MSJ #4 + Other

At IAS Part 42 of the Supreme Court of the State of New York, County of New York, at the courthouse at 111 Centre Street, in the County, City and State of New York, on the 28th day of March, 2016.

PRESENT:

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

----------x

In the Matter of

the Liquidation of

EVEREADY INSURANCE COMPANY.

----------x

Index No.: 160307/2014

**ORDER TO SHOW CAUSE**

Based on the March 22, 2016 affirmation of Lauren Reber an attorney with the New York Liquidation Bureau, the organization that carries out the duties of Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York in her capacity as Liquidator ("Liquidator") of Eveready Insurance Company ("Eveready"), and the exhibits attached thereto ("Reber Aff"), and upon all other papers previously submitted and all proceedings heretofore had herein, and it appearing that the relief sought be granted;

NOW, on motion of John Pearson Kelly, attorney for the Liquidator, and after due deliberation having been had thereon,

LET all policyholders, claimants, creditors and all other parties interested in the affairs of Eveready show cause before this Court at IAS Part 42, Room 1127B, thereof, at the Courthouse located at 111 Centre Street in the City, County and State of New York, on the ~~30th~~ 29th day of June, 2016 ("Return Date") at 11:30 o'clock in the a.m., or as soon thereafter as


1 of 3

counsel can be heard, why an order should not be made, pursuant to Article 74 of the New York Insurance Law, *inter alia*: (1) approving the Liquidator's report on the status of the Eveready liquidation proceeding and the financial transactions delineated therein; (2) authorizing the continued payment of administrative expenses; (3) authorizing the Liquidator to distribute Eveready's assets, consistent with this Court's orders and the priorities set forth in New York Insurance Law Section 7434, to those creditors of Eveready with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; and (4) granting such other and further relief as the Court may deem just and proper.

AND, sufficient cause having been alleged therefor, and this Court having found the form and method of notice specified herein to be the best notice practicable, it is hereby

ORDERED, that the Liquidator shall give notice of the application to Eveready's policyholders, claimants, creditors and all other interested parties by posting a notice, substantially in the form attached hereto, this Order to Show Cause and its supporting papers on the Internet web page maintained by the New York Liquidation Bureau at http://www.nylb.org at least ten (10) days before the Return Date; and it is hereby

ORDERED, that the form and method of service of notice specified herein is reasonable and constitutes due and appropriate notice of the relief sought in this Order to Show Cause to all persons and entities entitled to receive such notice; and it is further

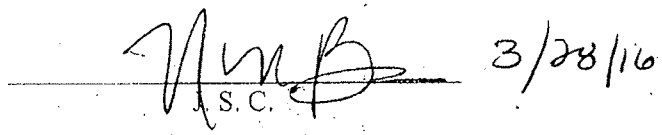

2 of 3

ORDERED, that the approved form of notice shall direct that all answering papers and supporting documentation be filed with this Court and served on the Liquidator at the following address:

Superintendent of Financial Services of the State of New York
as Liquidator of Eveready Insurance Company
110 William Street
New York, New York 10038
Attention: General Counsel

on or before June 3, 2016 ~~at least seven (7) days before the Return Date~~, and that any Answering Papers, together with an affidavit of service, shall be filed with the Court on or before the June 3, 2016, ~~Return Date~~.

ENTER



3/28/16

J.S.C.

**HON. NANCY M. BANNON**


3 of 3

**IN THE MATTER OF THE LIQUIDATION OF**
**EVEREADY INSURANCE COMPANY**
**Supreme Court County of New York**
**Index No.: 160307/2014**

## NOTICE

The Acting Superintendent of Financial Services of the State of New York as liquidator ("Liquidator") of Eveready Insurance Company ("Eveready") has taken possession of Eveready's property and is liquidating its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Liquidator has appointed Scott D. Fischer, Special Deputy Superintendent ("Special Deputy"), as her agent to liquidate the business of Eveready. The Special Deputy carries out his duties through the New York Liquidation Bureau, which is located at 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court an application for an order: (a) approving the Liquidator's report on the status of the Eveready liquidation proceeding and the financial transactions delineated therein; (b) authorizing the continued payment of administrative expenses; (c) authorizing the Liquidator to distribute Eveready's assets, consistent with the Court's orders and the priorities set forth in New York Insurance Law Section 7434, to those creditors of Eveready with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; and (d) granting such other and further relief as the Court may deem just and proper.

