

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MOHAMMAD IMRAN, M.D.,)	
)	
Plaintiff,)	
)	
v.)	
)	
SECURITY TRUST INSURANCE)	
LIMITED, a foreign insurance company,)	C.A. No. 02C-05-047 RRC
GEORGE A. HARRIS, JR., GRACIE P.)	
HARRIS, individually and as personal)	
representative of the estate of)	
GRACEALYNN T. HARRIS and next)	
friend of SHAWN A. HARRIS, a minor,)	
)	
Defendants.)	

Submitted: September 2, 2003
Decided: September 16, 2003

MEMORANDUM OPINION

**UPON PLAINTIFF’S “MOTION TO STRIKE ANSWER OF
DEFENDANT SECURITY TRUST INSURANCE LIMITED.”
CONDITIONALLY GRANTED.**

Joseph W. Benson, Esquire and Andrew G. Ahern III, Esquire, Joseph W. Benson, P.A., Attorneys for Plaintiff.

Stephen P. Casarino, Esquire, Casarino, Christman & Shalk, P.A., Attorney for Defendant Security Trust Insurance Limited.

Michael J. Rich, Esquire, Deputy Attorney General, for *amicus curiae* State of Delaware Department of Insurance.

COOCH, J.

I. INTRODUCTION

The issue before the Court in this declaratory judgment action is whether defendant Security Trust Insurance Limited (“Security Trust”), an insurer organized under the laws of the British Virgin Islands, may defend against a suit brought in this Delaware court by plaintiff Mohammad Imran, M.D. (“Dr. Imran”) since it has not procured a certificate of authority issued by the Insurance Commissioner of the State of Delaware and when the insurance it issued to Dr. Imran was issued through a “purchasing group” which had also failed to register with the Insurance Commissioner as is otherwise required by Delaware law; in addition, the record does not show that this “purchasing group,” Accord, purchased insurance from Security Trust either at a time when Security Trust was “admitted” in the state in which Accord was located, *i.e.*, California, or through a “licensed agent or broker acting pursuant to...[California’s] surplus lines laws...[,]” as is otherwise required by Delaware law.

Relying in part on federal precedent to determine to what extent Delaware law may be precluded by federal statutes in this apparent matter of first impression for the Delaware courts, this Court concludes that Security Trust may not presently defend against Dr. Imran’s suit unless and until it either procures a certificate of authority or posts cash and security, or a bond

in a sufficient amount. However, relevant Delaware statutory authority provides that this Court may, in its discretion, postpone the implementation of this ultimate holding, which authority this Court now exercises.

Accordingly, Dr. Imran's Motion to Strike is **CONDITIONALLY GRANTED**. Security Trust shall have until October 10, 2003 to procure a certificate of authority or to post cash and security, or a bond in a sufficient amount. If those acts are not accomplished by Security Trust by that date, Dr. Imran's Motion to Strike is granted, effective that date.

II. FACTS AND PROCEDURAL HISTORY

The genesis of the current declaratory judgment litigation lies in an earlier Superior Court medical negligence action brought by the Harris defendants against Dr. Imran and the National Women's Health Organization Clinic ("NWHO").¹ At all times during the pendency of that litigation, Security Trust was the insurer of both NWHO and of Dr. Imran. The medical negligence action resulted from an abortion that Dr. Imran performed on Gracealynn T. Harris at NWHO which resulted in Ms. Harris's death.

¹ See George A. Harris, Jr., et al. v. National Women's Health Org. of Del., Inc. and Mohammad Imran, M.D., C.A. No. 99C-09-138 JRJ.

Prior to trial, NWHO settled with the plaintiffs, leaving Dr. Imran as the only defendant actively litigating the case. A jury subsequently determined that Dr. Imran was 40% at fault, that NWHO was 60% at fault, and that the plaintiffs should be awarded \$2,252,000. Dr. Imran thereafter filed several post-trial motions, all of which were denied, before an appeal was taken.²

Security Trust retained substitute appellate counsel on Dr. Imran's behalf, but that attorney then filed a motion to withdraw. The basis for that motion was an allegation that Security Trust had failed to pay him his attorneys' fees and reimburse him for costs in connection with the appeal. Because Dr. Imran offered no objection to the withdrawal of the attorney, and because Dr. Imran stated that he did not personally intend to retain other counsel to pursue the appeal, the Delaware Supreme Court granted the attorney's motion to withdraw.³ Other counsel (also apparently chosen by Security Trust) thereafter entered their appearance in the Supreme Court on

² Dr. Imran's trial counsel thereafter also filed a debt-action complaint against Security Trust and its principal, Michael Vousden, on the basis of non-payment of fees and costs; that action was subsequently dismissed when the parties reached a settlement. See Gilbert F. Shelsby, Jr., et al. v. Michael Vousden et al., C.A. No. 02C-04-127 RRC.

