

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

KENT T. STAUFFER
EXECUTIVE DEPUTY ATTORNEY GENERAL
DIVISION OF STATE COUNSEL

LISA R. DELL
ASSISTANT ATTORNEY GENERAL IN CHARGE
LITIGATION BUREAU

WRITER'S TELEPHONE (212) 416-8301

VIA ECF AND HAND DELIVERY

December 17, 2013

Honorable Eileen A. Rakower, J.S.C.
Supreme Court of the State of New York
80 Centre Street
Room 327
New York, New York 10013

Re: In the Matter of the Application of Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York, for an order to take possession and liquidate the business and affairs of ICM Insurance Company, Index No. 452122/2013 (Sup. Ct. N.Y. Co.)

Dear Justice Rakower:

This Office represents the Superintendent of Financial Services of the State of New York ("Superintendent") in connection with the above-captioned proceeding, in which the Superintendent has petitioned this Court for an order of liquidation of ICM Insurance Company ("ICM"). The petition was brought by Order to Show Cause, signed by this Court on November 25, 2013, which set a return date of December 23, 2013. The petition contains a number of requests for relief.

I write to advise the Court that a creditor of ICM has contacted this Office to object to one provision in the request for relief in the Verified Petition, which would require modification of the proposed order of liquidation ("Proposed Order"), which was included with the Verified Petition for the Court's convenience. The Superintendent agrees with this suggested modification and wishes to bring it to the Court's attention in advance of next Monday's hearing.

The provision in question is paragraph 15 of the request for relief in the Verified Petition, which reads as follows:

(15) directing that the Liquidator refrain from adjudicating claims other than claims under insurance policies unless and until there is a reasonable basis upon which to conclude that all claims under insurance policies are paid in full;

See Verified Petition, at 14. The creditor suggests, and the Superintendent agrees, that paragraph 15 should have read as follows:

(15) authorizing the Liquidator, in his discretion, to refrain from adjudicating some or all claims falling into Classes three through nine (N.Y. Ins. Law Sec. 7434(a)(1)(iii)-(ix)) unless and until he reasonably believes that adjudication of such claims would be in the best interests of the estate.

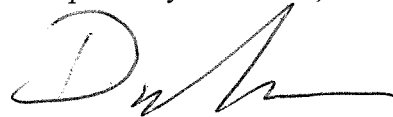
The relief requested in original paragraph 15 was sought in order to ensure that the Liquidator is not required to deplete estate assets in order to adjudicate claims that will not receive a distribution from the estate's assets. However, the creditor has noted that the Liquidator requires greater flexibility where circumstances warrant it. In particular, adjudicating lower-ranked claims may benefit the ICM estate because ICM's predecessor-in-interest entered into reinsurance agreements with third-parties. The obligations of ICM under those reinsurance agreements were, in turn, ceded to another reinsurer. Under Section 7434 of the New York Insurance Law, which classifies claims against liquidating property/casualty insurers, claims in respect of the ICM-provided reinsurance are of lower rank than claims against insurance policies provided by ICM. See N.Y. Ins. L. §7434(a)(1)(ii)-(vi). If the Liquidator receives, adjudicates and allows a lower-ranked reinsurance claim against ICM, the Liquidator will then be permitted to make a claim for payment in respect of the allowed claim against ICM's reinsurer. Funds realized from ICM's reinsurer will inure to the benefit of the estate generally. Claims against ICM-provided reinsurance may never materialize, but in the event that they do, it is preferable that the Liquidator have the flexibility to adjudicate them without seeking this Court's further approval. Thus, the Proposed Order (which did not previously include reference to this request for relief) should be modified to include this relief.

Separately, I wish to advise the Court that the Proposed Order should also be modified due to the resignation of ICM's Executive Vice President, Robert Palm. The Proposed Order currently provides that service of the order of liquidation, if signed, would be made on Mr. Palm. Due to his resignation, it is respectfully submitted that service of the Proposed Order should be made on ICM's counsel, Katten Muchin Roseman LLP. I am advised that ICM's counsel has agreed to accept such service.

A revised form of the Proposed Order consistent with the above modifications is enclosed with this letter.

Finally, a copy of this letter (with the revised Proposed Order) is being provided, by overnight mail, to all parties that received service of the Order to Show Cause, and a copy will also be posted on the internet web page maintained by the New York Liquidation Bureau.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Holgado', with a long horizontal flourish extending to the right.

