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

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

PEOPLE OF THE STATE OF ILLINOIS' REPLY IN SUPPORT OF THEIR MOTION TO VACATE THE ORDER OF SEQUESTRATION

The People of the State of Illinois, upon the relation of Dana Popish Severinghaus, Acting Director of the Illinois Department of Insurance (the "Director"), filed a Motion to Vacate the Order of Sequestration. While conservation proceedings are required to commence as sequestered proceedings, this confidentiality is intended only for a limited period of time as it cuts against the very tradition of judicial proceedings. *See A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 993 (1st Dist. 2004) ("Judicial proceedings in the United States are open to the public--in criminal cases by constitutional command, and in civil cases by force of tradition."). Despite the limited nature of this exception to open and public proceedings, NextLevel seeks to keep this conservation confidential without setting forth any cognizable basis for maintaining this status.

NextLevel's arguments fail for two primary reasons. *First*, the Director as regulator certainly has standing to bring this Motion to Vacate as nothing in the Illinois Insurance Code (the "Code"), 215 ILCS 5/1 *et seq*., limits her participation in this capacity to only the filing of a complaint, and *second*, the law and facts support the Motion to Vacate.

ARGUMENT

I. The Director as regulator has standing to ask this Court to vacate the Order of Sequestration.

The Director has standing to ask this Court to vacate the Order of Sequestration. Section 188 of the Code gives the Director the right to initiate and participate in these proceedings by stating as follows:

> With respect to a domestic company, the Director must report, and with respect to an unauthorized foreign or alien company, the *Director may report any such case to the Attorney General of this State whose duty it shall be to apply forthwith by complaint* on relation of the Director in the name of the People of the State of Illinois, as plaintiff, to the Circuit Court of Cook County, the Circuit Court of Sangamon County, or the circuit court of the county in which such company has, or last had its principal office, for an order to rehabilitate or liquidate the defendant company as provided in this Article, *and for such other relief as the nature of the case and the interests of its policyholders, creditors, members, stockholders or the public may require.*
> 215 ILCS 5/188 (emphasis added)

Section 201 of the Code similarly provides that

> No order or judgment enjoining, restraining or interfering with the prosecution of the business of any company, or for the appointment of a temporary or permanent receiver, rehabilitator or liquidator of a domestic company, or receiver or conservator of a foreign or alien company, shall be made or granted otherwise than upon the complaint of the Director represented by the Attorney General as provided in this article
> 215 ILCS 5/201

The language in these sections explicitly provides for the Director's participation in these proceedings as regulator. Specifically, section 188 gives the Director the broad authority to seek "such other relief as the nature of the case and the interests … of the public may require." 215 ILCS 5/188. Because this statutory language is clear and unambiguous, it must be given its plain and ordinary meaning. *See Dusty's Outdoor Media, LLC*, 2019 IL App (5th) 180269, ¶ 9 ("Words used in a statute should be given their plain and ordinary meaning, unless the legislature has provided a statutory definition."). Even if this Court determines that these sections pertain only to the procedures for initiating the Complaint, the sections do not proceed to limit any subsequent involvement by the Director. Although NextLevel attempts establish such a limitation, it fails to cite any specific language to support its position. This is because no such language exists. A limitation cannot be read into a statute when the statute's unambiguous language does not provide for one. *See Chi. Tribune Co. v. Bd. of Ed.*, 332 Ill. App. 3d 60, 67 (1st Dist. 2002) (Courts "cannot

read words into a statute that are not there.").

