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SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

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

MARLENE CARIDE,)
COMMISSIONER OF THE)
DEPARTMENT OF BANKING AND)
INSURANCE OF NEW JERSEY,)

Plaintiff,)

v.)

BROADWAY INSURANCE &)
SURETY COMPANY INC.,)

Defendant.)

Civil Action

VERIFIED COMPLAINT FOR AN
ORDER TO SHOW CAUSE AS TO
WHY AN ORDER OF
REHABILITATION SHOULD NOT
BE ENTERED WITH TEMPORARY
RESTRAINTS PURSUANT TO
RULE 4:52 AND N.J.S.A.
17:30C-5

Plaintiff, Marlene Caride, Commissioner of the
Department of Banking and Insurance of the State of New Jersey
("Commissioner"), and her successors in office, with her principal

office at 20 West State Street, Trenton, Mercer County, New Jersey, complaining of defendant, says:

PARTIES

1. The Office of the Commissioner of the Department of Banking and Insurance (the "Department") was created and now exists pursuant to Title 17 of the Statutes of New Jersey.

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

3. Broadway is a New Jersey property and casualty insurer licensed to transact bail bond surety insurance business in New Jersey. Broadway was incorporated on April 29, 2013, and authorized to transact bail bond surety insurance business as of August 1, 2013.

4. Broadway's counsel (who also sits on Broadway's board of directors), has represented to the Department the last bond approved and written by Broadway was on November 17, 2017, and Broadway ceased transacting business effective December 24, 2017.

5. Based upon information contained in the most recent Corporate Bond Surety Report prepared by the Administrative Office of the Courts, as of November 30, 2018, Broadway had \$20,234,701 in posted bonds (501 total bonds); \$947,500 in forfeited bonds (32

total bonds); and \$222,500 in forfeited bonds reduced to judgment (9 total bonds); for a total of \$21,404,701 (542 total bonds).

JURISDICTION AND VENUE

6. The Commissioner has jurisdiction to institute and maintain this action pursuant to N.J.S.A. 17:30C-1 to -31.

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, Broadway was governed by the provisions of N.J.S.A. 17:30C-1 to -31.

9. Pursuant to N.J.S.A. 17:30C-6(f), the Commissioner is authorized to apply to this court for an Order directing her to rehabilitate an insurer that is in a hazardous financial condition. As shown below, Broadway is in a hazardous financial condition.

COUNT ONE

10. The provisions of N.J.A.C. 11:2-27, a subchapter entitled "DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION," provides a list of factors that the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition.

11. N.J.A.C. 11:2-27.3(a) sets forth thirty-four 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."

12. A determination that an insurer is in a hazardous financial condition constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

13. N.J.A.C. 11:2-27.3(a)(2) permits a determination that an insurer is in a hazardous financial condition based upon adverse findings from the Insurance Regulatory Information System ("IRIS") developed and maintained by the National Association of Insurance Commissioners ("NAIC").

14. IRIS is a collection of analytical solvency tools and databases designed to provide state insurance departments with an integrated approach to screening and analyzing the financial condition of insurers operating within their respective states.

15. IRIS contains a series of thirteen key financial ratio formulas and range comparisons, with respect to property and casualty insurers, that are automatically generated based on financial information obtained from insurers' statutory Annual Financial Statements.

16. The IRIS Ratio Application based on information from Broadway's 2017 Annual Financial Statement resulted in five ratios that fall outside allowable ranges, as follows:

(a) Ratio 3 - Change in Net Premiums Written From Prior Year. Allowable range of results: -33% to +33%. Broadway's result: -83%;

(b) Ratio 5 - Two Year Overall Operating Ratio. Allowable range of results: Equal to or Under 100%. Broadway's result: -277%;

(c) Ratio 6 - Investment Yield. Allowable range of results: +3% to +6.5%. Broadway's result: +0.1%;

(d) Ratio 7 - Gross Change in Policyholders' Surplus From Prior Year. Allowable range of results: -10% to +50%. Broadway's result: -64%; and

(e) Ratio 8 - Change in Adjusted Policyholders' Surplus From Prior Year. Allowable range of results: -10% to +25%. Broadway's result: -64%.

