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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 35

-----X
In the Matter of

the Application of

INDEX NO:
450500/16

Maria T. Vullo, Acting Superintendent of
Financial Services of the State of New York,
for an order to take possession of the property
of and liquidate the business and affairs of

HEALTH REPUBLIC INSURANCE OF NEW YORK, CORP.,
-----X

Motion/Decision

60 Centre Street
New York, New York
May 10, 2016

B E F O R E:

HONORABLE CAROL R. EDMEAD,

JUSTICE

A P P E A R A N C E S:

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VINCENT J. PALOMBO, RMR, CRR
OFFICIAL COURT REPORTER

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PROCEEDINGS

THE COURT: People want to hear what is going on. These are, I imagine -- who is in the audience?

MR. HOLTZER: Claimants.

THE COURT: Somebody will explain and use the mic. I want everyone to hear you. Okay.

Speak up because they all want to know what is going on.

MR. HOLGADO: Of course, your Honor, and I have a pretty booming voice to begin with, but I'll direct it towards the microphone.

THE COURT: Go ahead.

MR. HOLGADO: Yes, your Honor.

Good morning, my name is David Holgado, I am a Senior Enforcement Counsel with the New York State Office of the Attorney General, the office of Eric T. Schneiderman. We are here representing Maria T. Vullo in her capacity as the Acting Superintendant of Financial Services of the State of New York, and pursuant to Article 74 of the New York Insurance Law Ms. Vullo, in her individual capacity, is the proposed liquidator of Health Republic Insurance of New York Corporation.

THE COURT: Now, everyone understands this is about health insurance of New York, that's the provider.

MR. HOLGADO: Health Republic.

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THE COURT: Health Republic, I'm sorry.
Off the record.

(Discussion held off the record.)

THE COURT: The first order is that it is
ordered that the transcript of today's proceeding and
the order annexed thereto be translated by Weil Gotshal.

MR. HOLTZER: Sure.

THE COURT: On behalf of --

MR. HOLTZER: On behalf of Health Republic.

THE COURT: -- will translate, at least into
Spanish, and then post the translated transcript and the
order on a website that they can access, and that the
hotline reference that the transcript can be read in
Spanish and maybe, I don't know what the other language
may be, and give them the link. That is order one.

MR. HOLTZER: Yes, your Honor.

(Mirella Torres, Official Court Interpreter,
Spanish, is now present and interpreting the
proceedings.)

THE COURT: All right, what we are going to do,
now we have a Spanish interpreter, I'm going to pause at
points so she can translate.

Now, today is a proceeding with respect to the
application for what?

MR. HOLGADO: Your Honor, it's an application

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2 by Maria T. Vullo, in her capacity as the Acting
3 Superintendant of Financial Services of the State of New
4 York.

5 THE INTERPRETER: Can you repeat the title of
6 Ms. Vullo?

7 MR. HOLGADO: Acting Superintendant of the
8 State of New York and it is an application pursuant to
9 Article 40 -- sorry, Article 74 of the New York
10 Insurance Law, seeking an order of liquidation to
11 initiate this liquidation proceeding, and to appoint the
12 superintendant as liquidator of Health Republic
13 Insurance of New York.

14 THE COURT: Explain what that means, to
15 liquidate, so that they understand what is going on.

16 MR. HOLGADO: Your Honor, the superintendant,
17 as liquidator, essentially stands in the shoes of the
18 insurance company. The superintendant as liquidator
19 stands in the shoes of the insurance company.

20 THE COURT: Acts as, the insurance company.

21 MR. HOLGADO: In order to manage its business
22 and affairs, given the state of the company, in order
23 to -- in order to ensure that claims are paid in the
24 most orderly fashion as possible, given the
25 circumstances.

26 And it's much broader than that, it is an order

PROCEEDINGS

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2 to manage all the affairs of the company, which the
3 superintendant has determined it is necessary for itself
4 to do.

5 Your Honor, we intend to explain in our
6 statements to you today how the process will work, once
7 the appointment is made.

8 This is a court-supervised process, and we will
9 be seeking an order from your Honor today that will
10 establish the initial procedures for managing the
11 affairs of the company.

12 THE COURT: Basic question. Will the insurance
13 company be dissolved?

14 MR. HOLTZER: The answer is yes, your Honor,
15 ultimately.

16 THE COURT: Yes, ultimately. Eventually. The
17 result will be dissolution.

18 MR. HOLTZER: Yes, your Honor.

19 THE COURT: But in the interim, the management
20 of the business and the claims of the insured, like the
21 ones in the audience, will be managed, if it is approved
22 by the liquidator?

