

At IAS Part 15 of the Supreme Court of the State of New York, County of New York, at the courthouse located at ~~80 Centre~~ New York, New York, on the 25 day of NOV, 2013.

PRESENT: **HON. EILEEN A. RAKOWER**

HON. \_\_\_\_\_, J.S.C.  
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In the Matter of  
the Application of

Index No. 452122-13

**ORDER TO SHOW CAUSE**

Benjamin M. Lawsby, 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.  
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Based on the verified petition ("Verified Petition") of Benjamin M. Lawsby, Superintendent of Financial Services of the State of New York ("Superintendent"), duly verified on the 21st day of November, 2013, the supporting Affidavit of Jean Marie Cho, dated November 21, 2013, and the exhibits 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 ICM Insurance Company ("ICM"), <sup>or counsel appear and</sup> show cause before this Court at IAS Part 15 Room 327, thereof, at the Courthouse located at 80 Centre St in the County, City and State of New York, on the 23 day of DEC, 2013, at 10 o'clock A.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 his successors in office, as liquidator ("Liquidator") of ICM; (2) directing the Liquidator to take possession of ICM's property and to liquidate ICM's business and affairs; (3) vesting title to all of ICM's property, contracts and rights of action with the Liquidator and his successors; (4) granting the injunctions provided for in Insurance Law Section 7419, permanently enjoining and restraining all persons from wasting the assets of ICM, and permanently enjoining and restraining all persons, except as authorized by the Liquidator, from transacting ICM's business (including the issuance of new or renewal insurance policies) or disposing of ICM's property, interfering with the Liquidator or this proceeding, obtaining any preference, judgment, attachment or other lien, or making any levy against ICM, its assets or any part thereof; (5) granting the injunctions provided for in Insurance Law Section 7419, permanently enjoining and restraining all parties from commencing or prosecuting any action or proceeding against the Liquidator, ICM, or 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 Article 74 in relation thereto; (6) granting injunctions enjoining and restraining 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 provide a defense of any matter insured pursuant to an insurance policy, bond, contract or otherwise, 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 an order of liquidation; (7) enjoining and restraining all persons who have first party policyholder loss claims, from presenting and filing claims with the Liquidator for a period of 90

days from the date of entry of an order of liquidation; (8) vesting all rights in ICM's contracts and agreements, including leases, tax agreements, insurance policies and employment contracts, however described, with the Liquidator, 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; (9) requiring that 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: (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/or (e) take any other action necessary for the proper conduct of the liquidation proceeding; (10) requiring that all persons or entities having property, papers (including attorney work product) 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 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; (11) authorizing, permitting and allowing the Liquidator to sell, assign or transfer any and all stocks, bonds, or other securities 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 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; (12) cancelling all existing insurance policies of ICM at 12:01 A.M. local time on the earliest of 30 days from the entry of an order of liquidation of ICM, 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; (13) authorizing the Liquidator, pursuant to Insurance Law Section 7405(f), to make "early access distributions" of ICM's assets to the Guaranty Funds (as defined in the Verified Petition) in accordance with such statute and an agreement to be entered into between the Liquidator and the Guaranty Funds, and authorizing and approving such agreement; (14) establishing (a) May 16, 2014, as 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, and (b) December 31, 2014 as the final date by which evidence supporting the liquidation of any claim presented by the bar date must be actually received by the Liquidator; (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 will be paid in full; (16) extending immunity to the Superintendent in his capacity as Liquidator of ICM and his successors in office and their agents and employees, including the New York Liquidation 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; (17) declaring ICM insolvent; and (18) granting such other and further relief as the Court may deem proper and just.

AND, sufficient cause having been shown therefor, let service of a copy of this order to show cause and the papers upon which it is granted be made by: (i) certified mail, return receipt requested, upon Robert G. Palm, Executive Vice President, ICM Insurance Company, 521 Fifth

Avenue, Suite 530, New York, NY 10175, and 1981 Marcus Ave, Suite C101, Lake Success, NY 11042; (ii) the following Guaranty Funds and Insurance Commissioners: David C. Edwards, President, Colorado Insurance Guaranty Association, c/o Western Guaranty Fund Services 1720 S. Bellaire Street, Ste., 408, Denver, CO 80222; Marguerite Salazar, Commissioner, Colorado Division of Insurance, 1560 Broadway, Denver, CO 80202; Marvin Kelly, Executive Director, Texas Property and Casualty Insurance Guaranty Association, 9120 Burnet Road, Austin, TX 78758; Julia Rathgeber, Commissioner, Texas Department of Insurance, 333 Guadalupe, Austin, TX 78701; Allen Muhlestein, Executive Director, Utah Property and Casualty Insurance Guaranty Association, P.O. Box 1608, Sandy, UT 84091; Todd E. Kiser, Commissioner, Utah Insurance Department, 3110 State Office Building Salt Lake City, UT 84114; Randy Blumer, Executive Director, Wisconsin Insurance Security Fund, 2820 Walton Commons West, Ste. 135, Madison, WI 53718; and Ted Nickel, Commissioner, Office of the Commissioner of Insurance, 125 South Webster Street Madison, Wisconsin 53703; posting in 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

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 at the following addresses:

Office of the Attorney General  
120 Broadway, 24th Floor  
New York, NY 10271  
Attention: David Holgado

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 15 at the Courthouse located at 80 Centre ST, New York, New York, on or before the Return Date; 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 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; and it is further

ORDERED, that pending the <sup>hearing</sup>~~determination~~ of this motion, ICM, its officers, directors, shareholders, members, trustees, agents, servants, employees, policyholders, attorneys and managers, and all other persons are hereby restrained from obtaining preferences, judgments, attachments or other liens, or making any levy or commencing or prosecuting any action or proceeding against ICM or its assets; and it is further

ORDERED, that pending the <sup>hearing</sup>~~determination~~ on this motion, all actions or proceedings against ICM and all actions or proceedings in which ICM is obligated to defend a party are stayed; and it is further

ORDERED, that pending the <sup>hearing</sup>~~determination~~ on this motion, ICM, its officers, directors, shareholders, members, trustees, agents, servants, employees, policyholders, attorneys, managers, and all other persons are restrained from wasting the assets of ICM, or, except as

authorized by the Superintendent, from transacting ICM's business (including the issuance of new or renewal insurance policies) or disposing of ICM's property.

Handwritten initials and scribbles, possibly "S.S.C."

Oral Argument  
Directed

JSC

ENTER

Handwritten signature of Eileen A. Rakower

J. S. C.

**HON. EILEEN A. RAKOWER**