

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

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In the Matter of

Index No. 405446/07

the Rehabilitation of

VERIFIED PETITION

LION INSURANCE COMPANY.

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

Benjamin M. Lawskey, Superintendent of Financial Services of the State of New York (“Superintendent”), respectfully petitions this Court for an order, *inter alia*: (i) converting the rehabilitation proceeding of Lion Insurance Company (“Lion”) to a liquidation proceeding (“Liquidation Proceeding”) pursuant to New York Insurance Law (“Insurance Law”) §§ 7402 (l), 7403 (c), and 7404 as further efforts to rehabilitate Lion would be futile and Lion’s sole shareholder, Eagle Insurance Company (“Eagle”)¹, has consented to an order of liquidation of Lion; (ii) appointing the Superintendent, and his successors in office, as liquidator (“Liquidator”) of Lion under Insurance Law Article 74; (iii) authorizing the Liquidator to distribute the entirety of Lion’s assets to its parent corporation and sole remaining claimant, Eagle, consistent with the priorities of Insurance Law §7434; and (iv) terminating and closing the Liquidation Proceeding upon distribution of Lion’s assets to Eagle.

1. I make this verified petition on information and belief based upon information derived from the books and records of Lion in rehabilitation and from employees of the New York Liquidation Bureau (“Bureau”), the office that carries out the functions of the Superintendent as receiver under Insurance Law Article 74.

¹ Eagle was placed into liquidation and a liquidator was appointed (“Eagle Liquidator”) by an order entered on August 9, 2007, in the Superior Court of New Jersey, Chancery Division, Mercer County, Docket No C-84-06.

BACKGROUND

2. On September 6, 2007, this Court issued an order (“Rehabilitation Order”) appointing the then-Superintendent of Insurance of the State of New York, and his successors in office, as rehabilitator of Lion (“Rehabilitator”) and commencing this rehabilitation proceeding (“Rehabilitation Proceeding”). *See* Rehabilitator’s Report on the Status of the Rehabilitation of Lion Insurance Company (“Report”) attached as Exhibit 1 to the Affidavit of Gail Pierce-Siponen, sworn to September 16, 2014, (“Siponen Affidavit”). The Superintendent of Financial Services of the State of New York has now succeeded the Superintendent of Insurance as Rehabilitator of Lion.

3. The Rehabilitation Order and Insurance Law Article 74 charged the Rehabilitator with, among other things, the responsibility for:

- a. Taking possession of Lion’s property;
- b. Conducting Lion’s business;
- c. Taking such steps toward the removal of the causes and conditions that made the Rehabilitation Proceeding necessary as the Rehabilitator deemed wise and expedient; and
- d. Otherwise rehabilitating Lion’s business pursuant to Insurance Law Article 74.

4. Since the date of the Rehabilitation Order, the Rehabilitator has discharged his duties and has resolved all claims against Lion in rehabilitation. The Rehabilitator submitted a “Report on the Status of the Rehabilitation of Lion Insurance Company” to this Court on September 16, 2014, which describes the conduct of the Rehabilitator and, more specifically, that all claims have been resolved and the only remaining obligation is to distribute the remaining assets of Lion to its sole equity holder. *See* Siponen Affidavit at Exhibit 1. Because Lion’s affairs have been wound up and for the reasons set forth below, I submit this verified

petition in support of an order to convert Lion's Rehabilitation Proceeding to a Liquidation Proceeding and to close the Liquidation Proceeding upon distributing Lion's remaining assets to its equity holder.

**FURTHER EFFORTS TO REHABILITATE LION ARE FUTILE, AND ADEQUATE
GROUNDS EXIST FOR LION'S LIQUIDATION**

5. Insurance Law §7403(c) provides that if, at any time, the Rehabilitator deems further efforts to rehabilitate an insurer to be futile, he may apply to the court for an order of liquidation. The Rehabilitator has determined that further efforts to rehabilitate Lion are futile and now seeks an order of liquidation.