23 MR. HOLTZER: Yes, your Honor.

24 THE COURT: Now, in this interim, if I'm an
25 insured, will I still be covered?

26 MR. HOLGADO: Your Honor, coverage has ceased

PROCEEDINGS

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2 as of the end of November of last year, actually. So
3 that's not the issue. It's more about --

4 THE COURT: One second.

5 So the coverage has ended?

6 MR. HOLTZER: Yes, your Honor.

7 THE COURT: As of last November 2015?

8 MR. HOLTZER: Yes, your Honor.

9 MR. HOLGADO: That's correct.

10 THE COURT: But if I have a claim that is
11 pending, this process will be in place to address my
12 claim?

13 MR. HOLTZER: Yes, your Honor.

14 MR. HOLGADO: That's correct.

15 THE COURT: What about a new claim? Could
16 there be a new claim?

17 MR. HOLTZER: No.

18 THE COURT: The answer is no.

19 So the only thing that can exist at this stage
20 is processing and handling of claims that have already
21 been filed.

22 MR. HOLTZER: Yes, your Honor.

23 THE COURT: What if I just discovered the
24 claim? What about a late discovery?

25 MR. HOLTZER: Your Honor -- it's Gary Holtzer,
26 for the record, from Weil Gotshal and Manges.

PROCEEDINGS

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2 We can explain the claims process, but the
3 short answer to your question, all claims that have been
4 submitted under the existing contracts and arrangements
5 by the end of March --

6 THE COURT: March, 2016.

7 MR. HOLTZER: Yes.

8 Because the time periods for the claim process
9 in the underlying insurance contracts had a fixed amount
10 of time to submit claims. Given the cessation of the
11 business, in November, 2015 the contractual period would
12 have run by March of 2016 to submit claims.

13 THE COURT: Got it.

14 Now, before you do the technical aspect of
15 this, why was the letter sent to all these people
16 requiring that they appear. That's what I was told.
17 Was there such a letter?

18 MR. HOLGADO: Your Honor, a notice was sent
19 out. It may have been that some of the recipients of
20 the letter understood it in the way you just mentioned,
21 but that's not what was -- it was an extra notice
22 that -- it was a notice that wasn't required by the
23 order to show cause, but was provided anyway in the
24 interest of transparency.

25 MR. HOLTZER: Your Honor, the most important
26 thing for them to know -- for the claimants to know is

PROCEEDINGS

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2 no claims are being waived today or resolved today. The
3 process for that will begin after today and there will
4 be notice regarding that process.

5 THE COURT: Okay. I'm now going to move to the
6 actual application. The application is in two parts.

7 MR. HOLGADO: That's correct your Honor.

8 THE COURT: Part one. Go ahead.

9 MR. HOLGADO: Yes, your Honor, again, my name
10 is David Holgado, Senior Enforcement Counsel at the
11 Office of Eric T. Schneiderman, Attorney General for the
12 State of New York, and we are here on behalf of Maria T.
13 Vullo in her capacity as the Acting Superintendent of
14 Financial Services, and the first part, your Honor, is
15 our request that you appoint the Superintendent as
16 liquidator of Health Republic, which will officially
17 commence this liquidation proceeding.

18 THE COURT: Stop right there.

19 MR. HOLGADO: Your Honor, there's a form of
20 order that was attached to the petition and Mr. Holtzer
21 will be addressing the various forms of injunctive
22 relief being sought in that order, once your Honor
23 appoints the superintendent as liquidator.

24 THE COURT: You're not going to move to the
25 second point because I need to hear the opposition to
26 the first point.

PROCEEDINGS

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2 MR. HOLGADO: There is no opposition to the
3 first point is some of the good news. There's been no
4 objection filed to the appointment of the superintendent
5 as liquidator and -- or to the grounds for the
6 liquidation.

7 THE COURT: Okay. She needs to translate.

8 I understand that there is no objection, but as
9 a background question, I don't know to what degree
10 you've explained this to the insured, but the reason
11 that liquidation is required is what?

12 MR. HOLGADO: Your Honor, there are two grounds
13 asserted for the liquidation. The first is the consent
14 of Health Republic itself.

15 The second is the in -- that the superintendent
16 has determined that Health Republic is insolvent under
17 the meaning of Section 1309.

18 THE COURT: I want you to interpret first
19 because I'm going to ask you to explain one piece of
20 that, for the benefit of those who may not know what
21 that meant.

