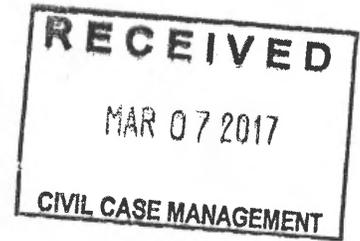


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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-

RICHARD J. BADOLATO,)
COMMISSIONER OF THE)
NEW JERSEY DEPARTMENT OF)
BANKING AND INSURANCE,)
)
Plaintiff,)

Civil Action

v.)

IFA INSURANCE COMPANY,)
)
Defendant.)

VERIFIED COMPLAINT FOR AN
ORDER TO SHOW CAUSE WITH
TEMPORARY RESTRAINTS
PURSUANT TO RULE 4:52 AS
TO WHY AN ORDER OF
LIQUIDATION AND
DECLARATION OF INSOLVENCY
SHOULD NOT BE ENTERED

Plaintiff, Richard J. Badolato, Commissioner of
Banking and Insurance ("Commissioner"), and his successors in

interest, with his principal office at 20 West State Street, Trenton, Mercer County, New Jersey, by way of complaint against defendant, IFA Insurance Company ("IFA"), says:

PARTIES

1. The Office of the Commissioner of the Department of Banking and Insurance ("Department") was created and now exists pursuant to N.J.S.A. 17:1-1 et seq.

2. The Commissioner is responsible for the regulation of, among others, property and casualty insurance companies domiciled in New Jersey.

3. IFA is a New Jersey domiciled property/casualty insurer licensed to transact insurance business in New Jersey. IFA was incorporated on December 11, 1972, and authorized to transact automobile liability and automobile liability property damage insurance coverage pursuant to N.J.S.A. 17:17-1 et seq. as of December 4, 1973. IFA is a wholly-owned subsidiary of Independent Financial Agents, Inc., which maintains its office at the same location as IFA. Certification of Steven P. Kerner, Jr. ("Kerner Cert."), ¶2.

4. IFA is also authorized to transact private passenger automobile insurance business in Pennsylvania, Maryland and Delaware. Kerner Cert., ¶3.

5. 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.

JURISDICTION AND VENUE

6. The Commissioner has jurisdiction to institute and maintain this action pursuant to N.J.S.A. 17:30C-1 et seq.

7. Venue is properly laid in Mercer County because the cause of action arises by action of the Commissioner whose principal office is located in Mercer County.

LEGAL AUTHORITY

8. At all relevant times, IFA was governed by the provisions of N.J.S.A. 17:1-1 et seq.

9. Pursuant to N.J.S.A. 17:30C-1 et seq., the Commissioner is authorized to apply to this court for an Order directing him to liquidate an insurer that, among other grounds, is insolvent, is in a hazardous financial condition, or consents to being placed into liquidation. Such grounds exist in this case, as more particularly set forth below.

COUNT ONE - INSOLVENCY

10. IFA has been experiencing financial difficulties since 2014 due to its failure to maintain adequate loss and loss adjustment expense reserves; IFA's financial condition; and IFA's ability to meet its policyholder obligations. Kerner Cert., ¶5.

11. IFA's financial difficulties continued. On July 10, 2015, the Department and IFA entered into a Consent Order under which the Department approved IFA's withdrawal from the New Jersey private passenger automobile insurance market. The Consent Order also provided that IFA cease writing new business in New Jersey, transfer certain business to another insurer, and non-renew any existing business not accepted by the insurer. Kerner Cert., ¶6.

12. Because of IFA's continued financial decline and the mutual desire of the Department and IFA to conduct an orderly run-off of IFA and its insurance business, on September 19, 2016, the Commissioner placed IFA under consensual and confidential administrative supervision pursuant to N.J.S.A. 17:51A-1 to -10. The Confidential Consent Order of Administrative Supervision ("Administrative Supervision CO") imposed certain requirements on IFA, including increased financial reporting to and monitoring by the Department; maintaining an Risk-Based Capital ratio at or above 1.000 (also expressed as "100% RBC") for the run-off of its business; increased actuarial reserve analysis; and continuing to refrain from writing any new business. Additionally, in the Administrative Supervision CO, IFA consented to its placement into liquidation if it failed to maintain sufficient reserves

and capital in IFA to keep its RBC at or above 1.000 during the run-off. Kerner Cert., ¶8.

