

EX PARTE MOTION OFFICE

APPROVED
FOR THE PAYMENT
OF MOTION FEE
ONLY

M.S. #14
Other

At IAS Part 21 of the Supreme Court of the State of New York, County of New York, at the Courthouse, 80 Centre Street, in the County, City and State of New York, on the 3 day of September, 2014.

P R E S E N T:

HON. MICHAEL D. STALLMAN, J.S.C.

In the Matter of

the Liquidation of

PROFESSIONAL LIABILITY INSURANCE
COMPANY OF AMERICA.

FILED
SEP - 2 2014
NEW YORK
COUNTY CLERK'S OFFICE

Index No.: 400986/2010

ORDER TO SHOW CAUSE

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 Professional Liability Insurance Company of America ("PLICA"), duly verified the 28th day of August, 2014, and exhibits attached thereto, 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 policyholder, creditors and others interested in the affairs of PLICA show cause before this Court at IAS Part 21, Room 130, thereof, at the Courthouse located at 80 Centre Street, New York, New York, on the 17th day of November, 2014 ("Return Date") at 9:30 o'clock a.m., or as soon thereafter as counsel can be heard, why an order should not be made,

pursuant to Article 74 of the New York Insurance Law ("Insurance Law"), *inter alia*: (i) approving an amended procedure for judicial review of the Liquidator's adjudication of claims filed in this proceeding ("Amended Procedure") and (ii) granting such other and further relief this Court may deem just and proper under the circumstances,

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 as Exhibit 1 to the Verified Petition, and service of such notice shall be made by: (i) posting 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;~~ and (ii) publication in *Business Insurance*, ~~or a publication of similar circulation,~~ such publication to occur in two consecutive issues thereof, commencing within the thirty (30) days following entry

of this Order to Show Cause; and it is further ORDERED that a copy of the Order to Show Cause and Verified Petition and Exhibits shall also be so posted

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 (7) business days prior to the Return Date, and that service on the Liquidator shall be made by first class mail at the following address:

Handwritten notes:
and all papers
Krepler and Penick
Pl. Benedictine and Wood
all supporting papers be served &
2 Brook-Cassidy, Rhonda L. Cassidy and J. Ty
Cassidy, and upon Baypid Capital and the
attorneys, at their last known
address, by
first class mail
or before 9/15

Superintendent of Financial Services of the State of New York
as Liquidator of Professional Liability Insurance Company of America
110 William Street
New York, New York 10038
Attention: John Pearson Kelly
General Counsel

and by submitting copies of the Answering Papers, with affidavit of service on the Liquidator as above, to this Court at IAS ~~Part 21~~ ^{Motion Submised Part} at the Courthouse located at 60 Centre Street, New York, ^{Rm 130, on} New York, ~~seven business days before~~ ^{at 9:30 AM} 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:



J.S.C.

HON. MICHAEL D. STALLMAN

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

-----x **Index No.: 400986/2010**

In the Matter of
the Liquidation of

PROFESSIONAL LIABILITY INSURANCE
COMPANY OF AMERICA.

**VERIFIED PETITION
IN SUPPORT OF
APPLICATION FOR AN
ORDER APPROVING
THE AMENDED
PROCEDURE FOR
THE LIQUIDATOR'S
ADJUDICATION OF
CLAIMS**

-----x

Mary Jo Marchisello, Assistant Special Deputy Superintendent and Agent of Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York ("Superintendent") as liquidator ("Liquidator") of Professional Liability Insurance Company of America ("PLICA"), respectfully petitions this Court for an order: (i) approving an amended procedure for judicial review of the Liquidator's adjudication of claims filed in this proceeding ("Amended Procedure") and (ii) granting such other and further relief this Court may deem just and proper under the circumstances. I respectfully show and allege the following upon information and belief:

1. I am a duly appointed agent of the Superintendent as Liquidator of PLICA.
2. PLICA was placed into rehabilitation and the then-Superintendent of Insurance of the State of New York, and his successors in office, were appointed as rehabilitator ("Rehabilitator") of PLICA by an order of the Supreme Court of the State of New York, New York County (Index No. 400986/2010) entered April 30, 2010.
3. By order dated, August 17, 2011, this Court approved the Rehabilitator's procedures for the judicial review of the adjudication of claims in the PLICA rehabilitation proceeding and appointed the Honorable Edward H. Lehner as Referee.

