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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

FILED
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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2020CH04431

**THIS PROCEEDING IS CONFIDENTIAL
UNDER 215 ILCS 5/188.1 AND PURSUANT TO
COURT ORDERS**

14799515

**IN THE MATTER OF THE)
CONSERVATION OF NEXTLEVEL) No. 2020 CH 4431
HEALTH PARTNERS, INC.)**

**VERIFIED OPPOSITION TO
MOTION TO VACATE ORDER OF SEQUESTRATION**

NextLevel Health Partners, Inc. (“**NextLevel**”) respectfully objects to the motion purportedly filed by the People of the State of Illinois (the “**People**”), upon the relation of Dana Severinghaus, Acting Director (the “**Director**”) of the Illinois Department of Insurance (the “**Department**”), by and through their attorney, Kwame Raoul, Attorney General (the “**Attorney General**”) of the State of Illinois, to vacate the Order of Sequestration entered by the Court on June 4, 2020 (the “**Motion**”). As demonstrated below, the Attorney General has no standing to bring his Motion, the Motion is insufficient as a matter of law and is devoid of competent fact, the Motion ignores the General Assembly’s numerous statutory directives to protect the confidentiality of these proceedings and the documents and information involved, the Motion is unprecedented in insurer conservation proceedings, the Motion is contrary to the parties’ agreement for winding up these proceedings, and the Motion appears designed to facilitate the baseless intervention of a politically motivated third-party academic. NextLevel will evidence the facts asserted below at the hearing in chambers currently scheduled for September 30th. For each and all of these reasons, the Motion should be denied.

BACKGROUND

1. NextLevel is a small “start-up” business created by African-American investors to deliver sorely needed medical services to the African-American community that historically were denied for illegitimate and discriminatory reasons. NextLevel first was organized as a community care coordination service and operated as such until the State of Illinois ceased funding such community care services. At the State’s suggestion, NextLevel reorganized as Health Maintenance Organization (“HMO”). Its “live” business and related assets have been transferred to another insurer, and NextLevel is winding-up its outstanding obligations to a handful of creditors and preparing for dissolution.

2. On June 3, 2020, a Complaint for Conservation of Assets and Injunctive Relief against NextLevel and a Motion for Sequestration Order under 215 ILCS 5/188.1 were filed by the Attorney General on behalf of the Director in her capacity as regulator. The Complaint requested that the Court appoint the Director as Conservator.

3. Since then, and at all times material, the Director has participated in and/or monitored this matter in her separate capacities as regulator and Conservator through separate counsel – the Attorney General (by Maggie Jones) has represented the Director as regulator and the General Counsel and his Senior Deputy (Kevin Baldwin and Daniel Guberman) in the Office of the Special Deputy Receiver (“OSD” or “Special Deputy”) have represented the Director as Conservator. The Director has remained involved in her capacity as regulator in order to monitor the proceedings should rehabilitation or liquidation of NextLevel become necessary within the meaning of 215 ILCS 5/188.1(2)

4. Article XIII of the Illinois Insurance Code (“Code”) provides that:

In conservation proceedings and judicial reviews thereof, all records of the company, other documents, and all insurance department files and court records and papers, so far

as they pertain to and are a part of the record of the conservation proceedings, *shall* be and remain confidential except as is necessary to obtain compliance therewith, unless and until the court, after hearing arguments in chambers from the Director and the company, shall decide otherwise, or unless the company requests that the matter be made public.

215 ILCS 5/188.1(5) (emphasis added).

5. On June 4, 2020, the Court issued an Order of Sequestration (the “**Sequestration Order**”), a true and correct copy of the relevant provisions of which are as follows:

2. The court file in this case is hereby sealed and sequestered from the public view until further order of this Court; and

3. All records of the Defendant, NextLevel Health Partners, Inc., and all Illinois Department of Insurance files related thereto, shall be held confidential, and all persons having knowledge of these proceedings and of this Order, or of the Order of Conservation heretofore entered in this cause, are hereby restrained and enjoined from disclosing: (i) the contents of the records of the Defendant; (ii) the Illinois Department of Insurance files related to the Defendant; (iii) the records of this Court related thereto; and/or (iv) any facts in their knowledge concerning the Defendant, to members of the general public, or otherwise, except to obtain compliance with the Orders of this Court, or except with the written permission of Director of the Illinois Department of Insurance, as Conservator of NextLevel, or his Special Deputy Receiver, or until further order of this Court.