13. Despite the active administrative supervision and monitoring by the Department, and as discussed more fully below, IFA reported to the Department in February 2017 that it was not going to be able to maintain sufficient reserves and capital in IFA to keep its RBC at or above 100% RBC, and that additional capital infusions to ensure a solvent run-off were highly unlikely. Furthermore, IFA advised that its cash position as of February 15, 2017, had deteriorated such that the company only had total cash on hand of \$323,985 and total potential cash receivables of \$254,830, for a total of \$578,815 in available assets. Kerner Cert., ¶9.

14. On February 21, 2017, the Department issued a letter to IFA finding by the Commissioner that it is in breach of the requirements of the Administrative Supervision CO, and that it is insolvent, in a hazardous financial condition, and that it is likely its RBC mandates the Commissioner to take regulatory control of the insurer pursuant to N.J.A.C. 11:2-39.7. Kerner Cert., ¶10.

15. Further, the Commissioner entered into an Amended Consent Order of Administrative Supervision, Consent Order No. A17-106 ("Amended CO"), with IFA on March 3, 2017. The Amended

CO finds and IFA agrees that: a) IFA is in breach of the Administrative Supervision CO by not maintaining a Risk Based Capital (RBC) level of 1.000 ("100% RBC"); b) pursuant to N.J.A.C. 11:2-39.7, IFA's RBC places the company at or below a mandatory control level event, thus requiring the Commissioner to take actions necessary to cause the insurer to be placed under regulatory control pursuant to N.J.S.A. 17:30C-1 et seq.; and c) IFA is in a hazardous financial condition pursuant to multiple sections of N.J.A.C. 11:2-27.1 et seq. Moreover, IFA consented to its placement into liquidation. Kerner Cert. ¶11.

16. Because of its cash position, the Amended CO also provides that IFA shall not make any expenditures of funds - including claims payments - without the prior approval of the Department. Kerner Cert. ¶12.

17. N.J.S.A. 17:30C-8 provides that the Commissioner "may apply to the court for an order directing him to liquidate the business of a domestic insurer ... regardless of whether or not there has been [a] prior order directing him to rehabilitate such insurer, upon any of the grounds set forth in [N.J.S.A. 17:30C-6]"

18. Pursuant to N.J.S.A. 17:30C-8, the impairment or insolvency of an insurer constitutes grounds for liquidation.

18. N.J.S.A. 17:30C-1a defines "impairment or

insolvency" to mean "... the capital of a stock insurer ... shall be deemed to be impaired and the insurer shall be deemed to be insolvent, when such insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock."

19. Based on financial information provided to the Department by IFA, as of February 15, 2017, IFA has estimated admitted assets of \$1,481,293; estimated liabilities and required reserves of \$3,555,934; and reported capital stock of \$2,494,035. IFA's liabilities, required reserves, and capital stock exceed its assets by \$4,568,676. Kerner Cert., ¶¶15-16.

20. Accordingly, IFA is insolvent pursuant to N.J.S.A. 17:30C-1a, establishing grounds for a declaration of insolvency and grounds for liquidation pursuant to N.J.S.A. 17:30C-8 and N.J.S.A. 17:30C-6a.

COUNT TWO - HAZARDOUS FINANCIAL CONDITION

(NEGATIVE SURPLUS)

21. Plaintiff incorporates the allegations of Count One by reference as if fully set forth herein.

22. The provisions of N.J.A.C. 11:2-27.1 et seq., a subchapter entitled "DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION", "set[s] forth the factors which the Commissioner shall consider in determining whether an insurer is

in such condition as defined [t]herein as to render the continuation of its business hazardous to its policyholders, creditors, or the general public. "

23. N.J.A.C. 11:2-27.3(a) sets forth 34 factors that shall be considered "... either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition."

24. A finding by the Commissioner that an insurer is in a hazardous financial condition constitutes grounds for liquidation pursuant to N.J.S.A. 17:30C-8 and N.J.S.A. 17:30C-6f.