³ See Imran v. Harris, No. 184, 2002, 2003 WL 60529, at *1 (Del. Jan. 6, 2003).

Dr. Imran’s behalf. The Supreme Court thereafter affirmed the judgment of the Superior Court jury.⁴

After substitute counsel entered their appearance in the Supreme Court action, Dr. Imran, through another attorney, filed a complaint in this Court seeking “a declaration of rights, status and other legal relations, as well as...other and further relief[] against...Security Trust...and [the] Harris [defendants]....”⁵ In support of the relief sought, Dr. Imran generally averred that his claims arose from:

- (1) Security Trust’s fraud in claiming that new and hitherto undisclosed policy language redefine[d] and limit[ed] its responsibilities to [him] pursuant to a professional liability policy;
- (2) Security Trust’s fraud in misrepresenting its financial stability and its ability to do business as an insurance company in the State of Delaware;
- (3) Security Trust’s breach of the contract of insurance with [him] for its failure to obtain his consent before filing an appeal of a professional liability verdict;
- (4) Security Trust’s breach of contract for failing and refusing to move for a stay of execution and to post an appeal bond on [his] behalf; [and]
- (5) Security Trust’s bad faith for fail[ing] to settle the Harris [plaintiffs’] claims before trial, for...fail[ing] to pay the amount awarded by the jury verdict, and for appealing the jury verdict over [his] objection....⁶

Because Dr. Imran contended that Security Trust “[wa]s not, and ha[d] not ever been licensed or approved to do business in the State of

⁴ Imran v. Harris, No. 184, 2002, 2003 WL 21488153 (Del. June 26, 2003).

⁵ Compl. at 1.

⁶ Id. ¶ 4.(1)-(5).

Delaware[][,]”⁷ he served the office of the Insurance Commissioner of the State of Delaware, pursuant to title 18, sections 2104 and 2105 of the Delaware Code.⁸

Security Trust filed its Answer on July 3, 2002, in which it included a Counterclaim to the effect that “it had and continues to have the authority to appeal the adverse verdict against Dr. Imran to the Delaware Supreme Court and...that it ha[d] no obligation to post an appeal bond [before doing so].”⁹ It is this pleading which Dr. Imran now seeks to strike from the record on grounds that Security Trust is an unauthorized insurer not permitted to file responsive pleadings in Delaware until certain conditions precedent are satisfied.

The Court, after having received Dr. Imran’s Motion to Strike, Security Trust’s Response, and Dr. Imran’s Reply, held oral argument thereon. At oral argument, the Court ordered further sequential briefing

⁷ Id. ¶ 19.

⁸ Section 2104 provides that “[s]olicitation, effectuation or delivery of any insurance contract...within this State by an unauthorized insurer...or the performance within this State of any other service or transaction connected with such insurance...shall be deemed to constitute an appointment by such insurer of the Commissioner...as its attorney, upon whom may be served all lawful process...” Section 2105(a) provides that “[s]ervice of process...pursuant to § 2104...shall be made by delivering to and leaving with the Commissioner...[two] copies thereof....”

⁹ Answer at 4. However, as stated earlier, the Delaware Supreme Court subsequently affirmed the judgment of the jury. See Imran v. Harris, *supra* note four.

from both sides. After having received said briefing, and with the consent of the parties, the Court thereafter sought the position of the Delaware Department of Insurance through an *amicus curiae* brief since issues relating to the construction and application of certain statutes in title 18 (Delaware’s Insurance Code) were involved.¹⁰ The Court received further memoranda from the parties after that brief was filed.

The Department of Insurance attached two affidavits to its *amicus* brief: one from Darryl Reese, the director of the Delaware Insurance Department Bureau of Examination, Rehabilitation and Guaranty; and one from Linda A. Long, the office manager of the Delaware Insurance Department Producer Licensing Section. Mr. Reese’s affidavit indicated that “there is not and never has been any registration by Security Trust, Protocol International and/or Accord...as a domestic or foreign insurer with the Department.”¹¹ Ms. Long’s affidavit indicated that “there is not and never has been any authority granted to...Security Trust, Protocol International and/or Accord...to place insurance with a lawfully registered purchasing group.”¹²

¹⁰ The Court appreciates the Department of Insurance’s filing of an *amicus curiae* brief in this case.

