IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE	)	
REHABILITATION OF INDEMNITY	)	C.A. No. 8601-VCL
INSURANCE CORPORATION, RRG	)	

MEMORANDUM OPINION

Date Submitted: January 10, 2014
Date Decided: January 16, 2014

W. Harding Drane, Jr., Jessica M. Willey, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware; *Attorneys for Petitioner State of Delaware.*

Michael W. Teichman, Michael W. Arrington, James D. Nutter, Elio Battista, Jr., PARKOWSKI, GUERKE & SWAYZE, P.A., Wilmington, Delaware; *Attorneys for Respondent Indemnity Insurance Corporation, RRG.*

Theodore A. Kittila, GREENHILL LAW GROUP, LLC, Wilmington, Delaware; *Attorney for non-party Jeffrey B. Cohen.*

LASTER, Vice Chancellor.

Jeffrey B. Cohen has moved for a stay pending appeal of an order placing Indemnity Insurance Corporation, RRG ("Indemnity") into rehabilitation (the "Rehabilitation Order"). His motion is denied.

I. FACTUAL BACKGROUND

The facts for purposes of Cohen's motion have been established at a series of hearings held on September 10, September 24, November 1, and December 5, 2013, and January 10, 2014. In connection with the hearings on September 24, November 1, and December 5, 2013, the parties submitted evidence with their written submissions and introduced documentary evidence and presented live witness testimony at the hearings. In connection with the hearings on September 10, 2013, and on January 10, 2014, the parties submitted evidence with their written submissions.

A. Indemnity Insurance Corporation, RRG

This case is a delinquency proceeding brought against Indemnity by the Insurance Commissioner of the State of Delaware (the "Commissioner"). *See* 18 *Del. C.* § 5901(3) (defining a "[d]elinquency proceeding" as "any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer"). A state-court delinquency proceeding is analogous to a federal bankruptcy court proceeding, but it proceeds in state court because Congress has reserved for the states the power to regulate insurance companies. *See* 15 U.S.C. §§ 1011-15 (McCarran-Ferguson Act); *Checker Motors Corp. v. Exec. Life Ins. Co.*, 1992 WL 29806, at *2 (Del. Ch. Feb. 13, 1992) ("Because distressed insurance companies are prohibited from seeking the protection of the Federal Bankruptcy Code, the rehabilitation

or liquidation of such insurers is left to regulation by the states."), *aff'd*, 615 A.2d 530 (Del. 1992) (TABLE). Many states, including Delaware, "have adopted the [Uniform Insurers Liquidation Act ('UILA')] to establish a uniform method for processing claims against, and distributing assets of, distressed insurance companies." *Checkers Motors*, 1992 WL 29806, at *2. The Delaware Uniform Insurers Liquidation Act appears in Chapter 59 of the Delaware Insurance Code, which is titled "Rehabilitation and Liquidation." *See* 18 *Del. C.* §§ 5901-5933; 5941-5944.

The movant, Cohen, founded Indemnity and served as its CEO and Chairman of the Board until August 5, 2013, when he resigned as Chairman and was removed from his other positions. As indicated by the letters "RRG" in its name, Indemnity is a risk retention group. Congress authorized risk retention groups by passing the Product Liability Risk Retention Act of 1981, which was amended in 1986 as the Liability Risk Retention Act. *See* 15 U.S.C. §§ 3901-3906. The Delaware General Assembly adopted the Delaware Risk Retention Act to govern risk retention groups that are formed under Delaware law or which operate in Delaware. *See* 18 *Del. C.* §§ 8001-8014.

Under the Delaware Risk Retention Act, the term "'[r]isk retention group' means any corporation or other limited liability association . . . [w]hose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members." *Id.* § 8002(11)(a). The risk retention group must have "as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group." *Id.* § 8002(11)(e). All members must be "engaged in businesses or activities similar or related with respect to the liability of which such

members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations." *Id.* § 8002(11)(f). The Delaware requirements parallel the federal requirements, which similarly mandate that a risk retention group be owned by its members and that all members be engaged in a similar or related line of business or activity that would expose the members to similar liabilities. 15 U.S.C. § 3901(a)(4)(E)-(F).

RB Entertainment Ventures, LLC ("RB Entertainment") is a limited liability company of which Cohen is the sole member. RB Entertainment claims to own 99% of Indemnity's equity by virtue of having been issued a zero-dollar insurance policy by Indemnity. Cohen has asserted that RB Entertainment once owned several investments in bars and other entertainment establishments, thereby qualifying RB Entertainment as a member of Indemnity. It is not clear whether RB Entertainment continues to own any such investments.

The remaining 1% of Indemnity's equity is owned by the International Association of Entertainment Businesses, which is an association comprising all of Indemnity's other policyholders. These other policyholders own or operate bars and other entertainment establishments, and they have been issued—and have paid premiums for—insurance policies that provide actual, positive-dollar coverage.

B. The Seizure Petition

On May 30, 2013, the Commissioner initiated a summary proceeding against Indemnity by filing a Verified Petition for Entry of Confidential Seizure and Injunction Order (the "Seizure Petition"). The Insurance Code grants the Commissioner power to

file such a petition if the Commissioner believes (i) there exists "[a]ny ground that would justify a court order for a formal delinquency proceeding against an insurer" and (ii) "that the interests of policyholders, creditors or the public will be endangered by delay." 18 *Del. C.* § 5943(a). Grounds that "would justify a court order for a formal delinquency proceeding against an insurer," such as an order requiring rehabilitation, include if (i) the insurer "is impaired or insolvent or is in unsound condition" or (ii) the insurer is "using such methods and practices in the conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders." *Id.* § 5905(1). The Insurance Code authorizes the Court of Chancery to issue a seizure order "forthwith, ex parte and without a hearing." *Id.* § 5943(a).

The Seizure Petition was supported by documentary evidence and averred that Indemnity was in a precarious financial position and had engaged (through Cohen) in multiple acts of fraud. After reviewing the Seizure Petition, the court entered an order granting the relief requested and authorizing the Commissioner to take control of the business and assets of Indemnity. Dkt. 4 (the "Seizure Order").