4. In November 2012, the Rehabilitator submitted an application to this Court seeking an order placing PLICA into liquidation, and by order of this Court entered February 10, 2014, PLICA was placed into liquidation and the Superintendent, and his successors in office, were appointed as Liquidator of PLICA.

5. The Liquidator determines the classification of timely filed claims under Section 7434 of the New York Insurance Law (“Insurance Law”) and may make a determination to allow or disallow such claims in the proceeding. If a party objects to the Liquidator’s determination, the party may apply for relief in the liquidation proceeding.

6. The Liquidator is seeking approval of the Amended Procedure to update the existing procedures to better fit the liquidation context. The changes are intended to clarify certain aspects of the process and to assist the Liquidator in expediting the resolution of claims and prevent the unnecessary expenditure of estate assets.

7. The Amended Procedure, which is set forth below, authorizes the Liquidator to issue notices of determination (“NOD”) and provides that a claimant will be bound by the adjudication unless the claimant objects in writing. This will enable the Liquidator to expedite the resolution of claims, reduce expenses and eliminate the need for the Court to consider a large number of motions. Copies of proposed NODs are attached hereto as Exhibit 2.

8. The Amended Procedure is required for the continued orderly administration of the PLICA estate in liquidation.

9. The Amended Procedure will enable the Liquidator to continue to resolve claims on an ongoing basis and provide due process to all claimants who object to an NOD.

10. The Amended Procedure is as follows:

- a) The Liquidator shall serve each claimant with a NOD for each claim submitted timely to the Liquidator. Service shall be made by first class mail

to the claimant's last known address, and if a representative, such as an attorney or broker, submits a claim on a claimant's behalf, to the address of such representative.

- b) The NOD shall advise each claimant of the following information:
- (i) The Liquidator's determination of the specific class of claim under Insurance Law Section 7434 in which the claim falls;
 - (ii) The Liquidator's recommendation that the claim be allowed and the amount of the recommended allowance, or that the claim be disallowed and the reason therefor;
 - (iii) No further action by the claimant is required if the claimant accepts the Liquidator's recommendation;
 - (iv) The claimant may object to the NOD by serving a written objection on the Liquidator prior to the last day for filing such objection, which is expressly set forth in the NOD and shall be sixty (60) days after the date of mailing the NOD;
 - (v) The Liquidator's recommendation will be presented to this Court for approval and the claimant's right to share in a distribution of assets, pursuant to Insurance Law Section 7434, will be fully and finally determined unless the claimant objects as set forth herein;
 - (vi) In the event the claimant makes a timely written objection, the Liquidator will contact the claimant to attempt to resolve the objection and, if resolved, will seek allowance of the agreed upon amount of the claim. If the objection cannot be resolved and the claimant requests a hearing, then the Liquidator will contact the claimant and the court-appointed Referee to initiate a pre-hearing conference;
 - (vii) The court-appointed Referee will hear and report on the validity of the claimant's unresolved objections; and
 - (viii) Either the claimant or the Liquidator may petition this Court, on notice, for an order confirming the Referee's report.

- c) The Liquidator shall move, ex-parte, at least seventy-five (75) days (or a lesser period if agreed by the claimant), but not more than ninety (90) days after the date of the NOD, for an order approving the Liquidator's recommendations for adjudication of all claims for which no objections are timely received.
- d) In the event that a claimant shall request a hearing pursuant to item 8(b)(vi), the Liquidator shall contact the claimant in writing ("Scheduling Notice") at the address set forth on the NOD (or such other address as the claimant has provided to the Liquidator in writing for the purpose of providing communication in respect of such NOD) to schedule a pre-hearing conference. If the claimant fails to respond in writing to the Scheduling Notice within forty-five (45) days of mailing of the Scheduling Notice, the objection is forfeited and the NOD is deemed accepted as set forth in item 8(b)(iii). In addition, if a claimant neglects its claim and fails to take the steps necessary to have its objection heard, the court-appointed Referee may issue a denial of the claimant's objection.

11. The Liquidator is authorized, in his sole discretion, to settle claims at any time during the adjudication process.

12. In the event that the Liquidator fails to timely meet any of the time periods set for mailing or delivering a notice required by this Order, it shall not affect the validity of the allowance but shall entitle the party that did not receive timely notice to postpone the approval process until such date as that party's right to be notified shall have been adequately protected.

