

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,

Index No.: 452564/2022

Hon. Arthur F. Engoron

Plaintiff,

-against-

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.

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**JOINT MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE TO  
JUSTIFY KNIGHT SPECIALTY INSURANCE COMPANY AS SURETY ON THE  
UNDERTAKING, TO SET ASIDE THE NOTICE OF EXCEPTION TO SURETY, AND  
TO AWARD COSTS INCURRED BY THIS APPLICATION**

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Knight Specialty Insurance Company (“KSIC”), a Delaware-licensed insurer, and Defendants President Donald J. Trump, Donald J. Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust (the “Trust”), The Trump Organization, Inc., 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 (collectively, the “Defendants,” and together with KSIC, the “Movants”), respectfully submit this memorandum in support of their joint application, pursuant to CPLR §§ 2506 and 2507, to: (a) justify KSIC as surety on the undertaking, upon the ground that said surety is duly qualified to act as such; (b) set aside the Notice of Exception to Surety filed by the Attorney General of the State of New York (“Plaintiff” or “NYAG”) on April 4, 2024; and (c) award costs incurred by this application.

#### **PRELIMINARY STATEMENT**

KSIC is a respected, well-capitalized, Delaware-domiciled insurer that has long underwritten surety bonds and other types of insurance placed around the country. KSIC is an eligible excess lines insurer in the State of New York consistent with applicable law and is authorized to underwrite surety bonds on an excess line basis. The \$175 million bond is collateralized by \$175,304,075.95 in cash held in a Charles Schwab account pledged to KSIC, and KSIC has the right to exercise control over that account. KSIC also independently maintains more than \$539 million in assets and \$138 million in equity and has access to more than \$2 billion in assets and \$1 billion in equity, of which nearly \$1 billion is cash and marketable securities, pursuant to a reinsurance agreement with its parent company, Knight Insurance Company (“KIC”).

The Excess Lines Association of New York (“ELANY”), which acts as a service provider to the New York Department of Financial Services (“DFS”) in monitoring and supervising the excess

lines market, has deemed KSIC sufficiently collateralized to make excess line placements in New York. New York, as the nation's commercial center, has long welcomed excess lines carriers. Here, KSIC's solvency and substantial financial credibility, as bolstered by cash collateral in the full amount of the bond and a reinsurance agreement with KIC, enable it to satisfy all obligations under the bond. By any standard, KSIC has therefore provided assurance to the Plaintiff judgment creditor that she can collect the designated amount if the award is affirmed on appeal.

### BACKGROUND

On April 1, 2024, Defendants posted an undertaking of \$175 million, secured by \$175 million in cash collateral, with KSIC as the surety. NYSCEF Doc. No. 1707. In its revised filing on April 4, 2024, KSIC attached (1) a joint limited power of attorney authorizing Mr. Shah to execute "undertakings and contracts of suretyship"; (2) KSIC's financial statement, as certified by Mr. Shah; and (3) KIC's financial statement, as certified by Mr. Shah. *Id.*; *see also* Affirmation of Amit Shah ("Shah Aff."), Exs. H, J. That same day, the NYAG filed a notice of exception to surety pursuant to CPLR § 2506(a) stating that KSIC had not provided a "certificate of qualification pursuant to CPLR § 1111." NYSCEF Doc. No. 1708. As set forth more fully in the Shah Affirmation, KSIC is authorized to underwrite surety bonds in this State on an excess line basis. Shah Aff. ¶¶ 3-14. Specifically, KSIC is authorized to issue surety bonds in its home state of Delaware as of December 2013 and was approved for excess line eligibility in New York as of June 2021. *Id.*; Exs. A-C.

Moreover, the bond is properly secured. Shah Aff. ¶¶ 18-31. KSIC entered into a Collateral Account Pledge and Security Agreement with the Trust, pursuant to which the Trust granted KSIC a security interest in a Schwab brokerage account containing \$175,304,075.95 in cash. *Id.* ¶ 19; Ex. E. KSIC, the Trust, and Schwab also entered into a Pledged Asset Account Control

Agreement, by which KSIC can exercise the right to control the account within two business days by submitting a letter to Schwab of its intent to activate that control. *Id.* ¶ 23; Ex. G. Thus, the \$175 million bond is fully collateralized by \$175 million in cash.