Among other things, the Seizure Order directed the Commissioner to

> immediately take exclusive possession and control of, and is hereby vested with all right, title and interest in, of or to, all of the property of [Indemnity] including, without limitation, all of [Indemnity's] assets, contracts, rights of action, books, records, bank accounts, certificates of deposits [sic], collateral and rights to collateral of [Indemnity], securities or other funds, and all real or personal property of any nature of [Indemnity] including, without limitation, all proceeds of or accessions to any of the foregoing, wherever located, in the possession, custody or control of [Indemnity] or any trustee, bailee, or any agent acting for or on behalf of [Indemnity] (collectively, the "Assets").

Id. ¶ 2; *see* 18 *Del. C.* § 5943(a) (authorizing Court of Chancery to direct the Commissioner "to take possession and control of all or a part of the property, books, accounts, documents and other records of an insurer and of the premises occupied by it for the transaction of its business"). The Seizure Order prohibited "[a]ll persons or entities that have notice of these proceedings or of this Seizure and Injunction Order . . . from interfering with the Commissioner and her authorized agents either in their possession and control of the Assets or in the discharge of their duties hereunder." Seizure Order ¶ 9; *see* 18 *Del. C.* § 5943(a) (authorizing Court of Chancery to "enjoin the insurer and its officers, managers, agents and employees from disposition of its property and from transaction of its business except with the written consent of the Commissioner").

The Insurance Code provides that an insurer subject to an ex parte order "may petition the Court at any time after the issuance of such order for a hearing and review of the order, and the Court shall grant such a hearing and review within 10 days of the filing of such petition." 18 *Del. C.* § 5943(d). On July 5, 2013, Indemnity petitioned for review of the Seizure Order. As required by statute, the court scheduled a hearing on the petition for July 15. The court held a telephonic status conference with the parties on July 10. After the status conference, the parties reached an agreement to defer the July 15 hearing.

C. The Liquidation Petition

Using the authority conferred by the Seizure Order, the Commissioner took possession of Indemnity's books, records, and other assets and conducted a preliminary

examination of Indemnity. On July 26, 2013, the Commissioner filed a Verified Petition for Entry of Liquidation and Injunction Order (the "Liquidation Petition"). Under Delaware law, the statutory grounds on which the Commissioner may apply to liquidate an insurer include the statutory grounds for seeking rehabilitation. 18 *Del. C.* § 5906. To reiterate, those grounds include (i) if the insurer "is impaired or insolvent or is in unsound condition" or (ii) the insurer is "using such methods and practices in the conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders." *Id.* § 5905(1).

The Liquidation Petition expanded on the allegations in the Seizure Petition and sought authority to liquidate Indemnity in light of (i) Indemnity's hazardous business practices, consisting predominantly of acts of fraud by Cohen and (ii) Indemnity's unsound financial condition. Indemnity's counsel subsequently conceded that Indemnity does not have any basis to dispute the truth of the averments in the Liquidation Petition. Dkt. 73 at 10.

1. The Susquehanna Bank Fraud

The Liquidation Petition described in detail an effort by Indemnity, acting through Cohen, to defraud the Commissioner using false documents purporting to be from Susquehanna Bank. As part of their investigation into Indemnity's safety and soundness, the Commissioner's investigators inquired about Indemnity's assets. In response, Cohen caused Indemnity to represent that it held $5.1 million in unencumbered cash in an account at Susquehanna Bank. Indemnity further represented that Cohen had provided that money as a capital contribution.

To confirm the account balance, the investigators asked for a contact at Susquehanna Bank. Through Cohen, Indemnity provided the investigators with an email address purportedly belonging to a Susquehanna Bank employee named Nicole Bliss. When the investigators pressed for a physical address, Cohen asked them to use the email address on the grounds that Susquehanna Bank charged an exorbitant fee for providing confirmations via physical mail. When the investigators insisted on a physical address, Cohen gave them the address of a P.O. Box that purportedly belonged to Susquehanna Bank.

The investigators sent a confirmation form to the P.O. Box that Cohen provided, and they received a fax confirming the account balance and its ownership. To follow up on the confirmation, the investigators tried to call Bliss at the phone number listed on the fax. That number connected to a voicemail box for "James Berg of Susquehanna." Confused, the investigators looked up Bliss's phone number on the internet and contacted her at that number. Bliss denied having seen the form that the investigators had sent to the P.O. Box, and she asked them to resend the form by email. The investigators sent the form to the email address that Cohen had provided for Bliss.

The investigators did not receive a response to the email sent to Bliss at the address Cohen had provided. They followed up with Bliss by phone, and she told them that she had not received the email. She provided the investigators with her correct email address, which differed from the address Cohen had provided. The investigators sent a copy of the form to the correct email address, and Bliss confirmed that she had never seen the form, had not completed it, and had not faxed it to the investigators.

Further investigation revealed the following:

- The P.O. Box that Cohen claimed belonged to Susquehanna Bank was registered to Cohen.
- The fax number that transmitted the fax to the investigators did not belong to Susquehanna Bank.
- The signature on the fax was not Bliss's, and she did not authorize anyone to sign her name.
- There is no "James Berg" at Susquehanna Bank.
- The phone number listed for Bliss on the fax that the investigators received is a VoIP number that does not belong to Susquehanna Bank and whose true owner is unknown.
- Susquehanna Bank does not charge a fee for account confirmations via physical mail.
- The domain name for the email address that Cohen provided does not belong to Susquehanna Bank. It was registered anonymously by Domains by Proxy, LLC, a company that Cohen is known to have used in the past.

Contrary to what Cohen had caused Indemnity to represent to the investigators, the cash in the Susquehanna Bank account was not unencumbered, and Cohen was not the source of the money. The cash actually originated from Susquehanna Bank itself, which loaned it to RB Entertainment. As conditions of that loan, RB Entertainment had to provide the funds to Indemnity as a loan or capital contribution, and Indemnity had to deposit the money back in Susquehanna Bank as security for the loan to RB Entertainment. RB Entertainment and Indemnity thus paid loan origination fees and interest so that Indemnity could show an account balance of approximately $5 million, even though Indemnity could not use the cash and had to keep it at Susquehanna Bank as security for the loan to RB Entertainment.

