

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

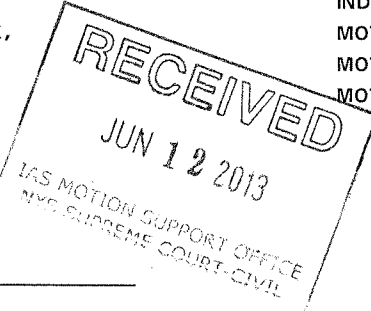
PRESENT: MANUEL J. MENDEZ  
*Justice*

PART 13

In the Matter of the Application of

BENJAMIN LAWSKY, Superintendent of  
Financial Services of the State of New York,  
for an Order of Appointment as  
Ancillary Receiver of,

INDEX NUMBER 400533/13  
MOTION DATE 05-22-2013  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_



AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY.

The following papers, numbered 1 to 5 were read on this petition and Order to Show Cause to/for New York Insurance Law Article 74 relief, based on appointment of ancillary receiver:

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...  
Answering Affidavits – Exhibits \_\_\_\_\_ cross motion \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED	
1 - 3	_____
4 - 5	_____
	_____

Cross-Motion: Yes  No

Benjamin Lawsky in his capacity as Superintendent of Financial Services of the State of New York (hereinafter referred to as "Superintendent"), brought this Order to Show Cause and Petition seeking an Order pursuant to New York Insurance Law Article 74, appointing him and his successors in office, as ancillary receiver of American Manufacturers Mutual Insurance Company (hereinafter referred to as "American Manufacturers"); directing the Superintendent to immediately take possession of such property and recover such other assets of American Manufacturers; injunctive relief; a bar date for the submission of claims; and extending immunity to the Superintendent as ancillary receiver.

American Manufacturers is a property and casualty mutual insurance company organized under the laws of the State of Illinois, with its principal office located at one Corporate Drive, Suite 200, Long Grove, Illinois 60049. American Manufacturers was authorized to do business in, and maintained its principal office in the State of New York at, 30 Rockefeller Plaza, New York, N.Y. 10112.

On July 2, 2012, an Agreed Order of Rehabilitation was entered against American Manufacturers in Illinois. Effective May 10, 2012, the Circuit Court of Cook County Illinois, County Department, Chancery Division, under #12 CH 24227, entered into an Order of Liquidation with a finding of insolvency (hereinafter referred

FOR THE FOLLOWING REASON(S):

FILED

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COUNTY CLERK'S OFFICE  
NEW YORK

to as the "Illinois Order of Liquidation"). Pursuant to the Illinois Order of Liquidation, American Manufacturers was consolidated in debt and insolvency, with Lumberman's Mutual Casualty Company. Pursuant to subsection (G) of the Illinois Order of Liquidation, mandatory and prohibitive injunctions were issued (pages 7-8 of 11). These injunctions included,

"(iv) The officers, directors, agents, servants, representatives and employees of Lumbermans, and all other persons and entities having knowledge of this Order are restrained from bringing or further prosecuting any claim, action or proceeding at law or in equity or otherwise, whether in this state or elsewhere, against Lumbermans, or its property or assets...or from obtaining, asserting or enforcing preferences, judgments, attachments or other like liens or including common law retaining liens, or encumbrances or the making of any levy against Lumbermans, or its property or assets...until further order of this Court."

The Director of Insurance of the State of Illinois, Andrew Boron (hereinafter referred to as "liquidator"), was appointed as liquidator. Pursuant to New York Insurance Law §7408[b][6], Illinois is a reciprocal state. The Domiciliary Receiver has requested the appointment of an ancillary receiver for American Manufacturers. The Superintendent in this Article 74 proceeding, is seeking the appointment as ancillary receiver.

In accordance with the "full faith and credit clause," of the Constitution, a stay of proceeding pending appointment of a receiver, or judgment in another state, has the same, "credit, validity and effect," in New York (A.J. Pegno Constr. Co. v. Highlands Ins. Co., 39 A.D. 3d 273, 834 N.Y.S. 2d 109 [N.Y.A.D. 1<sup>st</sup> Dept., 2007]). Liquidation proceedings commenced in another state on behalf of an insurer domiciled in that state, permits New York residents to file their claims either with the ancillary receiver or the domiciliary receiver. Secured claimants are required to either file their claims with the ancillary receiver or prove their claims to the domiciliary receiver. Secured creditors cannot maintain actions independent from liquidation proceedings because that would permit them to receive benefits to the detriment of other claimants (G.C. Murphy Co. v. Reserve Ins. Co., 54 N.Y. 2d 69, 429 N.E. 2d 111, 444 N.Y.S. 2d 592 [1981]).

