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IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE REHABILITATION OF INDEMNITY INSURANCE CORPORATION, RRG	)))))))	No. 621, 2013 On Appeal from C.A. No. 8601-VCL in the Court of Chancery of the State of Delaware

APPELLANTS' REPLY BRIEF

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Dated: February 14, 2014

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Statutes

Appellants Jeffrey B. Cohen and RB Entertainment Ventures, LLC ("RBE") respectfully submit this Reply Brief in further support of their appeal of the Nov. 1 Sanctions Order[1] and the Rehabilitation Order (together, the "Appealed Orders"). For the reasons stated herein as well as in their Opening Brief, Appellants maintain that the Trial Court erred and that the Appealed Orders should be reversed.

REPLY ARGUMENT

I. The Secret Hearing and the Violation of the Trial Court's Order to Share the Transcript from the Hearing Taints the Sanctions Rulings.

In the briefing on the related appeal, Case No. 545, 2013, the Court was briefed about undersigned counsel's discovery that an *ex parte* hearing had occurred on Sept. 10, 2013. While the Trial Court apparently intended for Mr. Cohen to be made aware that the hearing had taken place and ordered counsel present at the hearing to share a copy of the transcript with Mr. Cohen's prior counsel, David Wilks, Esq., inexplicably, this did not happen. *See* AR88 [17:2-5]. Not one of the seven lawyers present in the hearing told Mr. Cohen's counsel about this hearing until undersigned counsel discovered this on Jan. 15, 2014.

When the Trial Court was advised that opposing counsel had not shared the transcript from the Sept. 10 hearing until Jan. 15 (*see* AR207), the Trial Court sent

[1] Capitalized terms not otherwise herein defined shall have the same meanings ascribed to them in Appellants' Opening Brief. Additionally, this brief makes reference to the three appealed orders in Case No. 545, 2013: the Sept. 10 "Amended Seizure Order," the Sept. 25 "Sanctions Order," and the Oct. 7 "Rehearing Denial."

a Jan. 17 letter to the Commissioner's and IIC's counsel requiring counsel to advise why the transcript had not been shared (AR209). Equally, if not more, disappointing than the failure to share the transcript was opposing counsel's Jan. 22 response. Despite the Trial Court's order to share the Sept. 10 hearing transcript, opposing counsel explained, "Rightly or wrongly, but certainly reasonably, IIC's counsel believed that because Mr. Wilks had already received the Amended Seizure Order formally informing him what his, and more importantly his client's obligations were, providing the transcript to him was no longer necessary" (AR213). In short, a conscious decision was made by opposing counsel to not obey the Trial Court's order. There is simply no difference between what opposing counsel alleges that Mr. Cohen did versus what they admit that they did.

For the purposes of this appeal and the related appeal Case No. 545, there is no way to separate what happened on Sept. 10 at the in-Chambers hearing (leading to the entry of the Amended Seizure Order) from the Sept. 24 sanctions hearing (leading to the entry of the Sanctions Order) from the Nov. 1 sanctions hearing (leading to the entry of Nov. 1 Sanctions Order). As the Commissioner admits, the Trial Court's orders were tied together and "escalating" in nature. Ans. Br. at 29-30. But these "escalating" sanctions orders stemmed from the Sept. 10 hearing that Mr. Cohen was not invited to attend and that Mr. Cohen had no idea had occurred. As discussed below, the taint from the due process violation that occurred at this

hearing and the failure to share the transcript has infected every sanctions order that has occurred to date. The only appropriate remedy is reversal.

The fact remains that the Sept. 10 hearing set the tone for the sanctions hearings that occurred thereafter, specifically, the Sept. 24 hearing and the Nov. 1 hearing. During the Sept. 10 hearing, IIC's counsel presented evidence to the Trial Court and questioned an IIC witness about allegations that Cohen had interfered with the Commissioner. Having heard the evidence at the hearing, the Trial Court granted the motion to amend the seizure order, but also noted that Mr. Cohen's alleged actions were "also potentially criminal conduct" (AR85-6 [14:24-15:1]):

> I have had the benefit lately of getting an education in some of our state and federal statutes on point. And the conduct in which Mr. Cohen has engaged or is alleged to have engaged -- and there's a plausible basis for believing he's engaged -- would, at least on its face, appear to violate both the Federal Stored Communications Act, which is found at 18 U.S.C. Section 2701(a), as well as Delaware's analogous state statute found at 11 Del. Code Sections 2421 through 2427 (AR86 [15:1-10]).