25. N.J.A.C. 11:2-27.3(a)1 provides that the Commissioner may find an insurer to be in hazardous financial condition upon adverse findings reported in financial condition reports, audit reports, and actuarial opinions, reports or summaries.

26. Based on financial condition reports submitted to the Department, IFA's capital and surplus as regards policyholders as of September 30, 2016 was \$661,764, but decreased to \$(2,074,641) as of February 15, 2017. Kerner Cert., ¶21.

27. Based on these adverse findings by the Commissioner as to IFA's negative surplus, the Commissioner has

determined that IFA is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)1. Kerner Cert., ¶22.

28. A finding by the Commissioner that an insurer is in a hazardous financial condition constitutes grounds for liquidation pursuant to N.J.S.A. 17:30C-8 and N.J.S.A. 17:30C-6f.

COUNT THREE - HAZARDOUS FINANCIAL CONDITION

(INADEQUATE ASSET PORTFOLIO)

29. Plaintiff incorporates the allegations of Counts One and Two by reference as if fully set forth herein.

30. N.J.A.C. 11:2-27.3(a)4 provides that the Commissioner may determine an insurer to be in hazardous financial condition upon a finding by the Commissioner that the insurer's asset portfolio "is not of sufficient value, liquidity, or diversity to assure the [insurer's] ability to meet its outstanding obligations as they mature."

31. Based on financial condition reports submitted to the Department, as of February 15, 2017, IFA had total cash on hand of \$323,985 and total potential cash receivables of \$254,830, for a total of \$578,815 in available assets. Underwriting expenses for February 2017 are estimated at \$386,032. The remaining cash is projected to be \$192,783. Based on IFA's history of under-reserving, it is estimated that

IFA will be out of cash between the end of February 2017 and the end of March 2017. Accordingly, IFA's asset portfolio is inadequate to meet its outstanding obligations as they mature. Kerner Cert., ¶24.

32. Based on these findings by the Commissioner regarding IFA's asset portfolio, the Commissioner has determined that IFA is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)4. Kerner Cert., ¶25.

COUNT FOUR - HAZARDOUS FINANCIAL CONDITION

(EXCESSIVE OPERATING LOSS)

33. Plaintiff incorporates the allegations of Counts One, Two, and Three by reference as if fully set forth herein.

34. N.J.A.C. 11:2-27.3(a)7 permits a determination of hazardous financial condition upon a finding by the Commissioner that the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.

35. Based on financial condition reports submitted to the Department, as of September 30, 2016, IFA had negative net income of \$(1,957,036) for 2016, after reduction for net realized capital gains of \$601,712. Thus, without the capital

gains, IFA experienced a net operating loss of \$(2,558,748) of 2016. This net operating loss is (386.8)% of IFA's surplus as regards policyholders of \$661,764 as of September 30, 2016. Thus, IFA's operating loss for the first nine months of 2016 is greater than 20 percent of its remaining surplus. Kerner Cert., ¶¶27-28.

36. Based on these findings by the Commissioner regarding IFA's operating loss, excluding net capital gains, the Commissioner has determined that IFA is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)7. Kerner Cert., ¶29.

COUNT FIVE - HAZARDOUS FINANCIAL CONDITION

(INADEQUATE CASH FLOW OR LIQUIDITY)

37. Plaintiff incorporates the allegations of Counts One, Two, Three, and Four by reference as if fully set forth herein.

38. N.J.A.C. 11:2-27.3(a)17 permits a determination of a hazardous financial condition upon a finding by the Commissioner that the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

39. As discussed above, 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. In fact, IFA consented to, and the Commissioner is now approving, all

expenditures as an interim measure to preserve assets pending placement into liquidation and assumption of claims by the applicable state guaranty funds. Kerner Cert., ¶31.

40. Based on these findings by the Commissioner as to IFA's cash flow, the Commissioner has determined that IFA is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)17. Kerner Cert., ¶32.

COUNT SIX - HAZARDOUS FINANCIAL CONDITION

(FAILURE TO MAINTAIN REQUIRED CAPITAL AND SURPLUS)

41. Plaintiff incorporates the allegations of Counts One, Two, Three, Four and Five by reference as if fully set forth herein.