13. Insurance Law Section 7434 provides an order of priority of claims that is summarized below:

Class One – Administrative Claims

Claims with respect to the actual and necessary costs and expenses of administration incurred by the Liquidator;

Class Two – Claim and Related Costs

All claims under policies including claims of the federal, state or local government for losses incurred, third-party claims, claims for unearned premiums, and all claims of the security fund guaranty associations, but excluding claims arising under reinsurance contracts;

Class Three – Federal and Government Claims

Claims of the federal government, except those stated above in Class two;

Class Four – Employee Claims

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;

Class Five – State and Local Government Claims

Claims of state and local governments, except those stated above in Class two;

Class Six – General Creditor Claims

Claims of general creditors, including, but not limited to, claims under reinsurance contracts;

Class Seven – Late Filed Claims

Claims filed late or any other claims other than claims under Class eight or Class nine below;

Class Eight – Section 1307 Loans

Claims for advanced or borrowed funds made pursuant to Insurance Law Section 1307; and

Class Nine – Shareholder Claims

Claims of shareholders or other owners in their capacity as shareholders.

14. Insurance Law Section 7434 further provides that every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. Accordingly, the NOD will be issued based on the classes established in Insurance Law Section 7434.

15. The Amended Procedure authorizes the Liquidator to issue NODs and provides that a claimant will be bound by the adjudication unless the claimant objects in writing. This will enable the Liquidator to expedite the resolution of claims, reduce expenses, and eliminate the need for this Court to consider a large number of motions. By providing each claimant with sixty (60) days in which to object to the Liquidator's recommended allowance or disallowance, the Amended Procedure, provides due process to all claimants.

16. The Liquidator will contact the claimants and the court-appointed Referee to initiate a pre-hearing conference. The Referee will take evidence and report to this Court on

objections filed by claimants and the position of the Liquidator regarding the claim, so that all disputed claims may be adjudicated.

17. The Liquidator will schedule hearings on objections to NODs in accordance with the priority scheme outlined in Insurance Law Section 7434 and schedule the adjudication of class two claims before claims assigned to a lower priority. This will enable the Liquidator to use estate resources effectively by adjudicating only those classes of claims which are anticipated to receive distributions of estate assets.

18. If a claimant objects to a NOD but fails to respond in writing to the Scheduling Notice within forty-five (45) days of the mailing of the Scheduling Notice the objection is forfeited and the NOD is deemed accepted. In addition, if a claimant neglects their claim and fails to take the steps necessary to have their objection heard, the court-appointed Referee may issue a denial of the claimant's objection. These provisions serve to conserve the estate assets, avoid unnecessary litigation and help expedite the closure of the estate.

19. Whenever it shall appear to the Liquidator that disputed claims against which objections have been filed should be compromised, settled or adjusted, the Liquidator may compromise, settle or adjust said claims upon agreement of the claimant, without the necessity of a report from the Referee.

20. This Verified Petition seeks the issuance of an order ("Order") that: (i) approves the Amended Procedure and (ii) grants such other and further relief this Court may deem just and proper under the circumstances.

21. The Liquidator also requests that this Court issue the accompanying Order to Show Cause approving: (i) a return date ("Return Date") for a hearing ("Hearing") on the Verified Petition to be held before this Court at least thirty (30) days after the date of issuance of

the Order to Show Cause; (ii) the form of notice to be given to PLICA's policyholders, creditors and others interested in the affairs of PLICA regarding the Verified Petition and the Hearing ("Notice"), a copy of which is attached hereto as Exhibit 1; and (iii) the method of service of the Notice, i.e., by: (a) posting on the Internet web page maintained by the NYLB at <http://www.nylb.org> at least fifteen (15) days before the Return Date and (b) publication in Business Insurance, or a publication of similar circulation, such publication to occur in two consecutive issues thereof, commencing within the thirty (30) days following entry of the Order to Show Cause, such service shall be deemed good and sufficient service.

22. There has been no previous application for the relief requested herein.

WHEREFORE, it is respectfully requested that this Court enter an order: (i) approving the Amended Procedure and (ii) granting such other and further relief this Court may deem just and proper under the circumstances.