While the Trial Court has recently issued two opinions after the filing of this appeal stating why it believes that this hearing was appropriate (*see* B546 and B645)—a point that Appellants dispute[2]—the procedural irregularity of the hearing

[2] Appellants do not believe that the Trial Court's rationale in these Jan. 2 and Jan. 16 Opinions should serve as a basis in this appeal for countering Appellants' due process challenges. The Trial Court was not aware that the Sept. 10 hearing transcript had not been shared with Appellants' prior counsel when it wrote these opinions, and these opinions were written after the

was only made worse by opposing counsels' decision to not share the transcript. Given the fact that the Trial Court expected that the transcript from the Sept. 10 hearing would be given to Appellants' counsel, the Trial Court's shock (*see* AR246 [28:17-19]) that Mr. Cohen did not appear at the Sept. 24 hearing now has a great deal more context. The Trial Court noted at the Sept. 24 hearing:

> THE COURT: I was sort of expecting to see him here today. Why did he decide not to come to testify and rebut some of these issues that have been raised?

(A807-8 [3:24-4:3]). Without any idea that the Trial Court had already held a hearing on the allegations, Mr. Cohen's counsel was already at a disadvantage. This point cannot be understated: During the Sept. 10 hearing, the Trial Court responded to a question by IIC's in-house counsel regarding what the Court was envisioning for the Sept. 24 hearing, stating that the court was giving a "preview" of what was coming at the Sept. 24 sanctions hearing (AR89 [18:15]).

The decision to not attend the Sept. 24 hearing[3] has had a profound effect on what has occurred to date. In fact, the Trial Court has repeatedly cited Mr. Cohen's failure to attend as the grounds for why the Trial Court need not credit

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Opening Brief was filed. Moreover, since the issuance of these decisions and the filing of this appeal, Cohen has had the opportunity to depose IIC's 30(b)(6) representative, who undermined several key assumptions underlying the Trial Court's opinions and the findings of interference. These issues were highlighted in a motion filed pursuant to Rule 60(b) with the Trial Court last week. *See* AR270.

[3] Against Mr. Cohen's strong desire, Mr. Cohen was urged not to attend the Sept. 24 hearing. It bears noting, since this hearing, Mr. Cohen has attended every other hearing in this matter.

Mr. Cohen's evidence that the allegations of interference were baseless:

- In denying the Oct. 7 motion for re-argument, the Trial Court ruled:

  "The main reason why the Court's questions could not be answer on September 24 was because Cohen chose not to show up for a hearing about whether he was in contempt of an order from this court. Having chosen to send his lawyers and not appear personally, Cohen cannot complain about their inability to answer questions" (A1199).

- In an attempt to present evidence at the Nov. 1 hearing to show that the Trial Court had an incomplete picture of the alleged conduct, the Trial Court ruled:

  "This type of evidence, if you wanted to make it, last hearing was the time to do it. You chose not to show up. You could have shown up. You could have come in here, you could have put on evidence, and you could have tried to explain to me why you were not, in fact, interfering. You didn't make that showing.…

  We are not here for a re-do of what happened last time …. So, I mean, this has been great; it's been informative. It would have been nice to have some of this last time. You all chose not to do it" (A1719-20 [115:4-10; 115:21-116:3]).

The fact remains that Cohen had additional evidence, including evidence that was discovered after the Sept. 24 hearing: evidence that IIC had attempted to suborn perjury; evidence that the IT system that Mr. Cohen was accused of "hacking" did not belong to IIC, but to Cohen. Since the hearing, Cohen has gathered further evidence that the interference allegations were little more than a court room version of "diving."[4] Yet here, the sanctions were onerous. The result

[4] *See* http://en.wikipedia.org/wiki/Diving_%28association_football%29, last visited Feb. 13, 2014 ("In association football (soccer), diving … is an attempt by a player to gain an unfair

of the Sept. 10 hearings was a cascading array of sanctions: an order to deposit $100,000, to be forfeited after his "next act of interference" (A972 [168:9]) an order forfeiting the $100,000 at the Nov. 1 hearing; and an order to deposit a further $500,000 in escrow, again to be forfeited with additional acts of interference.[5]

At the Nov. 1 hearing, Cohen was sanctioned for (1) filing lawsuits that he believed were meritorious and contacting various IIC employees regarding these claims; (2) failing to return vehicles that he believed he owned and despite the fact that his lawyer had raised arguments to the contrary regarding IIC's claim to ownership; and (3) generalized claims of interference with the Commissioner. However, the Nov. 1 Sanctions Order cannot be separated from opposing counsel's violation of the Trial Court's order to share the transcript. The fact remains that the entire round of sanctions stems from the tainted Sept. 10 hearing. The Sept. 25 Sanctions Order should be reversed, and so should the related Nov. 1 Sanctions Order. If sanctions are to be pursued, then they must be pursued fairly.