6. The Report sets forth the results of the Rehabilitator's activities conducted in accordance with the Rehabilitation Order and Insurance Law Article 74 and details the results of the Rehabilitator's efforts to conduct Lion's business and to take steps toward the removal of the causes and conditions that made the Rehabilitation Proceeding necessary as the Rehabilitator deemed wise and expedient. *See* Siponen Affidavit at Exhibit 1.

7. The Rehabilitator has paid, from the assets of Lion, all of the claims of its creditors and policyholders listed in its books and records and all of the claims submitted to the Rehabilitator. *See* Siponen Affidavit at Paragraph 8. There are no outstanding creditor or policyholder claims. *Id.*

8. Lion has no business to rehabilitate. *See* Siponen Affidavit at Paragraph 11. The company ceased writing new and renewal policies and has been in runoff since 2002. *Id.* In addition, no outside parties have expressed interest in purchasing Lion and returning it to the marketplace. *See* Siponen Affidavit at Paragraph 13. Without any avenue by which to return Lion to the marketplace, further efforts to rehabilitate it would be futile.

9. Insurance Law §§ 7402 (l) and 7404 provide that the Superintendent may apply to the court for an order of liquidation of an insurer if it has consented to such an order through a majority of its shareholders. The Eagle Liquidator, having all the rights of Eagle as Lion's sole shareholder, has consented to an order of liquidation of Lion. A copy of the consent is attached hereto as Exhibit A.

10. As of August 31, 2014, the date the Rehabilitator completed all activities related to the Rehabilitation Proceeding, Lion had total net admitted assets of \$167,982 and total liabilities of \$9,187, leaving Lion with a surplus in the amount of \$158,795 ("Surplus"). See Siponen Affidavit at Exhibit 1. With no outstanding creditor or policyholder claims, the Surplus should be distributed to Lion's owners, *i.e.*, its parent company, Eagle. The Surplus cannot be distributed to Eagle until the Rehabilitation Proceeding is converted to a Liquidation Proceeding. See *In re Rehab. Of Allcity Ins. Co.*, 413 N.Y.S.2d 929, 932 (App. Div. 1st Dep't 1979) ("Rehabilitation is distinguished from liquidation in that it is 'directed toward preservation, whenever possible, of the business of an insurance company' [w]hile liquidation is the inevitable aftermath of an unsuccessful attempt at rehabilitation" and "brings to a conclusion the affairs of a company.")

11. Based upon the foregoing, the Rehabilitation Proceeding should be converted to a Liquidation Proceeding, the Surplus should be distributed to Eagle, and the Liquidation Proceeding should be terminated and closed.

RELIEF REQUESTED

12. As detailed below, the Superintendent seeks approval to convert the Rehabilitation Proceeding to a Liquidation Proceeding, distribute the entirety of Lion's assets to

its parent company and sole remaining claimant, Eagle, *i.e.*, the Eagle Liquidator, consistent with the priorities of Insurance Law §7434, and terminate and close the Liquidation Proceeding.

13. This Verified Petition seeks the issuance of an order (“Order”) that: (i) converts the existing Rehabilitation Proceeding to a Liquidation Proceeding; (ii) appoints the Superintendent and his successors in office as Liquidator; (iii) vests title to all of Lion’s property, contracts and rights of action with the Liquidator; (iv) continues and grants the permanent injunctions provided for in the Rehabilitation Order, including the enjoinder and restraint of all persons from wasting Lion’s property, transacting Lion’s business, disposing of Lion’s property, interfering with the Liquidator or the Liquidation Proceeding, obtaining any preferences, judgments, attachments or other liens, making any levy against Lion, its assets or any part thereof, or commencing or prosecuting any actions or proceedings against Lion, the Liquidator or the Bureau; (v) extends judicial immunity to the Superintendent in his capacity as Liquidator of Lion and his predecessors and 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; (vi) authorizes the continued payment of administrative expenses, including such expenses pertaining to the closing of the Liquidation Proceeding; (vii) authorizes the Liquidator to distribute the entirety of Lion’s assets to its parent corporation and sole remaining claimant, Eagle, *i.e.*, the Eagle Liquidator, consistent with the priorities of Insurance Law § 7434; (viii) terminates and closes the Liquidation Proceeding upon distribution of Lion’s assets to Eagle; (ix) authorizes the Liquidator, without further application to this Court, to continue, after the termination of the Liquidation Proceeding, to receive and disburse assets to Eagle pursuant to Insurance Law Article 74, and to pay administrative