¹¹ Reese Aff. ¶ 3 (Ex. “A” to *Amicus* Brief (Dkt. #30)).

¹² Long Aff. ¶ 3 (Ex. “B” to *Amicus* Brief).

The affidavits attached to the Department of Insurance’s *amicus* brief are important when considered alongside deposition testimony Michael Vousden gave in connection with the Gilbert F. Shelsby, Jr. et al. v. Michael Vousden et al. litigation.¹³ During that deposition, Mr. Vousden testified that he was then the “managing director” of Security Trust.¹⁴ Mr. Vousden further testified that Security Trust “[wa]s a British Virgin Islands corporation that was set up...to carry out the business of offering medical malpractice policies in the United States[][,]”¹⁵ but that it did not have a business license in any such state.¹⁶ Mr. Vousden stated that Security Trust had authority to transact business in Delaware “by virtue of the filings that Accord ma[de]....”¹⁷

Mr. Vousden testified that Accord “[wa]s a membership organization...ha[ving] members throughout the United States that are interested in getting professional liability insurance amongst other

¹³ The Shelsby litigation was consolidated with this litigation for discovery purposes.

¹⁴ Vousden Dep. of 7/30/02, at 8 (Ex. “A” to Pl.’s Supp. Reply).

¹⁵ Id.

¹⁶ Id. at 22.

¹⁷ Id. at 35.

things[][,]”¹⁸ and that Accord was therefore a “purchasing group.”¹⁹ Mr. Vousden further testified that Accord was in reality a d.b.a. of Protocol International, Inc.,²⁰ a California corporation “that was set up to write medical protocols to help reduce risks and get low cost insurance for people....”²¹ Mr. Vousden stated that Accord “made its filings” with the State of Delaware circa 1989,²² and that he had personally prepared the forms and filed them.²³

As an attachment to his Reply, Dr. Imran has submitted an apparently unfiled letter on “Accord” letterhead dated September 15, 1989, addressed to the Department of Insurance, and signed by “Su Dishington,” the pertinent part of which reads that “Accord...hereby applies for registration as a

¹⁸ Id. at 10.

¹⁹ Vousden Dep. of 7/30/02, at 14 (Ex. “A” to Pl.’s Supp. Reply). Delaware law defines a “purchasing group” as “any group which: a. [h]as as one of its purposes the purchase of liability insurance on a group basis; b. [p]urchases such insurance only for its group... (cont.)...members and only to cover similar or related liability exposure...; c. [i]s composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and d. [i]s domiciled in any state.” DEL. CODE ANN. tit. 18, § 8002(10) (1999).

²⁰ Id. at 10.

²¹ Id. at 12.

²² Id. at 36.

²³ Id.

purchasing group in the State of Delaware...as required under section 3903 of the [Liability] Risk Retention Act [of] 1986.”²⁴

This Court stayed resolution of this motion pending a decision of the underlying litigation by the Delaware Supreme Court.²⁵ The stay was lifted on September 2, 2003.²⁶

III. CONTENTIONS OF THE PARTIES

Dr. Imran’s primary contention is that Security Trust is an unauthorized foreign insurer that has not complied with either subsection (1) or subsection (2) of title 18, section 2107(a) of the Delaware Code, and that it is therefore precluded from filing a responsive pleading in this matter.²⁷

Dr. Imran also argues that Security Trust cannot file any pleadings in this action because Accord, the fictitiously-named entity that purportedly acted as a “purchasing group” on behalf of NWHO and Dr. Imran, has never registered with the Delaware Department of Insurance. Even if Accord had

²⁴ Ex. “A” to Pl.’s Reply at 1.

²⁵ Dkt.# 34.

²⁶ Dkt.# 44.