22 Go ahead.

23 MR. HOLGADO: Certainly.

24 THE COURT: Now, insolvent, that means exactly
25 what, in lay terms?

26 MR. HOLGADO: Your Honor, I will try my best to

PROCEEDINGS

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2 make these lay terms, but the -- to be very careful
3 because the statute requires -- the superintendent has
4 determined, based upon a review of financial statements
5 and other information provided by Health Republic, that
6 Health Republic is unable to pay its outstanding
7 obligations as they mature in the regular course of
8 business, and in finding that has found that its
9 liabilities and required reserves exceed its admitted
10 assets.

11 THE COURT: So the cost of doing business
12 exceeds the ability to provide?

13 MR. HOLGADO: That, your Honor, may be a lay
14 way of saying it, but I would say it the way I said it,
15 because I'm one of those annoying lawyers.

16 THE COURT: I'll say it my way so people
17 understand.

18 The cost of doing business is exceeding the
19 ability to provide the services?

20 MR. HOLGADO: And it is the very -- it is a
21 reason for taking possession of a company because of the
22 circumstances of --

23 THE COURT: And the liabilities are exceeding
24 the assets.

25 MR. HOLTZER: Correct.

26 MR. HOLGADO: And the liabilities, in addition

PROCEEDINGS

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2 to required reserves that are required by regulation,
3 exceed its assets and therefore it's been determined it
4 is unable to pay its debts as they come due.

5 THE COURT: And one point, then I'm going to
6 let you translate all that was said, this isn't like a
7 reorganization, this is a dissolution.

8 MR. HOLGADO: It's not always clear cut, your
9 Honor, at this stage, but it does appear to be the case
10 that -- with this particular company, that's correct.

11 THE COURT: I understand, because I guess
12 that's what is the eventual, it could possibly be, but
13 the likelihood is not, that it would survive. It is
14 more likely that it is a dissolution.

15 MR. HOLTZER: It will not survive. It will be
16 a liquidation.

17 THE COURT: Go ahead.

18 Thank you.

19 So my understanding is with respect to the
20 first part of the application there is no objection.

21 So the Court can address and order the first
22 part.

23 MR. HOLTZER: Yes.

24 THE COURT: So it is hereby ordered that the
25 application to appoint the superintendent, who is Maria
26 T. Vullo, and her successor in office, as liquidators of

PROCEEDINGS

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2 financial services of the -- of Health Republic
3 Insurance of New York, sorry, is granted.

4 MR. HOLGADO: Thank you, your Honor.

5 THE COURT: Now, that piece is done, so the
6 transfer is now in place that the superintendent and/or
7 her successors are now the liquidators.

8 That means that the office of the attorney
9 general in its capacity as the office of attorney
10 general has stepped aside.

11 MR. HOLGADO: I could leave the table if you
12 want.

13 THE COURT: Oh, no, no, it's not that dramatic.
14 And now counsel for the liquidator will take
15 over.

16 Am I right?

17 MR. HOLTZER: Yes, your Honor.

18 THE COURT: Let her translate.

19 Now, I am going to hear from counsel for the
20 liquidator.

21 MR. HOLTZER: Yes, your Honor.

22 Thank you, your Honor.

23 For the record, Gary Holtzer, Weil Gotshal and
24 Manges, we represent Health Republic and as you just
25 noted on the record, our engagement transfers to the
26 superintendant in her capacity as liquidator of Health

PROCEEDINGS

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2 Republic upon the entry of the liquidation order.

3 Before discussing the specific relief, the
4 superintendant requests, in the liquidation order, I
5 propose describing our plan for this proceeding during
6 the next six to twelve months. Fundamental -- a
7 fundamental tenet of our process, your Honor, is
8 transparency, which is one of the reasons that we
9 decided to serve several hundred thousand notices to
10 parties so that they would be aware of the proceeding,
11 and the process and could attend if they wanted to, but
12 are not required to.

13 Your Honor, as we noted on the record, and in
14 our papers, Health Republic ceased to operate in the
15 fourth quarter of 2015.

16 AUDIENCE MEMBER: I'm wondering does this
17 involve people who are members until August? My
18 coverage ends in August, so I don't know why I'm here.

19 THE COURT: Coverage ends in August. I don't
20 know what that means.

21 AUDIENCE MEMBER: With Health Republic.

22 MR. HOLTZER: All coverage would have ceased in
23 November of 2015.

24 THE COURT: My understanding is that
25 coverage -- and tell me if I misunderstood -- my
26 understanding is that coverage ceased effective November

PROCEEDINGS

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2 of 2015 which means one is no longer covered after that
3 date. Listen in little words. No one is covered after
4 that date, however, if I had a claim, I had until March
5 of 2016 to file that claim, but coverage ended last
6 year.

