

Hearing Date: No hearing scheduled
Courtroom Number: No hearing scheduled
Location: No hearing scheduled

CONFIDENTIAL Pursuant to Statute and Court Orders

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

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

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

15581521

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

**MEMORANDUM IN SUPPORT OF NEXTLEVEL’S
PROPOSED LIMITATIONS ON LIFT OF SEQUESTRATION**

NextLevel Health Partners, Inc. (“NextLevel”) respectfully requests that the Court retain a limited sequestration of materials that NextLevel and others presented to the Court with the expectation that statutory confidentiality would be maintained. In particular, NextLevel requests that the Court approve NextLevel’s proposed redactions to the Verified Complaint for Conservation of Assets and Injunctive Relief (the “**Complaint**”) and to the Order of Conservation of Assets and Injunctive Relief (the “**Conservation Order**”), and of Exhibits A and B to the Declaration of Glenn A. Giese (the “**Giese Declaration**”) in Support of the Joint Motion for an Order Authorizing and Approving Membership Transfer and Related Transaction (the “**Transfer Motion**”). As demonstrated below, this limited sequestration fully accords with the General Assembly’s intent and allows the public to view the Court file without any prejudicial loss of access to information that is otherwise of no interest or consequence.

BACKGROUND

1. The Court will recall that 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

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of Illinois ceased funding such community care services. At the State’s suggestion, NextLevel reorganized as a 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, the Attorney General on behalf of the Director (the “Director”) of the Department of Insurance (the “Department”) filed the Complaint against NextLevel.

3. 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

SFA

ENTERED:

Sam T. Taylor

Judge Presiding

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

4. On June 9, 2020, the Court issued 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.

5. On June 24, 2020, NextLevel and the Conservator filed the Transfer Motion, requesting an order authorizing the Conservator to approve NextLevel’s entry into a Member

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Transfer Agreement, by which NextLevel would transfer various assets and liabilities to Meridian Health Plan of Illinois, Inc., a subsidiary of Centene Corporation (“**Centene**”).

6. The Giese Declaration was attached as an exhibit to the Transfer Motion. Attached as Exhibits A and B to the Giese Declaration were the Annual Actuarial Certifications of NextLevel and supporting memoranda as of December 31, 2019 and May 31, 2020 respectively.

7. On June 29, 2020, the Court granted the Transfer Motion.

8. On June 30, 2020, now with approval from the Court and the Department, NextLevel entered into the Member Transfer Agreement. 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. In entering into and closing the Member Transfer Agreement, due to highly sensitive and confidential information of the companies being contained in the court file, including the Complaint, the Conservation Order, and the Transfer Motion and its accompanying exhibits, NextLevel and Centene relied on their expectations of confidentiality and sequestration, based on negotiated provisions in the parties’ agreements and the Sequestration Order.

10. 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**”).

11. On September 30, 2021, over NextLevel's objection, the Court granted the Attorney General's motion to lift the Sequestration Order based on the Court's finding that a complete sequestration of this proceeding was no longer necessary, and that the lift furthers the public's general interest in access to court proceedings. However, the Court issued its order with the caveat that it would consider keeping under seal a list of documents to be submitted by NextLevel to protect from being made public filings in this case that contain NextLevel's and Centene's most confidential and sensitive business information and that were filed under an expectation of confidentiality granted by 215 ILCS 5/188.1(5).

12. Since then, NextLevel has carefully reviewed the court file from this case to identify the proper documents to submit to the Court. Appreciating the Court's rationale of preserving public access to court proceedings to the extent practicable, NextLevel has carefully narrowed its request down only to the documents that contain its most confidential and sensitive business information. To that end, NextLevel requests only that the Complaint and Conservation Order be appropriately redacted, and that Centene's expectation of confidentiality as to Exhibits A and B to the Giese Declaration be respected and those documents remain sealed to avoid releasing information that would be the most damaging to both companies and the proof of claims procedure contemplated by the Dissolution Motion if it were made public.¹

