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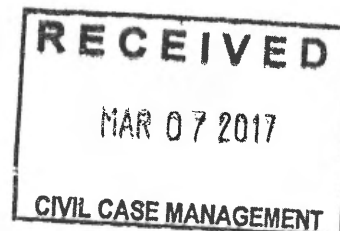
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March 7, 2017



DELIVERED BY HAND

Hon. Paul Innes, P.J.Ch.D.
Mercer County Civil Courts Building
175 S. Broad Street, 4th Floor
Trenton, NJ 08650

Re: I/M/O IFA Insurance Company
Docket No. C-
Petition for Liquidation

Dear Judge Innes:

Please accept this letter brief in support of the Petition for Liquidation of IFA Insurance Company ("IFA") filed by the Commissioner of Banking and Insurance ("Commissioner"). Along with this letter brief, the Commissioner relies on the Certification of Steven P. Kerner, Jr., Assistant Commissioner in the Office of Solvency Regulation. We are also submitting to the court a form of Order to Show Cause and a form of Order of Liquidation.

IFA is a New Jersey-domiciled insurance company. As set forth in the accompanying Certification, the Commissioner



has determined that IFA is insolvent and is in a hazardous financial condition. The Commissioner therefore respectfully requests that the court grant this petition and enter the Order to Show Cause and, ultimately, an Order of Liquidation.

As set forth below, due to IFA's insolvency, significant cash flow difficulties, and the fact that IFA's Risk-Based capital ("RBC") is at mandatory control event level, the Commissioner respectfully requests that Your Honor consider his petition on an expedited basis.

STATEMENT OF FACTS

IFA is a New Jersey property and casualty insurer licensed to transact insurance business in New Jersey. IFA was incorporated on December 11, 1972, and authorized to transact private passenger automobile insurance business as of December 4, 1973. Certification of Steven P. Kerner, Jr. ("Kerner Cert."), ¶2. IFA is a wholly-owned subsidiary of Independent Financial Agents, Inc., which maintains its office at the same location as IFA. Ibid. IFA is also authorized to transact private passenger automobile insurance business in Pennsylvania, Maryland and Delaware. Kerner Cert., ¶3. As of February 24, 2017, IFA had only 418 policies in force, all of which are in Maryland. IFA has no active policies in force in New Jersey, Pennsylvania, and Delaware. Kerner Cert., ¶4.

IFA is insolvent, as defined at N.J.S.A. 17:30C-1a and the Commissioner has found that it is in a hazardous financial condition pursuant to N.J.A.C. 11:2-27.3 as follows:

- IFA's liabilities, required reserves, and capital stock exceed its assets by \$4,568,676. Kerner Cert., ¶¶14-16.
- IFA's capital and surplus as regards policyholders decreased from \$661,674 as of September 30, 2016 to \$(2,074,641) as of February 15, 2017. Kerner Cert., ¶¶17-22.
- IFA is expected to run out of cash between the end of February 2017 and the end of March 2017, and its asset portfolio is inadequate to meet its outstanding obligations as they mature. Kerner Cert., ¶¶23-25.
- IFA had a net operating loss for the first nine months of 2016 of \$(2,558,748) as of September 30, 2016 -- (386.7) % of its surplus as regards policyholders of \$661,764. Kerner Cert., ¶¶26-29.
- IFA's cash position has significantly deteriorated such that it is expected to run out of cash to pay claims in the very near future. Kerner Cert., ¶31.
- IFA's capital and surplus is \$(1,938,236) less than the minimum required by law. Kerner Cert., ¶¶33-36.

In addition to all of the above, IFA has a projected Risk-Based Capital ("RBC") ratio of (730.257)%, as of February 15, 2017. This negative Risk-Based Capital ratio is a mandatory control level event that requires the Commissioner to take regulatory action. Kerner Cert., ¶¶35-38.

As part of its ongoing regulatory oversight of IFA, the Department had placed IFA under consensual and confidential administrative supervision on September 19, 2016 by entering into a Consent Order for Administrative Supervision ("CO") in order to monitor the run-off of its business. Kerner Cert., ¶8. In the Administrative Supervision CO,, IFA agreed to maintain, and consented to placement into liquidation if it failed to maintain, an RBC level of at least 1.000 at all times. IFA has reported to the Department that it has failed to maintain, and has no viable prospects of maintaining, a 100% RBC to enable a solvent run-off of its business. Moreover, IFA has reported that its cash position is significantly less than needed to cover its claims reserves, let alone covering its on-going operating expenses. Kerner Cert., ¶11. Therefore, the Commissioner entered into an Amended Consent Order of Administrative Supervision, Consent Order No. A17-106 ("Amended CO"), with IFA on March 3, 2017. Ibid. This Amended CO gives the Commissioner prior-approval of all expenditures so as to preserve as much of IFA's assets as possible, and in that same CO IFA consents to placement into liquidation. Ibid.

Moreover, the Boards of Directors of IFA and its ultimate parent holding company, Independent Financial Agents, Inc., have consented to IFA's liquidation by resolution. Kerner Cert., ¶41.