Reading a limitation into these sections would also contradict other sections of the Code that create duties and responsibilities for the Director as regulator. *See Slepicka v. Ill. Dep't of Pub. Health*, 2014 IL 116927, ¶ 14 ("In determining the meaning of a statute, a court will not read language in isolation, but must consider it in the context of the entire statute."). As recognized by NextLevel, the Code distinguishes between the Director's role as a regulator on behalf of the People of Illinois and the Director's role as conservator. And similar to NextLevel's Opposition, the Code either uses 'Director' when referring to the Director in her regulatory capacity and 'Conservator' when referring to the Director in her separate appointment as conservator, rehabilitator, or liquidator, or it specifically identifies when the Director is acting in one of these roles. *Cf.* 215 ILCS 5/188.1 ("Upon the filing by the *Director* of a verified complaint …") (emphasis added), 215 ILCS 5/192 ("Where in such proceedings the Court has entered an order for the filing of claims and it subsequently appears that the total amount of all allowable claims exceed the assets in the possession of the *Rehabilitator* …") (emphasis added), 215 ILC 5/205 ("The expenses expressly approved or ratified by the *Director as liquidator or rehabilitator* …") (emphasis added), 215 ILCS 5/205.1 ("Any collateral held by, for the benefit of, or assigned to the insurer or the *Director as rehabilitator or liquidator* to secure the obligations of a policyholder under a deductible agreement shall not be considered an asset of the estate and shall be maintained and administered by the *Director as rehabilitator or liquidator*") (emphasis added).

Section 188.1 identifies the procedures for lifting sequestration.[1] Specifically, section 188.1. states that these proceedings are only to remain confidential "until the court, after hearing

[1] NextLevel argues that its guarantee of confidentiality is confirmed throughout the Code. But the fact that the Code specifically provides for the lifting of sequestration belies NextLevel's argument. If confidentiality was guaranteed, the Code would not include the procedures for removing confidentiality.

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 (emphasis added). When comparing the language used throughout the Code, it is significant that section 188.1 uses the term 'Director' and also does not further identify the Director as either conservator, liquidator, or rehabilitator as it does in other sections of the Code. And because the Code typically identifies the role being referenced, the General Assembly appears to be referring to the Director as regulator in this section, meaning the Director certainly has standing under section 188.1 to bring this Motion to Vacate.

Without objection from NextLevel, the Director, as regulator, has already participated in Section 188.1's hearing process for lifting sequestration. As NextLevel states in Paragraph 10 of its Opposition, "[o]n 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" heard by the court in a closed hearing. As noted in Paragraph 11 of the Opposition, an Agreed Order was entered on May 20, 2021, partially lifting the Sequestration Order and that this relief has been continued several times. In each instance, the Director, as regulator, has, without objection from NextLevel, participated in the hearings before the Court and the drafting of the proposed orders.

Finally, NextLevel's interpretation would lead to an absurd result. According to NextLevel, the Director in her regulatory capacity is limited to the filing of the Complaint. But in this case, the Order of Sequestration was entered upon the "Motion for Sequestration, filed by the People of the State of Illinois, on relation of Robert H. Muriel, Director of the Illinois Department of Insurance." Order of Sequestration, attached as Exhibit A to the Motion to Vacate. It was not entered upon the request of the Conservator as would be required under NextLevel's argument.

Thus, if NextLevel's argument is accepted, the Order of Sequestration that NextLevel seeks to keep in place would be voidable as it was entered upon the request of a party that did not have standing. *See Taylor v. Bayview Loan Servicing, LLC*, 2019 IL App (1st) 172652, ¶ 14 ("A voidable judgment … is one entered erroneously by a court having jurisdiction and is not subject to collateral attack.").

Based on the foregoing, the People of the State of Illinois upon relation of the Director certainly have standing to bring a Motion to Vacate the Order of Sequestration because the Director's role as regulator is not limited to the filing of the complaint, section 188.1 specifically allows for the Director as regulator to argue for vacating sequestration, and NextLevel's argument would lead to an absurd result that ultimately makes voidable the very order it seeks to keep in place.

II. The Motion to Vacate the Order of Sequestration is correct as a matter of law and granting it would be proper as the facts show the purpose for sequestration has been satisfied.

An order vacating the Order of Sequestration would be proper and legally sufficient. Under Illinois law, the confidentiality of conservation proceedings is only intended to allow "the Director to ascertain the condition and situation of the company." 215 ILCS 188.1(2). Similar to temporary restraining orders, it is meant to maintain the status quo. *See* 9 New Appleman on Insurance Law Library Edition § 96.03 (2021), *relying on* 215 ILCS 5/188.1. And the case is usually sequestered only at the start of the conservation proceedings, which are intended to be of short duration. *Id*. ("Typically, a conservation proceeding is intended to be of short duration (*e.g.*, 90 days) and, *initially* is sequestered and confidential until such time as the court, after a hearing, makes it public") (emphasis added).

