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

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

**PEOPLE OF THE STATE OF ILLINOIS’ OPPOSITION TO
INTERVENOR’S FIRST AMENDED INTERVENOR MOTION**

The People of the State of Illinois, upon the relation of Dana Popish Severinghaus, Director of the Illinois Department of Insurance (the “Director”), instituted this conservation proceeding against NextLevel Health Partners, Inc. (“NextLevel”) and sought sequestration pursuant to Section 188.1 of the Illinois Insurance Code (the “Code”), 215 ILCS 5/188.1. While judicial proceedings are generally open to the public, the confidentiality of conservation proceedings are vital for allowing the Director, as Conservator, to fulfill the goals of conservation and to protect all parties involved, including the insurer, the insured, and the public. Jacqueline Stevens’ First Amended Intervenor Motion threatens to upend this historical and necessary confidentiality by seeking to declare Section 188.1 unconstitutional so that she can access documents that have already been made public.

Stevens’ First Amended Intervenor Motion fails. Although the Director maintains her objection to Stevens’ intervention, this Court must deny Stevens’ First Amended Intervenor Motion because addressing the question of whether Section 188.1 is constitutional is unnecessary to determining whether Stevens should have access to this proceeding and the court file. Moreover, the Court already vacated the Order of Sequestration and made these proceedings public, making Stevens’ Amended Motion moot. Finally, even if this Court were to address the constitutionality question (it should not), Stevens cannot satisfy the First Amendment’s presumption of public access to court records.

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BACKGROUND

I. Procedural history of the NextLevel Conservation.

On June 3, 2020, the Director filed a Verified Complaint for Conservation of Assets and Injunctive Relief against NextLevel. *See* Exhibit A, Redacted Complaint. The Complaint was filed pursuant to the provisions of Article XIII of the Code, which authorizes the Director to apply to the Court, through the Attorney General of the State of Illinois, on behalf of the People of the State of Illinois, for entry of an order without a hearing or prior notice, to conserve the assets of a domestic company upon a showing that any of the grounds specified in Section 188 of the Code, 215 ILCS 5/188, exist.

On June 4, 2020, this Court entered an Order sealing and sequestering this case from public view pursuant to Section 188.1(5) of the Illinois Insurance Code. *See* Exhibit B, Order of Sequestration. As part of this Order, all of NextLevel Health Partners, Inc.’s (“NextLevel”) records were to be held confidential and all individuals with knowledge of these proceedings were 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.” *Id.* at ¶ 3.

On June 9, 2020, this Court entered an Order of Conservation of Assets and Injunctive Relief (“Order of Conservation”) after finding that sufficient cause exists for the entry of such an order. *See* Exhibit C, Redacted Order of Conservation. Pursuant to this Order, the Director was appointed as Conservator and was provided with the all the statutory authority outlined in Section 191 of the Code, which included the authority to take immediate possession and control of all property, contracts, and rights of action of NextLevel. *Id.* at ¶ C.

Since this Court's entry of the Order of Conservation, the parties have worked together to complete NextLevel's conservation. As part of this process, NextLevel and the Conservator jointly filed a motion for this Court to approve NextLevel's transfer of assets. According to NextLevel, it agreed to this transfer under the expectation of confidentiality as the documents included sensitive business information.

On September 30, 2021, this Court granted the People of the State of Illinois' Motion to Vacate the Order of Sequestration over NextLevel's objection. At the request of NextLevel, the Court stayed this order to allow the parties to determine whether any documents or portions of documents in the Court's files should remain confidential. NextLevel subsequently submitted a memorandum requesting that Exhibits A and B to the Giese Declaration and portions of the Complaint and Order of Conservation remain under seal. On November 29, 2021, the Court issued an order requiring Exhibits A and B to the Giese Declaration to remain under seal and for portions of the Complaint and Order of Conservation to be redacted.

II. Stevens' Petition to Intervene

On August 30, 2021, Stevens filed a Petition to Intervene. As part of her Petition, Stevens requested intervention into the conservation proceeding, access to sealed court records, and a declaration that Section 188.1 of the Code is unconstitutional. The Director objected to the Petition to the extent Stevens sought to intervene into the proceeding for purposes beyond vacating the Order of Sequestration.

On December 6, 2021, this Court entered an order on Stevens' Petition. Pursuant to this order, Stevens was permitted to intervene into the proceedings. The Court reserved any ruling on whether the Court should reach the constitutional arguments raised by Stevens. Stevens

subsequently filed an Amended Motion, which again seeks access the sealed documents along with a declaration that Section 188.1 is unconstitutional.