expenses incurred in connection with the collection and disbursement of such assets; (x) authorizes and directs the Liquidator, in his discretion, to destroy or otherwise dispose of any and all of the books, files, records and other property of Lion without further order of this Court; (xi) releases and discharges the Liquidator, his predecessors and successors in office, and their agents, attorneys and employees, from any and all liability arising from their acts or omissions in connection with the Liquidation Proceeding upon the termination and closing of the Liquidation Proceeding; and (xii) provides for such other and further relief as this Court deems appropriate and just.

14. The Rehabilitator also requests that this Court issue the accompanying Order to Show Cause approving: (i) a return date (“Return Date”) at least 30 days after the date of issuance of the Order to Show Cause for a hearing (“Hearing”) on the Verified Petition to be held before this Court; (ii) the form of notice to be given to the claimants and creditors who filed claims and/or are on Lion’s books and records (“Notice”); (iii) the method of service of the Notice, *i.e.*, by: (a) posting it on the Internet web page maintained by the New York Liquidation Bureau at <http://www.nylb.org> at least fifteen (15) days before the Return Date; (b) mailing it by United States first class mail to the claimants and creditors who filed claims and/or are on Lion’s books and records; and (c) publishing it in *New York Newsday*, Long Island Edition or a newspaper of similar circulation, once a week over two consecutive weeks commencing within the thirty (30) days following issuance of this Order to Show Cause; and deeming such service of Notice to be good and sufficient; and (iv) the injunctions provided for in the Rehabilitation Order remaining in effect pending the hearing and determination of the motion, including the enjoinder and restraint of all persons from wasting Lion’s property, transacting Lion’s business, disposing of Lion’s property, interfering with the Rehabilitator or the rehabilitation

proceeding, obtaining any preferences, judgments, attachments or other liens, making any levy against Lion, its assets or any part thereof, or commencing or prosecuting any actions or proceedings against Lion, the Rehabilitator or the New York Liquidation Bureau.

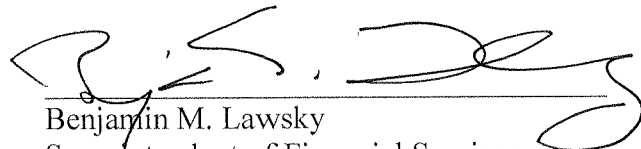
15. No previous application for the relief sought herein has been made to this or any other court or judge thereof.

WHEREFORE, it is respectfully requested that this Court enter the Order:

- a) converting the existing Rehabilitation Proceeding to a Liquidation Proceeding;
- b) appointing the Superintendent and his successors in office as Liquidator of Lion;
- c) vesting title to all of Lion's property, contracts and rights of action with the Liquidator;
- d) continuing and granting the permanent injunctions provided for in the Rehabilitation Order, including the enjoinder and restraint of all persons from wasting Lion's property, transacting Lion's business, disposing of Lion's property, interfering with the Liquidator or the Liquidation Proceeding, obtaining any preferences, judgments, attachments or other liens, making any levy against Lion, its assets or any part thereof, or commencing or prosecuting any actions or proceedings against Lion, the Liquidator, or the Bureau;
- e) extending judicial immunity to the Superintendent in his capacity as Liquidator of Lion and his predecessors and 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;
- f) authorizing the continued payment of administrative expenses, including such expenses pertaining to the closing of the Liquidation Proceeding;
- g) authorizing the Liquidator to distribute the entirety of Lion's assets to its parent corporation and sole remaining claimant, Eagle *i.e.*, the Eagle Liquidator, consistent with the priorities of Insurance Law §7434;
- h) terminating and closing the Liquidation Proceeding upon distribution of Lion's assets to Eagle;