The domiciliary state and its receiver are recognized in New York as having authority over all of a liquidated insurer's assets. Pursuant to Insurance Law §7410 the Court shall appoint the Superintendent of Financial Services, to act as ancillary receiver for an insurer not domiciled in New York State and to exercise control over certain assets located within New York State (Levin v. National Colonial Ins. Co., 1 N.Y. 3d 350, 806 N.E. 2d 473, 774 N.Y.S. 2d 465 [2004]).

Article 74 the New York Insurance Law applies after an insurer is liquidated, to create a single integrated administration for the equitable treatment of its creditors and to avoid preferences. The Supreme Court has jurisdiction concerning claims for and against the insurer and assets available for distribution (Cocoran v. Frank B. Hall

& Co., Inc., 149 A.D. 2d 165, 545 N.Y.S. 2d 278 [N.Y.A.D. 1<sup>st</sup> Dept., 1989]). The court has discretion and broad authority to issue injunctions it deems necessary, to prevent interference with liquidation proceedings or the waste of an insurer's assets. The Court in its discretion can modify injunctive relief in the "interest of justice," as a means to assist or aid in bringing about a result after the correct application and consideration of, "...the interests of both the litigants and society" (In Re Liquidation of Midland Insurance Company, 87 A.D. 3d 487, 929 N.Y.S. 2d 116 [N.Y.A.D. 1<sup>st</sup> Dept., 2011]). The Court can abuse its discretion by staying pending actions involving policies, claims and issues unrelated to the bankruptcy proceedings because it promotes delay over efficiency (Mt. McKinley Ins. Co. v. Corning Inc., 33 A.D. 3d 51, 818 N.Y.S. 2d 73 [N.Y.A.D. 1<sup>st</sup> Dept., 2006]).

The attorneys for, Rafael Perez and Jimuer Romero Olvera, (hereinafter referred to as the "Attorneys"), plaintiffs in an action titled *Julio Recciado, et al. v. BBR Contracting Corp.*, pending before the Honorable Joan M. Kenney, in Supreme Court, New York County, under index number 600653/06, partially oppose the relief sought by the Superintendent. They do not oppose the appointment of the Superintendent as ancillary receiver, but oppose any injunction or stay of their pending action. The Attorneys contend that Justice Kenney's Decision and Order dated January 3, 2013, denying American Manufacturer's motion for a stay pending rehabilitation proceedings, permitting discovery and having their action to proceed to trial, is law of the case (Mot. Exh. A). The Attorneys claim that their clients would be prejudiced by any stay of the pending action, because it is on the trial calendar. Any lengthy delay will prevent them from obtaining or maintaining subpoenaed records.

Justice Kenney's Decision and Order dated January 3, 2013, was prior to the injunctive relief indicated in the Illinois Order of Liquidation. The Superintendent of Financial Services, upon appointment to act as an ancillary receiver, requires sufficient time and opportunity to obtain the relevant information and documentation concerning American Manufacturers' assets located in New York State. The Superintendent will also need to coordinate with the Illinois domiciliary liquidator.

This Court in the "interest of justice," will provide a partial accommodation based on the relief sought by the attorneys in the unpaid wages action currently pending for trial, in which causes of action are asserted against American Manufacturers based on suretyship and failure to pay bonds. A partial modification of the injunctive relief sought by the Superintendent shall be granted permitting the pending action to proceed to trial after a brief stay. The pending trial will not interfere with the liquidation process, result in the waste of the insurer's assets, or create a preference.

Accordingly, it is ORDERED and [REDACTED], that the petition for an order of ancillary receivership is granted, as follows:

(1) The Superintendent and his successors in office are appointed Ancillary Receiver of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY and are: (A) authorized and directed to immediately take possession of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY's property and recover such

other assets of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY that are located in the State of New York; (B) vested with all powers and authority expressed or implied under Insurance Law Article 74, and as set forth in this Order, and (C) authorized to pay such claims against AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, or its policy holders, that are covered by New York Security funds.

(2) The Ancillary Receiver may deal with the property and business of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, in its name, or in the name of the Ancillary Receiver.