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advantage by diving to the ground and possibly feigning an injury, to appear as if a foul has been committed. Dives are often used to exaggerate the amount of contact present in a challenge.").

[5] As of the filing of this brief, neither the Commissioner nor any of her deputized agents has testified or supplied any evidence to the Trial Court that Cohen interfered with the Commissioner. The only evidence introduced has been through testimony of IIC employees and its counsel.

II. Appellants Were Not Accorded Due Process With Respect to the Request to Intervene on the Rehabilitation Petition.

A. The Prior Motion to Intervene is Not Relevant.

Appellants' appeal of the Rehabilitation Order is straight-forward: Appellants did not have an opportunity to brief a motion to intervene. Instead, less than 24 hours after the Commissioner filed her Rehabilitation Petition on Nov. 6, 2013, the Trial Court entered the Rehabilitation Order. The Trial Court's failure to permit briefing on a motion to intervene does not satisfy the requirements of due process.

Much of the Commissioner's Answering Brief is devoted to explaining why the Trial Court did not err when it denied an earlier attempt to intervene with respect to a July 27, 2013, Verified Petition seeking liquidation of IIC (the "Liquidation Petition") (B144). Using the Trial Court's denial of RBE's motion to intervene with respect to the Liquidation Petition as a due-process proxy for what would have happened had Appellants briefed an intervention motion, the Commissioner argues: "RBE Was Accorded Due Process By Its Prior Litigation of, and Hearing on, Intervention on the Liquidation Petition." Ans. Br. at 19.

The Commissioner's argument that the briefing and argument on the earlier-filed motion to intervene can somehow be deemed a due process "stand-in" for briefing and argument on the Rehabilitation Petition ignores the difference between the two petitions. Here, the Commissioner initiated these two phases,

liquidation and rehabilitation, over three months apart from each other in the underlying proceeding. These phases were not initiated by motion, but instead by the filing of separate "Verified Petitions" seeking different forms of relief. Under the Delaware Code, rehabilitation (18 *Del. C.* § 5905) is not the same as liquidation (18 *Del. C.* § 5906). Rather, the two are separate provisions of Chapter 59. While the two provisions contain overlapping "grounds" for determining whether rehabilitation or liquidation is appropriate, the goal of these statutes are different. *Compare* 18 *Del. C.* § 5905 ("Commissioner may apply to the court for an order appointing the Commissioner as receiver of and directing the Commissioner **to rehabilitate** a domestic insurer …") (emphasis added) *with* 18 *Del. C.* § 5906 ("Commissioner may apply to the court for an order appointing the Commissioner as receiver … and directing the Commissioner **to liquidate** the business of a[n] … insurer … regardless of whether or not there has been a prior order directing the Commissioner to rehabilitate such insurer …") (emphasis added).

Even apart from the differences in the petitions themselves, IIC's responses to these petitions were completely different. While the Liquidation Petition was answered by IIC on Aug. 21, 2013, with IIC contesting the relief sought and asking that the Court to "enter an order in equity, short of liquidation" (AR206), the Rehabilitation Petition was purportedly consented to by the board of IIC. This difference in response would have been a critical factor in an analysis on an

intervention motion. Specifically, under Court of Chancery Rule 24, the Trial Court was required to grant a timely motion to intervene if (1) the proposed intervenor claimed an "interest" under the requirements of Rule 24; and (2) an existing party would not adequately represent the intervenor's interest. *See, e.g.*, *Shipley v. Shipley*, 1991 Del. Ch. LEXIS 147, at *5 (Del. Ch. Sept. 3, 1991) (stating that Court "must grant" a motion to intervene if these requirements are satisfied). In light of a purported board consent that was filed with the Rehabilitation Petition, it was plain on the face of the petition that the existing party (IIC) would not adequately represent the interest of Appellants.[6]

With a different form of relief being sought by the Commissioner through the filing of a new Verified Petition, and a different position being taken by those responsible for defending the company, the argument that the earlier-filed motion to intervene on the Liquidation Petition could be treated as one and the same with what would have been filed with respect to the Rehabilitation Petition falls well short. The earlier hearing and briefing cannot be a stand-in for a hearing that did not occur. Due process requires more than simply a hearing by proxy.