LEGISLATIVE HISTORY OF CONFIDENTIALITY

Conservation proceedings have a long history of confidentiality. In 1937, the General Assembly established Article XIII of the Code, including Section 132, which provided as follows:

(1) The Director, for the purpose of ascertaining the assets, conditions and affairs of any company, may examine the books, records, documents and assets of
(a) any company transacting, or being organized to transact, business in this State;

* * *

(3) The examiners designated by the Director pursuant to section 402, shall make a full and true report of every examination made by them, which shall comprise only facts ascertained from the books, papers, records or documents, examined by them or ascertained from the testimony of officers or agents or other persons examined under oath concerning the business and affairs and the assets of such company or person. The report of examination shall be verified by the oath of the examiner in charge thereof, and said report so verified shall be prima facie evidence in any action or proceeding in the name of the State against the company, its officers or agents upon the facts stated therein.

(4) The Director shall grant a hearing to the company or person, its officers or agents, upon any facts contained in such examination report before filing the same, and before making such report public or any matters relating thereto; and he may withhold any such report from public inspection for such time as he may deem proper and may, after filing the same, publish any part or all of such report as he may deem to be in the interest of the public in one or more newspapers in this State without expense to the company.

Additionally, the General Assembly granted the Director the power to determine whether information should be confidential:

§ 404. Office of Director—a Public Office. The office of the Director shall be a public office and the records, books, and papers thereof on file therein shall be accessible to the inspection of the public, except as the Director, for good reason, may decide otherwise, or except as may be otherwise provided in this Code.

As the General Assembly has added to the Code, it has continued to expand the confidentiality provisions. *See, e.g.*, 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”); 215 ILCS 5/155.35 (“An insurance compliance self-evaluative audit document is privileged information and is not admissible as evidence in any legal action”); 215 ILCS 5/186.1 (“All 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’”).¹

ARGUMENT

I. The Director renews her objection to Stevens’ intervention for purposes of seeking a declaration that Section 188.1 is unconstitutional.

The Director renews her objection to Stevens’ intervention into this conservation proceeding for the purposes of declaring Section 188.1 of the Code unconstitutional. Specifically, the Director objects to this intervention as it improperly injects new issues into this litigation. Illinois courts have held that an intervenor “cannot change a proceeding by introducing new matters not relevant to the controversy or which unduly complicate it.” *See Home Ins. Co. v. Lorelei Restaurant Co.*, 83 Ill. App. 3d 1083, 1087 (1st Dist. 1980), *Chicago, M. S. P. & P. R. Co. v. Harris Trust & Sav. Bank*, 63 Ill. App. 3d 1012, 1022 (“[W]here intervention would result in the injection of many new and complicated issues, it may be denied.”).

In this case, Stevens’ intervention imposes into this litigation a request for relief that extends well beyond the parameters of the conservation proceeding. The purpose of the Director’s

¹ Many other states have similar confidentiality provisions in their insurance codes. *See* Ohio Rev. Code Ann. § 3903.11(A) (added in 1982 by H 830), M.C.L.A. 500.8111(1) (added in 1990 by P.A. 1989, No. 302 § 1), 18 Del. C. § 5944(a) and (b) (added in 1984 by 1964 Del. Laws, ch. 420 § 2).

Complaint was to institute conservation proceedings against NextLevel. Stevens' request for a declaration that Section 188.1 is unconstitutional unnecessarily complicates the litigation and is not required for the ultimate resolution of the proceedings. Accordingly, the Director renews her objection to Stevens' intervention for this purpose.

II. This Court should not reach the question of whether Section 188.1 is constitutional.

Generally, this Court should not reach the question of whether Section 188.1 is constitutional. Courts will not reach constitutional question if a case can be resolved on other grounds. *See Lyon v. Dep't of Children & Family Servs.*, 209 Ill. 2d 264, 271 (2004), *People v. Bass*, 2021 IL 125434, ¶ 30 (“[C]ases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort.”).

Stevens' Amended Motion seeks access to the documents and information that were previously ordered by this Court to remain confidential, as well as a declaration that Section 188.1 is unconstitutional. Because the primary purpose of this Amended Motion is access to information, this Court can address this purpose without determining the constitutionality of Section 188.1.

Beyond this general rule, however, this Court should not reach the question of whether Section 188.1 is constitutional because the matter is moot. The confidentiality portion of Section 188.1 of the Code no longer applies to the case as the Order of Sequestration has been vacated. Additionally, the matter is moot because Stevens has access to the documents and this proceeding.