(3) The officers, ~~directors, shareholders, trustees, depositories, policyholders,~~ agents, servants, attorneys, managers and employees of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY and all other related persons are permanently enjoined and restrained from: (A) transacting AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY business, except as authorized by the Ancillary Receiver; (B) wasting or disposing of the property or assets of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY that are located in the state of New York; (C) interfering with the Ancillary Receiver in the possession, control or management of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY's property or in the discharge of his duties.

(4) All persons are permanently enjoined and restrained from commencing any actions, lawsuits or proceedings against AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, and all persons are permanently enjoined and restrained from commencing any actions, lawsuits or proceedings against the Superintendent as Ancillary Receiver or the New York Liquidation Bureau, its employees, attorneys or agents, with respect to this proceeding or in the discharge of their duties under Insurance Law Article 74.

(5) All persons are permanently enjoined and restrained from obtaining preferences, judgments, attachments or other liens, or making any levy against AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY's property located in the State of New York or any part thereof.

(6) The parties to *Julio Recciado, et al. v. BBR Contracting Corp.*, pending before the Honorable Joan M. Kenney, in Supreme Court, New York County, under index number 600653/06, are enjoined and restrained from proceeding with any court proceedings or other litigation related tasks or procedures, including but not limited to, conferences, trials, applications for judgment or proceedings on settlement or judgment, for a period of 90 days from the date of Entry of this Order.

(7) Parties to all actions, lawsuits and special or other proceedings other than, *Julio Recciado, et al. v. BBR Contracting Corp.*, pending before the Honorable Joan M. Kenney, in Supreme Court, New York County, under index number 600653/06; in which AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, its policyholders or insureds, are obligated to defend a party or to provide a defense of any matter against an insured pursuant to an insurance policy, bond, contract or

otherwise, are enjoined and restrained from proceeding with any discovery, court proceedings or other litigation tasks or procedures, including, but not limited to, conferences, trials, applications for judgment or proceedings on settlement or judgment, for a period of 180 days from the date of Entry of this Order.

(8) All persons or entities having property located in the State of New York and/or information belonging or related to AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, including but not limited to, insurance policies, underwriting data, claims files (electronic or paper) and/or software programs owned by, belonging to or relating to AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY shall preserve such property and/or information, and immediately, upon the Ancillary Receiver's request and direction, ~~assign, transfer, turn over and~~ deliver such property and/or information to the Ancillary Receiver.

(9) Any bar date for the submission of claims that is established in the domiciliary liquidation proceeding shall also be effective in the ancillary receivership proceeding upon notice, as this Court shall, at the time of establishment of the bar date, determine to be proper and sufficient.

(10) Immunity is extended to the Superintendent in his capacity as Ancillary Receiver of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, and his successors in office and their agents and employees, for any cause of action of any nature against them, individually or jointly, for any act or omission when acting in good faith, in accordance with the orders of this Court, or in the performance of their duties pursuant to Insurance Law Article 74.

(11) The Ancillary Receiver shall serve a copy of this Order on Andrew Boron, Director of Insurance of the State of Illinois as Special Deputy Receiver of AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY, 222 Merchandise Mart Plaza, Suite 960, Chicago Illinois, 60654, by certified mail.

(12) The Ancillary Receiver shall provide notice of this Order to all creditors, claimants and interested persons located in the State of New York by: (A) publication of the notice of this Order in *Business Insurance*, or a publication of similar circulation, once a week for two consecutive publications, commencing within four weeks of entry of this Order in a form substantially similar to the one attached hereto; and (B) posting this Order on the Internet web page maintained by the Bureau at <http://www.nylb.org> within 15 days after entry of this Order.

(13) The notice of this Order shall inform all creditors, claimants and other interested persons that this Order has been entered and shall be sufficient notice to all persons interested in AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY.

(14) AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY's license to do business in the State of New York is hereby revoked.

(15) This Court shall retain jurisdiction over this matter for all purposes.

(16) The caption of this proceeding is amended to read as follows:

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

-----X  
In the matter of

The Ancillary Receivership of

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY

-----X

(17) The Superintendent shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry, upon the respondents, the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158) who are then directed to amend their records to reflect the above amended caption of this proceeding.

ENTER:

\_\_\_\_\_  
MANUEL J. MENDEZ,  
J.S.C.

Dated: June 6, 2013

MANUEL J. MENDEZ  
J.S.C.

Check one:     FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST     REFERENCE

**FILED**

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