7 She has to translate.

8 And when I finish, if you have questions -- I'm
9 not doing it now -- when I finish, I'll ask if you have
10 questions that they can maybe respond to.

11 THE COURT: Okay. One second.

12 (There is a pause in the proceedings.)

13 THE COURT: I understand that in the audience
14 is Mr. Leonard Rosenberg.

15 MR. ROSENBERG: Yes, your Honor.

16 THE COURT: Mr. Rosenberg is from what firm?

17 MR. ROSENBERG: Garfunkel Wild, PC.

18 THE COURT: And the request is?

19 MR. ROSENBERG: I'm just here on behalf of
20 Memorial Sloan Kettering, not a party to the proceeding,
21 however, they have a sizeable claim as creditor of
22 Health Republic, so we are here to monitor.

23 THE COURT: And you'd like notice, you said.

24 MR. ROSENBERG: Yes.

25 THE COURT: Of any proceedings.

26 MR. ROSENBERG: Yes.

PROCEEDINGS

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2 THE COURT: And a copy -- you will order the
3 transcript or if it's uploaded, you will read it, but
4 you want them to be aware you are here and you represent
5 Memorial Sloan Kettering Cancer Center and have you a
6 sizeable claim.

7 MR. HOLTZER: Yes, your Honor, we'll make sure
8 that he gets notice.

9 MR. ROSENBERG: Thank you.

10 MR. HOLTZER: Thank you.

11 THE COURT: Continue.

12 MR. HOLTZER: Your Honor just one clarification
13 of what you said.

14 THE COURT: At least.

15 MR. HOLTZER: It is true that the deadline for
16 the last claimants would have been March of 2016, but
17 that deadline derives from when the provision of
18 services were. And so our estimation that all claims
19 would be in is an estimation that derives from the idea
20 that the services were discontinued in November. If you
21 had services before then, your insurance arrangements
22 would have required that the deadline be before
23 March 2016 because it calculates off when the provision
24 of services were.

25 THE COURT: How could someone imagine or
26 believe they're still covered, if that's the case? How

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2 could someone say my coverage doesn't end until July of
3 2016?

4 Is that sort of what you said.

5 AUDIENCE MEMBER: No.

6 THE COURT: What did you mean -- oh, August of
7 2015. I got it.

8 AUDIENCE MEMBER: They stopped coverage. I
9 want to know if I can leave.

10 THE COURT: Yes, you can. Go ahead.

11 Yes, you can. The point is your coverage has
12 ended and therefore if your question is do I still have
13 coverage? Coverage has ended and you don't have to
14 stay.

15 Continue.

16 MR. HOLTZER: Your Honor, perhaps we could help
17 clear the room a little more if we told people this is
18 not a hearing about their claims, this is only a hearing
19 about the next steps of the liquidation process and that
20 they will get notice of their claims so if they choose
21 to leave now, because it is not about their claims, they
22 certainly can.

23 THE COURT: Okay, continue.

24 MR. HOLTZER: The superintendant's main goal
25 for the proceeding, your Honor, is to establish an
26 orderly and efficient process for collecting and

PROCEEDINGS

1
2 distributing Health Republic's remaining assets to
3 claimants.

4 THE COURT: Continue.

5 MR. HOLTZER: Two components of the process
6 must be substantially complete, your Honor, before the
7 liquidator can make distributions to claimants.

8 The first component is identifying and
9 collecting Health Republic's remaining assets; and the
10 second is collecting, reviewing and adjudicating claims
11 against Health Republic.

12 THE COURT: I want to understand claims against.

13 MR. HOLTZER: Claims against, and we'll go
14 through the claims process, but it will be claims of
15 providers and claims of covered parties.

16 Your Honor, do you think it makes sense to see
17 if we've lost the room -- whether we still want to have
18 a translator?

19 THE COURT: Is there anyone here who still
20 needs the translation?

21 (There is a pause in the proceedings.)

22 THE COURT: Yes.

23 AUDIENCE MEMBER: I have a question.

24 THE COURT: Questions at the end. I'll never
25 get through. You will answer the questions.

26 MR. HOLTZER: Yes, your Honor.

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2 So let's address each of the two components in
3 turn. First, identifying and collecting remaining
4 assets.

5 As in all insured liquidation proceedings, the
6 liquidator will identify and attempt to marshal all the
7 assets for the creditors.

8 In Health Republic's case there is a
9 reinsurance agreement that is expected to provide a
10 recovery to the estates, pharmacy rebates from a third-
11 party vendor, and certain amounts that Health Republic
12 is entitled to receive from federal programs.