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[6] The Commissioner also argues that RBE did not seek reconsideration of the denial of intervention with respect to the Liquidation Petition or appeal the denial. *See* Ans. Br. at 21. The Trial Court's denial of intervention at that time, however, was made without prejudice. (A311 [39:9-10]). ("So the bottom line is the motion is denied, but it's denied without prejudice."). Furthermore, given the fact that the Commissioner did not pursue the Liquidation Petition, but instead filed a new petition seeking rehabilitation, there was no need to appeal this ruling.

The Commissioner next argues that Appellants are essentially "stuck" with the argument that they raised in their Nov. 6 letter to the Trial Court requesting leave to file a motion to intervene (A1855). Because Appellants did not raise in their Nov. 6 letter any "new arguments," *i.e.*, arguments different from its prior briefing on the motion to intervene, the Commissioner maintains that Appellants would not have prevailed even if briefing had been permitted. *See* Ans. Br. at 19-20 ("Indeed, in the letter it filed seeking leave to brief a motion to intervene, no new arguments were made."). *See also id.* at 21 (noting that RBE in its Nov. 6 letter did not "seek to present argument other than that the proposed Rehabilitation Order sought 'some remedy that would deprive [RBE] of its voting rights or other[wise] affect its unique right as a stockholder.'").

The Nov. 6 letter was simply a letter, filed mere hours after the Rehabilitation Petition, notifying the Trial Court that Appellants wanted to brief intervention. Appellants were well aware that they needed to get a letter immediately to the Trial Court advising the court that they wanted to intervene. Prior to the entry of the Rehabilitation Order, the Trial Court had already issued orders in this proceeding without full briefing. Specifically:

- The Trial Court issued a September 10, 2013, Amended Seizure Order the day after IIC's management filed a motion. ***Two hours before*** the entry of the Amended Seizure Order, Mr. Cohen's counsel had filed a letter asking that the Trial Court allow for an opportunity to respond to the "serious allegations" contained in the motion.

- The Trial Court denied an October 7, 2013, Order Modifying Order Imposing Sanctions ***less than one hour*** after it was filed. Opposing counsel did not need to respond since the Trial Court cut off briefing.

Based on what had happened to date, and in light of the fact that the Commissioner filed a motion to expedite as well, Appellants knew that they had a limited window to place notice on the docket that they wanted to be heard. The Nov. 6 letter stated that formal briefing was necessary, but that such briefing could be done on such an expedited basis. *See* A1855, letter from Appellants' counsel to Trial Court (stating, "We … respectfully request the opportunity to brief a formal motion to intervene on behalf, at least, RB Entertainment.").

The Commissioner wanted the Rehabilitation Petition quickly adjudicated, and she is well aware that there was no way that Appellants could have fully briefed their position within hours. IIC's counsel themselves filed a letter shortly after the Rehabilitation Petition was filed asking the Trial Court to quickly rule on the petition, stating, "Respondent [IIC] has consented to the entry of a rehabilitation order," and that "[f]rom Respondent's perspective, the matter is ready for adjudication" (A1852). Even after Appellants' Nov. 6 letter was filed, the Commissioner filed a letter later that same evening asking the Trial Court to deny the request for leave to file a motion to intervene and to rule on the Rehabilitation Petition on an expedited basis. *See* A1861.

Despite Appellants' Nov. 6 letter, the Trial Court granted the Rehabilitation

Petition the next day, on Nov. 7. There was no opportunity to present meaningful argument to the Trial Court. The Commissioner cannot point to the Appellants' Nov. 6 letter as a proxy for what would have been in a formal motion to intervene. Nor can it serve as a set limitation on what was to come in a motion to intervene.[7] The fact remains that, in this particular case, there is no adequate due process substitution for formal briefing.

B. Intervention Should Have Been Briefed.

In responding to the arguments raised in the Opening Brief, the Commissioner argues vociferously that intervention in proceedings such as these is not appropriate. Yet, in responding to the authority raised in the Opening Brief, and citing additional authority of her own, the Commissioner makes the case why

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[7] The Commissioner specifically references in her Answering Brief the argument that was raised by Appellants regarding the impact that the then-proposed Rehabilitation Order had on RBE's voting rights as the 99-percent equity holder of IIC. The board's decision to place IIC in rehabilitation was another decision made by a board that was at odds with its shareholder. As acknowledged by undersigned counsel at a hearing approximately 1-week earlier:

> [T]he problem that I see is that you have a split between who is running the company versus who owns most of the company, and the problem that you have here is that, as a Delaware lawyer, my first thing would have been to tell [him], just exercise some written consents and get rid of these guys, just eliminate this whole Group. But he can't even do that right now, Your Honor, because of the seizure order. And that's the problem when you have people that own a company that are watching something being driven into the ground by people that they cannot then re[in] in.