The Return Date on the Verified Petition is scheduled for the ___ day of _____, 2016, at _:__ _.m., at the Courthouse, 111 Centre Street, IAS Part 42, Room 1127B, in the County, City and State of New York. If you wish to object to the Report, you must serve a written statement setting forth your objections and all supporting documentation ("Answering Papers") upon the Liquidator at least seven (7) days prior to the Return Date and any Answering Papers, together with an affidavit of service, shall be filed with the Court on or before the Return Date. Service on the Liquidator shall be made by first class mail at the following address:

Superintendent of Financial Services of the State of New York as
Liquidator of Eveready Insurance Company
Attention: General Counsel
110 William Street
New York, New York 10038

The Liquidator's application and Report are available for inspection at http://www.nylb.org and at the above address. In the event of any discrepancy between this notice and the documents submitted to Court, the documents control.

Requests for further information should be directed to the NYLB, Creditor and Ancillary Operations at (212) 341-6241.

Dated: New York, N.Y.
_____, 2016

MARIA T. VULLO
Acting Superintendent of Financial Services
of the State of New York as Liquidator of
Eveready Insurance Company

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

In the Matter of

the Liquidation of

EVEREADY INSURANCE COMPANY.
----------x

Index No.: 160307/2014

**AFFIRMATION**

Lauren Reber, an attorney at law duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am an attorney with the New York Liquidation Bureau (the "NYLB"), the organization that carries out the duties of Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York ("Superintendent") in her capacity as Liquidator (the "Liquidator") of Eveready Insurance Company ("Eveready"), and submit this affirmation, upon information and belief based on my review of the Eveready files maintained by the NYLB and the conversations I have had with employees of the Liquidator, in support of the Liquidator's application to approve the report on the status of the liquidation proceeding ("Liquidation Proceeding") of Eveready and the financial transactions delineated therein (the "Report"), a copy of which is annexed hereto as Exhibit 1.

2. Eveready was incorporated in the State of New York on or about August 8, 1963 and commenced business on May 1, 1965.

3. Eveready was licensed to provide bodily injury liability, property damage liability and motor vehicle and aircraft physical damage insurance in accordance with paragraphs (13), (14) and (19) of New York Insurance Law ("Insurance Law") Section 1113(a). Eveready wrote primarily private passenger auto liability and physical damage insurance, plus a small amount of

commercial auto insurance in downstate New York. Eveready was licensed to carry out the business of insurance only in the State of New York.

4. On January 26, 2015, this Court issued an order appointing the then-Superintendent and his successors in office as Liquidator of Eveready ("Liquidation Order") thereby commencing the Liquidation Proceeding.

5. The Report sets forth the Liquidator's activities that have been conducted in accordance with the Liquidation Order and Insurance Law Article 74 and details the results of the Liquidator's efforts to identify Eveready's creditors, adjudicate claims and marshal Eveready's assets.

6. This application seeks an order ("Order") that (a) approves the Report and the financial transactions delineated therein; (b) authorizes the continued payment of administrative expenses; (c) authorizes the Liquidator to distribute Eveready's assets, consistent with this Court's orders and the priorities set forth in New York Insurance Law Section 7434, to those creditors of Eveready with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; and (d) grants such other and further relief as the Court may deem just and proper.

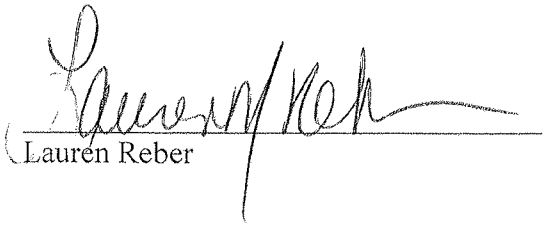
7. The Liquidator requests that this Court issue the accompanying Order to Show Cause approving a return date for a hearing on this application to be held before this Court at least thirty (30) days after the date of issuance of the Order to Show Cause.

8. No previous application for the relief sought herein has been made to this or any other court or judge thereof.

WHEREFORE, it is respectfully requested that the application be granted in its entirety and that this Court enter an Order (a) approving the Report and the financial transactions delineated therein, (b) authorizing the continued payment of administrative expenses;

(c) authorizing the Liquidator to distribute Eveready's assets, consistent with this Court's orders and the priorities set forth in New York Insurance Law Section 7434, to those creditors of Eveready with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; and (d) granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 22, 2016



Lauren Reber

# EXHIBIT 1

# REPORT ON THE STATUS OF THE LIQUIDATION OF EVEREADY INSURANCE COMPANY AND REQUEST FOR AUTHORITY TO DISTRIBUTE ASSETS

Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York ("Superintendent") as court-appointed liquidator ("Liquidator") of Eveready Insurance Company ("Eveready") has appointed Scott D. Fischer as Special Deputy Superintendent and Agent of the Liquidator and other Agents, to carry out, through the New York Liquidation Bureau ("NYLB"), the responsibilities of the Liquidator. The Liquidator, by Mary Jo Marchisello, Assistant Special Deputy Superintendent and Agent ("Assistant Special Deputy"), hereby submits this Liquidator's report ("Report") on the status of the Eveready liquidation proceeding ("Liquidation Proceeding") and requests authority to distribute assets.

