delivery or by certified mail;
23. The Liquidator shall provide notice of this Order to all creditors, claimants and interested persons by: (i) publication of notice of this Order, in a form substantially similar to the one attached hereto as Exhibit A, in the *New York Daily News*, once a week for two consecutive publication periods, commencing within 30 days of entry of this Order; and (ii) posting this Order on the Internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org> within 15 days after the entry of this Order;
24. Such notice shall inform all creditors, claimants and other interested persons that this Order has been entered;
25. The notice prescribed in paragraph 23 above is sufficient notice to all persons interested in Eveready;
26. This Court shall retain jurisdiction over this matter for all purposes;

27. The caption for 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

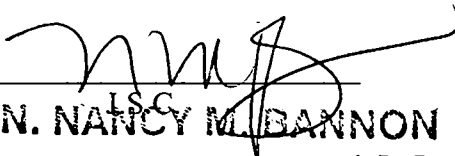
the Liquidation of

EVEREADY INSURANCE COMPANY.

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

ENTER



HON. NANCY M. BANNON
J.S.C.

EXHIBIT A

[Form of Notice]

NEW YORK LIQUIDATION BUREAU
110 WILLIAM STREET
NEW YORK, NEW YORK 10038
(212) 341-6400

To all persons or entities interested in the affairs of
EVEREADY INSURANCE COMPANY

Notice is Hereby Given:

Benjamin M. Lawskey, 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, County of New York (“Court”), entered _____, 2014, as the liquidator (the “Liquidator”) of Eveready Insurance Company (“Eveready”) and, as such, has been: (i) directed to take possession of Eveready’s property and liquidate Eveready’s business and affairs in accordance with New York Insurance Law (“Insurance Law”) Article 74; and (ii) 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 and with title to Eveready’s property, contracts, rights of action and all of its books and records, wherever located, as of the date of entry of the Order. The Liquidator has, pursuant to Insurance Law Article 74, appointed Scott D. Fischer, Acting Special Deputy Superintendent (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 is permitted to deal with the property and business of Eveready in Eveready’s name or in the name of the Liquidator;
- II. All persons are permanently enjoined and restrained from wasting the assets of Eveready, and all persons are permanently enjoined and restrained, except as authorized by the Liquidator, from transacting Eveready’s business (including the issuance of insurance policies) or disposing of Eveready’s property;
- III. All parties are permanently enjoined and restrained from interfering with the Liquidator or the proceeding, obtaining any preferences, judgments, attachments or other liens, making any levy against Eveready, its assets or any part thereof, and commencing or prosecuting any actions or proceedings against the Liquidator, Eveready, or the New York Liquidation Bureau, or their present or former employees, attorneys or agents, relating to the proceeding or the discharge of their duties under Article 74 in relation thereto;
- IV. All parties to actions, lawsuits, and special or other proceedings (other than those brought by Eveready) in which Eveready, its policyholders or insureds are a party or obligated to defend a party or 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 proceedings or other litigation tasks or procedures, 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 an order of liquidation;
- V. 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 an order of liquidation;
- VI. The Liquidator is vested with all rights in Eveready’s contracts and agreements, however described and permitting the Liquidator to, in his discretion, reject any executory contracts to which Eveready is a party, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of rejection;

- VII. Any bank, savings and loan association, other financial institution or any other entity or person, that has on deposit or in its possession, custody or control any of Eveready's funds, accounts (including escrow accounts) or assets shall immediately, upon the Liquidator's request and direction: (a) turn over custody and control of such funds, accounts or assets to the Liquidator; (b) transfer title of such funds, accounts or assets to the Liquidator; (c) change the name of such accounts to the name of the Liquidator; (d) transfer funds from such bank, savings and loan association or other financial institution; and/or (e) take any other action reasonably necessary for the proper conduct of the liquidation proceeding;
- VIII. All persons or entities having property, papers (including attorney work product and documents held by attorneys) and/or information, including, but not limited to, insurance policies, underwriting data, reinsurance policies, claims files (electronic or paper), software programs and/or bank records owned by, belonging to or relating to Eveready 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;
- IX. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all stocks, bonds, or other securities at the best price reasonably 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 Eveready, and 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 the Court;
- X. ALL EXISTING INSURANCE POLICIES OF EVEREADY WILL BE CANCELLED AT THE EARLIEST OF: (A) 30 DAYS FROM THE GIVING OF NOTICE OF SUCH CANCELLATION BY EVEREADY, IF SUCH NOTICE IS REQUIRED BY AN INSURANCE POLICY OR APPLICABLE LAW; (B) THE STATED EXPIRATION OR TERMINATION DATE AND TIME OF THE INSURANCE POLICY; (C) THE EFFECTIVE DATE AND TIME OF A REPLACEMENT INSURANCE POLICY OF THE SAME TYPE ISSUED BY ANOTHER INSURER REGARDLESS OF WHETHER THE COVERAGE IS IDENTICAL COVERAGE; (D) THE EFFECTIVE DATE AND TIME THAT THE EVEREADY INSURANCE POLICY OBLIGATION IS TRANSFERRED TO ANOTHER INSURER OR ENTITY AUTHORIZED BY LAW TO ASSUME SUCH OBLIGATION; OR (E) 12:01 A.M. LOCAL TIME ON THE DATE THAT IS 30 DAYS FROM THE ENTRY OF AN ORDER OF LIQUIDATION OF EVEREADY;
- XI. The date that is one year after the entry of the Order is established as the bar date by which all claims by any claimant against Eveready or its insureds, other than the Liquidator's claim for administrative expenses, must actually be received by the Liquidator, including all evidence supporting the liquidation of such claims;
- XII. The Liquidator is authorized, in his discretion, 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;
- XIII. Immunity is extended to the Superintendent in his capacity as Liquidator of Eveready and his successors in office, the New York Liquidation Bureau, 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 the Court, or in the performance of their duties pursuant to Insurance Law Article 74;
- XIV. Eveready is insolvent;

- XV. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74;
- XVI. In accordance with Insurance Law Section 7432(b), all claims against Eveready must be presented to the Liquidator within four months of the date of entry of the Order;
- XVII. The Liquidator may at any time make further application to the Court for such further and different relief as he sees fit;
- XVIII. The Court shall retain jurisdiction over this matter for all purposes.
- XIX. All communications relating to Eveready and to the liquidation proceeding thereof should be addressed to:

New York Liquidation Bureau
110 William Street, 15th Floor
Attention: Acting Special Deputy Superintendent
New York, New York 10038
(212) 341-6400

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

SCOTT D. FISCHER
Acting Special Deputy Superintendent
and Agent for the Superintendent as
Liquidator of Eveready Insurance Company