13 Financial statements will be prepared during
14 the proceeding to apprise the Court of the liquidator's
15 progress.

16 THE COURT: Will that be uploaded?

17 MR. HOLTZER: Yes.

18 The second main component of the proceeding
19 collecting, reviewing and adjudicating claims against
20 Health Republic I'll turn to next.

21 Over the past few months, the Alvarez and
22 Marsal team has evaluated the process Health Republic
23 already had in place to collect, review and adjudicate
24 claims against Health Republic.

25 THE COURT: Go ahead.

26 MR. HOLTZER: Given the importance of the

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2 claims process in the proceedings, your Honor, if it
3 makes sense, we can give the Court some background on
4 that process starting with the submission of policy
5 claims, if your Honor would like.

6 THE COURT: You know, first of all, your papers
7 contain and provide all of this information and it is
8 uploaded.

9 MR. HOLTZER: Yes, your Honor.

10 THE COURT: And to the degree -- this is what I
11 am going to ask because I want to get to the
12 objection -- to the degree that it is possible, in your
13 uploading of the transcript, can you attach certain
14 details that we don't have to now go through? Do you
15 follow what I'm saying? So that they -- anyone who
16 wants to read more, can do so.

17 MR. HOLTZER: Your Honor, we can include in the
18 website, a synopsis of what we would have said here in
19 the complete presentation.

20 THE COURT: Good. Thank you.

21 MR. HOLTZER: Your Honor, one important point
22 for the folks who are attending today is that based on
23 the process for the review of, literally, several
24 hundred thousand claims, and the need to convert into
25 cash the assets of Health Republic that remain that I
26 described, it is our anticipation that there won't be

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2 distributions to claimants until 2017.

3 Your Honor, so we're clear, it won't happen
4 until at least 2017. We'll have to see how the process
5 goes.

6 THE COURT: It could be longer.

7 MR. HOLTZER: It could be longer.

8 THE COURT: Now, the second application.

9 MR. HOLTZER: We can turn to the second
10 application, your Honor, and in particular, the
11 injunctive relief in that part of the application.

12 THE COURT: Go ahead.

13 MR. HOLTZER: The injunctive relief in the
14 proposed liquidation order that we have submitted is
15 designed to protect and preserve Health Republic's state
16 for the duration of this proceeding, and it is necessary
17 to enable the superintendant to accomplish her main goal
18 of establishing a transparent, orderly and efficient
19 process for collecting and distributing Health
20 Republic's remaining assets to claimants.

21 THE COURT: Which paragraph in the proposed
22 order covers injunctive relief?

23 Are we looking at Paragraph 8?

24 MR. HOLTZER: Hold on, we gave you ours. We
25 have plenty.

26 THE COURT: I believe I should be looking at

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2 Paragraph 8, but let me know if that is right.

3 MR. HOLTZER: Yes, there are a number of
4 paragraphs.

5 THE COURT: I'm looking at the injunctive one
6 that starts -- where injunctive relief application
7 starts.

8 MR. HOLTZER: Yes, your Honor.

9 THE COURT: Eight.

10 MR. HOLTZER: It begins --

11 THE COURT: Eight, nine -- for sure.

12 MR. HOLTZER: Eight, nine, ten and continues on
13 from there.

14 THE COURT: I'm sorry.

15 Now, I understand the one objection that, at
16 least -- that is articulated by a participant here is
17 with respect to paragraph ten, except for any
18 investigation or enforcement action by any state or
19 federal agency, all parties and entities are enjoined
20 and restrained from -- and it's about proceedings and
21 actions.

22 MR. YOUNG: Yes.

23 THE COURT: And that is your objection?

24 MR. YOUNG: Yes.

25 THE COURT: I'm listening.

26 MR. YOUNG: There's really only -- there's only

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one question before the Court related to this, which is statutory authority for it, which is --

THE COURT: Statutory authority for it?

MR. YOUNG: I'm sorry, the statutory authority for this injunctive relief, which would come under Section 7419 (b) of the Insurance Law, which in full reads: Such court --

THE COURT: One second.

Tell them I'm addressing a legal issue that doesn't, at this point, appear to this Court to concern anyone except the counsels and anyone who is interested in the audience, but I'm not translating it. It is primarily a legal issue, but it will be part of the uploaded, translated transcript.

Go ahead.

MR. YOUNG: So New York Insurance Law 7419 (b) reads: Such court or justice may any time -- may at any time --

THE COURT: Wait.

(Discussion held off the record.)