In addition, KSIC, both individually and through a reinsurance agreement with its parent, KIC, maintains sufficient security for its surety on the bond. *Id.* ¶¶ 24-31. While it is inconceivable that any shortfall could arise given the \$175 million bond is secured by \$175 million in cash, KSIC has an agreement with KIC by which KIC reinsures 100% of KSIC's risk. *Id.* ¶ 26; Ex. I. As reflected in the financial statements annexed to the undertaking, as of December 31, 2023, KSIC had \$539,284,552 in assets and \$138,441,671 in equity (exclusive of the \$175,304,075.95 in cash collateral), and KIC had \$2,177,780,679 in assets and \$1,005,031,058 in equity. *Id.* ¶¶ 25-27; Exs. H, J. KIC specifically has \$56,456,561 in cash and \$937,343,258 in marketable securities to support its reinsurance obligations. *Id.* ¶ 31; Ex. J. Gregory Serio, a former New York State Superintendent of Insurance, concurs in his expert affirmation that the surety on the undertaking given by KSIC is sufficient. Affirmation of Gregory Serio ("Serio Aff.").

## ARGUMENT

### POINT I

#### **KNIGHT SPECIALTY INSURANCE COMPANY QUALIFIES AS A SURETY AS AN ELIGIBLE EXCESS LINES INSURER IN THE STATE OF NEW YORK**

The purpose of an undertaking under CPLR § 5519 is to provide assurance to the judgment creditor that its judgment, or, as in this case, a lesser amount decreed by the court, will be collectable if the judgment is affirmed on appeal (*see Genet v. Delaware & H. Canal Co.*, 113 N.Y. 472 [1889]; *Essa v. Weiner*, 178 Misc.2d 149 [Sup. Ct. Kings Cty. 1998]). The surety and its bond in this case fulfill both the purpose and the legal requirements of an undertaking.

The process is grounded in CPLR § 5519(a), which enables an appellant to stay a judgment by filing an “undertaking.” This procedure is essentially automatic where “the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed.” Here, the First Department ordered that Defendants post a reduced undertaking in the amount of \$175 million pursuant to CPLR § 5519(c). Appeal No. 2024-01134, NYSCEF Doc. No. 21.

Plaintiff has filed a rare exception to the bond, under CPLR § 2506, on the alleged basis that KSIC is “(a non-admitted carrier) without a certificate of qualification pursuant to Insurance Law § 1111.” NYSCEF Doc. No. 1708. CPLR § 2506 provides that:

[i]f a certificate of qualification issued pursuant to subsections (b), (c), and (d) of section one thousand one hundred and eleven of the insurance law is not filed with the undertaking, a party may except to the sufficiency of the surety within ten days after receipt of a copy of the undertaking. . . . Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs.

CPLR § 2507(a) provides that:

Within ten days after service of notice of exception, the surety excepted to or the person upon whose behalf the undertaking was given shall move to justify, upon notice to the adverse party and to the sheriff if he was served with the undertaking. The surety shall be present upon the hearing of such motion to be examined under oath. If the court find the surety sufficient, it shall make an appropriate indorsement on the undertaking. A certificate of qualification issued pursuant to subsections (b), (c), and (d) of section one thousand one hundred eleven of the insurance law shall be accepted in lieu of a justification.



While a certificate of qualification obviates the need for justification, CPLR § 2507 permits the Court to justify a surety in the absence of a certificate.

Notwithstanding the CPLR's provision for a hearing on a motion to justify, it is well-settled under New York law that there is no need for a hearing where there is no disputed issue of material fact. *See, e.g., Montepagani v. New York City Dep't of Health*, 85 A.D.3d 474, 474-475 (1st Dep't 2011); *Matter of Cunningham v. Trustees of St. Patrick's Cathedral*, 159 A.D.3d 161, 165 (1st Dep't 2018); *Application of Congregation Ahavath Israel of Washington Heights*, 149 A.D.2d 333, 334 (1st Dep't 1989); *Matter of Caparros*, 146 A.D.2d 417, 418 (1st Dep't 1989).