Nothing herein precludes defendant from communicating with or disclosing to its attorneys and advisors the above-referenced documents and information

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et. The Clerk shall remove this case from its public website
KWAME RAOUL
Attorney General of the

ENTERED:

Samy T. Taylor
Judge Presiding

6. On June 9, 2020, the Court issued an Order of Conservation of Assets and Injunctive Relief (the “**Conservation Order**”), appointing the Director as Conservator of NextLevel, and authorizing the Conservator to take possession and control of NextLevel’s property, accounts, assets, records, business, and affairs. Thereafter, the Conservator appointed her Special Deputy and counsel in the OSD as her authorized representatives pursuant to 215 ILCS 5/202(a).

7. Both the Conservation Order and the Sequestration Order make clear that the Director participates in these proceedings as Conservator, and that she is charged with “protect[ing] the interests of . . . the general public.” *See, e.g.*, the Conservation Order at

preamble and paras. 2 (defining the conservator of NextLevel disjunctively as the “Director” or “Conservator”) and 17; and the Sequestration Order par. 3.

8. On June 30, 2020, NextLevel entered into a Member Transfer Agreement - having received prior approval from both the Court and the Department - by which NextLevel transferred various assets and liabilities to Meridian Health Plan of Illinois, Inc., a subsidiary of Centene Corporation. NextLevel then ceased to underwrite and provide health care to members. Since July 1, 2020, NextLevel has resolved almost all of its claims and conserved its remaining assets to resolve any outstanding claims, including to shareholders.

9. Over the last several months, NextLevel has diligently worked with the separate counsel representing the Director as regulator and Conservator, respectively, to draft a joint motion (supported by a Declaration of the witness verifying this motion, at the Special Deputy’s insistence) to set a proof of claim procedure for distributing NextLevel’s remaining assets and dissolving the company subject to applicable regulatory requirements (the “**Dissolution Motion**”). Submitted herewith as Ex. A is a true and correct copy of the most recent draft of the joint motion. The Dissolution Motion specifically provides for making the proceedings public on a going forward basis when notice of the contemplated proof of claim procedure is to be given. See par. P.

10. Special Deputy counsel will acknowledge advising NextLevel that before he could finalize the Dissolution Motion, he required a limited lift of the Sequestration Order to communicate with the Illinois Department of Health and Family Services (“**IDHFS**”), NextLevel’s largest creditor, about IDHFS’s claims against NextLevel. On May 14, 2021, in order to facilitate finalization of the Dissolution Motion, NextLevel and the separate counsel

representing the Director as regulator and Conservator, respectively, agreed to entry of an order providing such relief pursuant to motion.

11. On May 20, 2021, the Court entered an Agreed Order implementing a limited lift of the Sequestration Order for the sole purpose of allowing the Conservator twenty one (21) days to communicate with IDHFS but otherwise keeping the Sequestration Order in full force and effect. The limited lift has been continued for specific time periods, but the Conservator has refused to permit NextLevel to participate in her communications with IDHFS.

12. NextLevel has never requested that this matter be made public. For reasons that will be explained during the hearing in chambers on the Motion on September 30, 2021, maintaining sequestration is key to enabling NextLevel to wind up its affairs and be dissolved without unwarranted claims against its assets, needless intermeddling, and controversy.

13. On August 6, 2021, the Attorney General, without prior notice to NextLevel, filed her Motion to fully vacate the Sequestration Order. The Attorney General argues that it is no longer necessary to maintain confidentiality over this proceeding because the Director, as Conservator of NextLevel, has “completed all the tasks” set forth in the Conservation Order. The truth lies in a Freedom of Information Act (“**FOIA**”) request made to the Attorney General, as confirmed in two muckraking filings recently made in this proceeding.

