

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,
a Municipal Corporation,

Petitioner,

v.

PINELANDS INSURANCE COMPANY
RISK RETENTION GROUP, INC.

Respondent.

Civil Action No.: 2015 CA 006558B

Judge: Bartnoff

Calendar No.: 15

Next Event: Status Hearing 9/16/15

EMERGENCY MOTION TO STAY AND ENJOIN ALL LITIGATION AGAINST
PINELANDS INSURANCE COMPANY RISK RETENTION GROUP, INC.
AND ITS POLICYHOLDERS

The District of Columbia (District), at the request and on behalf of Stephen C. Taylor, Acting Commissioner of the District of Columbia Department of Insurance, Securities and Banking, as Liquidator of Pinelands Insurance Company Risk Retention Group, Inc. (Pinelands), by and through his attorneys, the Office of the Attorney General for the District of Columbia, hereby moves this Court for an order staying and enjoining all litigation against Pinelands and all litigation against Pinelands' policyholders where Pinelands may have a duty to defend or indemnify such policyholders with respect to such litigation (the Policyholders). For the reasons stated more fully in the attached Memorandum of Points and Authorities, which is incorporated herein by reference, the Petitioner therefore requests that the Court enter the attached Order.

Respectfully submitted,

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Attorney General for District of Columbia

ELIZABETH SARAH GERE
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Public Interest Division

/s/ Eric S. Glover
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CERTIFICATE PURSUANT TO SCR-CIVIL 12-I

The present litigation is an insurance liquidation proceeding and the District is now the only party to the litigation; therefore, the requirement under SCR-Civil 12-I(a) to request consent to this motion from an opposing party does not apply.

/s/ E. Louise R. Phillips
E. LOUISE R. PHILLIPS
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of September, 2015, a copy of the foregoing Motion to Stay and Enjoin All Litigation Against Pinelands Insurance Company Risk Retention Group, Inc. and its Policyholders, Memorandum of Points and Authorities in support thereof and Proposed Order was served by email upon the following:

Robert H. Myers Jr.
Special Deputy Liquidator
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/s/ E. Louise R. Phillips
E. LOUISE R. PHILLIPS
Assistant Attorney General

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF THE EMERGENCY MOTION TO STAY AND ENJOIN ALL LITIGATION AGAINST
PINELANDS INSURANCE COMPANY RISK RETENTION GROUP, INC. AND ITS
POLICYHOLDERS

The District respectfully moves this Court for an order staying and enjoining all litigation against Pinelands and its Policyholders, and enjoining all persons and entities from proceeding against Pinelands or any Policyholder in any new or pending litigation, while clarifying that such stay and injunction shall not interfere with Pinelands right as a plaintiff to take legal action to recover assets from any person, including a Policyholder.

BACKGROUND AND PROCEDURAL HISTORY

1. Pinelands is an association captive insurer, organized and licensed under the District's laws, that offered liability insurance to taxis in New Jersey and Pennsylvania.
2. On August 25, 2015, the District, at the request and on behalf of the Acting Commissioner for the District of Columbia Department of Insurance, Securities and Banking (DISB), filed an Emergency Consent Petition for an Expedited Order of Liquidation of Pinelands Insurance

Company Risk Retention Group, Inc. Pursuant to D.C. Official Code §§ 31-1303, 31-1315, 31-1316 and 31-3931.01 et seq. on or before September 1, 2015 (the Emergency Consent Petition).

3. After consideration of the Emergency Consent Petition and the entire record, the Judge Mize issued an Order of Liquidation for Pinelands on August 25, 2015 (the Liquidation Order). Among other things, the Liquidation Order appointed DISB's Acting Commissioner and his successors in office as Pinelands' Liquidator.

4. Pursuant to the Liquidation Order and D.C. Official Code § 31-1319(a)(1) (2012 Repl.), on August 27, 2015, the Liquidator appointed Robert H. Myers, Jr. to be the Special Deputy to the Liquidator for the purposes of liquidating Pinelands and for any related actions.

5. The Liquidator has published a general notice of Pinelands' liquidation on DISB's website. See <http://disb.dc.gov/node/1105452>. Shortly, the Special Deputy to the Liquidator will begin the process of giving specific notice to all known persons or entities who have or might have a claim against Pinelands' liquidation estate.

6. Based on the information currently available to the Liquidator, Pinelands now has over 350 claims from persons or entities seeking compensation from Pinelands and/or its Policyholders. The Liquidator anticipates that additional claims may be filed against Pinelands and its Policyholders.