David P. Holgado

At IAS Part ___ of the Supreme Court of the State of New York, County of New York, at the courthouse located at _____, New York, New York, on the ___ day of _____, 2013.

P R E S E N T:

HON. _____, J.S.C
-----x

In the Matter of
the Application of

Index No.

ORDER OF LIQUIDATION

Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York, for an order to take possession and liquidate the business and affairs of

ICM INSURANCE COMPANY.
-----x

Benjamin M. Lawsky, Superintendent of Financial Services of the State of New York (“Superintendent”), having moved this Court by order to show cause (“Order to Show Cause”) for an order appointing the Superintendent and his successors in office as liquidator (“Liquidator”) of ICM Insurance Company (“ICM”) and directing the Liquidator to take possession of the property of ICM and to liquidate its business and affairs, and upon reading and filing the petition of the Superintendent, duly verified the 21st day of November, 2013, the affidavit of Jean Marie Cho, sworn to on November 21, 2013, and the exhibits annexed thereto, this Court finds that:

1. ICM was incorporated under the laws of the State of New York on or about September 23, 1981;

2. ICM is licensed to transact the business of insurance in accordance with paragraphs (4)–(7), (9), (12)–(14), and (19)–(21) of New York Insurance Law Section 1113(a) (“Insurance Law”);

3. ICM’s principal office, as disclosed in its Quarterly Statement as of March 31, 2013, is located at 521 Fifth Avenue, New York, NY 10175;

4. On September 18, 2013, ICM’s Board of Directors unanimously passed a resolution consenting to the entry of a liquidation order pursuant to Insurance Law Article 74;

5. ICM is insolvent;

6. ICM is subject to the Insurance Law and, particularly, to Article 74 thereof;

7. It is in the best interest of all persons concerned that, based upon Article 74 of the Insurance Law, the Superintendent should be appointed Liquidator and directed to take possession of the property of ICM, to liquidate its business and affairs, and be vested with title to all of ICM’s property, contracts and rights of action; and

NOW, on motion of the Honorable Eric T. Schneiderman, Attorney General of the State of New York, it is hereby

ORDERED as follows:

1. The relief requested in the petition for an order of liquidation (“Order”) is granted and ICM is declared to be insolvent;
2. The Superintendent is appointed Liquidator of ICM and is: (i) vested with all powers and authority expressed or implied under Insurance Law Article 74, in addition to the powers and authority set forth in this Order; (ii) vested with title to ICM’s property, contracts, rights of action and all of its books and records, wherever located, as of the date of entry of this Order; and (iii) directed to liquidate ICM’s business and affairs in accordance with Insurance Law Article 74;
3. The Liquidator may deal with the property and business of ICM in ICM’s name or in the name of the Liquidator;

4. All persons are permanently enjoined and restrained from wasting the assets of ICM and permanently enjoined and restrained, except as authorized by the Liquidator, from disposing of ICM's property;
5. The officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates of ICM and all other persons other than the Liquidator and his agents are permanently enjoined and restrained from: (i) transacting ICM's business, except as authorized by the Liquidator; or (ii) interfering with this proceeding or the Liquidator in the possession, control and management of ICM's property or in the discharge of his duties;
6. All persons are permanently enjoined and restrained from commencing or prosecuting any action or proceeding against ICM, the Liquidator or the New York Liquidation Bureau ("Bureau"), or their present or former employees, attorneys or agents with respect to this proceeding or the discharge of their duties under Article 74 in relation thereto;
7. All persons are permanently enjoined and restrained from obtaining any preference, judgment, attachment or other lien, or making any levy against ICM, its assets or any part thereof;
8. All parties to actions, lawsuits, and special or other proceedings (other than those brought by ICM) in which ICM, its policyholders or insureds are a party or obligated to defend a party or to provide a defense of any matter insured pursuant to an insurance policy, bond, contract or otherwise are enjoined and restrained from proceeding with any discovery, court proceeding or other litigation task or procedure, 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 this Order;
9. All persons who have first party policyholder loss claims are enjoined and restrained from presenting and filing claims with the Liquidator for a period of 90 days from the date of entry of this Order;
10. The Liquidator is vested with all rights in ICM's contracts and agreements, including leases, tax agreements, insurance policies and employment contracts, however described, unless the Liquidator expressly terminates such contracts or agreements, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of termination;
11. The Liquidator is authorized, permitted and allowed to sell, assign or transfer any and all stocks, bonds or other securities of ICM at the best price obtainable at such times and upon such terms and conditions as, in

his discretion, he deems to be in the best interest of the creditors of ICM, and he is further authorized 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;