Dated: New York, New York
August 28, 2014

Benjamin M. Lawskey
Superintendent of Financial Services
of the State of New York as Liquidator of
Professional Liability Insurance Company of
America

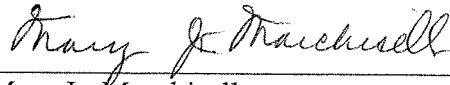
By: Mary Jo Marchisello
Mary Jo Marchisello
Assistant Special Deputy Superintendent and
Agent of Benjamin M. Lawskey,
Superintendent of Financial Services of the
State of New York as Liquidator of
Professional Liability Insurance Company of
America

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

Mary Jo Marchisello, being duly sworn, deposes and says:

That she has read the foregoing Verified Petition, and that the same is true based upon information and belief as to those matters stated therein. Deponent further says that the sources of her information and the grounds of her belief as to the matters alleged therein are from or were derived from the files of Professional Liability Insurance Company of America in the possession of the Liquidator and communications made to deponent by employees of the Liquidator.

That the reason this petition is verified by this deponent rather than by the Superintendent of Financial Services of the State of New York is that deponent is the duly appointed Assistant Special Deputy Superintendent and Agent of the Superintendent of Financial Services of the State of New York as Liquidator of Professional Liability Insurance Company of America.



Mary Jo Marchisello
Assistant Special Deputy Superintendent and
Agent of Benjamin M. Lawsky,
Superintendent of Financial Services of the
State of New York as Liquidator of
Professional Liability Insurance Company of
America

Sworn to before me this
28th day of August, 2014


Notary Public

MEISSA A. DELL'ORTO
Notary Public, State of New York
No. 02DE6287864
Qualified in Queens County
Commission Expires August 26, 2017

MEISSA A. DELL'ORTO
Notary Public, State of New York
No. 02DE6287864
Qualified in Queens County
Commission Expires August 26, 2017

EXHIBIT 1

**IN THE MATTER OF THE LIQUIDATION OF
PROFESSIONAL LIABILITY INSURANCE COMPANY OF AMERICA
Supreme Court County of New York
Index No.: 400986/2010**

NOTICE

Pursuant to an order of the Supreme Court of the State of New York, County of New York ("Court"), entered on February 10, 2014, the Superintendent of Financial Services of the State of New York and his successors in office were appointed as liquidator ("Liquidator") of Professional Liability Insurance Company of America ("PLICA") and, as such, has been directed to take possession of PLICA's property and liquidate its business and affairs pursuant to Article 74 of the New York Insurance Law ("Insurance Law"). The Liquidator has, pursuant to Insurance Law Article 74, appointed Scott D. Fischer, Acting Special Deputy Superintendent ("Acting Special Deputy"), as his agent to liquidate the business of PLICA. The Acting Special Deputy carries out his duties through the New York Liquidation Bureau, 110 William Street, New York, New York 10038. The Liquidator has submitted to the Court a verified petition ("Verified Petition") seeking an order: (i) approving an amended procedure for judicial review of the Liquidator's adjudication of claims filed in this proceeding ("Amended Procedure") and (ii) granting such other and further relief this Court may deem just and proper under the circumstances.

A hearing is scheduled on the Verified Petition on the ___ day of _____, 2014, at ___:___ .m., before the Court at the Courthouse, IAS Part 21, 80 Centre Street, Room _____, New York, New York. If you wish to object to the Verified Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Liquidator and Clerk of the Court, at least seven (7) business days prior to the hearing. 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 Professional Liability Insurance Company of America
110 William Street
New York, New York 10038
Attention: John Pearson Kelly, Esq.
General Counsel

The Verified Petition and Closing Report on the status of and request to close the Liquidation Proceeding are available for inspection 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 New York Liquidation Bureau, Creditor and Ancillary Operations Division, at (212) 341-6809.

Dated: [Insert Date]

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

EXHIBIT 2

Claimant Name
Claimant Address
Claimant Address
Attn:

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

-----X
In the Matter of

Notice of Determination
of Allowance

the Liquidation of

Index No.: 400986/2010

PROFESSIONAL LIABILITY INSURANCE
COMPANY OF AMERICA.

-----X

Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as liquidator ("Liquidator") of Professional Liability Insurance Company of America hereby gives notice that the claim set forth below has been examined and he will recommend that it be allowed as a Class ___ claim in the amount set forth below. You will be entitled to share in distributions of assets, if any, pursuant to New York Insurance Law ("Insurance Law") Section 7434, to be made by the Liquidator based on the amount allowed.

If you accept the Liquidator's recommendation, you are not required to take any further action. The recommendation will be presented to the Court for approval and your rights, pursuant to Article 74 of the Insurance Law will be fully and finally determined.