## INTRODUCTION

On January 29, 2015 ("Liquidation Order Date"), this Court entered an order ("Liquidation Order") placing Eveready into liquidation. Since the Liquidation Order Date, the Liquidator has taken possession of all of Eveready's assets, reviewed Eveready's claims and liabilities, arranged for the Security Funds (defined below) to handle claims that are covered by those funds, collected monies owed to Eveready, complied with the Bar Date (defined below), established "adjudication procedures" – procedures for the judicial review of the Liquidator's adjudication of claims in the Liquidation Proceeding – and otherwise has taken charge of winding-up Eveready's business affairs. As of December 31, 2015 (the most recent date for which comprehensive financial information is available), Eveready had assets of approximately $482,716 and liabilities of approximately $17,294,988.

The Liquidator is providing this Report to advise the Court on the conduct of the Liquidation Proceeding and to seek the Court's (i) approval of the Report and the financial

transactions delineated herein; (ii) authorization for the continued payment of administrative expenses; (iii) authorization for the Liquidator to distribute Eveready's assets, consistent with this Court's orders and the priorities set forth in New York Insurance Law ("Insurance Law") Section 7434, to those creditors of Eveready with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; and (iv) granting of such other and further relief as the Court may deem just and proper.

## EVEREADY'S BUSINESS AND THE COMMENCEMENT OF THE LIQUIDATION PROCEEDING

Eveready was incorporated in the State of New York on or about August 8, 1963 and commenced business on May 1, 1965. Eveready was licensed to provide bodily injury liability, property damage liability and motor vehicle and aircraft physical damage insurance in accordance with paragraphs (13), (14) and (19) of Insurance Law Section 1113(a). Eveready wrote primarily private passenger auto liability and physical damage insurance, plus a small amount of commercial auto insurance in downstate New York. Eveready was licensed to carry out the business of insurance only in the State of New York.

Eveready's June 2014 financial statements reported liabilities of $8,029,256, which exceeded its admitted assets of $7,100,288, resulting in a negative surplus to policyholders in the amount of $928,968. On July 7, 2014, Eveready's Board of Directors unanimously passed a resolution consenting to the entry of an order of liquidation pursuant to Insurance Law Article 74. Thereafter, an application was made to the Supreme Court, New York County (the "Supervising Court") to place Eveready into liquidation pursuant to Article 74 of the Insurance Law. On the Liquidation Order Date, the Supervising Court entered the Liquidation Order.

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

The Liquidation Order provided, among other things, that all existing Eveready insurance policies be cancelled at the earliest of: (a) 30 days from the giving of notice of such cancellation by Eveready, if such notice was 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 was identical coverage; (d) the effective date and time that the Eveready insurance policy obligation was 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 the Liquidation Order, i.e., February 28, 2015. The cancellation of the Eveready policies was an important aspect of the liquidation process because Eveready could not pay claims and its policyholders needed to obtain replacement insurance. Additionally, liquidating an insolvent insurance company, by definition, requires the cancellation of active insurance policies issued by the insolvent insurer. As of February 28, 2015, all Eveready insurance policies had been cancelled or non-renewed.

**B. The Establishment of a Bar Date**

The Liquidation Order also established January 29, 2016, as the bar date ("Bar Date") by which all claims against Eveready or its insureds, other than the Liquidator's claim for administrative expenses, and all evidence in support of such claims, must have been received by the Liquidator. The establishment of a bar date enables the Liquidator to complete the task of reviewing and determining claims against an insolvent insurer and, ultimately, to make distributions of assets, if any, to allowed claimants in accordance with Insurance Law Section 7434 (as more fully set forth below).

## CONDUCT OF THE LIQUIDATION PROCEEDING

### A. Liquidator's Obligations

Upon her appointment, the Liquidation Order and Insurance Law Article 74 charged the Liquidator with, among other things:

a. Identifying Eveready's policyholders and claimants;

b. Notifying Eveready's creditors, claimants and interested persons to present their claims;

c. Adjudicating the claims presented and establishing the total amount of Eveready's liabilities;

d. Marshaling Eveready's assets;

e. Distributing Eveready's assets to creditors with allowed claims; and

f. Otherwise liquidating Eveready's business pursuant to Insurance Law Article 74.