²⁷ Title 18, section 2107(a) of the Delaware Code generally provides that “[b]efore an unauthorized insurer files or causes to be filed any pleading...such insurer shall: (1) [p]rocur[e] a certificate of authority to transact insurance in this State; or (2) deposit...cash or securities, or file...a bond...in an amount to be fixed by the [C]ourt sufficient to secure the payment of any final judgment which may be rendered in such action.”

properly registered, Dr. Imran argues that Security Trust is not exempted under the federal Risk Retention Act “from licensing requirements and demonstration[s] of financial responsibility.”²⁸ Dr. Imran additionally argues that, because Security Trust is domiciled in the British Virgin Islands and is not licensed in California, where Protocol International, Inc. d.b.a. Accord is domiciled, title 18, section 8009(a) of the Delaware Code applies and further prohibits Security Trust from filing a responsive pleading in this action.²⁹ Lastly, Dr. Imran argues that there is nothing unconstitutional about requiring an unauthorized insurer from complying with section 2107(a) before such insurer can file a responsive pleading in order to defend a suit.

In response, Security Trust primarily argues that federal law, and more specifically the Liability Risk Retention Act of 1986,³⁰ preempts section 2107(a), such that Security Trust should be able to file its responsive pleading without first having to procure a certificate of authority or post

²⁸ Pl.’s Reply ¶ 5.

²⁹ Title 18, section 8009(a) of the Delaware Code provides that “[a] purchasing group may not purchase insurance from...an insurer not admitted in the state in which the purchasing group is located[] unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.” An identical federal statute can be found at 15 U.S.C. § 3903(f) (1994).

³⁰ 15 U.S.C. § § 3901-3906 (1994).

bond and/or security. Security Trust argues “it is clear...that a purchasing group and its insurer cannot be regulated either directly or indirectly by the state courts.”³¹ Alternatively, Security Trust argues that, pursuant to Delaware law, a certificate of authority from the Insurance Commissioner is not a prerequisite to defending a lawsuit.³² Security Trust argues that section 2107(a) is “in direct conflict” with the non-requirement statute.³³ Nevertheless, Security Trust contends that Dr. Imran “ignore[s] the dictates” of the non-requirement statute and federal law, as section 2107(a) “does not apply...because by definition [Security Trust] is not an unauthorized insurer.”³⁴ Lastly, Security Trust contends that section 2107(a) is unconstitutional as violative of Article I, Section 9 of the Delaware Constitution “because it permits a plaintiff to bring an action against [a] defendant and does not permit [that] defendant to file pleadings.”³⁵ Still, Security Trust requests that “a stay be granted by the Court”³⁶ if the Court

³¹ Letter from Stephen P. Casarino to the Court of 9/9/02, at 2 (Dkt. #23).

³² Security Trust cites title 18, section 506(3) of the Delaware Code, which provides that a certificate of authority shall not be required of an insurer with respect to “[p]rosecutions or defense of suits at law[][.]”

³³ Letter from Stephen P. Casarino to the Court of 9/9/02, at 2.

³⁴ Id.

³⁵ Def.’s Resp. ¶ 4.

³⁶ Id. ¶ 5.

concludes that Delaware’s law is not preempted and that Security Trust is an unauthorized insurer by virtue of non-compliance with section 2107(a).³⁷

In invited *amicus curiae* response, the Department of Insurance asserts that Delaware law is not preempted, but rather “[t]he powers reserved to the [S]tate[]...are consistent with those provisions generally that provide for consumer protection by allowing the [S]tate[] to monitor the registration of insurers, their financial solvency, and their compliance with the [Delaware] Unfair Trade Practices Act....”³⁸ Furthermore, the Department argues, “[w]ithout obtaining proper authority or registering as required by...[section 2107], Delaware consumers would have no protection [through]...the power of the courts...[by] the posting of appropriate security as a condition of defending any such action in court[][,]” particularly since “the General Corporation Law...does not apply to foreign insurance companies doing business in Delaware....”³⁹ The Department contends that section 2107(a) is not unconstitutional because “[h]aving failed to meet the lawful registration requirements of...this State, Security [Trust] cannot claim

³⁷ Title 18, section 2107(b) of the Delaware Code provides that the Court “may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with...subsection (a)...and to defend such action.”

³⁸ *Amicus Br.* at 7.

³⁹ *Id.* at 8.

that it is deprived of due process....”⁴⁰ The Department therefore concludes that Security Trust “must either register...or post a bond...as a condition of being permitted to answer or otherwise plead to the merits of the complaint.”⁴¹

IV. DISCUSSION

“The [federal] Product Liability Risk Retention Act of 1981...as amended by the Liability Risk Retention Act of 1986...authorizes persons or businesses with similar or related liability exposure to form ‘purchasing groups’ for the purpose of purchasing liability insurance on a group basis and ‘risk retention groups’ for the purpose of self-insuring.”⁴² “Aimed at reducing the cost and increasing the availability of commercial liability insurance, th[is] [a]ct expressly preempts state laws which make purchasing and risk retention groups illegal[]”,⁴³ prior to enactment of the Act,

⁴⁰ Id. at 11.

