

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
BY LETITIA JAMES, Attorney General of the
State of New York,

Plaintiff,

v.

DONALD J. TRUMP, DONALD TRUMP, JR.,
ERIC TRUMP, ALLEN WEISSELBERG,
JEFFREY MCCONNEY, THE DONALD J.
TRUMP REVOCABLE TRUST, THE TRUMP
ORGANIZATION, INC., THE TRUMP
ORGANIZATION LLC, DJT HOLDINGS
LLC, DJT HOLDINGS MANAGING
MEMBER, TRUMP ENDEAVOR 12 LLC,
401 NORTH WABASH VENTURE LLC,
TRUMP OLD POST OFFICE LLC, 40 WALL
STREET LLC, AND SEVEN SPRINGS LLC,

Defendants.

Index No: 452564/2022

Engoron, J.S.C.

**AFFIRMATION OF GREGORY
V. SERIO IN SUPPORT OF
MOTION BY KNIGHT
SPECIALTY INSURANCE
COMPANY TO SET ASIDE
EXCEPTION TO SURETY AND
TO JUSTIFY SURETY**

I, Gregory V. Serio, affirm this 15th day of April, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand this document may be filed in an action or proceeding in a court of law.

1. I am a partner at Park Strategies, LLC (“Park Strategies”). I submit this affidavit on behalf of Knight Specialty Insurance Company (“KSIC”) in support of KSIC and Defendants’ joint application (1) to set aside the New York Attorney General (“NYAG”)’s exceptions to the sufficiency of the surety given by KSIC on the undertaking in this matter, filed with the Court on April 1, 2024 (NYSCEF Doc. Nos. 1707-1708), and to award costs and fees because the exceptions have been taken unnecessarily, and (2) to justify KSIC as surety for the undertaking.

Summary of Opinion

2. Based upon my extensive knowledge, training and experience in New York insurance regulatory and compliance matters, a review of the Affirmation of Amit Shah (“Shah Aff.”) and the exhibits attached thereto, as well as the undertaking filed with this Court on April 1, 2024, and the notice of exception filed on April 4, 2024, it is my opinion that KSIC may lawfully underwrite surety bonds in New York as an eligible excess line insurer approved by the Excess Line Association of New York (“ELANY”) and is therefore duly authorized to issue the subject bond. Moreover, to my knowledge, KSIC independently maintains sufficient assets to secure the bond and the subject bond is itself fully collateralized by an account posted by the Defendants containing \$175,304,075.95 in cash.

Education and Experience

3. I graduated from the State University of New York at Albany in 1983 and Albany Law School of Union University in 1986. I am admitted to the practice of law in this state and in Connecticut.

4. I joined Park Strategies in January, 2005 and currently serve as a partner and leader of Park Strategies’ risk and insurance management practice group. Park Strategies is a global diversified management advisory and government relations consulting firm providing strategic and organizational advice to a wide variety of commercial enterprises, non-profit associations, and governmental entities, and providing expert testimony and counsel in insurance-related litigation and disputes. I also serve as a partner in the New York law firm The D’Amato Law Group.

5. Prior to joining Park Strategies, I served as the 37th superintendent of insurance for the State of New York between 2001 and 2005. As superintendent of insurance (a

predecessor position to that of superintendent of financial services, which was created in 2011), a position to which I was nominated by Governor George E. Pataki and confirmed by the New York State Senate in May 2001, I was responsible for the regulation of all forms of insurance transacted in New York, including, but not limited to, surety bonds, and led an agency of more than 1,000 employees.

6. During my tenure, the State saw significant insurance events, including, but not limited to, the World Trade Center 9/11 disaster and other commercial insurance crises. Among my accomplishments were the success of a nationally recognized health insurance program for the working uninsured, the growth of captive insurance companies as a meaningful alternative to traditional insurance programs, and the commencement of wide-ranging investigations into insurance carrier and broker activities. I was also the lead regulator in the Empire Blue Cross conversion transaction and participated in some of the largest demutualization and conversion projects during a period of significant corporate restructuring activity within the insurance industry.

7. As superintendent of insurance, I was a member of the National Association of Insurance Commissioners (“NAIC”). I served as a member and NAIC representative on the Financial Services and Banking Information and Infrastructure Committee of the United States Treasury. I also served as Chairman of the NAIC’s Government Affairs Task Force, advised the Federal Reserve Board on insurance issues, and served as a commissioner of the International Commission on Holocaust-Era Insurance Claims.