2. Solvency Issues

The Commissioner's investigation revealed other solvency problems at Indemnity that went beyond the lack of economic substance to the $5.1 million in cash that Indemnity claimed to hold at Susquehanna Bank. In its filings with the Commissioner, Indemnity claimed as assets over $21 million in receivables from IDG Companies, LLC ("IDG"), another entity controlled by Cohen. Indemnity booked the receivables in lieu of actual payment of over $23 million in premiums that IDG failed to remit to Indemnity. Delaware law requires unremitted premiums to be held in a fiduciary account, but IDG did not have a fiduciary account for the premiums. In fact, the Commissioner's investigation revealed that IDG did not appear to have the premiums at all. At the time of the investigation, IDG had only $3.3 million in assets and had $24.4 million in liabilities, including the $21 million owed to Indemnity.

Given IDG's financial position, Indemnity had no reasonable expectation that the receivables would be fully repaid. Indeed, even without the money owed to Indemnity, IDG's net assets were effectively zero. Yet Indemnity was carrying the receivables from IDG at full face value on its financial statements.

The Commissioner's investigation revealed other material misstatements on Indemnity's financial statements, including overstated account balances and unsubstantiated reinsurance claims. Adjusted for these items, Indemnity's total policyholder surplus was negative $9 million, an amount that contrasts sharply with the $24.5 million that Indemnity had claimed on its financial statements.

Delaware law requires a captive risk retention group to hold a minimum of $1 million in policyholder surplus. 18 *Del. C.* § 6905(a)(5). Because of the volume of Indemnity's business, the Commissioner would require Indemnity to maintain a substantially greater surplus. *See id.* § 6905(b) (giving Commissioner the authority to require additional surplus); Dkt. 20 ¶ 126 (statement by Commissioner that Indemnity's volume was sufficient to require a surplus "greatly in excess of $1,000,000"). Indemnity's fraudulent and misleading books masked a shortfall in policyholder surplus of at least $10 million.

D. The Court's Ruling On The Liquidation Petition

Based on the averments in the Liquidation Petition and supporting documentary evidence, the court granted an order directing Indemnity to show cause why it (i) was not insolvent or in unsound condition and (ii) should not be liquidated. The parties agreed to a schedule leading up to a hearing on the order to show cause, and they agreed to extend the Seizure Order for another ninety days pending the outcome of the hearing.

During this period, the Commissioner continued her investigation and uncovered evidence of additional fraud. Although Indemnity was not authorized to issue policies in excess of $6 million, the Commissioner identified a $35 million policy that Indemnity issued to The Light Group, LLC. Attached to the policy was an endorsement purporting to provide a "cut through" to SCOR, a reinsurance company. The Commissioner's investigation has revealed that (i) SCOR has no record of issuing the "cut through;" (ii) so significant a "cut through" would certainly have been documented; (iii) SCOR had never issued a "cut through" to Indemnity for any policy; (iv) the reference number on

the endorsement was not issued by SCOR; and (v) Indemnity has never paid a reinsurance premium on the endorsement. Dkt. 159 Ex. B. When presented with this evidence, the board of directors of Indemnity (the "Board") concluded that the endorsement was forged.

E. Cohen Resigns.

On August 5, 2013, Cohen resigned from his position as Chairman of the Board, and the Board removed him from all officer positions with Indemnity. After August 5, Cohen's only connection to Indemnity was as the sole member of RB Entertainment.

On August 12, 2013, Cohen caused RB Entertainment to move to intervene in these proceedings and request an expedited hearing. The parties briefed the motion, and the court heard argument on August 22. Based on the evidence in the record, the arguments made at the hearing, and the pertinent authorities, the court denied the motion. The court held that as a stockholder of Indemnity, RB Entertainment did not have standing to intervene as of right in the delinquency proceeding. Both under the Insurance Code and as a matter of business entity law, the Board was the duly authorized party that would direct and oversee Indemnity for purposes of the delinquency proceeding. The court also ruled that permissive intervention was unwarranted at that time. The court noted that RB Entertainment could renew its petition to intervene if the Commissioner sought a remedy involving Indemnity that would inflict on RB Entertainment a specific and unique injury that was not derivative of its status as an equity holder, such as a request to strip RB Entertainment's equity of voting rights or place it in a voting trust outside of Cohen's control.

F. The Emergency Application To Modify The Seizure Order

On September 9, 2013, the Commissioner and Indemnity sought an expedited modification of the Seizure Order on the grounds that Cohen was actively interfering with Indemnity and the efforts of the Commissioner. Due to the emergency nature of the motion, the court heard the motion the following day. The Commissioner and Indemnity did not give Cohen advance notice of the emergency hearing, and he did not attend. The Commissioner and Indemnity proceeded in this fashion under Section 5904 of the Insurance Code, which states:

> (a) Upon application by the Commissioner for such an order to show cause, or at any time thereafter, *the court may without notice issue an injunction restraining* the insurer, its officers, directors, *stockholders*, members, subscribers, agents *and all other persons* from the transaction of its business or the waste or disposition of its property until the further order of the court.
>
> (b) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary *to prevent interference with the Commissioner* or the proceeding or waste of the assets of the insurer or the commencement or prosecution of any actions or the obtaining of preferences, judgments, attachments or other liens or the making of any levy against the insurer or against its assets or any part thereof.

18 *Del. C.* § 5904(a)-(b) (emphasis added).

Counsel for both Indemnity and the Commissioner participated in the hearing, provided documentary evidence, and presented testimony by affidavit. The affiants attended and were prepared to testify, but the court dispensed with live testimony in the interest of time. The evidence showed that Cohen had access to Indemnity's IT system and was monitoring the email accounts of Indemnity's Acting President and other

Indemnity employees on an on-going basis. Cohen also had attempted to limit the Commissioner's access to Indemnity's IT systems by instructing Jorge Cuadra, an Indemnity employee, not to provide anyone with access to the servers that housed Indemnity's data. Cohen threatened Cuadra with personal liability if he did not comply with Cohen's instructions. Cohen used his access privileges to send a series of emails to all Indemnity employees in which he disparaged interim management, accused them of violating the law, and urged Indemnity employees to reach out to him personally.

Cohen also targeted Indemnity's business relationships. He sent an email to a large number of insurance brokers who did business with Indemnity, claiming that he had been wrongfully forced out and that interim management had no experience operating an insurance company. In addition, someone improperly accessed the email account of Amy Ticer, an Indemnity employee, and sent an email to AM Best, a rating agency that covers Indemnity. The email attached a copy of the Maryland seizure order, which was confidential. The email was sent just before David Koehler, an Indemnity executive, was due to meet with AM Best. While the identity of the sender could not be conclusively established, the circumstantial evidence strongly suggested that it was Cohen.