### B. Liquidator's Initial Actions

In the exercise of her responsibilities, immediately after this Court's Liquidation Order was granted, the Liquidator took possession of Eveready's property, which included taking control of Eveready's bank accounts, offices and equipment, and all records and files, both electronic and paper, of the company. The Liquidator's staff also coordinated with Eveready's critical vendors, such as those providing claims handling services, to insure continuity of services during the transition to liquidation.

As provided in the Liquidation Order, the Liquidator gave notice of the liquidation proceeding to Eveready's creditors, claimants and interested persons by publishing such notice in the *New York Daily News* once a week for two consecutive publication periods and by posting the Liquidation Order on the NYLB webpage at www.nylb.org, within 15 day of entry of the Order.

### C. Claim Handling and Security Funds

The Liquidator is responsible for limiting the impact of Eveready's insolvency on its policyholders, who were mainly individuals with auto insurance. This included arranging for policyholder claims to be handled by the Administrator of the New York Property and Casualty Insurance Security Fund ("P/C Fund") and the Public Motor Vehicle Liability Security Fund ("PMV Fund") (the P/C Fund and PMV Fund collectively, the "Security Funds").

Under Insurance Law Article 76, the Security Funds pay claims (up to the lesser of the policy limit or a statutory maximum) on policies insuring property or risks located in the State of New York or policies issued in the State of New York to New York residents insuring property or risks located outside the State of New York. The Security Funds also cover loss adjustment expenses ("LAE") and the administrative expenses of processing and adjudicating claims covered by the Security Funds. Loss payments, LAE and administrative expenses are collectively referred to hereinafter as "Security Fund Covered Claims".

The Security Funds ameliorate the effects of insolvency by making payments to claimants with Security Fund Covered Claims. *In re Reliance*, 35 A.D.3d 191 (1st Dept. 2006). The Security Funds pay Security Fund Covered Claims and, in turn, assert claims against the estate of an insolvent insurer for the amount of such payments. See Insurance Law Section 7609(a). Claims of the Security Funds are accorded the same level of priority in the distribution of estate assets as claims under policies. See Insurance Law Sections 7434(a)(1)(ii) and 7609. Generally, the Security Funds receive as distributions only a portion of the monies paid on Security Fund Covered Claims.

In the Eveready liquidation, from the Liquidation Date to December 31, 2015, the Security Funds have paid $3,771,373.00 to claimants.

### D. Adjudication of Claims

The Liquidator is responsible for adjudicating all classes of claims presented to Eveready. A claim is "adjudicated" upon the Liquidator's recommendation to the Court that the claim be either "allowed" or "disallowed." *See* N.Y. Ins. L. §§7432-7433. An "allowed" claim is a claim that has been approved by a liquidation court and the claimant is allowed to share in the distribution of assets under Insurance Law Section 7434. A "disallowed" claim is a claim that has been denied and the claimant will not share in any distribution of the estate's assets.

In order to effectuate this process, the Liquidator sought approval of adjudication procedures for both Security Fund eligible claims and claims other than those covered by the Security Funds. This Court approved an order, entered January 4, 2016, establishing Adjudication Procedures for claims other than Security Fund Covered Claims. Under this order, claimants who object to the Liquidator's recommendations of allowance or disallowance are entitled to have their objections heard by a court-appointed referee. The Liquidator has also submitted a similar application for Adjudication Procedures for Security Fund eligible claims, which was heard and granted by this Court on March 16, 2016.

Since the Liquidation Order Date, most claims under Eveready policies have been eligible for coverage by the Security Funds and have been handled by the Administrator of the Security Funds. The Liquidator, acting on authority granted to her by this Court in the Liquidation Order, has refrained from adjudicating claims falling into Classes three through nine. Unless it would benefit the estate or it appears that estate assets will be sufficient to pay claims below the priority of policyholder claims (Class two claims under Insurance Law Section 7434), the Liquidator will continue to exercise her discretion not to expend estate assets to adjudicate such claims.

### E. Marshaling of Assets

As detailed below, Eveready had few assets at the time of its entry into liquidation. Since that time, the Liquidator has determined that there is a limited universe of Eveready assets to be marshaled. To date, marshaled assets consist primarily of salvage and subrogation recoveries, investment income and some remaining premium owed to Eveready. Prior to liquidation, Eveready obtained reinsurance from a single reinsurer. The Liquidator will continue to pursue reinsurance recoveries pursuant to the reinsurance agreements.