Plaintiff overlooks the nature of the surety in this case. Excess lines insurers are not prohibited from issuing undertakings in New York. Instead, excess lines insurers are supervised by ELANY and regulated in their home states, *i.e.*, Delaware, and not directly by DFS. KSIC, a Delaware-licensed insurer<sup>1</sup> and a non-admitted insurer in the State of New York with excess line eligibility, issued the bond denoted as Bond No. SA300588 ("Bond"). While KSIC issued the Bond without a "certificate of qualification" pursuant to N.Y. Ins. Law § 1111, KSIC is nevertheless an eligible excess lines insurer in the State of New York. *See Shah Aff.* ¶ 8.

The State of New York permits an excess lines insurer to issue a bond under an exception to the insurance company licensing requirements set forth at Insurance Law § 1101(b)(2)(F). This Section provides that excess lines insurance, if effected by mail from outside this State by an unauthorized foreign or alien insurer duly licensed to transact insurance in its state of domicile, shall not constitute doing an insurance business in New York as proscribed by N.Y. Ins. Law § 1102. Excess lines insurance is a specialty insurance market intended to provide coverage when the coverage cannot be procured from an admitted insurer. In order for a non-admitted foreign

<sup>1</sup> *See Shah Aff.* ¶¶ 4-6.

insurer to qualify as an eligible excess lines insurer in New York, the insurer must maintain a minimum surplus to policyholders of \$48,000,000 and must be licensed by its state of domicile to write the lines of business it seeks to write as an excess lines insurer in New York. *See generally* 11 N.Y.C.R.R. § 27.3. Under these circumstances, New York cannot deem such unauthorized or alien insurer as doing insurance business in the State of New York and cannot prohibit issuance of the Bond. *See generally id.* Indeed, KSIC has previously placed coverage in New York on an excess lines basis as demonstrated by its Annual Statement for the period ending December 31, 2023. *See* Shah Aff. ¶ 15.<sup>2</sup>

KSIC was approved for excess line eligibility by ELANY via correspondence on June 10, 2021. Shah Aff. ¶ 8; Ex. C. This letter provides, in pertinent part, that “[KSIC] ... has provided sufficient documentation to establish that it meets New York’s eligibility requirements. Those requirements are that [KSIC] 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 lines basis.” *See* Shah Aff. ¶ 11; Ex. C. KSIC is authorized to write surety bonds in its home state of Delaware. *See* Shah Aff. ¶¶ 4-6; Ex. B. Under N.Y. Ins. Law § 6901(a)(1), “Financial guaranty insurance” means a surety bond, such as the Bond, and under Insurance Law § 1113(16), “Fidelity and surety insurance,” means: “(F) Becoming a surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts.” (emphasis added). Accordingly, KSIC has

<sup>2</sup> The NYAG argues that KSIC is “a non-admitted carrier,” but there is simply no requirement that a surety be an “admitted carrier.” CPLR § 2502 requires that a surety be “an insurance company authorized to execute the undertaking within the state.” CPLR § 2502(a)(1). Indeed, the New York Insurance Law does not speak in terms of “admitted carriers” or “non-admitted carriers.” *See* Dep’t of Fin. Servs., OGC Op. No. 07-11-09 (Nov. 29, 2007). Instead, the Insurance Law employs the concepts of “authorized insurers” and “unauthorized insurers.” KSIC plainly satisfies the requisite legal standard because it is authorized to underwrite surety bonds in New York on an excess lines basis.

lawfully issued the Bond consistent with New York law and the Notice of Exception must be set aside by this Court.

## POINT II

### **KSIC IS ADEQUATELY CAPITALIZED AND REINSURED THROUGH ITS PARENT COMPANY, KIC**

KSIC also meets the solvency standards at the heart of the qualification process and can therefore support its ability to honor the Bond as issued. First, KSIC has entered into a Collateral Account Pledge and Security Agreement (the “Pledge Agreement”) with the Trust, whereby the Trust has granted KSIC a security interest in a Schwab account (the “Account”) containing \$175,304,075.95 in cash. *See* Shah Aff. ¶¶ 20, 22; Ex. E. The Pledge Agreement also includes a “true-up” provision that requires the Trust to deposit additional collateral into the Account in the event the Account balance falls below the required minimum. *See id.* ¶ 21; Ex. E.