THE COURT: Go ahead.

MR. YOUNG: Such court or justice may at any time during a proceeding under this Article issue such other injunctions or orders as it deems necessary to prevent interference with the superintendant of the

PROCEEDINGS

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2 proceeding or waste of the assets of the insurer, or the
3 commencement or prosecution of any actions, the
4 obtaining of any preferences, judgments, attachments or
5 other liens or the making of any levy against the
6 insurer, its assets or any part thereof.

7 There's no mention of states or injunctions
8 against any third parties.

9 However, in the proposed liquidation order,
10 Paragraph 10, they include a stay against New York State
11 Department of Financial Services, the Superintendent,
12 the New York Liquidation Bureau and their respective
13 officers, employees, attorneys, representatives, agents
14 directors and the officers, employees, attorneys,
15 representatives and agents of Health Republic's
16 Insurance of New York. Those are all third parties that
17 are not covered under 7419 (b) of the Insurance Law.

18 THE COURT: As you understand it.

19 MR. YOUNG: As I understand it as -- plain
20 reading, correct --

21 THE COURT: No, as you understand it.

22 MR. YOUNG: As I understand it. Yes.

23 THE COURT: Thank you.

24 Go ahead.

25 MR. YOUNG: So I think what is going on here --

26 THE COURT: First, I want them to respond to

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1
2 whether or not your understanding is accurate, or do
3 they have a different understanding.

4 MR. HOLTZER: We have a different
5 understanding, your Honor. 7419 of the New York
6 Insurance Law authorizes the Court to grant a broad
7 spectrum of injunctive relief in a liquidation
8 proceeding.

9 The relief that is sought here --

10 THE COURT: When you say "a broad spectrum" and
11 I hate to put you on the spot, but I know you must have
12 at least one cite.

13 MR. HOLTZER: We do, your Honor.

14 THE COURT: Thank you.

15 MR. HOLTZER: We have submitted --

16 THE COURT: Counsel, did you look at their
17 cite?

18 MR. YOUNG: Yes, I did.

19 MR. HOLTZER: We submitted, with our papers,
20 four or five instances of other insurance liquidation
21 proceedings in this Court which have gotten the
22 injunctive relief that we're referring to, including a
23 recent one called the Financial Guarantee Insurance
24 Company matter, in which this Court granted the
25 injunctive relief in favor of the Department of
26 Financial Services to protect them against litigation

PROCEEDINGS

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2 during a liquidation proceeding.

3 THE COURT: Were there any objections in those
4 cases?

5 MR. HOLTZER: Yes, the cases were hotly
6 contested throughout. I don't know that there was an
7 objection to this particular injunctive relief --

8 THE COURT: But what is important is -- what?
9 What is important in those rulings, is what? It's the
10 broad scope. That is what you were going to say right?

11 MR. BYEFF: Yes.

12 THE COURT: What is important is the rulings,
13 they all contain a broad scope, which is to say it
14 doesn't have to have the specificity of this laundry
15 list, what matters is that it is a broad stroke
16 application.

17 Am I right?

18 MR. BYEFF: Yes.

19 MR. HOLTZER: Your Honor, one other point --

20 THE COURT: I will put you all on the spot, I'm
21 telling you now. I used to teach, I do this naturally.
22 I can't help myself.

23 MR. HOLTZER: One other point, the order has a
24 mechanic in it that would allow counselor to meet with
25 us and our client to work through any issues and if we
26 can't resolve them, counselor can come back to the court

PROCEEDINGS

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2 and seek further relief --

3 THE COURT: But the relief requested at this
4 juncture is the relief that would stop you from
5 proceeding because according to this counselor, the
6 application is -- what you are seeking is so broad, it
7 should be denied.

8 Close?

9 MR. YOUNG: Correct. It applies to parties
10 that aren't in liquidation, so they're seeking to get
11 the benefits of liquidation without the
12 responsibilities.

13 The Department of Financial Services is in
14 liquidation, if there are claims against them, they're
15 seeking to those claims stayed against the Department of
16 Financial Services for whatever potential civil --
17 civilly -- civil actions that could proceed against
18 them, and --

19 THE COURT: And while the claims are stayed,
20 they intend to involve and engage third parties?

21 MR. YOUNG: Not against claims against the
22 Department of Financial Services, but -- that's what my
23 main problem here is, there's a little bit of a
24 conflict, because counselor is representing the
25 Department of Financial Services, but he's also
26 representing the creditors of Health Republic.

PROCEEDINGS

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MR. HOLTZER: No, your Honor.

THE COURT: Incorrect.

MR. YOUNG: Okay.