12. ICM and each of its officers, directors, shareholders, members, depositories, trustees, policyholders, agents, servants, employees, attorneys, managers and affiliates, and all firms, corporations, associations and other persons or entities having any property, papers (including attorney work product) and/or information, including, but not limited to, insurance policies, underwriting data, reinsurance contracts, claims files (electronic or paper), software programs, and/or bank records owned by, belonging to or relating to ICM, 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;
13. Any person or entity providing claims processing services, data processing services, electronic records retention services or other information technology services to ICM shall maintain and preserve all information in its possession relating in any way to ICM, wherever located, including but not limited to all documents, data, electronic files and records, computer equipment (*i.e.*, servers and printers), software programs and software licenses owned or leased by ICM and is directed, upon the Liquidator's request, to promptly submit all such information to the Liquidator or his designees;
14. Any bank, savings and loan association, other financial institution or any other entity or person, which has on deposit or in its possession, custody or control any of ICM's funds, accounts (including escrow accounts) or assets shall immediately, upon the Liquidator's request and direction: (i) turn over custody and control of such funds, accounts or assets to the Liquidator; (ii) transfer title of such funds, accounts or assets to the Liquidator; (iii) change the name of such accounts to the name of the Liquidator; (iv) transfer funds from such bank, savings and loan association or other financial institution; and/or (v) take any other action necessary for the proper conduct of the liquidation proceeding;
15. Any distribution of assets shall be in accordance with the priorities set forth in Insurance Law Article 74;
16. In accordance with Insurance Law Section 7405(f), the Liquidator is hereby permitted to make distributions of ICM's assets to the New York Property/Casualty Insurance Security Fund and similar guaranty funds of other states in accordance with such statute, and any agreement to be

entered into among the Liquidator and such guaranty fund is hereby approved and the Liquidator is authorized to enter into and perform such agreement;

17. All existing insurance policies of ICM shall terminate at 12:01 A.M. local time on the earliest of 30 days from the entry of this order, 30 days from the giving of notice of such cancellation, if such notice is required by an insurance policy or applicable law, or upon the date and time stated in the policy;
18. May 16, 2014 is the bar date by which all claims by any claimant against ICM or its insureds, other than the Liquidator's claims for administrative expenses, must be actually received by the Liquidator;
19. December 31, 2014 is the final date by which evidence supporting the liquidation of any claim presented by the foregoing bar date must be actually received by the Liquidator;
20. The Liquidator, in his discretion, is authorized to refrain from adjudicating some or all claims falling into Classes three through nine (N.Y. Ins. Law Sec. 7434(a)(1)(iii)-(ix)) unless and until he reasonably believes that adjudication of such claims would be in the best interests of the estate;
21. Immunity is extended to the Superintendent in his capacity as Liquidator of ICM and his successors in office and their agents and employees, including the Bureau, 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;
22. The Liquidator may at any time make further application to this Court for such further and different relief as he sees fit;
23. The Liquidator shall serve the copy of this Order upon: Marc Tract, Katten Muchin Roseman LLP, 575 Madison Ave, New York, NY 10022, attorneys for ICM Insurance Company, by overnight delivery or by certified mail;
24. The Liquidator shall provide notice of this Order to all creditors, claimants and interested persons by: (i) publication of the notice of this Order in *The New York Times*, National Edition, once a week for two consecutive weeks, commencing within thirty days of entry of this Order in a form substantially similar to the one attached hereto as Exhibit A; and (ii) posting this Order on the Internet web page maintained by the Bureau at <http://www.nylb.org> within 15 days after the entry of this Order;

25. Such notice shall inform all creditors, claimants and other interested persons that this Order has been entered;
26. The notice prescribed in decretal paragraphs 23 and 24 hereof is sufficient notice to all persons interested in ICM;
27. This Court shall retain jurisdiction over this matter for all purposes;
28. The caption for this proceeding is hereby amended as follows:

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

-----X

In the Matter of

the Liquidation of

ICM INSURANCE COMPANY.

-----X

29. All further papers in this proceeding shall bear the above amended caption.

E N T E R

J.S.C.

EXHIBIT A

[Form of Notice]