A. *Any determination as to the constitutionality of Section 188.1 of the Code would be an improper advisory opinion.*

Any determination as to the constitutionality of Section 188.1 of the Code would be an improper advisory opinion because this section is no longer at issue in this case. As a general rule, courts do not decide moot questions because to do so would violate the general principle that courts do not render advisory opinions. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). That means that a

court should abstain from ruling on any issues where “the result will not be affected regardless of how those issues are decided.” *Id.*

The Court entered the Order of Sequestration pursuant to Section 188.1(5) of the Code, which provides that “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.” 215 ILCS 5/188.1(5). On November 29, 2021, this Court vacated the Order of Sequestration “after hearing arguments in chambers from the Director” and NextLevel. *Id.* The vacatur of the Order of Sequestration effectively made these proceedings and the documents filed as part of the proceedings open to the public with the exception of a small group of documents.

Based on the foregoing, Section 188.1(5) of the Code is no longer at issue in this case because the Court vacated the Order of Conservation, which relied upon that section. Without this order, Section 188.1(5) has no further effect on these proceedings. When a statute is no longer at issue in a case, a court should not rule on its constitutionality because such a ruling would be answering a moot question. *People v. Mosley*, 2015 IL 115872, ¶ 11 (quoting *In re Luis R.*, 239 Ill. 2d 295 (2010)). For this reason, this Court should deny Stevens’ Amended Motion.

B. Stevens’ Amended Motion is also moot because she has access to the documents.

A determination as to the constitutionality of Section 188.1 would also be an improper advisory opinion because this matter is no longer sequestered. As previously discussed, the primary purpose of Stevens’ Amended Motion is to access documents relating to this proceeding. And Stevens gained access to the case file and this proceeding when the Court vacated the Order of Sequestration. Although a small set of documents remain confidential, the Court’s decision to keep this information confidential resulted from a finding that the information was sensitive and

confidential and it was not based upon Section 188.1. Aside from the small set of documents that were placed under seal, Stevens's Amended Motion is moot because she already has access to this case and the court file. Accordingly, this Court does not need to address the constitutionality of Section 188.1 because Stevens already obtained access to the documents in this proceeding, which was the purpose for her intervention. Any further order addressing constitutionality would be unnecessary and have no effect on the ultimate relief sought. *See Bass*, 2021 IL 125434, ¶ 30.

III. Stevens' Amended Motion must be denied because she cannot satisfy the First Amendment's presumption of public access to court records in this case.

If the Court determines that it should address the constitutionality of Section 188.1 of the Code, it should not strike down the statute as unconstitutional because Stevens cannot satisfy the First Amendment's presumption of public access to court records. The presumption of public access to court records applies only to proceedings that (1) "have been historically open to the public" and (2) "have a purpose and function that would be furthered by disclosure." *People v. Kelly*, 397 Ill. App. 3d 232, 256 (1st Dist. 2009) (citing *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214, 231–33 (2000)). Neither of these requirements are met in this case.

First, insurance proceedings have not historically been open to the public. To the contrary and as already outlined above, the General Assembly has consistently included and expanded upon the confidentiality protection provided by the Code since 1937. For this reason alone, Stevens cannot meet this presumption.

Second, there is no presumption of public access in conservation proceedings because disclosure would defeat the purpose and function of the confidentiality. Under Illinois law, the confidentiality of conservation proceedings is intended to allow "the Director to ascertain the condition and situation of the company." 215 ILCS 188.1(2). Like 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 public access to this information would lead to a “run on the bank” by the company’s creditors, which would wholly prevent the Director from ascertaining the condition and situation of the company, *i.e.* one of the primary purposes of conservation proceeding. Moreover, aside from disclosure preventing the Director from achieving this goal, the insurer could suffer irreparable harm even if the condition requiring conservation has been removed. *See* National Association of Insurance Commissioners, Receiver’s Handbook for Insurance Company Insolvencies, page 7 (April 2021), <https://content.naic.org/sites/default/files/publication-rec-bu-receivers-handbook-insolvencies.pdf>. Accordingly, the confidentiality of conservation proceedings is integral to achieving the purpose behind the proceedings and to protecting insurers, the insureds, and the public.

Based on the foregoing, Stevens cannot satisfy the requirements for the First Amendment’s presumption of public access to court records. The proceedings have historically been confidential as prescribed by the General Assembly for decades. And this confidentiality is a vital part of successfully achieving the goals of conservation.

WHEREFORE, for the foregoing reasons, the People of the State of Illinois respectfully request that this Court deny Jacqueline Stevens’ First Amended Intervenor Motion.

Respectfully Submitted,

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