THE COURT: Why?

MR. HOLTZER: We represent the liquidator of Health Republic, not the Department of Financial Services.

THE COURT: So earlier, while -- the law secretary is here, Ms. Cherry and Mr. Grinberg, their question is: Was there a conflict. We were chatting, and I explained as I'm sure you will, that there is no conflict.

MR. HOLTZER: There is no conflict, your Honor. We represent the estate and the liquidator, and the Department of Financial Services has regulator and separate counsel and is separate from the liquidation estate.

It happens that the superintendant of insurance is appointed by statute as the liquidator, but it is a separate assignment and we are only counsel to that party as liquidator.

THE COURT: You understand?

MR. YOUNG: I understand.

THE COURT: So the conflict issue is not -- is a nullity.

PROCEEDINGS

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2 MR. HOLTZER: Your Honor, I would only make one
3 other point in response to counsel which is his
4 objection bears on a hypothetical in some litigation
5 that he might bring. That's one -- or that somebody
6 might bring. That is one of the reasons we put the
7 mechanic in the order, that if there is a real
8 controversy, a real request for relief from the
9 injunction, he can speak with us pursuant to the
10 mechanic. If it can't be resolved, he'll come back and
11 see your Honor on an application for relief from the
12 injunction.

13 THE COURT: It's not as if it's the end of
14 possibility. It's just the initial injunctive relief,
15 but if you -- if it turns out that you need,
16 specifically -- or anyone specifically believes that
17 there needs to be further judicial intervention because
18 the parties can't work it out, that avenue remains open.

19 MR. HOLTZER: Yes, your Honor.

20 MR. YOUNG: Right.

21 THE COURT: So it's not a total -- it's not a
22 foreclosure of the opportunity.

23 MR. YOUNG: Yes, there's --

24 THE COURT: It's an interim status quo, lock it
25 up, so that they can get things under way and
26 processing.

PROCEEDINGS

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2 MR. YOUNG: When suing a state agency, there's
3 very tight time limits for filing notices of claim
4 and --

5 THE COURT: But it is -- can a notice of
6 claim -- can the notice of claim be addressed by the
7 Court, if that time limit has expired?

8 MR. SLACK: So I think the answer, your Honor,
9 is that that's why the mechanism is in place.

10 So if somebody is going to, let's say, lose
11 their ability to sue because of the statute of
12 limitations, that's when they can come back to the
13 liquidator or come back to the court --

14 THE COURT: Absolutely.

15 MR. SLACK: -- and say: I need relief, your
16 Honor.

17 THE COURT: Can that statute of limitations be
18 tolled? Waived? Extended? Or can it be deemed -- can
19 it be nunc pro tunc? What can it be if someone comes in
20 and they say: I've lost because of the statute of
21 limitations?

22 MR. SLACK: I think the point is, your Honor,
23 anybody who wants to bring a claim would still have to
24 know when the statute of limitations is and would still
25 have to come to the liquidator and say: We want relief.

26 But the point is nobody is going to be forced

PROCEEDINGS

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2 to give up their claim. This is not an immunity, this
3 is merely a stay during a very limited period in order
4 to marshal the assets and go through the liquidation.

5 THE COURT: When you say "very limited period."

6 MR. SLACK: Whatever period the liquidation
7 takes place, but the point -- nobody is losing a claim.

8 MR. YOUNG: I have two responses.

9 So, first of all to file a notice of claim,
10 that's 120 days, against the state agency. So if this
11 is going to be a two-year litigation or two-year
12 liquidation, then --

13 THE COURT: But the point is somebody should
14 know with all the notice whether a claim exists. It
15 shouldn't be that the claim -- the 120 day period -- you
16 should know based on all that's going on, whether a
17 claim exists.

18 Now, are you talking about an actual or
19 hypothetical?

20 MR. YOUNG: No, I have a claim against --
21 already I have a pending lawsuit --

22 THE COURT: You have a lawsuit and you have a
23 claim and it's not lost, it's stayed --

24 MR. YOUNG: No -- that's against Health
25 Republic, it is to the state --

26 THE COURT: You need to first exhaust

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administrative remedies --

MR. YOUNG: I've been going through that process, working with the inspector general, I went through the procedures that I believe that I needed to go through to check off the boxes so that I could sue the Department of Financial Services.

THE COURT: That's right, which means you've already started --

MR. YOUNG: I have started those.

THE COURT: Which is fine.

MR. YOUNG: I filed internal complaints with Department of Financial Services --

THE COURT: I understand.

MR. YOUNG: Okay.