14. On August 30, 2021, Jacqueline Stevens, purporting to proceed *pro se*, filed a Petition to File Intervenor Motion, Pursuant to 735 ILCS 5/2-408 (the “**Intervention Petition**”), an Intervenor Motion to Vacate Order Impounding Court Records and Declare Unconstitutional 215 ILCS 5/188.1(b)(4.5) (the “**Vacatur Motion**”), and a Notice of Court Date for Motion. In par. 6 of her verified Vacatur Motion, Ms. Stevens declares that she “filed a request under the Freedom of Information Act to obtain a copy of the Complaint [in this proceeding] from the

office of the Illinois Attorney General.” The Attorney General has confirmed that Ms. Stevens’ FOIA Request is the reason for the Attorney General’s motion.

15. Pursuant to the Court’s order, NextLevel will address the Intervention Petition and Vacatur Motion in the near future. For purposes of the instant Motion, however, it is sufficient to note the blatant political motivation behind Ms. Stevens’ cynical lack of trust in the State (describing it as a “kleptocracy, i.e., government by thieves”), the Director (describing her as the product of a revolving door between public and private “profit-driven industry” legal service), NextLevel (describing it as both the improper beneficiary of “close personal ties to Illinois and United States government officials, including President Barack Obama”; and former employer of an unsuccessful congressional candidate), and even the Court (which “impounded” the case “after it [the case] received media coverage through a [Crain’s *Chicago Business*] report”). Unfortunately, Ms. Stevens’ papers are yet another example of the discriminatory *animus* that has raised its ugly head against NextLevel and the community it serves.

ARGUMENT

16. The Attorney General’s proffered rationale for the Motion is wholly insufficient in both law and fact for at least seven reasons.

17. ***First***, neither the People nor the Director *as regulator* have standing to bring the Motion. This is an important issue, albeit highly technical.

18. The General Assembly determined in 1937 that the Attorney General’s participation in receiverships is limited to filing the complaint or petition for receivership, whether conservation, rehabilitation or liquidation. *See* 215 ILCS 5/188 and 201; *see also* Annotating Committee of the Section on Insurance Law of the Illinois State Bar Association, *The Illinois Insurance Code Annotated* (The Foundation Press, Inc. 1939). As the express terms of

the Conservation Order manifest, the Director's involvement in this proceeding *as regulator* ceased upon entry of such Order.

19. Through Article XIII, the General Assembly has established that once a receivership order is entered, the People's interests are represented by the receiver (here the Conservator), who is not represented by the Attorney General, and who did not join in the Attorney General's Motion. *See, e.g.*, the Memorandum Opinion And Order Approving Stock Purchase Agreement And Channeling Of Certain Assets And Liabilities entered upon the motion of the Special Deputy Receiver in *In re the Rehabilitation of Public Service Ins. Co.*, Case NO. 17 CH 3790 (entered Dec. 3, 2018) ("The [Conservator] is charged with the administration and enforcement of Article XIII of the Code, 215 ILCS 5/187-221 ("**Article XIII**"), and represents the interests of all policyholders, creditors and shareholders of [the company in receivership]; *see also, e.g., Relfe v. Rundle*, 103 U.S. 222, 225 (1881) ("[the receiver is] the person designated by law to take the property of any dissolved life insurance corporation of th[e] State, and hold and dispose of it in trust for the use and benefit of creditors and other persons interested"); *Stamp v. Ins. Co. of N. Am.*, 908 F.2d 1375, 1377 (7th Cir. 1990) ("Like most other states, Illinois handles the failure of insurers in state court under the supervision of the state's chief regulator, who takes title to the firm's assets as trustee and liquidator.") (Cleaned up)).

20. As the final paragraph in section 188 of the Code makes clear, in all events a receivership order "appoint[s] the Director as receiver . . . pending a complete investigation of the rights of policyholders, creditors, members, shareholders, and *the general public.*" 215 ILCS 5/188 (emphasis added). Accordingly, the Conservation Order twice charges the Conservator with protecting the interests of "the public." Conservation Order at 2, par. 2. In other words, the

Conservator protects the interests of the People of the State of Illinois in these proceedings, not the Director as regulator.

21. The distinction in the Director's roles is important. The Director as regulator is a separate juridical person and acts in a different legal capacity as receiver. *See, e.g., Corcoran v. Becker, a/k/a In re Liquidation of Ideal Mutual Ins. Co.*, 140 A.D.2d 62, 532 N.Y.S.2d 371, 374 (1988) (New York Superintendent of Insurance when acting as statutory liquidator is essentially a court-appointed private trustee who takes the insurer's place and stands in its shoes; the Superintendent as liquidator occupies a legal personality separate and distinct from the Superintendent as the public official charged with regulating the industry generally); accord *People v. Niehaus*, 356 Ill. 104, 109, 190 N.E. 349 (1934) (the Illinois Insurance Liquidation Act is patterned closely after that of New York).