Separately, KSIC, the Trust, and Schwab have entered into a Pledged Asset Account Control Agreement (the “Control Agreement”) whereby Schwab, as custodian of the Account, has acknowledged KSIC’s right to control the Account within two (2) business days of receiving notice from KSIC of KSIC’s intent to activate said control.<sup>3</sup> *See id.* ¶ 23; Ex. G. KSIC has substantial capital and surplus as well as inter-company reinsurance support for its insurance undertakings, which include the Bond. *See id.* ¶¶ 24-31. As of December 31, 2023, KSIC had \$539,284,552 in assets and \$138,441,671 in equity, and 100% of KSIC’s risk is reinsured through a standing agreement with its parent company, KIC. *See id.* ¶¶ 25, 26; Exs. H, I.

As of December 31, 2023, KIC had, on a consolidated basis, \$2,177,780,679 in assets and \$1,005,031,058 in equity. *Id.* ¶ 27; Ex. J. If KSIC were unable to secure funds pledged in the

<sup>3</sup> Note also, Defendants’ deposit and dedication of \$175 million under the Control Agreement undoubtedly qualifies as an undertaking in its own right.

collateral Account, in accordance with the terms of its reinsurance agreement with KIC, KSIC would seek payment of any claim(s) on the Bond from KIC. As of the date hereof, KIC has \$56,456,561 in cash and \$937,343,258 in marketable securities to support its reinsurance obligations. *Id.* ¶ 31; Ex. J. As KIC is a Cayman Islands exempt company, a trust account has been established for the benefit of KSIC. Under the terms of the reinsurance agreement, KIC is required to deposit collateral to this trust account, based on KSIC's expected losses and unearned premium, on a quarterly basis. *Id.* ¶ 28. KSIC has the right to demand deposits of additional collateral to the trust account from KIC if the expected losses of KSIC increase over time. *Id.* ¶ 30.

\* \* \*

The documentary evidence in support of justification is overwhelming and obviates any need for a hearing to set aside the exception or to justify KSIC as surety. KSIC has attached to the Shah Affirmation (1) evidence of KSIC's good standing in Delaware, (2) KSIC's certificate of authority from Delaware, (3) KSIC's authorization from ELANY, (4) the Account Pledge and Control Agreements, (5) the Schwab brokerage account statement, (6) KSIC's and KIC's financial statements, and (7) the reinsurance agreement between KSIC and KIC. In light of this overwhelming evidence, there can be no issue of material fact, and the NYAG cannot manufacture one by insisting on the submission of a certificate of qualification, which is not required by law for KSIC to act as surety. *See, e.g., Montepagani*, 85 A.D.3d at 474-475.

The NYAG's exception is taken unnecessarily and should be set aside with costs. Her sparse notice identifies no insufficiency other than the failure to enclose a certificate of qualification. While a certificate would be dispositive evidence of justification, it is not the only evidence of justification. KSIC was and is authorized to issue the Bond here, and the Bond is more than sufficiently collateralized in the event the Court's judgment is affirmed.

**CONCLUSION**

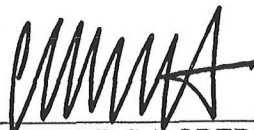
Because the undertaking qualifies as a valid surety instrument, Plaintiff's exceptions should be set aside, KSIC justified as surety, costs awarded, and the undertaking indorsed by this Court.

Dated: New York, New York  
April 15, 2024

Respectfully submitted,



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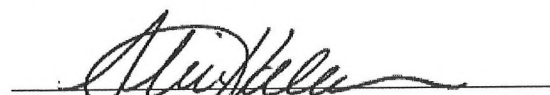


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**CERTIFICATION**

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 Memorandum of Law contains 2,764 words. The foregoing word counts were calculated using Microsoft® Word®.

Dated: New York, New York  
April 15, 2024



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