⁴¹ Id. at 12. Dr. Imran contends that “the arguments made by the State [as *amicus*] are consistent with, or supplemental to, the arguments submitted...in [the] Motion to Strike, Reply, and Supplemental Reply.” Pl.’s Resp. to Def.’s Supp. Resp. (Dkt.# 33).

⁴² Insurance Co. of Pennsylvania v. Corcoran, 850 F.2d 88, 89 (2d Cir. 1988) (citing 15 U.S.C. § § 3901-3906 (1982 & Supp. IV 1986)).

⁴³ Florida Dep’t of Ins. v. National Amusement Purchasing Group, Inc., 905 F.2d 361, 362 (11th Cir. 1990).

“purchasing and risk retention groups [we]re illegal under some states’ laws....”⁴⁴

Under the Act, “purchasing groups” are treated differently than are “risk retention groups”; “[u]nlike the risk retention section which broadly preempts state law while enumerating specific laws that states may enforce,^[45] the section pertaining to purchasing groups expressly preempts a limited number of specific state laws while also providing that ‘[n]othing in this chapter shall be construed to affect the authority of any [s]tate to make use of any of its powers to enforce the laws of such [s]tate with respect to which a purchasing group is not exempt under this chapter.’”⁴⁶ In other words, “both the language and the history of the Act suggest that Congress intended there to be limited preemption of state laws relative to purchasing groups.”⁴⁷ At least one federal court has held that such preemption does not extend “to exempt purchasing group insurers from being licensed or

⁴⁴ Corcoran, 850 F.2d at 89.

⁴⁵ According to the Act, a “risk retention group is regulated primarily by the domiciliary state[]” but “[t]he authority of non-domiciliary states to license and regulate...is largely preempted.” National Amusement, 905 F.2d at 363.

⁴⁶ Id. at 364 (citing 15 U.S.C. 3903(g)).

⁴⁷ Id. (citing H.R.Rep. No. 865, 99th Cong., 2d Sess. 19, *reprinted in* 1986 U.S.Code Cong. & Admin.News 5503, 5316).

otherwise authorized in the state where a purchasing group member resides.”⁴⁸

With that backdrop, the Court is not persuaded by Security Trust’s arguments that the federal law contained in the Liability Risk Retention Act of 1986 preempts Delaware law with respect to unauthorized insurers.⁴⁹

Similarly, the Court finds unpersuasive Security Trust’s argument that purchasing groups and the insurance companies from which they purchase “cannot be regulated either directly or indirectly by the state courts.”⁵⁰

Given Mr. Vousden’s deposition testimony that Security Trust was “a British Virgin Islands corporation”⁵¹ that did not have a business license in any state in the United States,⁵² and given Mr. Vousden’s testimony that Security Trust was authorized to transact business in Delaware “by virtue of

⁴⁸ National Amusement, 905 F.2d at 365 (permanently enjoining defendant insurer from soliciting or transacting business in the State of Florida in violation of that state’s statutes requiring purchasing groups to purchase insurance from an insurer that is: (1) certificated or licensed in one of the states of the United States; (2) an authorized insurer; or (3) an eligible surplus lines insurer).

⁴⁹ See DEL. CODE ANN. tit. 18, § 2107(a) (1999).

⁵⁰ Letter from Stephen P. Casarino to the Court of 9/9/02, at 2.

⁵¹ Vousden Dep. of 7/30/02, at 8.

⁵² Id. at 22.

the filings that Accord [had] ma[de]...[,]”⁵³ the Court’s analysis will proceed accordingly.

The Court initially notes that Security Trust has admittedly not complied with any of the “authorization” procedures contained in title 18, sections 501 to 534 of the Delaware Code.⁵⁴ As Mr. Vousden himself testified, Security Trust, a company organized under the laws of the British Virgin Islands, did not have a business license in any state of the United States.⁵⁵ The affidavits executed by Darryl Reese (the director of the Delaware Insurance Department Bureau of Examination, Rehabilitation and Guaranty) and Linda A. Long (the office manager of the Delaware Insurance Department Producer Licensing Section) confirm this. Thus, for purposes of the present motion, in order to lawfully sell insurance within the State of Delaware, Security Trust would have had to do so through the vehicle of the Accord “purchasing group,” and would have had to have done so in compliance with relevant state and federal statutory authority.