17. The above IRIS Ratio Application results based on Broadway's 2017 Annual Financial Statement are adverse and indicative of a hazardous financial condition.

18. Based on these adverse IRIS findings and the recommendation of the Office of Solvency Regulation in the Department, the Commissioner has determined that Broadway is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)(2).

19. Broadway's hazardous financial condition, as more specifically set forth above, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

COUNT TWO

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

21. N.J.A.C. 11:2-27.3(a)(6) permits a determination that an insurer is in a 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, including, but not limited to, net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.

22. Based on the most recent Annual Financial Statement financial condition reports submitted to the Department, as of December 31, 2017, Broadway had negative net income of \$(1,638,757) for the twelve-month period ending December 31, 2017. Thus, Broadway experienced a net operating loss of \$(1,638,757) through December 31, 2017. This net operating loss is (267.3%) of Broadway's surplus as regards policyholders of \$613,116 as of December 31, 2017.

23. Thus, Broadway's operating loss for the last reported twelve-month period is greater than fifty percent of its remaining surplus.

24. Based on these findings as found by the Office of Solvency Regulation within the Department regarding Broadway's

operating loss and the recommendation of the Office of Solvency Regulation, the Commissioner has determined that Broadway is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)(6).

25. Broadway's hazardous financial condition, as more specifically set forth above, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

COUNT THREE

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

27. N.J.A.C. 11:2-27.3(a)(7) permits the Commissioner to determine an insurer is in a 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 twenty percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.

28. Based on the most recent Annual Financial Statement submitted to the Department, as of December 31, 2017, Broadway had negative net income of \$(1,638,757) for the twelve-month period ending December 31, 2017. Thus, Broadway experienced a net operating loss of \$(1,638,757) through December 31, 2017. This net operating loss is (267.3%) of Broadway's surplus as regards policyholders of \$613,116 as of December 31, 2017.

29. Thus, Broadway's operating loss for the last reported twelve-month period is greater than twenty percent of its remaining surplus.

30. Based on these findings as found by the Office of Solvency Regulation within the Department regarding Broadway's operating loss, excluding net capital gains, and the recommendation of the Office of Solvency Regulation, the Commissioner has determined that Broadway is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)(7).

31. Broadway's hazardous financial condition, as more specifically set forth above, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

COUNT FOUR

32. Plaintiff incorporates the allegations of Counts One through Three, inclusive, by reference as if fully set forth herein.

33. N.J.A.C. 11:2-27.3(a)(14) permits a determination that an insurer is in a hazardous financial condition upon a finding that the insurer has failed to meet financial filing requirements established by law in the absence of a reason satisfactory to the Commissioner.

34. N.J.S.A. 17:23-1 requires insurance companies transacting business in this state to file with the Department an Annual Financial Statement by March 1 each year, in the format

adopted by the NAIC, showing its financial condition as of December 31 of the previous year.

35. In response to Broadway's request, the Department granted Broadway an extension of time to May 31, 2018 to file the Annual Financial Statement for the period ending December 31, 2017. Broadway did not comply with the extension of time granted by the Department by filing its 2017 Annual Financial Statement until July 9, 2018, over a month after the due date.

36. N.J.S.A. 17:23-1 also requires insurance companies transacting business in this state to file with the Department Quarterly Financial Statements, in the format adopted by the NAIC, covering the periods ending on March 31, June 30, and September 30, which are to be filed within forty-five days after each such date.

37. Broadway's Quarterly Financial Statement for the period ending March 31, 2018, was due by May 15, 2018. In response to Broadway's request, the Department granted Broadway an extension of time to June 30, 2018 to file the Quarterly Financial Statement for the period ending March 31, 2018.

38. Broadway's Quarterly Financial Statement for the period ending June 30, 2018, was due by August 15, 2018. No extension of the time to file this Quarterly Financial Statement has been requested of, or granted by, the Department.