After holding the emergency hearing and considering the evidence presented, the court amended the Seizure Order to clarify that Cohen was prohibited from accessing Indemnity's IT systems and from communicating with Indemnity's employees and business associates. Dkt. 85 (the "Amended Seizure Order"). The Amended Seizure Order did not impose any other restrictions on Cohen that were not already present under the Seizure Order. Paragraph 2 of the Seizure Order had directed the Commissioner to

take control over all of Indemnity's assets, wherever located. Seizure Order ¶ 2. Paragraph 9 of the Seizure Order enjoined "[a]ll persons or entities that have notice of these proceedings or of this Seizure and Injunction Order . . . from interfering with the Commissioner and her authorized agents either in their possession and control of the Assets or in the discharge of their duties hereunder." *Id.* ¶ 9.

Assuming it was not already clear, the Amended Seizure Order confirmed that the Assets covered by the Seizure Order included intangible assets like Indemnity's information systems and electronic records and that Cohen could not access those intangible assets. Amended Seizure Order ¶ 1. The Amended Seizure Order also confirmed that the Seizure Order prevented Cohen from communicating with Indemnity employees and third parties about the Seizure Order and Indemnity's business. *Id.* ¶ 2.

Although the evidence presented in connection with the motion indicated Cohen had violated the Seizure Order, the court did not impose any sanctions on Cohen at that time. Instead, the court entered an order requiring Cohen to show cause why he had not violated the Seizure Order.

G. Cohen Continues To Interfere With The Commissioner And Indemnity.

Less than an hour after the Amended Seizure Order was docketed, Cohen met with an Indemnity employee who provided him with a surreptitious recording of an all-hands meeting held that day. Cohen also sent a text to an Indemnity board member indicating that he had obtained the recording and would bring litigation.

On September 12, 2013, Indemnity moved for sanctions based on this additional misconduct. The next day, the court scheduled a hearing for September 24 at which

Cohen would be able to present evidence and argument with respect to both the court's order to show cause and Indemnity's motion for sanctions. The court set a briefing schedule so that Cohen would be able to respond in writing to the allegations against him.

Mere hours after the court scheduled that hearing, Cohen attempted to liquidate investments held in deferred compensation accounts for the benefit of certain Indemnity employees. Indemnity and the Commissioner prevented the accounts held for the benefit of Indemnity's then-current employees from being liquidated, but Cohen successfully liquidated the investments in an account held for a former Indemnity employee.

Cohen also tried to interfere with Indemnity's operations by shutting down Indemnity's utilities. He contacted Verizon and asked them to shut off Indemnity's phone service, telling them that Indemnity had "moved." Cohen asked that the shut-off be scheduled for a date after the September 24 hearing, but Verizon disconnected Indemnity's phone service on September 19. Verizon informed Indemnity that it could not transfer the account into Indemnity's name without Cohen's consent, which he refused to provide. Cohen also tried to shut off Indemnity's electricity, but Indemnity's accounts payable department detected those efforts and was able to prevent Indemnity's electrical service from being disrupted.

H. The September 24 Hearing

On September 24, 2013, the court held an evidentiary hearing on the order to show cause and the motion for sanctions. In his written submission in advance of the hearing, Cohen defended his conduct on the grounds that many assets that appeared to belong to Indemnity in fact belonged to other companies that Cohen owned, such as IDG. Those

assets, Cohen argued, were not subject to the Seizure Order or the Amended Seizure Order. A key issue for the September 24 hearing, therefore, was the extent to which Indemnity owned particular assets and was operationally separate from Cohen's other companies. As the founder and owner of the relevant entities, Cohen was uniquely situated to address these matters. Moreover it was Cohen (not Indemnity, the Commissioner, or the court) who raised the other entities in an effort to justify his actions. Yet despite these facts, and even though he was facing civil contempt, Cohen chose not to appear in person at the September 24 hearing. He sent his Delaware counsel and a Maryland lawyer who had long served as Indemnity's outside counsel. Neither proved able to answer questions about the relationship between Indemnity and the other companies that Cohen controlled. Nor did they respond effectively to the evidence presented by Indemnity regarding interference with its operations and the efforts of the Commissioner.

Evidence at the hearing established that Cohen had violated multiple provisions of the Seizure Order and the Amended Seizure Order. The court made oral rulings at the close of the hearing, then formally implemented them by order dated September 25, 2013. Dkt. 161 (the "September 25 Order").

In an effort to establish a coercive civil sanction that would cause Cohen to comply with the court's orders in the future, the court required Cohen to post security in the amount of $100,000 with the Register in Chancery. *Id.* ¶ 4. If Cohen complied with the court's orders going forward, he would receive his $100,000 back in full at the end of the case. If he did not, he would forfeit it. In setting the amount of the security at

$100,000, the court took into account that Cohen had received an annual salary from Indemnity of more than $1 million and that his total compensation was as much as twice that amount. In light of Cohen's wealth, the court believed that a lesser amount would not provide a sufficient incentive for Cohen to comply with the court's orders. At the hearing, Cohen's counsel did not object to the size of the security or dispute its proportionality in light of Cohen's wealth.

The court also directed that Cohen comply with paragraph 2 of the Seizure Order by taking the necessary steps to place Indemnity's utilities in its name. *Id.* ¶ 5. As a coercive sanction, the court directed that if Cohen had not made a good faith effort to do so by September 27, 2013, a fine of $10,000 per day would be imposed on him starting on September 30. *Id.* The court took into account Cohen's wealth in setting the amount of this coercive sanction.

In addition, the court authorized discovery into Cohen's net worth so that more refined sanctions could be imposed, if necessary, in the future. *Id.* ¶ 3. The court also directed that discovery proceed into the separateness of Indemnity from the other Cohen-controlled entities so that Indemnity's assets could be identified and any separate assets of those entities could be made available to Cohen. *Id.* ¶ 2. Pending the outcome of that process, and because Cohen had repeatedly used IDG to interfere with the Commissioner and Indemnity, the court directed that Cohen "shall not, directly or indirectly, exercise any control over IDG." *Id.* ¶ 7.