THE COURT: So you are not in jeopardy of losing your claim --

MR. YOUNG: Well.

THE COURT: -- based on statute of limitations. You have engaged the administrative, required administrative process, and if you lose on that, you will then engage the review process --

MR. YOUNG: Right.

THE COURT: But you are in place.

MR. YOUNG: I just want to raise two points about this.

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THE COURT: It better be relevant --

MR. YOUNG: It's totally relevant.

THE COURT: -- because I think I've answered all that you need, but go ahead.

MR. YOUNG: It's really important to understand that what's being sought here is an injunction against third party, so it's not necessary -- they keep raising the reason it's necessary to protect assets of Health Republic for the creditors, it's necessary to -- for the good of all creditors, so that they don't waste assets, but DFS is not in liquidation, so I don't understand how a lawsuit against DFS for their own actions would harm the estate of Health Republic.

THE COURT: Can you?

MR. SLACK: Sure.

Any claim against DFS relating to Health Republic necessarily is going to require the time and effort, as we all know, of the insurer. And so in this liquidation, you're going to have a very small group of people left actually managing the business, and you want their focus paying claimants and paying policy holders and not dealing with litigation during the time of the liquidation.

THE COURT: And that's why...

MR. SLACK: That's why you have an injunction

PROCEEDINGS

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2 for the period of the liquidation without -- without
3 disturbing the claims that actually exist. So if there
4 are claims, you're not immunizing them --

5 THE COURT: Embroiling.

6 MR. SLACK: Exactly.

7 MR. YOUNG: That's my point, when I said
8 conflict of interest, the DFS is separate as an entity
9 than the liquidator, and nine -- that's what they said.
10 So if there's a suit against the DFS, it shouldn't be
11 involving the liquidator.

12 THE COURT: But it does.

13 MR. YOUNG: And their assets, because they're
14 theoretically separate --

15 THE COURT: But it does. But it does. It does
16 involve. It does. And all of those kinds of actions
17 need to be put on hold while the primary focus should be
18 on taking care of the claims of the insured. That is
19 paramount, that trumps it all. That trumps it all, and
20 that's why the broad discretion is to say it trumps it
21 all, but focus on first taking care of the individuals
22 whose claims need to be addressed, first and primarily,
23 to the degree possible, and then we'll get to those
24 lawsuits, which can go on. And as we can see sitting
25 here, can drag out all kinds of minutia issues. Minutia
26 doesn't mean unimportant, just small in comparison to

PROCEEDINGS

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taking care of the claims.

Anything else?

MR. YOUNG: (Nodding.)

THE COURT: You have to speak on the record.

Anything else?

MR. YOUNG: I want to finally note that I believe the statute speaks for itself.

THE COURT: Next time that statute speaks, give me a call. I want to be there and hear what the accent sounds like.

All right, move on.

MR. HOLTZER: Your Honor, the objection was the last part of our presentation because it was the only objection after serving several hundred thousand notices to our relief, and so we've submitted a form of order and delineated on it so that it is in one order, your initial ruling regarding the posting to the website. We can have that typed in or we can have a signed order and post the one with your delineation. Whatever you prefer, your Honor.

THE COURT: So, over the objections, the second half, directing the liquidator to take possession --

MR. HOLTZER: Yes.

THE COURT: -- and/or control of the property and assets of Health Republic Insurance of New York

PROCEEDINGS

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2 Corp., and to liquidate the business and affairs thereof
3 and granting injunctive relief is granted.

4 MR. HOLTZER: Thank you, your Honor.

5 THE COURT: Now, I need you to work with --
6 make sure the law secretary has -- because I have an
7 order, but I want to make sure the order that I'm
8 getting ready to sign says all. We've added the piece
9 about the transcript being translated. Now I want to
10 make sure any other little piece needs to be added, and
11 the transcript is so ordered. The transcript will be
12 translated and uploaded and I think for today, that does
13 it.

14 MR. HOLTZER: Yes, your Honor.

15 THE COURT: Am I close?

16 MR. HOLTZER: Yes.

17 THE COURT: Is there anything else?

18 MR. BYEFF: No, there's not.

19 THE COURT: Are you sure?

20 MR. HOLTZER: Sure.

21 (Continued on next page:)
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PROCEEDINGS

THE COURT: Counsels, I'm requiring all of these nice lawyers to come out in the hall, and if you have a question you want to ask them, I'm requiring they stay here for about another half hour, if they can, and answer your questions.

* * *

CERTIFIED THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPTION OF THE PROCEEDINGS, THIS DATE.



VINCENT J. PALOMBO, RMR

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