39. Broadway's Quarterly Financial Statement for the period ending September 30, 2018, was due by November 15, 2018. No extension of time to file this Quarterly Financial Statement has been requested of, or granted by, the Department.

40. The statutorily required Quarterly Financial Statements for the periods ending March 31, 2018, June 30, 2018, and September 30, 2018, have not been filed by Broadway with the Department, nor have any additional extensions of time to file these Statements been requested of, or granted by, the Department.

41. Broadway has not provided any satisfactory reasons that justify these failures to timely file Annual and Quarterly Financial Statement filings.

42. Based on these findings by the Office of Solvency Regulation within the Department as to Broadway's delinquent Financial Statement filings, and the recommendation of the Office of Solvency Regulation, the Commissioner has determined that Broadway is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)(14).

43. Broadway's hazardous financial condition, as more specifically set forth above, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

COUNT FIVE

44. Plaintiff incorporates the allegations of Counts One through Four, inclusive, by reference as if fully set forth herein.

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

46. As a result of Broadway's 2017 operating loss as discussed above, Broadway's cash position has significantly deteriorated.

47. Broadway's Annual Financial Statement as of December 31, 2017, showed that it only had capital and surplus of \$613,116 as of that time. Broadway has advised that it has no income because writing bail bonds was its only business.

48. Broadway has failed to file any Quarterly Financial Statements showing its current capital and surplus, and upon the request of the Department, Broadway has failed to produce balance sheet or income statements, or statements of all investment and deposit accounts held by the company.

49. As of November 30, 2018, Broadway had \$20,234,701 in posted bonds (501 total bonds); \$947,500 in forfeited bonds (32 total bonds); and \$222,500 in forfeited bonds reduced to judgment (9 total bonds); for a total of \$21,404,701 (542 total bonds.)

The total amount of the forfeited bonds plus the forfeited bonds that have been reduced to judgment alone exceeds Broadway's capital and surplus as of year-end 2017 as follows: \$1,170,000 vs. \$613,116 (Capital and Surplus as of 12/31/17), and the capital and surplus has likely deteriorated further since that time. Moreover, it is unclear how much of the remaining \$20 million in posted bonds will result in judgments, but even if only 1% result in judgments, this will further increase Broadway's liabilities to the courts by approximately \$202,000.

50. Based on these findings by the Office of Solvency Regulation within the Department that demonstrate foreseeable future problems with Broadway's cash flow and liquidity, and the recommendation of the Office of Solvency Regulation, the Commissioner has determined that Broadway is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)(17).

51. Broadway's hazardous financial condition, as more specifically set forth above, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

COUNT SIX

52. Plaintiff incorporates the allegations of Counts One through Five, inclusive, by reference as if fully set forth herein.

53. N.J.A.C. 11:2-27.3(a)(20) permits a determination that an insurer is in a hazardous financial condition upon a

finding that the insurer does not possess the minimum capital and surplus required to be maintained by law.

54. Under N.J.S.A. 17:17-6, Broadway is required to maintain a minimum capital and surplus of \$1,250,000.

55. Based on the most recent Annual Financial Statement submitted to the Department, as of December 31, 2017, Broadway had capital and surplus of \$613,116. Thus, Broadway's capital and surplus is \$(636,884) less than the minimum required by law.

56. Based on these findings by the Office of Solvency Regulation within the Department as to Broadway's deficient capital and surplus, and the recommendation of the Office of Solvency Regulation, the Commissioner has determined that Broadway is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)(20).

57. Broadway's hazardous financial condition, as more specifically set forth above, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

COUNT SEVEN

58. Plaintiff incorporates the allegations of Counts One through Six, inclusive, by reference as if fully set forth herein.

59. In addition to the Commissioner's other powers under Titles 17 and 17B of the New Jersey Statutes relating to the examination of insurers, the Commissioner has the power under

N.J.S.A. 17:27A-5 "to order any insurer ... to produce such records, books, or other information papers in the possession of the insurer ... as shall be necessary to ascertain the financial condition of the insurer."