The court directed that all communications between Cohen and Indemnity, its employees, and its officers and directors take place through counsel. *Id.* ¶ 6. The court

imposed this restriction in an effort to avoid further allegations of interference and because of the volatile nature of the relationship between Cohen and Indemnity's management.

I. The October 21 Motion For Sanctions

Cohen complied with certain of the court's directives. He posted the $100,000 in security without difficulty, and he cooperated in the transfer of Indemnity's utilities.

Cohen was decidedly uncooperative when responding to the Commissioner's discovery into Cohen's other entities and his net worth. On October 7, 2013, the Commissioner served interrogatories and document production requests that sought information on these subjects. On November 12, Cohen served his responses. He refused to provide substantive answers to the relevant interrogatories. Each time, he stated in obstructionist fashion that the documents and information necessary to respond to the discovery were in the possession of Indemnity and that he could not provide any responsive information. That might have been a valid objection to some of the interrogatories, but Cohen certainly could have provided much more information than he did. Contrary to his interrogatory responses, Cohen subsequently chose to testify about the subjects covered by the interrogatories, and he relied on his testimony to seek relief from the court. His testimony demonstrates that he could and should have provided substantive responses to the interrogatories.

Cohen similarly raised numerous objections to producing documents. As of the date of Indemnity's response to the current motion, Cohen had not produced any documents. As with his interrogatory responses, Cohen subsequently filed a motion with

the court and attached documents that were responsive to the requests. He plainly had responsive documents in his possession, custody, or control, yet chose not to produce them.

Meanwhile, on October 21, 2013, Indemnity was forced to file a new motion for sanctions in an effort to obtain Cohen's compliance with the court's orders. First, although the Seizure Order required that anyone holding assets belonging to Indemnity return them to Indemnity, Cohen refused to return a 2011 Aston Martin, a 2012 Range Rover, and a 2013 Ford Mustang Shelby GT. Each vehicle was titled in Indemnity's name. Despite the plain language of paragraph 8 of the Seizure Order, Cohen refused to return them unless Indemnity paid him $30 million that he claimed was due under his employment agreement.

Second, Cohen caused IDG and other companies he controlled to file suit against Indemnity and Indemnity employees. He also filed two lawsuits *pro se* against similar defendants. All three lawsuits were filed in the Maryland state courts. Each filing contravened paragraph 10 of the Seizure Order, which required that all legal issues related to the seizure be litigated in the Court of Chancery. Moreover, the complaints attached pages of sealed transcripts from these proceedings. The Maryland complaints were not properly filed under seal, and the transcripts became available to the public. Information in his complaints indicated that Cohen continued to have contact with Indemnity employees.

After reviewing the motion, the court scheduled a hearing for November 1, 2013, to enable Cohen to present evidence in his defense. That hearing lasted for over three

hours. Unlike the earlier hearing, Cohen appeared personally with his counsel. Through counsel, Cohen presented evidence to explain why he should not be sanctioned. Cohen also took the stand and testified. He admitted that he had not returned the vehicles, even though they were titled in Indemnity's name. He admitted that he filed the Maryland actions despite knowing of the restrictions in the Seizure Order. He admitted that he had contact with Indemnity employees, even though he knew that he was forbidden from doing so under the Seizure Order and the Amended Seizure Order. He pointed out that the Amended Seizure Order required all communications between Cohen and Indemnity to go through counsel, and he claimed that because he had filed his Maryland action *pro se*, he thereby became his own counsel and was therefore permitted to communicate directly with Indemnity and its employees.

During the hearing, Indemnity introduced additional evidence regarding Cohen's net worth. Indemnity presented documentation establishing that Cohen had received cash compensation in excess of $1 million in each of the past four years. Indemnity also introduced a set of personal financial statements, prepared in June 2013, in which Cohen represented that he had net assets in excess of $43 million. According to the financial statements, setting aside his interests in Indemnity and his other companies, Cohen had over $19 million in net assets, including over $13 million in cash and $2 million in positive net equity in real estate. Cohen claimed not to recognize the financial statements. He did not present any contrary evidence regarding his net worth.

Based on the evidence presented at the hearing, the court found that Cohen had violated nine separate provisions of the Seizure Order and the Amended Seizure Order.

The court made factual findings and oral rulings at the close of the hearing, then formally implemented them in a written order. Dkt. 217 (the "November 1 Order").

The court directed that the $100,000 Cohen had deposited as security be turned over to Indemnity. *Id.* ¶ 5. The court also ordered Cohen to arrange for the vehicles to be returned by Monday, November 4, 2013, and to dismiss the Maryland lawsuits by Friday, November 8. *Id.* ¶¶ 6-7. In an effort to avoid any altercations, the order required Cohen to return the vehicles through an agent and not to return them personally. *Id.* ¶ 6.

Based on the evidence in the record concerning Cohen's net worth and the fact that a deposit of $100,000 had been shown ineffective in convincing Cohen to conform his conduct to the court's orders, the court ordered Cohen to post security of $500,000 with the Register in Chancery. *Id.* ¶ 10. The terms of the new security deposit were the same as before: If Cohen complied with the court's orders going forward, he would receive back the entire amount at the end of the case. If he did not, he would forfeit some or all of it. *Id.* Cohen has not posted the $500,000 security.

J. The Rehabilitation Order

On November 6, 2013, the Commissioner filed a Verified Petition for Entry of Rehabilitation and Injunction Order by Consent, which was supported by extensive documentary evidence. Dkt. 228 (the "Rehabilitation Petition"). The Rehabilitation Petition averred that Indemnity was impaired and insolvent and cited Cohen's fraudulent schemes and other improper business practices. Indemnity advised the court that it did not contest the allegations in the Rehabilitation Petition and consented to the entry of the relief sought. Dkt. 232.

As noted, statutory grounds for rehabilitation include (i) if the insurer "is impaired or insolvent or is in unsound condition" or (ii) the insurer is "using such methods and practices in the conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders." 18 *Del. C.* § 5905(1). A rehabilitation order also may be entered if the insurer "[h]as consented to such an order through a majority of [its] directors, stockholders, members or subscribers." *Id.* § 5905(9). On November 7, 2013, the court entered an order placing Indemnity into rehabilitation. Dkt. 237.

K. Cohen Appeals And Moves For A Stay.

On November 8, 2013, Cohen filed a notice of appeal from the November 1 Order and the Rehabilitation Order. Three weeks later, on November 29, he moved to stay aspects of both orders pending appeal. During the hearing on January 10, 2014, Cohen withdrew his request to stay the November 1 Order and sought only a stay of the Rehabilitation Order.