DISCUSSION

Pinelands is insolvent and has limited assets, as set forth in detail in the Emergency Consent Petition. The purpose of Pinelands' liquidation is, in part, to ensure that the Court may oversee the equitable, consistent, and efficient evaluation and resolution of claims that have been or could be brought against Pinelands directly or through suits against Pinelands' Policyholders. The Liquidator is in the process of identifying all claims against Pinelands or an insured of Pinelands.

While the claims process is ongoing, litigation remains pending against Pinelands or its Policyholders in various states. Through the continued prosecution of pending suits, claimants may

seek to obtain a determination of Pinelands or its Policyholders' liability to them, seek recovery of Pinelands' assets and/or seek to obtain some other advantage in the resolution of their claim against Pinelands' liquidation estate. The continued prosecution of such suits may well give priority to certain claimants over other claimants, because a claimant's ability to pursue suits against Pinelands and/or its Policyholders will necessarily depend upon their financial condition. Furthermore, resolution of claims in other courts may result in inconsistent adjudication of identical or similar claims. Accordingly, allowing claimants to pursue their claims against Pinelands or its Policyholders effectively defeats the purpose of the liquidation process, namely that all claims will be fairly, consistently and equitably resolved in the liquidation proceeding pending before this Court.

The Court has expressly retained jurisdiction over claims against Pinelands and its Policyholders. The Liquidation Order expressly states:

FURTHER ORDERED, that for the purpose granting such order and further relief as this cause and the interests of the policyholders, creditors and the public may require, the Court shall retain jurisdiction in this matter until the Liquidator petitions this Court for an order discharging the liquidator pursuant to D.C. Official Code § 31-1318 (2012 Repl.)

District law mandates an automatic stay of all suits against an insurer in liquidation and its liquidator. Specifically, section 31-1322(a) of the D.C. Official Code provides:

Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in the District, ***no action at law or equity or in arbitration shall be brought against the insurer or liquidator***, whether in the District or elsewhere, ***nor shall any existing actions be maintained*** or further presented after issuance of the order.

(Emphasis added).

Further, District law empowers the liquidation court to stay other suits to ensure that they do not interfere with the liquidation proceedings. In this regard, section 31-1304(a) of the D.C. Official Code provides:

Any receiver¹ appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, ***restraining orders, preliminary and permanent injunctions***, and other orders deemed necessary and proper to prevent: ...

(3) Interference with the receiver or with a proceeding under this chapter;

(4) Waste of the insurer's assets; ...

(6) The institution or further prosecution of any actions or proceedings;

(7) The obtaining of preferences, ***judgments***, attachments, garnishments, or liens ***against the insurer, its assets or its policyholders***; ...

(11) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(Emphasis added).

Accordingly, to ensure that the pendency of other suits against Pinelands and/or its Policyholders does not adversely impact the fair, equitable and efficient resolution of claims against Pinelands' liquidation estate, the Liquidator moves the Court for an emergency order, pursuant to D.C. Official Code § 31-1304(a), staying and enjoining all pending suits against Pinelands effective until further order of this Court, and staying and enjoining all pending suits against Policyholders to whom Pinelands may be liable under policies of insurance or indemnity for one (1) year from entry of an order granting this Motion.

The proposed Order would limit the stay and injunction to suits ***against*** Pinelands, whether directly against Pinelands itself or indirectly through its Policyholders. The proposed Order would ***not*** apply if Pinelands itself sues a Policyholder who owes money to Pinelands. Pinelands does not

¹ D.C. Official Code § 31-1301 (2012 Repl.) defines receiver as "receiver, liquidator, rehabilitator, or conservator as the context requires." Here, the receiver is the court-appointed liquidator.

have a duty to defend or indemnify its Policyholders in such an action, and therefore such an action does not implicate the concerns behind this Motion for a Stay.

The purpose of the requested stay and injunction, as well as the Liquidation Order itself, would be undercut if Pinelands were prevented from taking actions to recover assets due to it. District law is clear that there should be no stay or injunction of actions in which the insurer in liquidation sues to reclaim its assets. *See* D.C. Official Code § 31-1304(a)(11) (2012 Repl.). For instance, if a Policyholder had unjustly enriched itself at Pinelands' expense, staying Pinelands' suit to recover the improperly obtained assets would have the effect of lessening the value of Pinelands' total assets – and this would prejudice the rights of other Policyholders and creditors to recover in the liquidation proceedings. Similarly, D.C. Official Code § 31-1316(a) vests the Liquidator with “all title to all the property, contracts, *and rights of action*” of the liquidated insurer (emphasis added). Such rights of action would be valueless without the ability to prosecute them in court. District law is clear that, in addition to possessing the liquidated insurer's rights of action, the Liquidator has the power to enforce such rights via legal action: the D.C. Official Code § 31-1319 specifies that the powers of the Liquidator include:

(8) To *collect all debts and moneys due and claims belonging to the insurer*, wherever located, and for this purpose:

(A) To *institute timely action* in other jurisdictions, in order to forestall garnishment and attachment proceedings against the debts;

(B) To do any other acts necessary or expedient to collect, conserve, or protect assets or property of the insurer, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he or she deems best; and

(C) To *pursue any creditor's remedies* available to enforce his or her claims;

[...]