### F. Distribution of Assets

The Liquidator has not been in a position to distribute assets to Eveready's creditors since the Liquidation Order Date. All distributions from the estate will be made for administrative expenses and policyholder claims. As described in more detail below, there is no reasonable expectation that the Liquidator will be able to pay all allowed policyholder Class two claims in full. Therefore, no other claimants with priorities below Class two will receive any distributions in this Liquidation Proceeding.

In New York, a claim under a policy is afforded a Class two priority in distribution of estate assets, standing behind only Class one administrative expenses. No payment in respect of claims below Class two claims can be made unless and until all Class two claims are paid in full. *See* N.Y. Ins. L. §7434(a)(1). Section 7434(a)(1) provides in pertinent part:

> 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.

The classes of claims, as provided for in the prioritization scheme established by Insurance Law Section 7434, are as follows:

(i) Class one. Claims with respect to the actual and necessary expenses of administration incurred by a liquidator or rehabilitator.

(ii) Class two. All claims under policies, including claims of federal, state or local government for losses incurred, third party claims, claims for unearned premiums, and all claims of security funds or guaranty associations, but excluding claims under reinsurance contracts.

(iii) Class three. Claims of the federal government, except those under Class two.

(iv) Class four. Claims for wages owing to employees of an insurer against whom an Article 74 proceeding is commenced and claims for unemployment insurance contributions required by Article 18 of the New York Labor Law.

(v) Class five. Claims of state and local governments, except those under Class two.

(vi) Class six. Claims of general creditors, including but not limited to claims arising under reinsurance contracts.

(vii) Class seven. Claims filed late or any other claims other than claims stated in Class eight or Class nine below.

(viii) Class eight. Claims for advanced or borrowed funds made pursuant to Insurance Law Section 1307.

(ix) Class nine. Claims of shareholders or other owners in their capacity as shareholders.

Since the start of the Liquidation Proceeding, the Liquidator has incurred and paid on a current basis the administrative expenses of the proceeding (Class one). If sufficient assets are available, the Liquidator hopes to make a distribution to Class two claimants pursuant to this Report.

### G. Current Status of Claims Presented

As described above, the Liquidator adjudicates those claims that are presented to her. As of the Liquidation Order Date, there were 197 unresolved claims and no resolved but unpaid claims under Eveready policies. Between the Liquidation Order Date and the Bar Date, 1,298 additional claims were presented to the Liquidator and handled by the Security Funds. All 1,495 policyholder claims have been or are in the process of being reviewed and adjudicated by the Security Funds. Ultimately, those 1,495 claims will yield two claims against the assets of the Eveready estate– one for each of the Security Funds. As of December 31, 2015, there were no Class two claims filed in the Liquidation Proceeding which are not eligible for payment from the Security Funds. There are 100 claims that fall into classes below Class two.

#### 1. Value and Payment of Claims

##### a) Class One Claims

From the Liquidation Order Date through December 31, 2015, the Liquidator has incurred and paid administrative expenses in the amount of $398,293. Additionally, as of December 31, 2015, the Liquidator has incurred, but not paid, administrative expenses in the amount of $85,402 and therefore has set a reserve equal to that amount.

##### b) Class Two Claims

###### i. Total Value of all Class Two Claims

All of the Class two claims that have been filed in the Liquidation Proceeding as of December 31, 2015, amount to $16,314,542.[1] Such claims, if and when allowed, will remain unpaid until all other Class two claims reported prior to the Bar Date have been resolved, or until

[1] This number is comprised of both actual claim amounts and reserves established by the Security Funds for claims submitted but not yet resolved.

an interim distribution of estate assets is made by the Liquidator in accordance with the authority sought on the basis of this Report.

#### ii. Non-Security Fund Eligible Claims of Policyholders

No Class two claims have been filed in the Liquidation Proceeding as of December 31, 2015 that are not eligible for payment from the Security Funds.

#### iii. Security Funds Claims

As of December 31, 2015, there are two claims, including LAE, of the Security Funds, which have been reserved in the amount of $16,314,542.

### c) The Remaining Classes of Claims

The remaining claims are: 1 Class three claim in the amount of $5,857; no Class four claims; 8 Class five claims in the amount of $258,502; and 91 Class six claims in the total amount of $630,685.

## FINANCIAL CONDITION OF EVEREADY

### A. Financial Condition as of the Liquidation Order Date

Eveready's financial records as of the Liquidation Order Date showed that Eveready had assets totaling $898,342 and liabilities totaling $4,043,130, making it insolvent in the amount of $3,144,788.