II. LEGAL ANALYSIS

Court of Chancery Rule 62(d) recognizes that stays pending appeal are governed by Article IV, Section 24 of the Constitution of the State of Delaware and by the Rules of the Supreme Court. Ct. Ch. R. 62(d). Court of Chancery Rule 62(d) does not otherwise provide guidance on handling a motion to stay.

Article IV, § 24 of the Constitution of the State of Delaware requires adequate security for a stay pending appeal. Section 24 states: "Whenever a person . . . appeals or applies to the Supreme Court for a writ of error, such appeal or writ shall be no stay of

proceedings in the court below unless the appellant or plaintiff in error shall give sufficient security" to satisfy the final judgment below if the appeal is unsuccessful. Article IV, § 24 does not address matters other than the need for security.

Supreme Court Rule 32(a) covers motions for stay in greater detail. It states:

> A motion for stay must be filed in the trial court in the first instance. The trial court retains jurisdiction over the initial motion and must rule on the initial motion regardless of whether the case is on appeal to this Court. A stay or an injunction pending appeal may be granted or denied in the discretion of the trial court, whose decision shall be reviewable by this Court. The trial court or this Court, as a condition of granting or continuing a stay or an injunction pending appeal, may impose such terms and conditions, in addition to the requirement of indemnity, as may appear appropriate in the circumstances.

Supr. Ct. R. 32(a). As stated in Rule 32(a), the outcome of a motion to stay turns on "the discretion of the trial court." *Id.*

The Delaware Supreme Court has identified four factors to guide the trial court in exercising its discretion under Rule 32(a). *Kirpat, Inc. v. Del. Alcoholic Beverage Control Comm'n*, 741 A.2d 356, 357 (Del. 1998). They are (i) "likelihood of success on the merits of the appeal," (ii) "whether the petitioner will suffer irreparable injury if the stay is not granted," (iii) "whether any other interested party will suffer substantial harm if the stay is granted," and (iv) "whether the public interest will be harmed if the stay is granted." *Id.* The *Kirpat* factors do not operate as a multi-part test where satisfying all four leads to the granting of a stay while missing one leads to its denial. Rather, the trial court must "consider all of the relevant factors together to determine where the appropriate balance should be struck." *Id.*

In *Kirpat*, the Supreme Court reversed the denial of a stay pending appeal because the trial court focused too narrowly on the first factor, "a preliminary assessment of likelihood of success on the merits of the appeal." *Id.* The decision explained that this element "cannot be interpreted literally or in a vacuum when analyzing a motion for stay pending appeal." *Id.* at 358. In an appeal from a final judgment, the trial court has already issued a decision in the case, so a literal reading "would lead most probably to consistent denials of stay motions . . . because the trial court would be required first to confess error in its ruling before it could issue a stay." *Id.* (footnote and internal quotation marks omitted). Instead, "the necessary degree of probability of success on the merits of the appeal will vary from case to case." *Id.* In balancing the equities, "[i]f the other three factors strongly favor interim relief, then a court may exercise its discretion to reach an equitable resolution by granting a stay if the petitioner has presented a serious legal question that raises a fair ground for litigation and thus for more deliberative investigation." *Id.* (footnote and internal quotation marks omitted).

Cohen asks to stay the Rehabilitation Order. He objects to the provision of the Rehabilitation Order that authorizes the Commissioner to "take or continue exclusive possession and control of, and be vested or continue to be vested with, all right, title, and interest in, of, and to the property of [Indemnity]." Rehabilitation Order ¶ 6. He particularly objects to the provision of the Rehabilitation Order that gives the Commissioner power over property "in the possession, custody, or control of [Indemnity]." *Id.* According to Cohen, the Rehabilitation Order should be stayed because (i) Cohen's "various affiliated entities" have property "located in the Indemnity

offices (including furniture, computer servers, etc.)" and (ii) Cohen has "personal effects" located in his office, including a "large, valuable toy collection." Mot. for Stay Pending Appeal ¶ 8.

Cohen correctly points out that the Rehabilitation Order authorizes the Commissioner to "deal with the Assets" of Indemnity, which includes selling some or all of them (subject to the requirements of the Insurance Code and court supervision). Cohen claims that he and his affiliates will be harmed irreparably if any of their property is sold pending appeal. Alternatively, he asks that "a stay be granted until the Court can institute a uniform process by which the parties can claim and prove ownership of assets." *Id.* ¶ 10.

A. Likelihood of Success on Appeal

The first *Kirpat* factor is "a preliminary assessment of likelihood of success on the merits of the appeal." 741 A.2d at 357. To favor Cohen, this decision analyzes the first factor using the lenient standard that applies when a movant has shown that the other three *Kirpat* factors "strongly favor interim relief." *Id.* at 358. As discussed below, this decision finds that the other three *Kirpat* factors do not favor a stay of the Rehabilitation Order. Nevertheless, to evaluate the likelihood of success on the merits, this decision will examine whether Cohen "has presented a serious legal question that raises a fair ground for litigation and thus for more deliberative investigation." *Id.* (footnote and internal quotation marks omitted).

1. RB Entertainment's Standing To Object To Solvency

Cohen first contests the entry of the Rehabilitation Order on the theory that RB Entertainment had standing to object to the Rehabilitation Order and should have been given the opportunity to intervene and show that Indemnity was not insolvent before the Rehabilitation Order was entered. This argument does not present a serious legal question for appeal because Cohen has not challenged the other bases for the Rehabilitation Order, which are independently sufficient to justify its entry.

Under Delaware law, as under the laws of most states, "[r]eceivership proceedings can be commenced even if an insurer is not insolvent." Phillip A. O'Connell, *et al.*, Feature Article, *Insurance Insolvency: A Guide for the Perplexed*, 27 No. 14 Ins. Litig. Rep. 669 (2005). The Rehabilitation Petition relied on grounds in addition to insolvency.

Section 5905 of the Insurance Code identifies ten grounds for the entry of an order "appointing the Commissioner as receiver of and directing the Commissioner to rehabilitate a domestic insurer." 18 *Del. C.* § 5905. Pertinent grounds include if the insurer:

> (1) Is impaired or insolvent or is in unsound condition or in such condition or using such methods and practices in the conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders; [or]
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> * * *
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> (9) Has consented to such an order through a majority of the directors, stockholders, members or subscribers . . . .