8. Before my appointment as superintendent of insurance, I served as first deputy superintendent of insurance (1995-2001) and general counsel (1995-1997) of the New York Insurance Department, chief counsel to the New York State Senate Standing Committee on

Insurance (1989-1995), and in a variety of other legal positions for the New York Senate prior to joining the Insurance Committee.

9. I also served as an adjunct professor of public administration at C.W. Post College of Long Island University and as a frequent lecturer and member of the Global Advisory Board for the Mississippi State University Risk Management and Insurance Program. I serve on the boards of Radian Group, a mortgage insurance company (and formerly a financial guaranty company), Capital District Physicians Health Plan, a health maintenance organization, the Senior Health Insurance Plan of Pennsylvania, a long-term care insurance company, and PHL Group, a life insurance company. I am also a former member of the board of the Employer Services Assurance Corporation, a best-practices financial assurance organization associated with professional employer organizations.

10. I am a frequent lecturer and author on insurance, risk management, and business continuity policy and practice. I have also been recognized by courts of New York and other states, as well as numerous federal courts, as an expert in insurance regulatory and compliance matters.

11. I was recently appointed to the Advisory Council of the Rockefeller College of the University at Albany. Additionally, I am active in the National Association of Corporate Directors (“NACD”) and its New York chapter. I achieved and maintain the NACD Board Leadership Fellow designation.

Opinion

12. KSIC has requested that I review the facts and circumstances surrounding the undertaking posted on behalf of Defendants in this action and to render an opinion as to the sufficiency of the surety thereon.

13. My opinion, as set forth herein, is based upon my extensive knowledge, training and experience in New York insurance regulatory and compliance matters and a review of the affidavit of Amit Shah (“Shah Aff.”) and the exhibits attached thereto as well as the undertaking filed with this Court on April 1, 2024, as amended on April 4, 2024, and the notice of exception filed on April 4, 2024. In sum, I see no reason why KSIC may not lawfully underwrite surety bonds in New York as an eligible excess line insurer approved by the Excess Line Association of New York (“ELANY”) and, therefore, duly authorized to issue the subject bond. Moreover, KSIC independently maintains sufficient assets to secure the bond and the subject bond is itself fully collateralized by an account posted by Defendants containing \$175,304,075.95 in cash.

A. KSIC is Authorized to Underwrite Surety Bonds in this State on an Excess Line Basis.

14. N.Y. Ins. Law § 1113(16) defines “fidelity and surety insurance” as, *inter alia*, “[b]ecoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed.”

15. KSIC is a corporation duly organized and existing under the laws of Delaware. Shah Aff., Ex. A.

16. KSIC has been the subject of a triennial review in Delaware and sends its intercompany reinsurance agreements, as discussed more fully below, to the State of Delaware. In my opinion, KSIC has had no unusual regulatory activity within the last several years.

17. KSIC received authorization to transact insurance business in the State of Delaware from the Delaware Department of Insurance as of December 4, 2013. *Id.*, Ex. B. KSIC’s certificate of authority remains in effect “until terminated, suspended, or revoked” and specifically states that KSIC is authorized to transact the business of, *inter alia*, “surety.” *Id.*

18. The certificate of authority further provides that KSIC’s authority is “limited to

that described in Delaware Insurance Code, Chapter 19 as a Domestic Lines Insurer.” Id.; see also 18 Del. § 1932. 18 Del. § 1932 provides that “[s]uch insurers may write surplus lines insurance in any jurisdiction, including this State.”

19. Because KSIC’s certificate of authority has never been terminated, suspended, or revoked, KSIC remains authorized to transact business in the State of Delaware. See Shah Aff. ¶ 6.

20. KSIC received approval for excess line eligibility from ELANY as of June 10, 2021. Id., Ex. C.

21. ELANY was established in 1988 and has operated since then to serve as a facilitator of transactions in the so-called “excess and surplus lines” marketplace, which is a major supplier of capacity for all forms of insurance, including surety coverages, especially commercial insurance. The “E&S” market is focused on “wholesale” brokers who place business with companies not otherwise licensed in New York, as compared to the “authorized” or “admitted” market of insurers licensed by and regulated directly by New York State. New York, as a major insurance market, relies heavily upon the almost forty years of experience in ELANY to assure that the excess and surplus lines insurance market functions smoothly and compliantly. It is a self-regulating non-profit industry advisory association, as it describes itself.