22. References to the "Director" in Article XIII of the Illinois Insurance Code are contextual; that is, in a rehabilitation the "Director" is acting as the separate juridical person of rehabilitator (*see* 215 ILCS 5/192); in a liquidation the "Director" is acting as the separate juridical person of liquidator (*see, e.g.,* 215 ILCS 5/193); and in conservation the "Director" is acting as the separate juridical person of conservator. The General Assembly firmly established this point in 215 ILCS 5/202(e) ("Receiver" means the Director in his or her capacity as the liquidator, rehabilitator, *or* conservator of a company in liquidation, rehabilitation, *or* conservation." (emphasis added)).

23. This first point alone is enough to deny the motion. The People are fully and adequately represented and protected by the Conservator under the Court's supervision. The Conservator is not seeking to lift the sequestration generally and make these proceedings public.

If anyone else wishes to participate in these proceedings or in any other capacity, they must apply to intervene pursuant to 735 ILCS 5/2-408.

24. **Second**, the Motion is insufficient as a matter of law. Entry of the Sequestration Order was required under 215 ILCS 5/188.1(5). The Attorney General's suggestion that confidentiality should automatically expire when "[t]he Conservator has fulfilled [the] requirements" of the Conservation Order is neither expressed nor implied in section 188.1(5), and it is incorrect as a matter of law. Nor does section 188.1(5) provide for a lift of sequestration upon the mere assertion that "these proceedings no longer require the confidentiality that was necessary at the beginning of the conservation proceedings." *see* Mot. at 3.

25. Section 188.1(5) plainly contemplates only two grounds for sequestration lift as evidenced by the disjunctive structure of the relief provided in that section: (i) a limited lift of the full protection guaranteed for "all records of the company, other documents, and all insurance department files and court records and papers, so far as they pertain to and are a part of the record of the conservation proceedings shall be and remain confidential *except as is necessary* to obtain compliance therewith, unless and until the court after hearing arguments in chambers from the Director and the company, shall decide otherwise"; *OR* (ii) a full lift of such protection *if* "the company requests that *the matter* be made public." 215 ILCS 5/188.1(5) (emphasis added). In other words, unless and until the Court determines that the stated exception applies and that certain company or Department documents or information are not confidential, the full protection continues. Here, neither NextLevel nor the Conservator has asserted any exception, and there is no compliance issue. Nothing in section 188.1(5) enables a lift upon the application of a third party, including the Attorney General "on behalf of the People," which is the only

reason for the Attorney General's motion as laid bare in Ms. Stevens' Intervention Petition and Vacatur Motion.

26. The purpose of confidentiality is not to assist the Conservator in completing its responsibilities under the Conservation Order. As the statute expressly makes clear, the purpose of confidentiality is to protect the interests of NextLevel and all of its creditors, including shareholders, and the general public until the conservation proceeding is complete. As the Attorney General's motion admits, this proceeding may not be complete until the dissolution of NextLevel. *See* Mot. at 2. Lifting the Sequestration Order sooner will expose highly sensitive financial and other information that has been filed or discussed with the Court since June 9, 2020 with an expectation arising from express statutory protection that it is and would remain confidential.

27. The Attorney General has identified neither an urgent need for these proceedings to be disclosed to the public, nor what specific information about these proceedings the public needs to know. Instead, the real reason for the Motion lies in Ms. Stevens' inapplicable and incomplete FOIA request.¹ The Attorney General's failure to mention this point in his Motion is at least alarming and suggests a conflict of interest.