A1634-5 [30:19-31:5]. Again, this split in ownership vs. control was very much in the forefront of Appellants' concerns when the Commissioner filed the Rehabilitation Petition. Appellants saw yet another decision being made by a board contrary to the wishes of the 99-percent owner. Yet, Appellants did not have an opportunity to brief this issue because the Court granted the Rehabilitation Petition the next day.

the Trial Court erred when it failed to allow briefing on the issue: the issue of whether a 99 percent shareholder can intervene in a rehabilitation proceeding was a novel issue requiring more than a 24-hour window for response.

The filing of the Rehabilitation Petition implicated a number of critically important issues, and Appellants' should have been permitted an opportunity to at least be heard before a ruling was made. Specifically, the Rehabilitation Order effected a taking of property and a limitation on several person's rights, including:

- Paragraph 6 gave the Commissioner to "immediately 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 IIC;
- Paragraph 11 enjoined all persons from "transacting any business of, or on behalf of, [IIC] or selling, transferring, destroying, wasting, encumbering, or disposing of any of the Assets, without prior written permission of the Receiver or until further Order of this Court"; and
- Paragraph 14 prohibited all persons "from instituting or further prosecuting any action at law or in equity or in other proceedings against [IIC], the Receiver, the Deputy Receiver(s), or the Designees in connection with their duties" related to the proceedings.

Moreover, on top of all these provisions, the Court permitted the Commissioner to include a broad indemnification for herself, her deputies, and shockingly, the very staff of the company she was seeking to liquidate. *See id.* at ¶ 22. Given the implications of the Rehabilitation Order, RBE should have been given a reasonable opportunity to brief intervention before this order was entered.

The Commissioner challenges Appellants' legal argument that intervention

is appropriate, arguing that the case law does not typically permit shareholders to intervene. *See* Ans. Br. at 13. Yet, these are arguments that should have been made in formal briefing on a motion to intervene. The fact that so much of this appeal reflects legal argument on what would have happened had briefing been permitted shows that the Trial Court erred in not permitting briefing to go forward. *See Formosa Plastics Corp. v. Wilson*, 504 A.2d 1083, 1089-90 (Del. 1986) ("Before a party can be deprived of life, liberty, or property, it has the right to notice and a hearing in a meaningful time and a meaningful manner.").

Turning to the Commissioner's responses to the arguments raised by the Appellants in their Opening Brief, the Commissioner argues that the Opening Brief "wrongly conflates Section 5903, which authorizes broad injunctive relief to protect the interests of various corporate constituencies, with a grant of standing. That Section 5903 does ***not*** act to confer standing on those constituencies, is confirmed by *Hartnett* [*v. Southern American Fire Ins. Co.*, 495 So. 2d 902 (Fla. Dist. Ct. App. 1986)] and *Metcalf* [*v. Investors Equity Life Ins. Co.*, 910 P.2d 110 (Hawaii 1996)]." Ans. Br. at 15.

In the Opening Brief, Appellants noted that 18 *Del. C.* § 5903 specifically identified "shareholders" as one of the stakeholders on whose behalf the Commissioner is supposed to act when commencing delinquency proceedings. In challenging Appellants' distinguishing of *Metcalf* in the Opening Brief, the

Commissioner noted that the Hawaiian version of the Uniform Insurer's Liquidation Action ("UILA") contained a statute similar, although not identical, to Delaware's § 5903 providing that injunctive relief may be pursued to prevent "[a]ny other threatened or contemplated action that might … prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this article." HRS § 431:15-105(a)(11). *See* Ans. Br. at 15-16. Similarly, the Commissioner notes that the Florida version of the UILA in effect at the time *Hartnett* was decided contained a statute identical to Delaware's § 5903. *See id.*

While the Hawaiian and Florida statutory schemes may contain these similar provisions, these provisions were not part of the courts' analyses in *Hartnett* and *Metcalf*. Instead, those courts relied on the stated "purpose" provisions in the states' statutory schemes—a provision that Delaware's statutory scheme does not have. Given the fact that 18 *Del. C.* § 5903 specifically lists "stockholders," and the fact that the Delaware statutory scheme does not contain any conflicting Delaware purpose statute like the other schemes, neither *Metcalf* nor *Hartnett* are on point.