ARGUMENT

BOTH AN IMMEDIATE DECLARATION THAT
IFA IS INSOLVENT AND ENTRY OF THE
ORDER OF LIQUIDATION ARE NECESSARY
TO PRESERVE IFA'S ASSETS AND TO
PROTECT THE PUBLIC.

N.J.S.A. 17:30C-1 et seq. authorizes the Commissioner to petition the Superior Court for an Order of Liquidation if an insurer is insolvent, regardless of whether or not an Order of Rehabilitation has been previously entered. N.J.S.A. 17:30C-8b. Under N.J.S.A. 17:30C-8, the Commissioner may also apply for an Order of Liquidation upon any of the grounds for rehabilitation under N.J.S.A. 17:30C-6. Therefore, liquidation is appropriate if an insurer is "impaired or insolvent," N.J.S.A. 17:30C-6a; or "is found ... to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its stockholders, or to its creditors, or to the public," N.J.S.A. 17:30C-6f; or has consented to the entry of an order of liquidation, N.J.S.A. 17:30C-6k.

As discussed above, IFA is insolvent, as defined at N.J.S.A. 17:30C-1a. Kerner Cert., ¶¶14-16.. Thus, liquidation is appropriate under N.J.S.A. 17:30C-8 and -6a. As also discussed, IFA is in a condition such that its further transaction of business will be hazardous to its policyholders, or to its stockholders, or to its creditors, or to the public. Kerner Cert., ¶¶17-38.; and thus liquidation is necessary under N.J.S.A. 17:30C-8 and -6f. Finally, IFA, its Board of Directors, and its holding company's Board of Directors, have

explicitly consented to being placed into liquidation. Kerner Cert., ¶¶11, & 39-41. Thus, liquidation is appropriate and necessary under N.J.S.A. 17:30C-8 and -6k.

The Commissioner is authorized to seek an order of liquidation with respect to an insurer regardless of whether a prior order of rehabilitation has been issued regarding that insurer. N.J.S.A. 17:30C-8. The Commissioner has determined, in light of the decline of IFA's financial condition as described above, to proceed to place IFA directly into liquidation. Liquidation is necessary for the protection of IFA's policyholders, creditors and the public. An Order of Liquidation will allow IFA to run off its business, enable activation of the various guaranty funds in each state of its operation to assume payment of its claims, and prevent further accumulation of debts. Therefore, the Commissioner requests that this court immediately declare IFA to be insolvent and issue an Order of Liquidation.

An immediate declaration that IFA is insolvent and court approval for the liquidation of IFA are consistent with the grounds set forth in N.J.S.A. 17:30C-6 and -8. Furthermore, the Commissioner's decision to liquidate an insurance carrier is entitled to substantial deference because of the specialized nature of insurance generally and specifically, as here, in light of the Commissioner's financial expertise in making this type of decision. In re Assignment of Exposures to the Aetna Cas. & Sur. Co., 248 N.J.Super. 367, 376 (App. Div.), certif.

denied, 126 N.J. 385 (1991), cert. denied, 502 U.S. 1121, 112 S. Ct. 1244, 117 L. Ed. 2d 476 (1992); IFA Ins. Co. v. N.J. Dept. of Ins., 195 N.J. Super. 200, 208 (App. Div.), certif. denied, 99 N.J. 218 (1984). The Appellate Division reasoned in Fortunato v. N.J. Life Ins. Co., 254 N.J. Super. 420, 426-27 (App. Div. 1991), that because an insurance company's financial solvency necessarily threatens the justifiable interests of policyholders, creditors and the public, the Commissioner's "informed prediction" regarding the company's financial condition should be upheld if it is neither "arbitrary nor unreasonable."

The Commissioner's decision to petition this court for liquidation is reasonable for all of reasons discussed above. First, IFA is insolvent and rapidly running out of cash. The magnitude and speed of the deterioration of IFA's financial condition supports the Commissioner's determination. IFA has admitted that there is no reasonable possibility of a solvent run-off and has consented to liquidation.

Second, the Commissioner must protect the interests of the public by petitioning to liquidate the company. Prompt liquidation of IFA will allow the company to be run off in an orderly manner that will both protect claimants and maximize assets for potential creditors. Upon liquidation, the respective state guaranty funds in its states of operation can trigger and assume payment of policyholders automobile insurance claims pursuant to their statutory authorities; thus, ensuring


that policyholders are not unduly harmed by IFA's insolvency.

Finally, the public interest strongly favors granting the Commissioner's Petition for Liquidation. The Commissioner is charged with protecting the interests of IFA's policyholders, claimants, and creditors, as well as those of the general public. Liquidation is necessary to protect the interests of policyholders and claimants who would rely on an orderly run-off to fund outstanding claims. The public interest will not be served by allowing IFA to continue to lose money. Accordingly, the Commissioner has determined that IFA must be placed into liquidation, and a declaration of insolvency issued, as soon as possible.

For all of the foregoing reasons, the Commissioner requests that the court approve the Commissioner's petition to liquidate IFA as soon as possible.

Respectfully submitted,

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By: 

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