60. N.J.A.C. 11:2-27.3(a)(13) permits a determination that an insurer is in a hazardous financial condition upon a finding that the management of the insurer has failed to respond to inquiries from the Commissioner regarding the condition of the insurer or has furnished false and misleading information concerning such inquiries.

61. After the Department's review of Broadway's 2017 Annual Financial Statement (received by the Department on July 9, 2018, as set forth in Paragraph 32 above), and subsequent communications with Broadway, the Assistant Commissioner of the Office of Solvency Regulation wrote to Broadway's president and counsel on August 20, 2018, advising them of the anticipated need to take additional supervisory action regarding Broadway, "including but not limited to, the placement of Broadway under administrative supervision pursuant to N.J.S.A. 17:51A-1 [to - 10.]" (A copy of the Department's August 20, 2018 letter to Broadway is attached as Exhibit A.)

62. The August 20, 2018 letter also required Broadway to produce certain information and documents in connection with the examination of Broadway's financial condition to the

Department by the close of business on August 24, 2018, and certain additional information and documents by the close of business on August 31, 2018. (See Exhibit A.)

63. As discussed further below, Broadway responded to this request by e-mails on August 23, 2018, and on August 31, 2018, with some, but not all of the requested financial information, books and records. (Copies of Broadway's August 23, 2018 and August 31, 2018 e-mail responses are attached as Exhibit B.)

64. A review of Broadway's Annual Financial Statement as of December 31, 2017, showed a write-off of a "bad debt expense" totaling (\$1,905,847) and the notes to the Financial Statement indicated that this "bad debt" due to Broadway was from a related party, namely premium and collateral receivables totaling \$777,243 and \$4,636, respectively, from Aaron Bail Bonds- which is owned by the same parties as Broadway, and a "related party loan receivable of \$1,123,968." The Assistant Commissioner of the Office of Solvency Regulation requested additional information on the write-offs from Broadway via an e-mail to Broadway's counsel on August 28, 2018, to which Broadway's counsel provided a response via e-mail on August 31, 2018. (Copies of the August 28, 2018 Department's e-mail inquiry and Broadway's August 31, 2018 e-mail response regarding the "bad debt expense" are attached as Exhibit C.)

65. Broadway's August 31, 2018 response failed to respond to the specifics of the Department's "bad debt expense" inquiry, including but not limited to: why the amounts are no longer believed to be collectable, and to what "related party" the \$1,123,968 loan was made. (See Exhibit C.)

66. In a follow-up email dated September 14, 2018, the Assistant Commissioner of the Office of Solvency Regulation requested Broadway to provide the information missing from the response to the Department's August 20, 2018 letter, and additional related information. The deficiencies re-requested or augmented included the following: (a) Quarterly Financial Statements; (b) lists of all contracted agents, both current and expired, including any sub-agents; (c) a spreadsheet for all build-up funds (BUF) balances for two agencies, including Aaron's Bail Bonds for which the outstanding premium and collateral was written-off, collateral held by agencies, etc.; and (d) statements for all deposit and investment accounts held by Broadway for 2018 to date in lieu of balance sheet and income statements that were previously requested and for which Broadway stated that it did not maintain. (A copy of the Department's September 14, 2018 e-mail is attached as a part of Exhibit D.)

67. Broadway's counsel responded to the Department via e-mail on September 28, 2018, stating it was Broadway's position that (a) Broadway had "already provided" the requested information

and documents; (b) Broadway's financial position "has not significantly changed for some time, as no new business has been written for almost two years;" and (c) Broadway "cannot afford to keep paying an accountant to complete these financial forms." (A copy of Broadway's September 28, 2018 e-mail is attached as a part of Exhibit D.)

68. On November 21, 2018, the Assistant Commissioner of the Office of Solvency Regulation sent an additional letter to Broadway through its counsel via e-mail and to Broadway's President via overnight delivery at Broadway's home office address. This letter advised Broadway that it: a) has been found by the Department to be in a hazardous financial condition; b) has failed to comply with demands for books and records; c) has failed, without request for extension or satisfactory reason for the failure, to file required Quarterly Financial Statements; and d) has failed to cooperate with the Department to address Broadway's hazardous financial condition. Thus, the letter required the principals of Broadway to attend an in-person meeting with the Department one week later on November 28, 2018. (Copies of the Department's November 21, 2018 e-mail and letter are attached as a part of Exhibit E.)