#### 1. Assets

Based upon the Liquidator's investigation and review of Eveready's books and records after the Liquidation Order Date, the Liquidator determined that Eveready had total cash and equivalents in the amount of $208,769 and common stocks at fair market value in the amount of $4,306. Eveready's other assets consisted of $1,917 in accrued investment income and $32,771 in miscellaneous assets. Additionally, Eveready was carrying reinsurance recoverables on

unpaid losses and unpaid LAE in the amount of $286,925 and statutory deposits held by New York State in the amount of $363,654.

### 2. Liabilities

The Liquidator's analysis of Eveready's books and records, including its reserves, disclosed that, as of the Liquidation Order Date, Eveready had total liabilities in the amount of $4,043,130, which consisted of $8,645 for accrued expenses, $2,980,052 in loss reserves for the Security Funds[2], $22,179 in unearned and advance premium reserves for the Security Funds, $853,000 reported as LAE for the Security Funds, $7,033 for federal government claims, and $172,221 for general creditor unsecured claims.

Eveready's comparative statement of assets, statement of liabilities and statement of changes in cash and invested assets for the period between the Liquidation Order Date and December 31, 2015 (collectively, "Financial Statements") are attached hereto as Exhibit A.

## B. Financial Condition of Eveready as of December 31, 2015

The Liquidator's records show that Eveready's financial position as of December 31, 2015 was a follows: Eveready had total assets of $482,716 and total liabilities of $17,294,988, leaving it insolvent in the amount of $16,812,272. Eveready's Financial Statements reflect the steps taken by the Liquidator since the Liquidation Date to collect assets and process claims as described in this Report. *See* Exhibit A.

### 1. Assets

As of December 31, 2015, Eveready had total assets of $482,716, which consisted of: cash and cash equivalents in the amount of $112,839, bonds at fair market value in the amount of

[2] The liabilities attributable to the Security Funds are based on the claims for losses for which Eveready was liable as of the Liquidation Order Date, but which were paid by the Security Funds at a later date.

$363,654, common stocks at fair market value in the amount of $4,306, and $1,917 in accrued investment income.

### 2. Liabilities

As of December 31, 2015, Eveready's total liabilities were $17,294,988, of which $85,402 were Class one liabilities for operating and administrative expenses; $16,314,542 were Class two liabilities for policy-related claims; $5,857 were Class three liabilities for federal government claims; $258,502 were Class five liabilities for state and local government claims; and $630,685 were Class six general creditor unsecured claims. *See* Exhibit A. The sharp rise in liabilities between the Liquidation Order Date and December 31, 2015 is attributable, in large measure, to the Liquidator's review of Eveready's books and decision to substantially increase the loss claim reserves.

### 3. Collection of Assets

#### a) Cash Receipts

As of December 31, 2015, the Liquidator had collected assets in the amount of $302,363, consisting of $8,028 in investment income, $231,481 in salvage and subrogation recoveries, $216 in premiums, $740 in litigation awards and $61,898 in miscellaneous receipts.

#### b) Receipts from Statutory Deposits

As of December 31, 2015, the Liquidator had received $363,654 from the release of statutory deposits held by the New York State Department of Financial Services.

### 4. Disbursement of Assets

#### a) Expenses

As of December 31, 2015, the Liquidator has incurred and paid $398,293 in administrative expenses, which include: $10,902 for Salvage and Subrogation collection fees,

$179,480 for the salaries of the Liquidator's staff; $13,909 for employee relations and welfare (*e.g.*, payroll taxes, health insurance and pension contributions); $98,713 for general and administrative expenses (*e.g.*, IT services and general office maintenance); $90,518 for professional fees (*e.g.*, accountants and other consultants) and $4,771 for other miscellaneous expenses (*e.g.*, insurance and bank fees).

**5. Payments to Claimants**

No distribution has yet been made to any class of claimant other than Class one. The Liquidator has established reserves for the Class two claims which have yet to be adjudicated, as well as a reserve for projected administrative expenses. These reserves are necessary to ensure that at the time of any distribution, there will be sufficient assets to pay all administrative expenses incurred as of that time and then all Class two creditors in parity.

