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SUPERIOR COURT OF NJ
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December 7, 2018

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: MARLENE CARIDE, Commissioner of the Department
of Banking and Insurance of New Jersey, v.
BROADWAY INSURANCE & SURETY COMPANY INC.
Docket No. C-
Petition for Rehabilitation

Dear Judge Innes:

Please accept this letter brief in support of the Petition for Rehabilitation of Broadway Insurance & Surety Company Inc. ("Broadway") filed by the Commissioner of Banking and Insurance ("Commissioner"). Along with this letter brief, the Commissioner relies on the Certification with Exhibits 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 Rehabilitation.

Broadway is a New Jersey-domiciled insurance company.



As set forth in the accompanying Certification, the Commissioner has determined that Broadway is in a hazardous financial condition; that Broadway has refused to file statutorily required Financial Statements; and that Broadway has failed to cooperate with the Department's attempts to monitor its financial condition, including examination of its books, records, accounts or affairs. The Commissioner therefore respectfully requests that the Court grant this petition and enter the Order to Show Cause and, ultimately, an Order of Rehabilitation.

As set forth below, due to Broadway's hazardous financial condition and refusal to submit its records for examination, the Commissioner respectfully requests that Your Honor consider her petition on an expedited basis.

STATEMENT OF FACTS

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. Certification of Steven P. Kerner, Jr. ("Kerner Cert."), ¶2.

Broadway's counsel (who also sits on Broadway's board of directors), has represented to the Department that the last bond approved and written by Broadway was on November 17, 2017, and

Broadway ceased transacting business effective December 24, 2017.

Kerner Cert., ¶3.

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 \$21,430,701 (573 total bonds).

Kerner Cert., ¶4.

The Commissioner has determined that Broadway is in a hazardous financial condition pursuant to N.J.A.C. 11:2-27.3 as follows:

- Broadway has five adverse findings from the Insurance Regulatory Information System ("IRIS") developed and maintained by the National Association of Insurance Commissioners ("NAIC"). Kerner Cert., ¶¶10-15.
- Broadway's operating loss for 2017 is greater than fifty per cent of its remaining surplus as regards policyholders in excess of the minimum required. Kerner Cert., ¶¶16-18, 22.
- Broadway had a net operating loss for 2017 of \$(1,638,757) as of September 30, 2016 -- (267.3%) of

its surplus as regards policyholders of \$613,116.

Kerner Cert., ¶¶19-22.

- Broadway failed to file with the Department its statutorily required Annual Financial Statement for 2017 in a timely fashion without justification. Kerner Cert., ¶¶23-25.
- Broadway has failed to file with the Department its statutorily required Quarterly Financial Statements for the first three quarters of 2018 without justification, and has refused to come into compliance. Kerner Cert., ¶¶26-33.
- Broadway's cash position has significantly deteriorated, and Broadway will likely experience cash flow and liquidity problems in the foreseeable future. Kerner Cert., ¶¶34-39.
- Broadway's capital and surplus is \$(636,884) less than the minimum required by law. Kerner Cert., ¶¶40-43.

Also, Broadway has failed to cooperate with the Department's monitoring of its financial condition including refusal to submit its books, records, accounts or affairs to the reasonable examination of the Commissioner. Kerner Cert., ¶¶44-

ARGUMENT

AN IMMEDIATE DECLARATION THAT BROADWAY IS IN A HAZARDOUS FINANCIAL CONDITION, AND HAS REFUSED TO SUBMIT ITS RECORDS TO THE REASONABLE EXAMINATION OF THE COMMISSIONER, AND ENTRY OF THE ORDER OF REHABILITATION ARE NECESSARY TO PRESERVE BROADWAY'S ASSETS AND TO PROTECT THE PUBLIC.

N.J.S.A. 17:30C-1 to -31 authorizes the Commissioner to petition the Superior Court for an Order of Rehabilitation upon any of the grounds set forth under N.J.S.A. 17:30C-6. Rehabilitation is appropriate if an insurer "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-6(f). As discussed above, Broadway 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., ¶¶7-43. Thus, rehabilitation is appropriate and necessary under N.J.S.A. 17:30C-6(f).

Rehabilitation is also appropriate if an insurer "[h]as refused to submit its books, records, accounts or affairs to the reasonable examination of the [C]ommissioner." N.J.S.A. 17:30C-6(b). As discussed above, Broadway has failed to cooperate and has refused to enable reasonable examination of its books and records, including refusal to produce its depository and

investment account statements. Kerner Cert., ¶¶44-55.

As discussed above, Broadway 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., ¶¶44-55. Thus, rehabilitation is appropriate and necessary under N.J.S.A. 17:30C-6(b).

The Commissioner's decision to rehabilitate 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 (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 rehabilitation is reasonable for all of the reasons discussed

above. First, the deterioration of Broadway's financial condition supports the Commissioner's determination, and Broadway's refusal to submit its books and records to the reasonable examination of the Commissioner exacerbates the need for the grant of the Commissioner's Petition for Rehabilitation.

Second, the Commissioner must protect the interests of the public by petitioning to rehabilitate the company. Prompt rehabilitation of Broadway will enable the Commissioner to endeavor to take such actions in an orderly manner to both protect claimants -- which are generally the courts of this State because Broadway only wrote bail bonds -- and maximize assets for potential creditors.

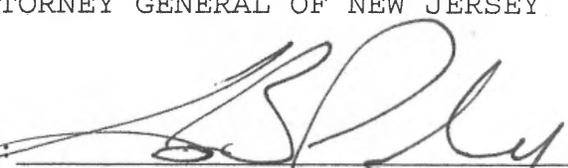
Finally, the public interest strongly favors granting the Commissioner's Petition for Rehabilitation. The Commissioner is charged with protecting the interests of Broadway's policyholders, claimants, and creditors, as well as those of the general public. Rehabilitation is necessary to protect the interests of policyholders and claimants. The public interest will not be served by allowing Broadway's financial condition to deteriorate further. Accordingly, the Commissioner has determined that Broadway must be placed into rehabilitation as soon as possible.

For all of the foregoing reasons, the Commissioner

requests that the court approve the Commissioner's petition to rehabilitate Broadway.

Respectfully submitted,

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