13. In a hearing on October 20, 2021, the Court instructed NextLevel to contact Centene's counsel to notify them of the Court's lift of the sequestration and seek Centene's input as to whether it objected to the lift as to any documents that may risk making its own sensitive and confidential business information public. On November 10, 2021, Centene's counsel responded that its preference would be for all documents filed in this proceeding to remain

¹ The Complaint and NextLevel's proposed redactions to it are attached hereto as Exhibits 1 and 2. The Conservation Order and NextLevel's proposed redactions to it are attached hereto as Exhibits 3 and 4. Exhibits A and B to the Giese Declaration are attached hereto as Exhibit 5.

sequestered. Centene also requested that its statement be included in NextLevel's objections in connection with the lift of sequestration. A true and correct copy of Centene's statement is attached hereto as Exhibit 6.

ARGUMENT

14. Although the public generally has the right to access court files, *see* 705 ILCS 105/16(6), that right "is not absolute," *Deere & Co. v. Finley*, 103 Ill. App. 3d 774, 776 (1st Dist. 1981). The Court retains an "inherent power to control its files and impound any part of a file in a particular case." *Id.* In determining whether to restrict access to judicial records, the Court must balance the interests supporting the presumption in favor of access against the interest asserted for restricting access. *In re Marriage of Johnson*, 232 Ill. App. 3d 1068, 1072 (4th Dist. 1992). Thus, the Court "in its sound discretion, may impound records if it is shown that the interests asserted for restricting access outweigh those in support of access." *Doe v. Carlson*, 250 Ill. App. 3d 570, 574 (2d Dist. 1993).

15. Here, NextLevel proposes only very slight redactions to the Complaint and Conservation Order and proposes only the continued sealing of two exhibits to the Giese Declaration. On one hand, given the voluminous filings in this proceeding, accommodating NextLevel's minimal proposed limitations would cause virtually no impairment to public access. On the other hand, the information that NextLevel requests remain confidential is its very most sensitive business information that has the most potential to damage the company were the information to be made public. Additionally, the information has the potential to jeopardize the proof of claim procedure contemplated by the Dissolution Motion that is integral to the success of this proceeding. Finally, this sensitive and confidential information was made part of the court file under NextLevel's expectation that the proceeding would remain sequestered as required by

default by 215 ILCS 5/188.1(5). Thus, the interests in maintaining confidentiality over this specific, limited portion of the court file outweighs the interest in making it public.

The Complaint and Conservation Order should be released only in redacted form.

16. NextLevel’s proposed redactions to the Complaint and Conservation Order relate exclusively to statements in the documents purporting to describe NextLevel’s risk-based capital or “RBC.” As the General Assembly has determined, calculations and comparisons of an insurance company’s RBC are a useful tool for regulators but not a valid way for policyholders to evaluate the company. Thus, RBC information can be highly misleading to policyholders and unfairly damaging to the company if made public.

17. To that end, the General Assembly has determined that:

All RBC Reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC Plans, **including the results or report of any examination or analysis of an insurer performed under this Article and any Corrective Order issued by the Director pursuant to the examination or analysis,** with respect to any domestic insurer or foreign insurer that are filed with the Director **constitute information that might be damaging to the insurer if made available to its competitors and shall be kept confidential by the Director.** This information **shall not be made public** or be subject to subpoena, other than by the Director and then **only for the purpose of enforcement actions taken by the Director under this Code or other provisions of the insurance laws of this State.**

235 ILCS 5/35A-50(a) (emphasis added).

18. The General Assembly has further determined that:

It is the judgment of the legislature that the comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and **not a means to rank insurers generally.** Therefore, except as otherwise required under the provisions of this Code, **the disclosure, in any manner or form, directly or indirectly, of information containing an assertion, representation, or statement regarding the RBC levels of any insurer or any component derived in the calculation of RBC levels by any insurer, insurance producer, limited insurance producer, broker, or other person engaged in any manner in the insurance business would be misleading** and is prohibited. In the event that a materially false statement with respect to the comparison regarding an insurer's total adjusted capital to any of its RBC levels or an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate

to the Director with substantial proof the falsity of the statement or the inappropriateness thereof, the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