- i) authorizing the Liquidator, without further application to this Court, to continue, after the termination of the Liquidation Proceeding, to receive and disburse assets to Eagle pursuant to Insurance Law Article 74, and to pay administrative expenses incurred in connection with the collection and disbursement of such assets;
- j) authorizing and directing the Liquidator, in his discretion, to destroy or otherwise dispose of any and all of the books, files, records and other property of Lion without further order of this Court;
- k) releasing and discharging the Liquidator, his predecessors and successors in office, and their agents, attorneys and employees, from any and all liability arising from their acts or omissions in connection with the Liquidation Proceeding upon the termination and closing of the Liquidation Proceeding; and
- l) providing for such other and further relief as this Court deems appropriate and just.

Dated: New York, New York
September 30, 2014



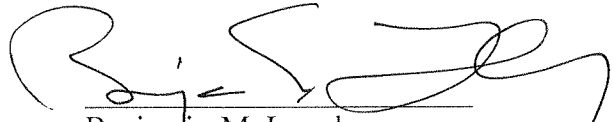
Benjamin M. Lawsky
Superintendent of Financial Services
of the State of New York

L12146

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

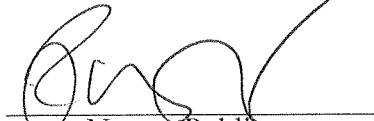
Benjamin M. Lawsky, being duly sworn, deposes and says:

That he is the Superintendent of Financial Services of the State of New York and that he executed the foregoing petition; that he is acquainted with the facts therein stated; that he knows the contents of the petition and that the same is true upon information and belief, based on information derived from the books and records of Lion Insurance Company in rehabilitation and from employees of the New York Liquidation Bureau.



Benjamin M. Lawsky
Superintendent of Financial Services
of the State of New York

Sworn to before me this
30th day of September, 2014



Notary Public

EXHIBIT A

**CONSENT OF THE SOLE SHAREHOLDER
OF LION INSURANCE COMPANY**

I, Michelina A. Lombardo, Deputy Liquidator of Eagle, Newark, GSA and National Consumer Insurance Companies, collectively referred to as "Eagle and its Subsidiaries", an authorized agent of the Commissioner of the New Jersey Department of Banking & Insurance, in his capacity as liquidator of Eagle and its Subsidiaries ("Liquidator") appointed by an order of liquidation ("Order of Liquidation") entered August 9, 2007, by the Superior Court of the State of New Jersey, Chancery Division, County of Mercer, Docket No.: C-84-06, pursuant to Title 17 of the Statutes of New Jersey, hereby declare and direct the following with regard to the Eagle insolvency:

Eagle Insurance Company ("Eagle") is the sole shareholder of Lion Insurance Company ("Lion"), which is in rehabilitation pursuant to an order of rehabilitation entered on September 6, 2007, by the Supreme Court of the State of New York, County of New York.

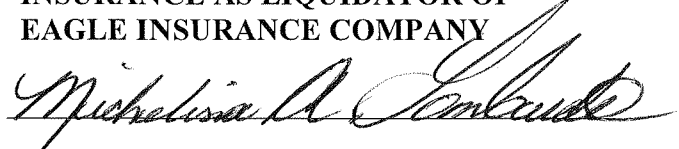
Pursuant to the Order of Liquidation and Title 17 of the Statutes of New Jersey, the Liquidator succeeded to all rights, title and interests in and to the property and contracts of Eagle. This includes Eagle's rights as the sole shareholder of Lion.

The Liquidator hereby consents to the entry of an order of liquidation of Lion in accordance with Sections 7402 (l), 7403 (c), and 7404 of the New York Insurance Law.

The Liquidator shall execute and deliver to the Superintendent such further documents as may be reasonably necessary or desirable to carry out the purpose and intent of the foregoing consent.

DATED: July 29, 2014

**COMMISSIONER OF NEW JERSEY
DEPARTMENT OF BANKING &
INSURANCE AS LIQUIDATOR OF
EAGLE INSURANCE COMPANY**

BY: 

NAME: Michelina A. Lombardo

TITLE: Deputy Liquidator of Eagle and its Subsidiaries