## RELIEF SOUGHT

The Liquidator submits this Report to describe to this Court the status of the Eveready Liquidation Proceeding and request authorization to make distributions of Eveready's assets 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 Lauren M. Reber. Based on the facts set forth in the Affirmation and in this Report, the Liquidator requests in the Affirmation that the Court issue an order which:

a. Approves the Report on the status of the Eveready Liquidation Proceeding and the financial transactions delineated herein;

b. Authorizes the continued payment of administrative expenses;

c. Authorizes the Liquidator to distribute Eveready's assets, consistent with this Court's orders and the priorities set forth in Insurance Law Section 7434, to those creditors of Eveready with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available; and

d. Grants such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 22, 2016

Mary Jo Marchisello
Assistant Special Deputy Superintendent
and Agent of Maria T. Vullo, Acting
Superintendent of Financial Services of the
State of New York as Liquidator of
Eveready Insurance Company

# EXHIBIT A

EVEREADY INSURANCE COMPANY IN LIQUIDATION
STATEMENT OF ASSETS

| | | Dec. 31, 2015 | | Jan. 29, 2015 |
|---|---|---|---|---|
| Unrestricted Assets | | | | |
| Cash-Unrestricted | $ 112,839 | | $ 208,769 | |
| Bonds at fair market value | 363,654 | | - | |
| Common Stocks at fair market value | $ 4,306 | | 4,306 | |
| Total Cash and Invested Assets | | $ 480,799 | | $ 213,075 |
| Investment in Subsidiary | | - | | - |
| Other Invested Assets | | - | | - |
| Reinsurance Recoverables on Paid Losses and LAE | - | | - | |
| Less: Allowance for Uncollectible Reinsurance Recoverable | - | | - | |
| Net Reinsurance Recoverable on Paid Losses and LAE | | - | | - |
| Reinsurance Recoverables on Unpaid Losses and Unpaid LAE | - | | $ 286,925 | |
| Less: Allowance for Uncollectible Reinsurance Recoverable | - | | - | |
| Net Reinsurance Recoverable on Unpaid Losses and LAE | | - | | 286,925 |
| Premiums in course of collection | | - | | - |
| Accrued Investment Income | | 1,917 | | 1,917 |
| Other Assets | | - | | 32,771 |
| Total Unrestricted Assets | | 482,716 | | 534,688 |
| Restricted Assets: | | | | |
| Restricted - Statutory Deposits in This or Other States | | - | | 363,654 |
| Restricted - Funds held by or deposited with Reinsurance Companies | | - | | - |
| Restricted - Other | | - | | - |
| Total Restricted Assets | | - | | 363,654 |
| Total Assets | | $ 482,716 | | $ 898,342 |

# EVEREADY INSURANCE COMPANY IN LIQUIDATION
## STATEMENT OF LIABILITIES

| | | Dec. 31, 2015 | | Jan. 29, 2015 |
|---|---|---|---|---|
| Secured Claims | | - | | - |
| Class I - Administrative Claims: | | $ 85,402 | | $ 8,645 |
| Class II - Claims and Related Costs: | | | | |
| Guaranty Fund Claims: | | | | |
| Allowed Claims: | | | | |
| Administrative Claims Expenses | - | | - | |
| Loss Adjustment Expenses (LAE) | - | | - | |
| Loss Claims | $ 3,391,917 | | - | |
| Unearned and Advance Premium Claims | 379,456 | | - | |
| Total Allowed Claims | 3,771,373 | | - | |
| Less Advance Dividends | - | | - | |
| Total Allowed Claims | 3,771,373 | | - | |
| Non - Allowed Claims: | | | | |
| Administrative Claims Expenses | 1,531,652 | | - | |
| Loss Adjustment Expenses (LAE) | 5,591,253 | | $ 853,000 | |
| Loss Claim Reserves | 5,348,184 | | 2,980,052 | |
| Unearned and Advance Premium Claims | 72,080 | | 22,179 | |
| Total Non-Allowed Claims | 12,543,169 | | 3,855,231 | |
| Total Guaranty Fund Claims: | | 16,314,542 | | 3,855,231 |
| Creditor Claims: | | | | |
| Allowed Claims: | | | | |
| Loss Claims | - | | - | |
| Unearned and Advance Premium Claims | - | | - | |
| Total Allowed Claims | - | | - | |
| Less Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non - Allowed Claims: | | | | |
| Loss Claims Reserves | - | | - | |
| Unearned and Advance Premium Claims | - | | - | |
| Loss Adjustment Expenses (LAE) | - | | - | |
| Total Non-Allowed Claims | - | | - | |
| Total General Creditor Claims | | - | | - |
| IBNR | | - | | - |
| Total Class II Claims and Related Costs: | | 16,314,542 | | 3,855,231 |
| Class III - Federal Government Claims: | | | | |
| Allowed Claims: | - | | - | |
| Less: Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non - Allowed Claims | $ 5,857 | | $ 7,033 | |
| Total Class III Claims | | $ 5,857 | | $ 7,033 |
| Class IV - Employee Claims: | | | | |
| Allowed Claims: | - | | - | |
| Less: Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non - Allowed Claims | - | | - | |
| Total Class IV Claims | | - | | - |