Id. In one of the few rehabilitation proceedings in Delaware that have generated written opinions, Chancellor Allen noted that he entered a rehabilitation order one day after the

petition was filed where "the board of directors of [the insurer] had consented to the [order]." *In re Rehab. of Nat'l Heritage Life Ins. Co.*, 656 A.2d 252, 254 (Del. Ch. 1994). The order was entered "without notification to any third party." *Id.*

Here, Indemnity's directors unanimously consented to the entry of the Rehabilitation Order. Dkt. 228 Ex. 2. That alone constituted sufficient basis for the order.

As a separate basis for its entry, the Rehabilitation Petition presented a powerful case, supported by detailed documentary evidence, that Indemnity (through Cohen) engaged in fraudulent and misleading business methods and practices. Indemnity has stated that it does not have any basis to contest those allegations. As to Indemnity, therefore, the record establishes that Indemnity used "such methods and practices in the conduct of its business as to render its further transaction of insurance . . . hazardous to its policyholders."

The record also establishes that once Indemnity's financial statements are corrected to account for the fraud, Indemnity has a shortfall in policyholder surplus of at least $10 million. Here too, Indemnity has stated that it does not have any basis to contest those allegations.

In his motion, Cohen objects to the entry of the Rehabilitation Order because he does not believe that the Commissioner made a sufficient showing that Indemnity was insolvent. The only reason he provides is the Commissioner's statement that it might be possible to achieve a transaction that "would provide a substantial likelihood that

[Indemnity's] tail liabilities can be run off completely with existing assets." Mot. for Stay Pending Appeal ¶ 16 (quoting Rehabilitation Petition ¶ 22).

Leaving aside that Indemnity has not contested the allegations of insolvency, Cohen has not objected to any of the alternative bases for the entry of the order. Even if he were right on the solvency issue, the Rehabilitation Order still was appropriately entered. Cohen therefore has not presented "a serious legal question that raises a fair ground for litigation and thus for more deliberative investigation" regarding the entry of the Rehabilitation Order.

2. Due Process

Cohen appears to challenge the Rehabilitation Order on the grounds that it was the culmination of a series of orders that began with the Seizure Order and the Amended Seizure Order. According to Cohen, he was denied due process of law when the Seizure Order and the Amended Seizure Order were entered. He seems to argue that the taint of those violations extends to the Rehabilitation Order.

Cohen's motion devotes just one sentence to explaining his due process theory:

> [W]ith all due respect to this Honorable Court, the entry of the Amended Seizure Order was done in violation of due process (*see Matthews v. Eldridge*, 424 U.S. 319 (1976)) since it was done without a proper opportunity to address what was an overbroad order proposed by Indemnity's counsel. *See Formosa Plastics Corp. v. Wilson*, 504 A.2d 1083, 1089-90 (Del. 1986) (holding that meaningful time and manner must be given before a party can be deprived of life, liberty, or property).

Mot. for Stay Pending Appeal ¶ 13. It is difficult to assess a theory that has been stated so laconically.

As noted, this is a delinquency proceeding governed by the Insurance Code, including sections of the Delaware Uniform Insurers Liquidation Act. The Insurance Code contains a serious of provisions that authorize the Commissioner to seek—and the Court of Chancery to issue—injunctions in support of the Commissioner's efforts. Section 5904, entitled "Injunctions," states:

> (a) Upon application by the Commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.
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> (b) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the Commissioner or the proceeding or waste of the assets of the insurer or the commencement or prosecution of any actions or the obtaining of preferences, judgments, attachments or other liens or the making of any levy against the insurer or against its assets or any part thereof.

18 *Del. C.* § 5904.

Section 5904(a) authorizes the court to issue an injunction restraining an insurer's "stockholders" and "other persons from the transaction of its business or the waste or disposition of its property until the further order of the court." *Id.* By statute, such an order can be entered "without notice." *Id.* Assuming for the sake of argument that the Amended Seizure Order marked the first time that any restrictions were placed on Cohen, the order satisfied due process because it complied with the procedure contemplated by Section 5904(a).

But the Amended Seizure Order was not the first time that restrictions had been placed on Cohen. The Seizure Order contained provisions enjoining persons with notice of the order, such as Cohen, from "interfering with the Commissioner and her authorized agents either in their possession and control of the Assets or in the discharge of their duties hereunder." Seizure Order ¶ 9; *see* 18 *Del. C.* § 5943(a) (authorizing Court of Chancery to "enjoin the insurer and its officers, managers, agents and employees from disposition of its property and from transaction of its business except with the written consent of the Commissioner"); *see also* O'Connell, *supra* ("Such orders typically include a litany of injunctions precluding third parties from taking a variety of actions with respect to the insurer and its assets. Such injunctions function in a manner comparable to that of the automatic stay in bankruptcy." (footnote omitted)).

Cohen was fully aware of the Seizure Order and its contents. Cohen was still CEO and Chairman of the Board when Indemnity petitioned for review of the Seizure Order on July 5, 2013. He still held those positions at the time of a telephonic status conference on July 10, when the court and the parties discussed issues relating to the Commissioner's oversight of the business.

The Amended Seizure Order confirmed that the Assets covered by the Seizure Order included intangible assets like Indemnity's information systems and electronic records and that Cohen could not access those intangible assets. Amended Seizure Order ¶ 1. The Amended Seizure Order also confirmed that the Seizure Order prevented Cohen from communicating with Indemnity employees and third parties about the Seizure Order and Indemnity's business. *Id.* ¶ 2.

The Amended Seizure Order did not impose any sanctions on Cohen. Instead, the court entered an order requiring Cohen to show cause why he had not violated the Seizure Order. That hearing took place on September 24, 2013. In advance of the hearing, the parties presented written submissions to the court. During the hearing, Cohen's Delaware and Maryland counsel introduced documentary and testimonial evidence and presented argument.

Both the Seizure Order and the Amended Seizure Order were issued in accordance with the procedures contemplated by the Insurance Code. The General Assembly established these procedures to create an orderly mechanism for initiating and conducting delinquency proceedings involving struggling insurers. The Delaware Uniform Insurers Liquidation Act is not an outlier. It is based on the Uniform Insurers Liquidation Act, which is a product of the National Conference of Commissioners on Uniform State Laws and has been adopted in numerous states. Cohen has not presented a serious question for further litigation as to whether the procedures established by this widely adopted and longstanding uniform act violate due process.

