

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

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In the Matter of

the Ancillary Receivership of

EAGLE INSURANCE COMPANY and  
NEWARK INSURANCE COMPANY.  
-----X

Index No.  
400874/09

Motion Sequence No.  
002

WALTER B. TOLUB, J.:

In the instant motion, the Acting Superintendent of Insurance of the State of New York (the ancillary receiver) has moved to extend the temporary injunction, entered in the February 27, 2009 Order, which placed Eagle Insurance Company (Eagle) and Newark Insurance Company (Newark) into ancillary receivership and restrained all parties to actions and proceedings against Eagle and/or Newark's insureds from going forward for 180 days.

The ancillary receiver moves by Order to Show Cause, dated August 25, 2009, for a 180-day extension, which it asserts is necessitated by a variety of reasons, including "the fact that [the Claims Division of the New York State Liquidator's Bureau] has, to date, only received from the New Jersey Liquidator less than fifteen percent (15%) of the property and casualty files and less than one percent (1%) of the no-fault claim files." See Order to Show Cause, ¶ 5. According to the movant, the New Jersey Liquidator's delay was caused, in large part, by "technical issues with respect to assigning claim numbers and

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converting electronic data to a useful format."

The ancillary receiver's motion is opposed by Lauren Verlizzo (Verlizzo), who was severely injured in an July 4, 2002 accident, in which an Eagle insured is involved to a small degree. Verlizzo contends that her Supreme Court, Suffolk County action (Index No. 1614/03) has been awaiting trial since November 17, 2006, but cannot go forward due to the injunction at issue herein.

#### Discussion

Insurance Law § 7419 provides that a court "may at any time during a proceeding under this article issue such ... injunctions ... as it deems necessary to prevent ... the commencement or prosecution of any actions, the obtaining of ... judgments, attachments or other liens, or the making of any levy against the insurer, its assets or any part thereof."

Pursuant to that authority, on February 27, 2009, Nassau County Justice Angela G. Iannacci (Justice Iannacci) issued an order, which included the provision that "[a]ll parties to actions, lawsuits ... or other proceedings in which Eagle or Newark are obligated to defend a party pursuant to an insurance policy, ... are enjoined and restrained from proceeding ... for a period of 180 days from the date of entry of this Order." See Justice Iannacci Order, at ¶ 9.

The Superintendent of Insurance has been given expansive

authority in matters of insurer liquidation and rehabilitation. See *Curiale v AIG Multi-Line Syndicate, Inc.*, 204 AD2d 237 (1st Dept. 1994). "[T]he Legislature [has] bestowed upon the Superintendent broad fiduciary powers to manage the affairs of distressed domestic insurers and to marshal and disburse their assets." *Matter of Dinallo v DiNapoli*, 9 NY3d 94, 97 (2007).

Courts will generally defer to the Superintendent of Insurance's business judgment and disapprove their actions "only when they are shown to be arbitrary, capricious or an abuse of discretion." *Mills v Florida Asset Financing Corp.*, 31 AD3d 849, 850 (3d Dept 2006). Although the movants have failed to give much detail as to why the requested extension is needed, and have not included an affidavit from anyone at the New Jersey Liquidator's office verifying its contention that technical issues caused the delay, the opposition have not proffered any evidence of the of the ancillary receiver's lack of veracity.

Therefore, the movant's motion is granted. However, Verlizzo is not barred from seeking an exception to the injunction, which this court will entertain in an exercise of its discretion in these matters. See *In re Rehabilitation of Frontier Ins. Co.*, 57 AD3d 1302 (3d Dept 2008).

**Order**

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that all parties to actions, lawsuits or special or other proceedings in which Eagle Insurance Company or Newark Insurance Company are obligated to defend any party 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 and proceedings on defaults, settlements or judgments, for a period of 90 days from the date of entry of this Order; and it is further

ORDERED that the Acting Superintendent of Insurance of the State of New York shall provide notice that this Order has been entered to all creditors, claimants and interested persons located in the State of New York by publishing such notice in the New York Post or Newsday, or a publication of similar circulation, once a week for two consecutive weeks, commencing within two weeks of entry of this Order.

Dated: 12/23/97

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*[Signature]*  
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 J.S.C.