69. In response, Broadway through its counsel on November 26, 2018, advised the Department that "my client's [sic] and I cannot meet on such short notice. Please contact my office

so we may arrange a convenient date." No reason for the inability to appear on the required date was provided, and no alternate dates were provided. (A copy of Broadway's November 26, 2018 e-mail is attached as a part of Exhibit E.)

70. Broadway's refusal to produce the requested information, including filing of the statutorily required Quarterly Financial Statements, and appear at the Department as requested constitute additional hazardous financial conditions pursuant to N.J.A.C. 11:2-27.3(a)(13) and directly and unreasonably interferes with the ability of the Commissioner and the Department to examine Broadway's most current financial condition.

71. Broadway's refusal to produce the requested information, including filing of the statutorily required Quarterly Financial Statements, and appear at the Department as requested, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(f).

COUNT EIGHT

72. Plaintiff incorporates the allegations of Counts One through Seven, inclusive, by reference as if fully set forth herein.

73. The refusal of an insurer to submit its books, records, accounts or affairs to the reasonable examination of the

Commissioner constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(b).

74. Broadway's refusal to produce the requested information, including filing of the statutorily required Quarterly Financial Statements, and appear at the Department as requested, constitutes grounds for rehabilitation under N.J.S.A. 17:30C-6(b).

CONCLUSION

75. For the above reasons as found by the Office of Solvency Regulation, and in consideration of the recommendation of the Office of Solvency Regulation, the Commissioner has determined that it is necessary and appropriate to place Broadway into rehabilitation pursuant to N.J.S.A. 17:30C-1 to -31 in order to protect its bail bond policyholders, creditors, and the public at large.

76. Placement of Broadway into rehabilitation now will enable the Commissioner to protect its policyholders, creditors, and the public at large by taking control of the operations of the surety, marshalling its assets, reducing its costs and beginning the process of an orderly wind-down.

77. Placement of Broadway into rehabilitation now will enable the Commissioner to act expeditiously to provide notice to all Broadway's policyholders to make an orderly and informed

transition to alternate bail bond sureties, such as may prove necessary.

WHEREFORE, plaintiff demands an Order:

(a) declaring that Broadway is in a financial condition such that its further transaction of business will be hazardous to its policyholders, creditors, and the public pursuant to N.J.S.A. 17:30C-6(f); and further

(b) declaring that Broadway has refused to submit its books, records, accounts or affairs to the reasonable examination of the Commissioner in violation of N.J.S.A. 17:27A-5 and 17:30C-6(b); and further

(b) appointing the Commissioner and her successors in office as Rehabilitator of Broadway to rehabilitate Broadway in accordance with N.J.S.A. 17:30C-1 to -31, with all the powers and authority express or implied thereunder and as set forth in the Order of Rehabilitation that is being filed herewith; and further

(d) vesting the Rehabilitator with immediate title to, and exclusive possession of, and control over, the business and affairs of Broadway and all real and personal property, assets, funds, accounts, records, files or any other property, assets or possessions of any nature of Broadway, wherever situated or located; and further

(e) directing the Rehabilitator to take immediate and exclusive possession and control of the businesses and affairs of

Broadway, as well as all of its real and personal property, assets, files, records, accounts and funds wherever located and to immediately begin removing the causes and conditions that have made rehabilitation necessary; and further

(f) restraining and enjoining all persons or entities, including but not limited to Freelancers, its officers, directors, or members, from further conducting the business of Broadway; and further

(g) granting such other relief as the Court may deem appropriate.

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

By: 

William B. Puskas, Jr.
Deputy Attorney General

Dated: December 7, 2018

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION PURSUANT TO R. 4:5-1

I certify, in accordance with R. 4:5-1, that I am not aware of any 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).

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

By: _____

William B. Puskas, Jr.
Deputy Attorney General

Dated: December 7, 2018