235 ILCS 5/35A-50(b) (emphasis added).

19. For example, a Corrective Order was issued by the Director in this proceeding on April 9, 2020, pursuant to the Director's analysis of NextLevel's RBC (a copy of which is attached hereto as Exhibit 7). Under 235 ILCS 5/35A-50(a), this document must be kept confidential except solely to the extent necessary by the Director to achieve the objectives of this proceeding. Because disclosing it to the public would not be necessary to address any outstanding claims against NextLevel or to facilitate the wind-up of NextLevel's business, this document should remain confidential by statute. The General Assembly has made the judgment that its release has the potential to be damaging to the company.

20. Similarly, the passages of the Complaint and Conservation Order that purport to describe NextLevel's RBC present the same risks of damage to NextLevel. The Complaint contains only allegations about NextLevel's RBC that were never proven. And the Conservation Order never made any factual findings about NextLevel's RBC but simply concluded that the Complaint's allegations were sufficient to allow this action to proceed. It would be manifestly unjust for these allegations to be made available to the public when they have never been proven. The Complaint is based on information released pursuant to a financial examination of NextLevel memorialized in the Corrective Order. That order required NextLevel to make weekly filings of sensitive financial information, which is entitled to protection under 215 ILCS 5/35A-50(a). In other words, the Complaint works a sleight of hand, albeit perhaps without the Director's intent.

21. Moreover, releasing these allegations about NextLevel's RBC to the public would jeopardize the proof of claim procedure contemplated by the Dissolution Motion that NextLevel

and the Conservator have jointly been working on for months. The proof of claim procedure is intended to facilitate the distribution of NextLevel's remaining assets and its dissolution. Completion of the procedure is essential to the success of this proceeding. But if unproven allegations about NextLevel's RBC are suddenly made public, such information has the potential to cause a massive increase in the number of people who file unjustified claims against NextLevel, which can threaten the fair and orderly determination of claims. Thus, NextLevel's interest in confidentiality outweighs the general right of public access regarding these limited redactions.

Exhibits A and B to the Giese Declaration should remain under seal.

22. Exhibits A and B to the Giese Declaration contain the Annual Actuarial Certifications of NextLevel and supporting memoranda as of December 31, 2019 and May 31, 2020 respectively. These documents contain such confidential information as estimations of the reserve for claims unpaid, calculations of total margins for conservatism, reinsurance ceded, Other Direct-Paid Medical, amounts owed to certain providers for updated fee schedules, aggregate policy reserves, and an assessment of the necessity of cash flow testing. These calculations comprise NextLevel's highly sensitive and confidential business information that could be highly damaging to the company if exposed to the public and also could harm the proof of claim procedure contemplated by the parties.

23. Another factor weighing in favor of keeping these documents under seal is the damage it would do to Centene, a third party who also relied on the expectation of confidentiality granted by 215 ILCS 5/188.1(5) in entering into the Member Transfer Agreement and did not have the opportunity to argue at the hearing that originally led to the Court lifting the Sequestration Order. As Centene notes in its statement supporting keeping the Sequestration

Order in place, the exhibits to the Giese Declaration contain “highly sensitive financial and business information.” *See* Ex. 6. Thus, NextLevel’s and Centene’s interests in confidentiality outweighs the ordinary right of public access for this limited set of documents as well.

WHEREFORE, NextLevel respectfully requests that the Court limit its unsealing of the Complaint and Conservation Order as provided in NextLevel’s proposed redactions to those documents and that the Court maintain under seal Exhibits A and B to the Giese Declaration.

Dated: November 12, 2021

Respectfully submitted,

By: /s/ Matthew Freilich

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CERTIFICATE OF SERVICE

I certify that on November 12, 2021, I caused the foregoing Memorandum in Support of NextLevel's Proposed Limitations on Lift of Sequestration to be filed and served on all counsel of record entitled to receive it.

/s/ Matthew Freilich

Attorney for NextLevel Health Partners, Inc.