

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

ENENEDINA GARCIA,)	
)	
Plaintiff)	
)	
-v-)	NO: 13-12403
)	
CHRISTEN NOVAK,)	<i><u>In Re: Affirmative Insurance Company</u></i>
)	
Defendant)	

MEMORANDUM OPINION AND ORDER ON
CONSOLIDATED MOTIONS OF DEFENDANTS INSURED BY
AFFIRMATIVE INSURANCE COMPANY.
IN CASES PENDING IN THE LAW DIVISION AND
FIRST MUNICIPAL DISTRICT OF THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS

I. Factual Background

On March 24, 2016, Affirmative Insurance Company was placed into liquidation pursuant to order of the Circuit Court of Cook County, Chancery Division, 15-CH-13718. Counsel for the Defendant in the instant case filed a motion to stay all proceedings in the above-captioned matter, which ruling would also apply in all cases involving parties insured by Affirmative Insurance Company.

The instant motion and motions pending in cases involving parties insured by Affirmative Insurance Company, pending in the Law Division and in the First Municipal District, were then assigned to this Court for ruling, pursuant to order of the Honorable James P. Flannery, Jr., Presiding Judge of Law Division on May 3, 2016 at 10:30 AM.

According to the Defendants insured by Affirmative Insurance Company, Section 551 of the Illinois Insurance Guaranty Fund Act provides that all proceedings arising out of a claim under a policy of insurance, written by an insolvent company, shall be stayed for 120 days from the date of the entry of the order of liquidation, to permit proper defense by the Fund of all such pending causes of action (215 ILCS 5/551).

Further, the Illinois Guaranty Fund must now assume all of the statutorily defined “covered claims” of Affirmative Insurance Company, pursuant to 215 ILCS 5/537.4. The instant case, as well as all others pending in the Law Division and the First Municipal District, which involve parties insured by Affirmative Insurance Company “covered claims, that the Illinois Insurance Guaranty Fund must assume. In order to permit the Fund to properly organize a defense of this and other covered claims, the provisions of 215 ILCS 5/551 triggers a 120-day stay of proceedings in these cases.

II. Court’s Discussion and Ruling

Unlike the motions to stay proceedings previously ruled upon by this Court in situations involving insurance companies in rehabilitation or liquidation, the Motion to Stay in the instant cases does not involve the propriety or enforcement of a *foreign* court order imposing a stay on cases *in Illinois* involving litigants who were not insureds of the insurance company, and over whom the foreign court had no subject matter or *in personam* jurisdiction.

On the contrary, in the instant cases, there is an Illinois statute, which specifically provides that in the event of an insurance company liquidation, *in Illinois*, the Illinois

Guaranty Fund assumes the obligations of the liquidated insurer and its insureds and Illinois claimants (subject to certain limitations and conditions of the Act), pursuant to which a stay is put in place in order to perform the proper review of the pending causes of action, retaining current counsel for the insureds, or transitioning to new counsel if and when appropriate. Therefore, there is subject matter jurisdiction in Illinois

Additionally, the Illinois Guaranty Fund Act and its statutory provisions apply to Illinois claimants who have filed their cases in Illinois and who were Illinois residents at the time of the occurrence covered under the Interstate policies, thereby conferring personal jurisdiction over the claimants/plaintiffs as well as the insureds/defendants.

All of the cases pending in the Circuit Court of Cook County, in the Law Division and in the First Municipal District are in a variety of different procedural positions (*e.g.*, ready for trial, arbitrations set, in early stages of litigation or in late stages of litigation). All of these cases are distributed among motion judges, trial judges, and/or arbitrators, and all have different dates for case management and/or status. In order to complete the proper review of these cases, as required by 215 ILCS 5/551, all such cases must be stayed for the requisite 120-day period. Thereafter, all cases involving insureds of Affirmative Insurance Company, pending in the Law Division and First Municipal District, will be set for a status in Room 2005 fourteen (14) days after the expiration of the 120-day stay period, and counsel for the Affirmative Insurance Company insureds shall inform the court as to the status of each case, for the court to determine if the matter may be set for a new trial date, returned to the

originally assigned judge, or any other such action which may be appropriate under the circumstances of the case. All other case management dates shall be stricken, all previously entered stay orders are vacated, all prior orders placing the cases on the Insurance Calendar are vacated, and a copy of this order shall be sent to the Presiding Judge of the Law Division, to the Presiding Judge of the First Municipal District, and all Law Division motion judges, upon entry.

Based on the foregoing, the Court orders as follows:

1. The Motion To Stay Proceedings of Defendant, CHRISTEN Novak, is granted;
2. All proceedings in all cases involving parties insured by Affirmative Insurance Company, pending in the Law Division and the First Municipal District, shall be stayed until September 7, 2016;
3. All Law Division cases shall be set for status in Room 2005 at 2:00 PM on September 21, 2016, for determination of further appropriate proceedings;
4. All First Municipal District cases shall be set for status at a date and time set by the Presiding Judge of the First Municipal District;
5. All currently set court dates for trial, status, arbitration, and/or case management are stricken;
6. A copy of this order shall be sent to the Presiding Judge of Law Division, the Presiding Judge of the First Municipal District, and all Law Division motion judges *instanter*;

7. The Clerk of the Circuit Court shall spread this Memorandum Opinion and Order on the electronic docket and place a copy in each court file for all cases identified in Exhibit "A," attached to this Memorandum Opinion and Order.

ENTER:

Kathy M. Flanagan
JUDGE _____ NO.

ENTER

MAY - 3 2016 ✓

KATHY M. FLANAGAN #267