28. ***Third***, the Motion is devoid of fact. Even if it were relevant (but it is not) whether the Conservator has fulfilled the requirements of the Conservation Order, the Conservator has not yet fulfilled those requirements. The Conservation Order directed the Conservator, among other things, to "take such actions that the nature of this cause and the interests of the policyholders and creditors of NextLevel, *or the public*, may require, subject to

¹ As we will demonstrate in a forthcoming brief, if necessary, Ms. Stevens' FOIA request provides no basis for the Attorney General's request for relief, since (i) it is readily apparent that Ms. Stevens has not exhausted her FOIA-related administrative (or other remedies, (ii) a court is not a "public body" within the meaning of FOIA, (iii) Section 188.1(5) exempts the records of this proceeding from disclosure, (iv) and FOIA exempts from disclosure commercial, proprietary and insurance regulatory information.

further orders of this Court.” See Conservation Order at 2 (emphasis added); see also 215 ILCS 5. The ongoing discussions between IDHFS and the Conservator about an outstanding claim demonstrate that the dissolution of NextLevel is an ongoing but soon to be resolved process. NextLevel’s policyholders and creditors and the public need and are entitled to the orderly procedures to address outstanding claims against NextLevel and wind up its business provided for in the Code, as evidenced by the months of work devoted to the Dissolution Motion and developing such a procedure with the express agreement of the Director’s separate counsel. Because the parties have not yet had the opportunity to file that motion and implement the proof of claim procedure, the Conservator simply has not yet completed the tasks required by the Conservation Order.

29. **Fourth**, the General Assembly’s guarantee of confidentiality is further confirmed throughout the Code, and the Attorney General has offered no reason to deviate from any of those directives. The Conservator will acknowledge that each of these directives has been fully implicated in this proceeding; to wit; (i) this proceeding followed and has continued contemporaneously with a Department examination pursuant to 215 ILCS 5/131.22 (documents, materials and other information obtained in the course of a company examination are “confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act”); (ii) NextLevel has submitted to the Conservator self-evaluative audit documents pursuant to 5/155.35 (“[a]n insurance compliance self-evaluative audit document is privileged information and is not admissible as evidence in any legal action”); and (iii) this proceeding followed the Director’s issuance of two corrective orders pursuant to 5/186.1 (“[a]ll administrative and judicial proceedings arising [in respect of corrective orders] shall be held privately unless a public hearing is requested by the company, and all records of the company, and all records of

the Department concerning the company, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential, unless the company requests otherwise. Such records shall not be subject to public disclosure under the ‘Illinois Freedom of Information Act’”).

30. ***Fifth***, as noted above, the Director as regulator and the Director as Conservator have already agreed to a process, and advised the Court of their general agreement, for lifting sequestration as part of a proof of claim and dissolution procedure.

31. ***Sixth***, NextLevel has not identified any precedent or other instance in which either the Attorney General or the Director – whether in her capacity as regulator or Conservator – has requested a lift of sequestration in any insurer conservation proceeding without the consent of the insurer in receivership. And neither the Attorney General nor the Director (in either capacity) has explained how or why this case is different from the many other conservation proceedings they have initiated in Illinois.

32. ***Seventh***, to the extent that the Attorney General’s motion may relate to the petition filed by putative intervenor Jacqueline Stevens, the Attorney General does not represent Professor Stevens. The Attorney General may yet be required to participate in these proceedings for the limited purpose of defending Code section 188.1(5) and the interests of the Director and the Department in protecting such section, but the Attorney General has no right or need to seek a lift of sequestration in these proceedings.

33. To the extent there is to be any more expansive lift of sequestration, it should be prospective only and subject to express parameters and protections put in place (*e.g.*, no retrospective application) after argument in chambers and a fair opportunity to review and respond to them.

CONFIDENTIAL Pursuant to Statute and Court Orders

WHEREFORE, NextLevel respectfully requests that the Court deny the Director as regulator's motion to vacate the Court's June 4, 2020 Order of Sequestration.

Dated: September 13, 2021

Respectfully submitted,

By: /s/ Stephen Schwab

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VERIFICATION

I, Cheryl Whitaker, M.D., under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certify that the statements of fact set forth in paragraphs 1, 8, 9, 12, and 26 of this document are true and correct.

Dated: September 13, 2021



Cheryl Whitaker

CERTIFICATE OF SERVICE

I certify that on September 13, 2021, I caused the foregoing Verified Opposition to Motion to Vacate Order of Sequestration to be filed and served on all counsel of record entitled to receive it.

/s/ Stephen Schwab

Attorney for NextLevel Health Partners, Inc.