42. N.J.A.C. 11:2-27.3(a)20 permits a determination of a hazardous financial condition upon a finding by the Commissioner that the insurer does not possess the minimum capital and surplus required to be maintained by law.

43. Under N.J.S.A. 17:17-6, IFA is required to maintain a minimum capital of \$1,400,000 and a minimum surplus of \$1,200,000, for a total of \$2,600,000. Kerner Cert., ¶34.

44. Based on financial condition reports submitted to the Department, as of September 30, 2016, IFA had capital of \$2,494,035 and surplus of \$(1,832,271), for a total of \$661,764.

Thus, IFA's capital and surplus is \$(1,938,236) less than the minimum required by law. Kerner Cert., ¶35.

45. Based on these findings by the Commissioner as to IFA's failure to maintain the minimum capital and surplus, the Commissioner has determined that IFA is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)20. Kerner Cert., ¶36.

COUNT SEVEN - RBC MANDATORY CONTROL LEVEL EVENT

46. Plaintiff incorporates the allegations of Counts One, Two, Three, Four, Five, and Six by reference as if fully set forth herein.

47. One of the tools used by the Department in monitoring the solvency of insurers is analysis of an insurer's Risk-Based Capital ("RBC") pursuant to N.J.A.C. 11:2-39.1 to - 39.14. RBC analysis can result in various event level actions to be taken by an insurer or the Department with respect to solvency regulation. Kerner Cert., ¶37.

48. Based on financial condition reports submitted to the Department, the Department has projected IFA's RBC ratio to be (730.257)%, as of February 15, 2017. This negative Risk-Based Capital ratio is a mandatory control level event pursuant to N.J.A.C. 11:2-39.7(a). Under N.J.A.C. 11:2-39.7(b)2, the Commissioner is required to take such actions as are necessary

to place IFA under regulatory control pursuant to N.J.S.A. 17:30C-1 et seq. Kerner Cert., ¶38.

COUNT EIGHT - IFA HAS CONSENTED TO LIQUIDATION

49. Plaintiff incorporates the allegations of Counts One, Two, Three, Four, Five, Six, and Seven by reference as if fully set forth herein.

50. One requirement of the September 19, 2016 consensual Administrative Supervision CO referenced in Paragraph 12 above was the requirement that "IFA shall maintain a level of not less than 1.000 ("100%") RBC at all times on or subsequent to [September 19, 2016]. Any downward breach of this required level of RBC shall constitute immediate grounds to initiate Liquidation proceedings ... and IFA hereby consents to placement of the company into liquidation upon such a breach." Kerner Cert., ¶8, Exhibit A, p. 3, ¶2 - emphasis added.)

51. As discussed in Paragraph 50 above, IFA has a RBC ratio of (730.257)%, as of February 15, 2017. This ratio is less than the 1.000 ("100%") RBC ratio which IFA agreed to maintain under the September 19, 2016 consensual administrative supervision order. By failing to maintain a RBC ratio of at least 1.000 and through its entry into the Amended CO, IFA has consented to being placed into liquidation. Kerner Cert., ¶40.

52. Additionally, 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.

THE NEED TO PLACE IFA INTO LIQUIDATION

50. For the reasons set forth above, the Commissioner has determined that it is necessary and appropriate to place IFA into liquidation pursuant to N.J.S.A. 17:30C-1 et seq. in order to protect its policyholders, creditors and the public at large. Kerner Cert., ¶42.

51. Accordingly, the Commissioner has determined that IFA must be placed into liquidation, and a declaration of insolvency issued, as soon as possible in order to limit the duration of any claims payment interruptions due to IFA's significantly deteriorated cash position. Kerner Cert., ¶43.