Next, in a textbook version of the slippery-slope argument, the Commissioner argues that if a shareholder is permitted to intervene, then what will stop all other stakeholders—including the public—from being entitled to intervene? *See* Ans. Br. at 17 ("The *Crawford* court denied intervention because it

followed from the shareholders' arguments that all claimants would have sufficient interest to support intervention in every action by a receiver. This concern is doubly at issue here."). Citing *Crawford v. American Standard Life and Acc. Ins. Co.*, 37 P.2d 971 (Okla. Civ. App. 2001), the Commissioner argues that intervention by the shareholder[8] might set a precedent that would thwart the purposes of the statute authorizing delinquency proceedings. *See* Ans. Br. at 16-17.

However, Court of Chancery Rule 24 and the case law interpreting this rule provides a means for balancing whether intervention is appropriate. As noted above, in *Shipley v. Shipley*, the Trial Court should have made a determination whether Appellant had claimed an "interest" in the underlying proceeding and whether an existing party would not adequately represent the intervenor's interest. *See Shipley*, 1991 Del. Ch. LEXIS 147, at *5. In its assessment of the proposed intervenor's interest, "the Court should not prejudge the merits of Intervenor's claims, but should only consider whether those claims 'appear to be of sufficient substance so as not to be considered legally frivolous.'" *Id.* (*citing Schiff v. RKO Pictures Corporation*, 136 A.2d 193, 195 (Del. Ch. 1954) and *Pennamco, Inc. v. Nardo Mgmt. Co., Inc.*, 435 A.2d 726, 728 (Del. Super. 1981)). Indeed, "[o]n a

[8] The Commissioner's attempt to compare this matter to a matter in which a large corporation with thousands of shareholders is improper. In this instance, RBE owns 99 percent of IIC as opposed to a matter in which a shareholder may own 1/100,000 of a corporation. Her argument simply fails when viewed in relation to logic.

motion to intervene, a party need only claim, rather than prove, an interest in the subject of the litigation; the validity of that claimed interest is assessed by reference to the allegations accompanying the motion to intervene, and such allegations are accepted as true." *Harris v. RHH Partners, LP*, 2009 Del. Ch. LEXIS 42, at *6-9 (Del. Ch. Apr. 3, 2009) (*citing Bonczek v. Helena Place, Inc.*, 1989 Del. Ch. LEXIS 111 (Del. Ch. Sept. 21, 1989)).

Here, the interests of Appellants are clear: RBE is the 99 percent owner of IIC, and Cohen is the 100 percent owner of RBE. The entry of the Rehabilitation Order effected a taking of RBE and Cohen's property. The consent of the board of IIC was done at a time when Cohen was prohibited from exercising written consents to replace the board—despite his desire to do so. Moreover, the Rehabilitation Order placed serious restrictions, if not outright prohibitions, on what Cohen and RBE could do to remedy these seizures, while at the same time, unprecedented broad grants of immunity have been effectively extended by the Court order to the Receiver, her deputies, and employees of IIC.

Even ignoring the value of RBE's equity interest in a Rule 24 analysis, the fact remains that the Rehabilitation Petition contained a number of fraud-based allegations directed at Cohen. These allegations have already had a damaging effect on Cohen in a number of other litigation arenas. Without an adequate

opportunity to challenge these allegations, Appellants will continue to face what has been trial by innuendo.

The Commissioner also attempts to argue that "the other provisions, in law and in the Rehabilitation Order … provide … an opportunity to be heard on ***specific issues***." Ans. Br. at 27. This is too little too late. After entry of the Rehabilitation Order, the Commissioner has already taken total control and been granted immunity, and Appellants are restricted on challenging that control.

The Commissioner has pointed at nothing that makes a delinquency proceeding so entirely different from other proceedings so as to make a wholesale prohibition on shareholder intervention an acceptable policy choice. The motion to intervene should have been briefed and the merits of the intervention weighed by the Trial Court. The Trial Court erred by failing to hear this issues fully.

CONCLUSION

For all the reasons stated herein, RBE and Mr. Cohen respectfully request that this Honorable Court reverses the Rehabilitation Order and the Nov. 1 Sanctions Order, in accordance with the arguments outlined in this appeal.

Respectfully submitted,

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