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Other

**ORIGINAL**

EX PARTE MOTION

Room 574

At IAS Part 58, of the Supreme Court of the State of New York, County of New York, at the Courthouse, 111 Centre Street, New York, New York, on the 21<sup>st</sup> day of February, 2013.

13M04461

APPROPRIATE  
FOR THE  
OF MOTION  
ONLY

PRESENT:

HON. DONNA MILLS, J.S.C.

In the Matter of  
the Liquidation of

HOME MUTUAL INSURANCE COMPANY  
OF BINGHAMTON, NEW YORK.

Index No.: 403105/97

ORDER TO SHOW CAUSE

FILED  
NEW YORK  
COUNTY CLERK'S OFFICE

Based on the verified petition ("Verified Petition") of Mary Jo Marchisello, Assistant Special Deputy Superintendent and Agent of Benjamin M. Lawskey, Superintendent of Financial Services of the State of New York, as liquidator ("Liquidator") of Home Mutual Insurance Company of Binghamton, New York ("Home Mutual"), duly verified the 15th day of February, 2013, and exhibit attached thereto, upon all other papers previously submitted and all proceedings heretofore had herein, and it appearing that the relief sought should be granted;

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

LET all claimants and all other parties interested in the affairs of Home Mutual show cause before this Court at IAS Part 58 thereof, at the Courthouse located at 111 Centre Street, in the County, City and State of New York, on the 12<sup>th</sup> day of APRIL, 2013 ("Return Date") at 10<sup>30</sup> o'clock A.m., or as soon thereafter as counsel can be heard, why an order should not be

Approved and

made, pursuant to Article 74 of the New York Insurance Law ("Insurance Law"), *inter alia*:

- (i) approving the Liquidator's Report on the Status of the Liquidation of Home Mutual ("Liquidation Proceeding") and Request for Authority to Distribute Assets, and the financial transactions delineated herein;
- (ii) establishing April 30, 2013 as the bar date ("Bar Date") for presentment of all claims other than claims for administrative costs and expenses;
- (iii) authorizing and directing the Liquidator to consider for allowance only those claims for actual losses incurred and arising under policies issued by Home Mutual that are presented to the Liquidator on or before the Bar Date;
- (iv) barring and discharging all claims for losses reported after the Bar Date;
- (v) authorizing the continued payment of administrative costs and expenses;
- (vi) authorizing the Liquidator to distribute Home Mutual's assets, consistent with this Court's orders and the priorities set forth in Insurance Law Section 7434, to those creditors of Home Mutual with allowed claims, to the extent that, in the Liquidator's discretion, sufficient funds are available;
- (vii) extending judicial immunity to the Superintendent in his capacity as Liquidator of Home Mutual, his successors in office and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74; and
- (viii) providing for such other and further relief as this 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 notice of the Verified Petition and this Order to Show Cause shall be substantially in the form attached hereto and service shall be made to Home Mutual's claimants and all other interested parties by: (i) posting on the Internet web page maintained by the New

York Liquidation Bureau at <http://www.nvlb.org> at least 15 business days prior to the Return Date; and (ii) publication in *The New York Times*, or a newspaper of similar circulation, such publication to occur once a week over two consecutive weeks commencing within the thirty (30) days following issuance of this Order to Show Cause; and it is further

ORDERED, that the form and methods of service of notice specified herein are hereby approved as in accordance with the law and as the best notice practicable and shall therefore constitute due and sufficient notice of this Order to Show Cause and scheduled Return Date herein and the Verified Petition and the relief sought therein to all persons and entities entitled to receive such notice; and it is further

ORDERED, that the approved form of notice shall direct that all answering papers and supporting documentation ("Answering Papers") be served on the Liquidator so as to be received at least seven business days prior to the Return Date, and that 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 Home Mutual Insurance Company of Binghamton, New York  
110 William Street  
New York, New York 10038  
Attention: John Pearson Kelly  
General Counsel

and by submitting copies of Answering Papers, with affidavit of service on the Liquidator as above, to this Court at IAS Part 58 at the Courthouse located at 111 Centre Street, in the County, City and State of New York, seven business days before the Return Date; and it is further

ORDERED, that in the absence of Answering Papers filed pursuant to the previous paragraph on or prior to the date specified, the Court may enter relief without hearing and no party shall be entitled to be heard thereon; and it is further

ORDERED, that any person or entity that fails to serve Answering Papers as provided herein shall be deemed to have waived any objections to the relief sought in the Verified Petition and shall be barred from raising objections in this or any other proceeding concerning the matters set forth herein; and it is further

ORDERED, that any person or entity that has served Answering Papers as provided herein shall be deemed to have waived any objections that are not set forth in the Answering Papers.

ENTER:

2/26/13



J.S.C.

DONNA M. MILLS, J.S.C.