If you object to the Liquidator's recommendation the Liquidator must receive your written objection(s) and all supporting documentation within 60 days after the date of mailing the NOD by U.S. mail at the address below.

**Creditor and Ancillary Operations Division
New York Liquidation Bureau
110 William Street
New York, NY 10038-3889
Attn: Objection Unit, 16th Floor**

If you make a timely written objection, the Liquidator's staff will contact you. If the objection is resolved, the Liquidator will seek allowance of the agreed upon amount of the claim. If the objection cannot be resolved, and you request a hearing, the Liquidator will contact you and the court-appointed referee to initiate a pre-hearing conference.

If you have any questions concerning this notice, you may contact Benny Thomas at (212) 341-6241.

Dated:
New York, New York

Benjamin M. Lawsky
Superintendent of Financial Services
of the State of New York
as Liquidator of Professional Liability
Insurance Company of America

Claimant:
Liq No.:
Policy No.
Claim No.
Amount Allowed:

Claimant Name
Claimant Address
Claimant Address
Attn:
Notice of Determination and Acknowledgement

ACKNOWLEDGMENT OF RECEIPT

_____ I hereby acknowledge receipt of the [Date] Notice of Determination as a claimant. By signing this Acknowledgment of Receipt, I understand and **agree** to the content of the Notice of Determination.

_____ I hereby acknowledge receipt of the [Date] Notice of Determination as a claimant. By signing this Acknowledgment of Receipt, I understand and **object** to the content of the Notice of Determination.

I request Professional Liability Insurance Company of America ("PLICA") mail future correspondence to:

_____ Same address as above

_____ New address

Acknowledgment of Receipt must be completed, signed and returned to PLICA in order to be eligible for future distributions, if any, as directed by the Supervising Court.

Date _____

Claimant
(Please Sign)

(Please Print)

Claimant Name
Claimant Address
Claimant Address
Attn:

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

-----X
In the Matter of

Notice of Determination
of Disallowance

the Liquidation of

Index No.: 400986/2010

PROFESSIONAL LIABILITY INSURANCE
COMPANY OF AMERICA.
-----X

Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York as liquidator ("Liquidator") of Professional Liability Insurance Company of America hereby gives notice that the claim set forth below has been examined and that he will recommend to the Court that the claim be disallowed for the reason(s) set forth below.

If you accept the Liquidator's recommendation, you are not required to take any further action. The recommendation will be presented to the Court for approval and your rights, pursuant to Article 74 of the New York Insurance Law, will be fully and finally determined.

If you object to the Liquidator's recommendation, the Liquidator must receive your written objection(s) and all supporting documentation within 60 days after the date of mailing the NOD by U.S. mail at the address below.

**Creditor and Ancillary Operations Division
New York Liquidation Bureau
110 William Street
New York, NY 10038-3889
Attn: Objection Unit, 16th Floor**

If you make a timely written objection, the Liquidator's staff will contact you. If the objection is resolved, the Liquidator will seek allowance of the agreed amount of the claim. If the objection cannot be resolved, and you request a hearing, the Liquidator will contact you and the court-appointed referee to initiate a pre-hearing conference.

The Liquidator reserves the right to raise any other reasons in support of his denial of your claim(s) as further defenses arise during litigation.

If you have any questions concerning this notice you may contact Benny Thomas at (212) 341-6241.

Dated:
New York, New York

Benjamin M. Lawsky
Superintendent of Financial Services
of the State of New York
as Liquidator of Professional Liability
Insurance Company of America

Claimant Name:
Liq Claim No.:
Policy No.
Co. Claim No.
Amount Recommended for Disallowance:
Reason for Disallowance:

Claimant Name
Claimant Address
Claimant Address

Attn:

Notice of Determination and Acknowledgement

ACKNOWLEDGMENT OF RECEIPT

_____ I hereby acknowledge receipt of the [Date] Notice of Determination as a claimant. By signing this Acknowledgment of Receipt, I understand and **agree** to the content of the Notice of Determination.

_____ I hereby acknowledge receipt of the [Date] Notice of Determination as a claimant. By signing this Acknowledgment of Receipt, I understand and **object** to the content of the Notice of Determination.

I request Professional Liability Insurance Company of America ("PLICA") mail future correspondence to:

_____ Same address as above

_____ New address

Date _____

Claimant
(Please Sign)

(Please Print)