# EVEREADY INSURANCE COMPANY IN LIQUIDATION
## STATEMENT OF LIABILITIES

| | | Dec. 31, 2015 | | Jan. 29, 2015 |
|---|---|---|---|---|
| Class V - State and Local Government Claims: | | | | |
| Allowed Claims: | - | | - | |
| Less: Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non - Allowed Claims | $ 258,502 | | - | |
| Total Class V Claims | | $ 258,502 | | - |
| Class VI - General Creditors: | | | | |
| Allowed General Unsecured Creditor Claims (Other than | - | | - | |
| Less: Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non Allowed General Unsecured Creditor Claims (Other than Reinsurance Related) | 630,685 | | $ 172,221 | |
| Total General Unsecured Creditor Claims (Other than Reinsurance | $ 630,685 | | $ 172,221 | |
| Reinsurance Related Unsecured Claims | - | | - | |
| Less: Dividends | - | | - | |
| Total Reinsurance Related Unsecured Claims | - | | - | |
| Total Class VI Claims | | 630,685 | | $ 172,221 |
| Class VII - Late Filed Claims: | | | | |
| Allowed Claims: | - | | - | |
| Less: Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non - Allowed Claims | - | | - | |
| Total Class VII Claims | | - | | - |
| Class VIII - Section 1307 (Shareholder) Loans: | | | | |
| Allowed Claims: | - | | - | |
| Less: Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non - Allowed Claims | - | | - | |
| Total Class VIII Claims | | - | | - |
| Class IX - Share Holder Claims: | | | | |
| Allowed Claims: | - | | - | |
| Less: Dividends | - | | - | |
| Total Allowed Claims | - | | - | |
| Non - Allowed Claims | - | | - | |
| Total Class IX Claims | - | - | - | - |
| Other Liabilities | | - | | - |
| Total Liabilities | | 17,294,988 | | 4,043,130 |
| Liquidator's Surplus (Deficit) | | (16,812,272) | | (3,144,788) |
| Total Liabilities and Liquidator's Surplus (Deficit) | | $ 482,716 | | $ 898,342 |

# EVEREADY INSURANCE COMPANY IN LIQUIDATION
## STATEMENT OF CHANGES IN CASH AND INVESTED ASSETS
## FROM JANUARY 29, 2015 TO DECEMBER 31, 2015

| | | |
|---|---|---|
| Receipts: | | |
| Investment Income | $ | 8,028 |
| Premiums collected | | 216 |
| Salvage and Subrogation | | 231,481 |
| Release from Statutory Deposits | | 363,654 |
| Litigation Awards | | 740 |
| Miscellaneous | | 61,898 |
| Total Receipts | | 666,017 |
| Disbursements: | | |
| Salvage and Subrogation Fees | | 10,902 |
| Salaries | | 179,480 |
| Employee Relations & Welfare | | 13,909 |
| Professional Fees | | 90,518 |
| General and Administrative Expenses | | 98,713 |
| Other Expense | | 4,771 |
| Total Disbursements | | 398,293 |
| Net Increase (Decrease) of Receipts Over Disbursements | | 267,724 |
| Cash and Invested Assets (Unrestricted), as of January 29, 2015 | | 213,075 |
| Unrealized Gain / (Loss) on Investments | | - |
| Cash and Invested Assets (Unrestricted), as of December 31, 2015 | $ | 480,799 |

Index No. 160307 Year 2014

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

---

In the Matter of

the Liquidation of

EVEREADY INSURANCE COMPANY.

---

**ORDER TO SHOW CAUSE AND AFFIRMATION**
(Initial Report)

---


**JOHN PEARSON KELLY**
Attorney for Superintendent of Financial Services of the State of New York as Liquidator

*Office and Post Office Address, Telephone*

New York Liquidation Bureau
110 William Street
New York, NY 10038
(212) 341-6755
Fax (212) 233-0461


---

**ATTORNEY CERTIFICATION**
The undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, belief and reasonable inquiry, the contentions in the above referenced document(s) are not frivolous.

Dated: March 22, 2016
New York, New York

Lauren M. Reber

---

[ ] NOTICE OF ENTRY
that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on the day of 20
[ ] NOTICE OF SETTLEMENT
that an order of which the within is a true copy will be presented for settlement to the HON. one of the judges of the within named court, at
, on 20 at

Dated:

Yours, etc.


**JOHN PEARSON KELLY**
Attorney for Superintendent of Financial Services of the State of New York as Liquidator

*Office and Post Office Address, Telephone*
New York Liquidation Bureau
110 William Street
New York, NY 10038
(212) 341-6755
Fax (212) 233-0461