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At IAS Part 39 of the Supreme Court of the State of New York, County of Queens, at the courthouse located at ~~88-11 Sutphin Boulevard, Jamaica, New York~~, on the 28 day of MARCH 2017.

25-10 Ct SQ LIC
NY 11101

PRESENT:

HON. _____, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----x

In the Matter of

Index No.

7032641R

the Application of

ORDER TO SHOW CAUSE

Maria T. Vullo, Superintendent of Financial Services of the State of New York, for an order to take possession and liquidate the business and affairs of

FIDUCIARY INSURANCE COMPANY OF AMERICA.

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Based on the verified petition ("Verified Petition") of Maria T. Vullo, Superintendent of Financial Services of the State of New York ("Superintendent"), duly verified on February 24, 2017, the supporting Affidavit of Marc Allen, dated February 16, 2017, and the exhibits and schedules attached thereto, and it appearing that the relief sought should be granted;

NOW, on motion of Eric T. Schneiderman, Attorney General of the State of New York, attorney for the Superintendent, and after due deliberation having been had thereon;

LET Fiduciary Insurance Company of America ("Fiduciary") show cause before this Court at IAS Part 28 Room 28, thereof, at the Courthouse located at 88-11 Sutphin Boulevard,

Jamaica, New York in the County of Queens, State of New York, on the 2 day of May.

DARE

2017, at 2:50 o'clock P.m., or as soon thereafter as counsel can be heard ("Return Date"), why an order in the form of Exhibit 1 to the Verified Petition should not be made, pursuant to Article 74 of the New York Insurance Law ("Insurance Law"), *inter alia*: (1) appointing the Superintendent, and her successors in office, as liquidator of Fiduciary (the "Liquidator"); (2) directing the Liquidator to take possession of Fiduciary's property and to liquidate Fiduciary's business and affairs; (3) vesting title to all of Fiduciary's property, contracts, and rights of action and all of its books and records, wherever located, in the Liquidator and her successors; (4) permitting the Liquidator to deal with the property and business of Fiduciary in Fiduciary's name or in the name of the Liquidator; (5) granting the injunctions provided for in Insurance Law § 7419(a), permanently enjoining and restraining all persons, except as authorized by the Liquidator, from transacting Fiduciary's business (including the issuance of insurance policies) or the waste or disposition of Fiduciary's property; (6) granting the injunctions provided for in Insurance Law § 7419(b), permanently enjoining and restraining all parties from interfering with the Liquidator or this proceeding, or wasting assets of Fiduciary or obtaining any preferences, judgments, attachments or other liens, or making any levy against Fiduciary, its assets or any part thereof, and commencing or prosecuting any actions or proceedings against the Superintendent as Liquidator of Fiduciary, 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 Insurance Law Articles 74 and 76 in relation thereto; (7) enjoining and restraining all parties to actions, lawsuits, and special or other proceedings in which Fiduciary's policyholders or insureds are a party or are obligated to defend a party pursuant to an insurance policy, bond, contract or otherwise, 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; (8) enjoining and restraining all persons who have first party policyholder loss claims, from presenting and filing claims with the Liquidator or with the Administrator for a period of 90 days from the date of entry of an order of liquidation; (9) vesting all rights in Fiduciary's contracts and agreements, however described, with the Liquidator and permitting the Liquidator, in her discretion, to reject any executory contracts to which Fiduciary is a party, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of rejection; (10) requiring that 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 Fiduciary'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 (e) take any other action reasonably necessary for the proper conduct of the liquidation proceeding; (11) requiring that 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 Fiduciary 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; (12) authorizing, permitting and allowing the Liquidator 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 her discretion, she deems to be in the best interest of the creditors of Fiduciary, and further authorizing the Liquidator 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; (13) cancelling all existing insurance policies of Fiduciary at 12:01 A.M. local time on the date that is 60 days from the entry of an order of liquidation of Fiduciary (the "Cancellation Date"); (14) providing that all claims against Fiduciary, including all evidence to establish the existence of an actual loss under a policy, must be presented to the Liquidator by the date that is one year after the Cancellation Date (the "Bar Date"), except that the Bar Date shall not apply to the Liquidator's claims for administrative expenses or to claims for reimbursement submitted by the New York Property/Casualty Insurance Security Fund and the New York Public Motor Vehicle Liability Security Fund; (15) authorizing the Liquidator, in her discretion, to refrain from adjudicating some or all claims falling into Classes three through nine (Insurance Law § 7434(a)(1)(iii)-(ix)) unless and until she reasonably believes that adjudication of such claims would be in the best interests of the estate; (16) extending immunity to the Superintendent in her capacity as Liquidator of Fiduciary, her 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 this Court, or in the performance of their duties pursuant to Insurance Law Article 74; (17) declaring Fiduciary insolvent within the meaning of Insurance Law § 1309(a); and (18) granting such other and further relief as the Court may deem proper and just.

AND, sufficient cause having been shown therefor, pursuant to Insurance Law § 7418(a)(1), let service of a copy of this order to show cause and the papers upon which it is

~~granted~~ ^{Personal delivery} be made: (i) by ~~first-class mail~~ ^{Certified} upon John J. Hession, Executive Vice President and General Counsel, Fiduciary Insurance Company of America, 45-07 Davis Street, 3rd Floor, Long Island City, New York 11101; (ii) by ~~first-class mail~~ upon the 69 policyholders holding Fiduciary policies that remain in force as of March 1, 2017;¹ (iii) by publishing a notice thereof, substantially in the form attached as Exhibit 3 to the Verified Petition ("Notice"), in the *New York Post* not less than 30 days after the issuance of the order to show cause; and (iv) by posting on the internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org>; and let such service be made at least 15 days prior to the Return Date, and such service shall be deemed good and sufficient service; and it is hereby

NOTE

ORDERED, that all answering papers and supporting documentation ("Answering Papers") be served on the Superintendent so as to be received at least seven days prior to the Return Date, and that service on the Superintendent shall be made by first class mail or overnight carrier at the following addresses:

Office of the Attorney General
120 Broadway
New York, NY 10271
Attention: Rosalie Hronsky

New York Liquidation Bureau
110 William Street
New York, New York 10038
Attention: General Counsel

and Answering Papers shall be submitted to this Court at IAS Part ____ at the Courthouse located at 88-11 Sutphin Boulevard, Jamaica, New York, on or before the Return Date; and it is further

¹ The names and addresses of these policyholders are being withheld from this order to show cause in order to maintain their privacy, but each policyholder will be served with a copy of this order to show cause and its supporting papers at their last-known address as shown on Fiduciary's books and records. Fiduciary had 5,476 policies which expired, by their own terms, on or before March 1, 2017.

ORDERED, that pursuant to Insurance Law § 7419, which provides that injunctions may be issued, without notice, pending the determination of this application, Fiduciary, its officers, directors, shareholders, members, trustees, agents, servants, employees, policyholders, attorneys, and managers, and all other persons, are hereby restrained, except as authorized by the Superintendent, from transacting Fiduciary's business (including the issuance of new insurance policies) or disposing of Fiduciary's property, and all persons are restrained from wasting any of Fiduciary's property; and it is further

NOTE ORDERED, that pursuant to Insurance Law § 7419 pending the determination of this motion, all actions or proceedings against Fiduciary and all actions or proceedings in which Fiduciary is obligated to defend a party are stayed; and it is further

NOTE ORDERED, that pending the determination of this motion, all persons are restrained from obtaining preferences, judgments, attachments or other liens, or making any levy or commencing or prosecuting any actions or proceedings against Fiduciary or its assets.

ENTER

J. S. C.