WHEREFORE, plaintiff demands an order declaring that:

(a) IFA is insolvent and is in a financial condition such that its further transaction of business will be hazardous to its policyholders, creditors, and the public; and further

(b) appointing the Commissioner and his successors in office as Liquidator of IFA in accordance with N.J.S.A. 17:30C-1 et seq., with all the powers and authority express or implied

thereunder and as set forth in the Order of Liquidation that is being filed herewith; and further

(c) directing the Commissioner to take immediate and exclusive possession and control forthwith of IFA's property, to liquidate IFA's business, to deal with IFA's property and business in his own name as Commissioner or in the name of IFA as the court may direct, and to give notice to creditors who may have claims against IFA to present their claims; and further

(d) restraining and enjoining all persons or entities, including but not limited to IFA, its officers, directors, or stockholders, from further conducting the business of IFA; and further

(e) ordering that all persons and entities be permanently enjoined from pursuing litigation against IFA or from interfering with the Commissioner's efforts to liquidate IFA; and further

(f) halting all payment of claims by IFA except at the directive of the Commissioner or of this court; and further

(g) ordering that all claims against IFA be asserted no later than 180 days from the date of the Order of Liquidation, in the form established by the Commissioner, or such claims will be forever barred; and further

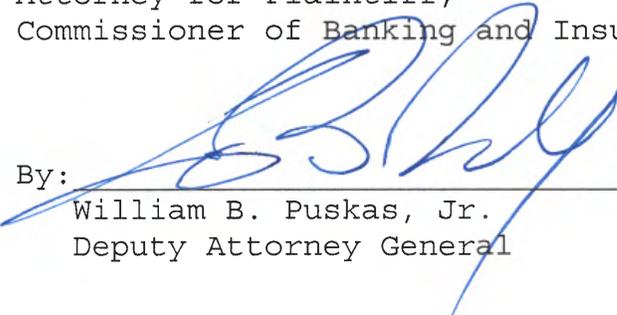
(h) ordering that the Commissioner as Liquidator establish procedures governing the payment of claims by IFA; and further

(i) granting all such temporary restraints as are set forth in the attached proposed Order to Show Cause; and further

(j) granting all such relief as is set forth in the attached proposed Order for Liquidation; and further

(k) granting such further relief as the court may deem appropriate.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff,
Commissioner of Banking and Insurance

By: 

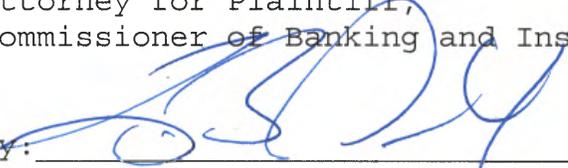
William B. Puskas, Jr.
Deputy Attorney General

Dated: March 7, 2017

DESIGNATION OF TRIAL COUNSEL

Deputy Attorney General William B. Puskas, Jr. is hereby designated as trial counsel in this matter.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff,
Commissioner of Banking and Insurance

By: 

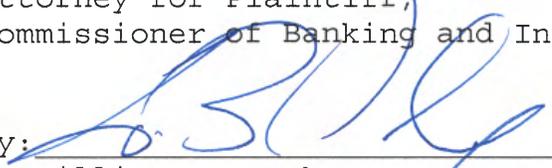
William B. Puskas, Jr.
Deputy Attorney General

Dated: March 7, 2017

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff hereby certifies pursuant to R. 4:5-1 that there are no other civil proceedings either pending or contemplated with respect to the matter in controversy herein and no other parties who should be joined to this action. I further certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff,
Commissioner of Banking and Insurance

By: 

William B. Puskas, Jr.
Deputy Attorney General

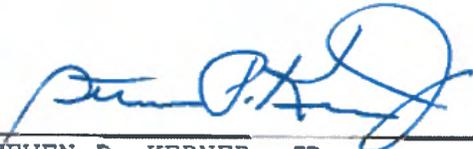
Dated: March 7, 2017

VERIFICATION

I, STEVEN P. KERNER, JR., of full age, hereby certify:

I am the Assistant Commissioner of the Office of Solvency Regulation for the New Jersey Department of Banking and Insurance. My responsibilities include monitoring the financial condition of all insurance entities transacting business in New Jersey. I have read the Complaint and certify that the allegations contained in the Complaint are true to the best of my knowledge and belief.

I certify that the foregoing statements are true. I am aware that if any statement made herein is willfully false, I am subject to punishment.



STEVEN P. KERNER, JR.
Assistant Commissioner
Office of Solvency Regulation

Dated: March 7, 2017