As stated, title 18, section 8009(a) of the Delaware Code provides that “[a] purchasing group may not purchase insurance from...an insurer not

⁵³ Id. at 35.

⁵⁴ Title 18, chapter five of the Delaware Code generally describes the procedures attendant to the authorization of insurers within the State of Delaware.

⁵⁵ Vousden Dep. of 7/30/02, at 22.

admitted in the state in which the purchasing group is located[] unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.” To comply with section 8009(a), Accord would had to have purchased insurance from Security Trust either at a time when Security Trust was “admitted” in the state in which Accord was located, *i.e.*, California, or through a “licensed agent or broker acting pursuant to...[California’s] surplus lines laws....” The present record is devoid of any evidence to support either requirement in Security Trust’s favor.

Furthermore, Mr. Vousden testified that Accord had made the requisite filings with the Delaware Insurance Commissioner on behalf of Security Trust. But the evidence in this case refutes that any such filings were in fact made. Even if they had been, such filings would have failed to satisfy the dictates of section 8009(a), based on the fact that the record fails to establish that Security Trust was not “admitted” in California and the fact that it sold insurance to Accord through an agent or broker or pursuant to surplus lines laws. Such a lapse renders Security Trust an unauthorized insurer pursuant to Delaware law, and thus unable to file a responsive pleading according to section 2107(a).

Security Trust’s argument that section 2107(a) and section 506(3)⁵⁶ of title 18 are in “direct conflict” is similarly unpersuasive. When read in conjunction with one another, it is clear that the two statutes establish a statutory scheme for “unauthorized” insurers to be able to defend suits at law in the courts of Delaware. Although section 506(a) states that a certificate of authority is not required, 2107(a)(2) indicates that before defending a suit without such a certificate, an unauthorized insurer must “[d]eposit with the clerk of the court in which...[an] action or proceeding is pending cash or securities, or...a bond...in an amount to be fixed by the court....”⁵⁷ Thus this Court finds no “direct conflict” in the two, as is argued by Security Trust.

The Court is also not persuaded by Security Trust’s argument that section 2107(a) is violative of Article I, Section 9 of the Delaware Consitution.⁵⁸ No authorities on point were cited by Security Trust to

⁵⁶ Again, this section provides that a certificate of authority “shall not be required of an insurer with respect to...[p]rosecution or defense of suits at law.” DEL. CODE ANN. tit. 18, § 506(3) (1999).

⁵⁷ DEL. CODE ANN. tit. 18, § 2107(a)(2) (1999).

⁵⁸ Article I, Section 9 of the Delaware Constitution provides, in pertinent part, “[a]ll courts shall be open; and every man for an injury done him...shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land....”

support this claim. Other similar statutes have been upheld against constitutional challenge.⁵⁹

With the above analysis in mind, and having concluded that Security Trust is an unauthorized insurer not having complied with relevant statutory authority, the Court finds that it cannot presently defend against Dr. Imran's complaint in any lawful manner. But as stated, subsection (b) of section 2107 permits this Court to, in its discretion, "order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a)...[of section 2107], and to defend such action."⁶⁰ In its discretion, this Court will do so. Accordingly, Security Trust will have until October 10, 2003 to comply with that subsection.

V. CONCLUSION

For all of the above reasons, Plaintiff's Motion to Strike is **GRANTED** insofar as the Court finds that Security Trust cannot presently defend against the complaint filed by Dr. Imran in any lawful manner. This relief is granted to the extent that Security Trust shall have until October 10,

⁵⁹ See, e.g., Retail Union Health and Welfare Fund v. Seabrum, 242 S.E.2d 18, 20 (Ga. 1978) (reversing entry of default judgment against nonresident insurer that had tendered bond within reasonable time following entry of judgment, and holding that statute requiring any unauthorized insurer to deposit cash or securities or bond or to procure a certificate of authority before filing any responsive pleading was "to provide assurance that any judgment rendered against the insurer may be collected...").

⁶⁰ DEL. CODE ANN. tit. 18, § 2107(b) (1999).

2003 to satisfy the conditions of title 18, section 2107(a) of the Delaware Code.

IT IS SO ORDERED.

_____/s/_____
Richard R. Cooch

oc: Prothonotary