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May 15, 2009

BY HAND DELIVERY

Hon. Maria Marinari Sypek, P.J. Ch. Div.
Superior Court of New Jersey
Chancery Division
210 South Broad Street, 5th Floor
Trenton, New Jersey 08650-0068

Re: I/M/O Rehabilitation of Consumer First Ins. Co.
Docket No. MER-C-17-09

Dear Judge Sypek:

Please accept this letter brief in support of the Petition for Liquidation of Consumer First Insurance Company ("Consumer First") filed by the Commissioner of Banking and Insurance ("Commissioner"). Along with this letter brief the Commissioner relies on the certification of Assistant Commissioner Raymond K. Conover. We are also submitting to the court a form of Order to Show Cause and a form of Order of Liquidation. As set forth below, due to the increasingly rapid deterioration of Consumer First's financial condition, and in order to minimize the disruption to policyholders and other claimants awaiting payment



for medical expenses and repairs to damaged property, the Commissioner respectfully requests that Your Honor consider the petition on an expedited basis.

Consumer First is a New Jersey-domiciled insurance company. Based on papers filed with this court on February 11, 2009, the court issued an Amended Order to Show Cause on February 24, 2009. On April 22, 2009, the court issued an Order of Rehabilitation. Since that time, however, the Commissioner has determined that Consumer First's financial condition is such that it cannot be rehabilitated and that any efforts to rehabilitate Consumer First would be useless. The Commissioner therefore respectfully requests that the court grant this petition and enter the Order to Show Cause and, ultimately, an Order of Liquidation.

ARGUMENT

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

The Uniform Insurers Liquidation Act (the "ULA"), N.J.S.A. 17:30C-1 et seq., authorizes the Commissioner to petition the Superior Court for an Order of Liquidation "[i]f at any time the Commissioner deems that further efforts to rehabilitate the insurer would be useless . . .," N.J.S.A. 17:30C-7b. Based on the information set forth in Consumer First's most recent annual

statement (filed May 11, 2009), the Commissioner has determined just that. The Commissioner may also apply for an order directing liquidation on "any of the grounds specified in [N.J.S.A. 17:30C-6] ..., " N.J.S.A. 17:30C-8. 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.

In the annual statement, Consumer First reported capital and surplus of negative \$2,885,572 as of December 31, 2008. This is a significant decrease of \$5,074,481 from the capital and surplus of \$2,188,909 that Consumer First reported as of November 30, 2008. Second Certification of Raymond K. Conover ("Second Conover Cert."), ¶ 7a. In addition, Consumer First reported a Net Operating Loss of \$5,645,696 for the twelve-month period ending December 31, 2008; Id. at ¶ 7b.

Yet another indicator of Consumer First's worsening financial condition is its liquidity ratio. The liquidity ratio measures the extent to which an insurer can quickly liquidate assets to meet pending obligations. The Department determines the liquidity ratio by examining an insurer's total liabilities, less deferred premiums, and dividing that amount by the insurer's liquid assets. Second Conover Cert., ¶ 7c.

As of December 31, 2008, Consumer First's liquidity ratio was 786.6 percent, more than double its 340.8 percent liquidity ratio as of September 30, 2008. A liquidity ratio of 787 percent means that the insurer's liabilities are nearly eight times as much as its available liquid assets, and the company may not have enough cash on hand to pay liabilities as they come due. A liquidity ratio of 105 percent or greater is the benchmark promulgated by the National Association of Insurance Commissioners to suggest cause for concern, and the Department, as well as the insurance regulators of most other States, follow that benchmark. At 787 percent, Consumer First is in danger of running out of cash. Consumer First's liquidity ratio has exceeded this 105 percent benchmark since June 30, 2006. See N.J.A.C. 11:2-27.3(a)2 and - 27.3(a)15. Second Conover Cert., ¶ 7c.

In light of the accelerating decline of Consumer First's financial condition, liquidation is necessary for the protection of Consumer First's debtors and of Consumer First's other claimants. An Order of Liquidation will allow Consumer First to run off its business and prevent further accumulation of debts. Therefore, the Commissioner requests that this court immediately declare Consumer First to be insolvent and issue an Order of Liquidation.

The enclosed form of Order to Show Cause also provides for the temporary injunctive relief of continuing the stay on

litigation originally imposed pursuant to paragraph 9 of the Order of Rehabilitation that the court entered on April 22, 2009.

The ULA authorizes the court to issue such injunctions as are necessary to prevent interference with the liquidation proceeding, waste of the carrier's assets, or the creation of preferences. N.J.S.A. 17:30C-5b. Extending the stay until the return date of the Order to Show Cause is in the public interest because it maintains the status quo. If an Order of Liquidation is entered, the responsibility for litigating matters involving Consumer First insureds will pass to the New Jersey Property-Liability Insurance Guaranty Association ("PLIGA"), which is then entitled to apply for an additional stay to permit it to prepare to defend pending causes of action. N.J.S.A. 17:30A-18. In light of PLIGA's interests, it is appropriate to extend the stay of pending matters until PLIGA is prepared to assume control of those matters.

An immediate declaration that Consumer First is insolvent and court approval to liquidate Consumer First 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 and was made for three reasons. First, Consumer First is insolvent. The magnitude and speed of the deterioration of Consumer First's financial condition makes clear that Consumer First will not emerge from rehabilitation and that efforts to rehabilitate Consumer First will be useless. Consumer First has not demonstrated the existence of any reasonable possibility of a solvent run-off for Consumer First.

Second, the Commissioner must protect the interests of the public by petitioning to liquidate the company. Prompt liquidation of Consumer First will allow the company to be run off in an orderly manner that will both protect claimants and maximize assets for potential creditors.

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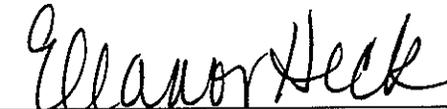
Finally, the public interest strongly favors granting the Commissioner's Petition for Liquidation. The Commissioner is charged with protecting the interests of Consumer First's policyholders, claimants, and creditors, as well as those of the general public. Liquidation is necessary to protect the interests 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 Consumer First to continue to lose money.

For all of the foregoing reasons, the Commissioner respectfully requests that the court approve the Commissioner's Petition to Liquidate Consumer First.

Respectfully submitted,

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By:



Eleanor Heck
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