(14) To continue to *prosecute and to institute in the name of the insurer, or in his or her own name, any and all suits and other legal proceedings*, in the District or elsewhere . . . ;

(15) To *prosecute any action which may exist* in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person

(Emphasis added).

The Liquidator and the Special Deputy will be investigating whether to pursue subrogation or other actions. In other liquidation proceedings, defense counsel have raised a stay order as a bar order to an insolvent insurer's prosecution of subrogation claims. To avoid any possibility of similar confusion or misinterpretation of the proposed stay order, the Liquidator moves this Court to include within the stay order language that clearly states that the order will not stay, enjoin, or otherwise interfere with actions where Pinelands as a plaintiff and/or claimant seeks to recover its assets, including but not limited to subrogation actions or suits against Policyholders for unjust enrichment. In short, the proposed Stay Order properly should be understood as staying litigation that could (1) unfairly advantage certain creditors and (2) diminish Pinelands' assets prior to their distribution pursuant to the liquidation process. When Pinelands, as a plaintiff, initiates an action with the aim of recovering assets to which is entitled, neither of these concerns is implicated, and the proposed Stay Order should not stay, enjoin, or otherwise interfere with the action. The proposed Stay Order therefore includes proposed language to ensure that the Stay Order is correctly understood by all concerned parties.

RELIEF REQUESTED

Wherefore, the Liquidator moves the Court for the entry of an order staying and enjoining all litigation against Pinelands and its Policyholder and enjoining all persons and entities from proceeding against Pinelands or any Policyholder in any new or pending litigation, where the stay

and injunction would be effective until further order of this Court as to litigation against Pinelands and would be effective for one (1) year with respect to litigation against Policyholders in which Pinelands is not a party, and where the order would clearly state that it does not stay, enjoin, or otherwise interfere with actions where Pinelands as a plaintiff and/or claimant seeks assets for its liquidation estate.

Respectfully Submitted,

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ELIZABETH SARAH GERE
Acting Deputy Attorney General
Public Interest Division

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ERIC S. GLOVER
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ORDER STAYING AND ENJOINING LITIGATION

The District of Columbia at the request of and on behalf of the Liquidator of Pinelands Insurance Company Risk Retention Group, Inc. (“Pinelands”) sought to stay and enjoin, until further order of this Court, the commencement or continuation of any litigation against Pinelands; to stay and enjoin, for one (1) year from entry of this Order, any litigation against policyholders of Pinelands in cases as to which Pinelands may have a duty to defend or indemnify its policyholders; and to make clear that such stay and injunction shall not stay, enjoin, or otherwise interfere with actions where Pinelands as a plaintiff and/or claimant seeks assets for its liquidation estate.

After considering the Motion to Stay and Enjoin All Litigation Against Pinelands Insurance Company Risk Retention Group, Inc. and its Policyholders and the entire record, the Court finds that: (1) Pinelands’ insolvency caused it to be placed into liquidation; (2) the purpose of the liquidation is, in part, to insure the fair and efficient evaluation and resolution of all claims that were or could be brought against Pinelands directly or through the entities that Pinelands

insured; (3) there are pending suits which could adversely affect the fair, just and efficient evaluation and payment of claims against the liquidation estate; and (4) the motion to stay should be granted.

It is therefore, this ____ day of September, 2015, **ORDERED** as follows:

1. All litigation pending against Pinelands is hereby stayed until further order of this Court;
2. All persons and entities are hereby enjoined until further order of this Court from commencing or continuing any litigation against Pinelands;
3. All litigation pending against any Policyholder is hereby stayed for one (1) year from entry of this Order;
4. All persons and entities are hereby enjoined from commencing or continuing any litigation against a Policyholder for a period of one (1) year from the date of entry of this Order; and
5. It is further ordered that no provision of this Order shall be construed, interpreted, or understood to stay, enjoin, or otherwise interfere with Pinelands' right as plaintiff or claimant to take legal action to recover assets from any person, including a Policyholder.
6. This Court shall retain jurisdiction to modify or extend the stay and injunction provided herein.

Judge Judith Bartnoff
D.C. Superior Court

cc by CaseFileXpress:

E. Louise R. Phillips
Assistant Attorney General

Robert H. Myers, Jr.
Special Deputy to the Liquidator
Morris, Manning & Martin, LLP