3. The Power To Sell Assets

Cohen advances a more targeted challenge to the Rehabilitation Order in which he contends that it should not have authorized the Commissioner to take possession of Indemnity's assets with authority potentially to sell those assets. Section 5910(a) of the Insurance Code provides that "[a]n order to rehabilitate a domestic insurer shall direct the Commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof and to take such steps toward removal of the causes and conditions

which have made rehabilitation necessary as the court may direct."[1] The power to "conduct the business" of Indemnity includes the power to sell assets in the ordinary course of business. The power to "take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct" includes the power to sell assets outside of the ordinary course of business to the extent approved by the court. Assuming the Rehabilitation Order was entered properly, it was proper to give the Commissioner authority over Indemnity's assets, including the ability to sell assets in the ordinary course of business and to pursue more significant sales with the approval of the court.

B. Whether Cohen Will Suffer Irreparable Harm Absent A Stay

The second *Kirpat* factor is "whether the petitioner will suffer irreparable injury if the stay is not granted." 741 A.2d at 357. According to the motion, both RB Entertainment and Cohen will be harmed irreparably if the Rehabilitation Order is not stayed because RB Entertainment could lose its equity and Cohen could lose a collection of action figures and other toys. Neither gives rise to a threat of irreparable harm.

Throughout this proceeding, Cohen has claimed to own 99% of Indemnity's equity as the sole member of RB Entertainment. Cohen has never provided any evidence of RB Entertainment's equity ownership, and the Rehabilitation Petition disputes whether equity

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[1] 18 *Del. C.* § 5911(a); *accord* 18 *Del. C.* § 5913(a) (providing that when a receiver is to be appointed in a delinquency proceeding, the court shall appoint the Commissioner as such receiver and "order the Commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court"); 18 *Del. C.* § 5913(b) (stating that as receiver, "the Commissioner shall be vested by operation of law with the title to all of the property, contracts and rights of action and all of the books and records of the insurer, wherever located" and "shall have the right to recover the same and reduce the same to possession").

validly was issued to RB Entertainment. In his motion, Cohen states that he and RB Entertainment should be permitted to demonstrate that RB Entertainment properly holds 99% of Indemnity's equity. Cohen will have that opportunity as part of the rehabilitation process.

The procedures for making claims against an insurer like Indemnity are governed by Sections 5915 through 5929 of the Insurance Code. *See* 18 *Del. C.* §§ 5915-5929. Claimants are grouped by class, and assets are distributed *pro rata* to each class in order of priority. *See* 18 *Del. C.* § 5918 (addressing priority of certain claims). RB Entertainment can make a claim for 99% of all assets that are available for the equity holders, and that claim will be adjudicated as contemplated by Section 5917. *See* 18 *Del. C.* § 5917 (describing procedures for making claim). The Rehabilitation Order specifically notes Indemnity's right to make claims as part of the rehabilitation proceeding: "To the extent RB [Entertainment] has a claim against the [Indemnity] estate, RB [Entertainment] may give notice of its claim and file an objection to any proposed report and recommendation in the manner contemplated by this Rehabilitation and Injunction Order." Rehabilitation Order ¶ 28. RB Entertainment does not face irreparable harm.

Cohen does not face irreparable harm either. The motion states that Cohen keeps in his office at Indemnity "a number of one-of-a-kind toys that are very valuable to toy collectors." Mot. for Stay Pending Appeal ¶ 22. "Cohen maintains that these were purchased with his own money, and these toys are unique and not replaceable should a sale occur [so] the harm to Mr. Cohen unless the Commissioner and Indemnity are not

permitted to sell the toys is irreparable." *Id.* In support of these statements, Cohen has attached a composite exhibit consisting of screen shots from eBay and receipts from Entertainment Earth.

The screen shots from eBay suggest that there is an active market for the action figure toys that Cohen collects. The eBay screen shots and the Entertainment Earth receipts indicate that the prices for Cohen's action figures and related items range from $2.99 to $600, with many clustering in the $10-$40 range. The Entertainment Earth receipts identify toys costing in the aggregate approximately $4,000. This evidence indicates that the toys are not unique or irreplaceable and that the harm to Cohen from a sale of the toys would not be irreparable. Cohen can make a claim against Indemnity. If he proves that he purchased the toys with his own funds and that they belong to him, then Indemnity can either return them or compensate him for their value.

Because of the protections in the Rehabilitation Order, Cohen and RB Entertainment do not face a threat of irreparable harm if a stay is not granted. This factor therefore counsels against issuing a stay.

C. Whether Other Parties Will Suffer Harm

The third *Kirpat* factor is "whether any other interested party will suffer substantial harm if the stay is granted." 741 A.2d at 357. The fourth *Kirpat* factor is "whether the public interest will be harmed if the stay is granted." *Id.* Both favor denying a stay.

The purpose of rehabilitation is for the Commissioner "to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the

court may direct." 18 *Del. C.* § 5910(a). In bringing a delinquency proceeding, the Commissioner seeks not only to protect policyholders, but also the public. The Commissioner needs to move forward with the rehabilitation process so that Indemnity does not remain in limbo, under the Commissioner's oversight, for any longer than necessary. Extending the period of uncertainty works to the detriment of Indemnity and all of its constituencies, including policyholders, employees, customers, suppliers, and equity holders. These factors counsel against a stay pending appeal.

Alternatively, Cohen asks that "a stay be granted until the Court can institute a uniform process by which the parties can claim and prove ownership of assets." Mot. for Stay Pending Appeal ¶ 10. That process already exists under the Insurance Code. During the hearing on January 10, 2014, the Commissioner confirmed that Cohen can file a claim against the Receiver for property, like his toy collection, that he believes is his and not an Asset of Indemnity under the terms of the Rehabilitation Order.

III. CONCLUSION

None of the *Kirpat* factors support a stay of the Rehabilitation Order pending appeal. Nor has Cohen shown why the court must "institute a uniform process by which the parties can claim and prove ownership of assets." Mot. for Stay Pending Appeal ¶ 10. By statute, that process already exists. Cohen's motion is therefore denied.