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Conservatorship

When an insurer is placed into conservation, the creation of the conservatorship does not trigger an automatic stay against the Board proceeding in a pending matter. An automatic stay would only issue pursuant to court action and the Board would either be involved in those arguments regarding the stay or, at a minimum, served with notice of the court action. 4/26/91. (Am. 2003-3).

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David H. Levine

Conservatorship of (Redacted) Life Insurance Company

(Redacted) has been placed into conservatorship and the question has arisen as to whether we can proceed with administrative action in a matter involving (redacted).

The conservatorship proceeding is commenced by the filing of a verified application by the Commissioner of Insurance in superior court showing any of certain conditions exist. (Ins. Code § 1011.) The order of conservatorship remains in effect until an order of that same court removing the conservatorship. (Ins. Code § 1012.) Under section 1020, when the court issues the order under section 1011, or any time thereafter, the court shall issue such other injunctions or orders as may be deemed necessary to prevent, as relevant here, the institution or prosecution of any actions or proceedings. This provision appears directly relevant to the proceeding before the board.

Section 1020 was construed in Webster v. Superior Court (1988) 46 Cal.3d 338. That case provides guidance as to whether a court should issue a stay, and would be useful if we were arguing against a stay in court. However, as relevant here, the important holding of the court was that:

“[T]he Insurance Code provisions regarding an insurer’s insolvency, including section 1020, do not mandate a stay of an action against an insolvent insurer in conservatorship or liquidation proceedings. Courts have discretion to determine whether to stay an action against the insolvent insurer and, if so, under what terms and conditions.” (46 Cal.3d 350.)

In summary, the creation of a conservatorship in (redacted) did not trigger an automatic stay against the Board proceeding in the pending matter. Any such stay would be pursuant to court action and we would either be involved in those arguments regarding the stay or, at a minimum, served with notice of the court action.

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