Illinois law supports vacating the Order of Sequestration. As demonstrated by section 188.1 and New Appleman Insurance Law, sequestration of conservation proceedings is only meant to preserve the status quo at the initiation of the proceedings to allow the Director time to ascertain the condition and situation of the company. In its Opposition to the Motion to Vacate, NextLevel conflates successfully completing part of the Order of Conservation with completing the entire Order of Conservation. Specifically, NextLevel argues that Illinois law does not contemplate that confidentiality should end once the Conservator has fulfilled her obligations under the Order of Conservation. *See* Opposition to Motion to Vacate, ¶ 24. But this is incorrect as it misconstrues the issue. The issue under Illinois law is whether the Conservator has been able to fulfill the part of the Order of Conservation that requires her to take control of the property and to ascertain the condition and situation of the company, not whether she has fulfilled *every* obligation under the Order of Conservation as argued by NextLevel.

The facts demonstrate that the need for sequestration has ended. As identified in the Motion to Vacate, the Director successfully ascertained the condition and status of NextLevel after she took control of its property, books, and records as required under Illinois law and the Order of Conservation. NextLevel's Opposition to the Director's Motion to Vacate further evidences that the need for sequestration has ended by asserting that the parties have agreed to a proof of claims and dissolution procedure.[2] *See* Opposition to Motion to Vacate, ¶ 30. This statement supports vacating the Order of Sequestration because if the Conservator had not successfully ascertained NextLevel's status, the parties would not have been able to reach this agreement. Thus, the status quo has been sufficiently maintained to allow the Conservator time to review NextLevel's

[2] In its Opposition to the Motion to Vacate, NextLevel uses the parties' agreement as support for maintain the Order of Sequestration. But any agreement to certain procedures that was made months ago does not change the fact that this matter should not continue to remain confidential.

condition, eliminating any further need for confidentiality in these proceedings. And to the extent that NextLevel requires certain documents and records to be kept confidential, nothing prevents NextLevel from seeking leave to file under seal, even if the Order of Sequestration is vacated.

III. NextLevel's arguments and comments relating to the Freedom of Information Act request and subsequent Motion to Intervene are irrelevant and improper.

Finally, NextLevel concludes by addressing a Freedom of Information Act ("FOIA") request that the Office of the Illinois Attorney General received, as well as the subsequent Motion to Intervene filed by Jacqueline Stevens. In its brief, NextLevel alleges that the Motion to Vacate was secretly based upon this FOIA request and alludes to secret representation of Professor Stevens. *See* Opposition to Motion to Vacate, ¶ 14 ("Jacqueline Stevens, *purporting* to proceed pro se, filed a Petition to File Intervenor Motion …") (emphasis added). Not only are these accusations improper, they are incorrect. *First*, even if this FOIA request prompted any relief sought, this is irrelevant and separate from the legal basis for seeking this relief. The legal basis for the relief is the relevant inquiry. *Second*, the Director's *basis* for her Motion to Vacate is fully grounded in the law, as set forth above and in her Motion to Vacate. *Third* and finally, the Office of the Illinois Attorney General has not provided any assistance to Professor Stevens in pursuing the legal remedies that she seeks. Nor does this accusation even make sense given that the Office of the Illinois Attorney General has already stated on the record that it opposes most of the relief that Professor Stevens seeks, *i.e.* a declaration that section 188.1 is unconstitutional and an order requiring the Illinois Department of Insurance to only bring future actions under a specific section of the Code.

WHEREFORE, for the foregoing reasons along with those stated in the Motion to Vacate, the People of the State of Illinois respectfully request that this Court vacate its Order of Sequestration.

This Matter is Confidential
Under 215 ILCS 5/188.1

Respectfully Submitted,

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