22. In ELANY’s letter approving KSIC for excess line eligibility, ELANY determined that “Knight Specialty has provided sufficient documentation to establish that it meets New York’s eligibility requirements” for excess line eligibility. Id., Ex. C. Those requirements are that “the applicant maintains a minimum policyholder surplus of \$47,000,000 and that it is licensed in its home state to write the lines of business it seeks to write in New York

on an excess line basis.” Id.¹ The letter concludes that “transactions submitted to ELANY by excess line brokers, which Knight Specialty underwrites, will be processed in the ordinary course of business provided they otherwise meet the legal requirements for excess line transactions.”

Id.

23. To my knowledge, ELANY has not terminated, suspended, or revoked its approval of KSIC for excess line eligibility. Based upon my review of the financials submitted with the undertaking and the records of the Delaware Secretary of State, KSIC continues to meet ELANY’s requirements for excess line eligibility insofar as KSIC (1) maintains a minimum policyholder surplus of \$48,000,000, and (2) remains licensed in Delaware to write in New York on an excess line basis. See id. ¶¶ 3-13, Exs. C, H.

24. Consequently, KSIC is eligible as an excess line insurer in the state of New York and was duly authorized to issue the subject bond.

B. The Bond is Adequately Secured.

25. The \$175 million bond at issue is adequately secured.

26. KSIC has entered into a Collateral Account Pledge and Security Agreement (the “Account Pledge Agreement”) with the Donald J. Trump Revocable Trust (the “DJT Trust”).
Id., Ex. E.

27. Pursuant to the Account Pledge Agreement, the DJT Trust granted KSIC a security interest in a Schwab brokerage account, in which the DJT Trust is obligated to maintain no less than \$175 million in cash or cash equivalents at all times. Id.

28. The Account Pledge Agreement also contains a “true-up” provision, which

¹ The minimum surplus requirement is currently \$48,000,000.

requires the DJT Trust to deposit additional collateral into the account in the event the balance falls below the required minimum. Id.

29. As of Friday, April 5, 2024, the account contains \$175,304,075.95 in cash. Id., Ex. F.

30. KSIC, the DJT Trust, and Schwab have also entered into a Pledged Asset Account Control Agreement, whereby Schwab, as custodian of the account, has acknowledged KSIC's right to exercise control over the account within two business days of receiving notice from KSIC of KSIC's intent to activate the control. Id., Ex. G.

31. KSIC also reports that it independently maintains sufficient assets to secure the bond. Based upon my review of the financials submitted with the undertaking, as of December 31, 2023, KSIC held \$539,284,552 in assets and \$138,441,671 in equity (exclusive of the pledged account). Id., Ex. H.

32. KSIC also has a standing agreement with its parent company, Knight Insurance Company, Ltd. ("KIC"), by which KIC reinsures 100% of KSIC's risk. Id., Ex. I.

33. Based upon my review of the financials submitted with the undertaking, as of December 31, 2023, KIC held, on a consolidated basis, \$2,177,780,679 in assets and \$1,005,031,058 in equity. Id., Ex. J.

34. In the unlikely event that the cash pledged to KSIC pursuant to the Account Pledge Agreement is insufficient to secure the \$175 million bond set by the Appellate Division, First Department (a seeming impossibility given the collateral is cash in an amount exceeding \$175 million), the reinsurance agreement permits KSIC to seek payment of any claim(s) on the bond from KIC in accordance with the terms of its reinsurance agreement with KIC.

35. Under the terms of the reinsurance agreement, KIC is required to deposit

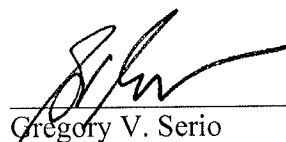
collateral into a trust account, based on KSIC's expected losses and unearned premiums, on a quarterly basis. Id. ¶ 28. With respect to the bond, the potential loss to KSIC is minor due to the DJT Trust's deposit of cash collateral in the Schwab brokerage account and the agreements granting KSIC the ability to exercise control over that brokerage account immediately in the event that a debt becomes due. Id. ¶ 29.

36. KSIC also has the right to demand deposits of additional collateral to the trust account from KIC if its expected losses increase. Id. ¶ 30.

37. As of December 31, 2023, KIC maintains \$56,456,561 in cash and \$937,343,258 in marketable securities to support its reinsurance obligations, far in excess of the amount of the bond here. See id., Ex. J.

38. Based upon the foregoing, it is my professional opinion that the surety on the undertaking filed by KSIC on April 1, 2024, as amended on April 4, 2024, is sufficient and that there is no basis for the exception filed on April 4, 2024.

Dated: Albany, New York
April 15, 2024



Gregory V. Serio

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court, I certify that, excluding the caption, table of contents, table of authorities, signature block, and this certification, the foregoing Affirmation contains 2,291 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: April 15, 2024
New York, New York



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