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1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK - CIVIL TERM - PART 35
-----X

4 IN THE MATTER OF THE LIQUIDATION OF
5 HEALTH REPUBLIC INSURANCE OF NEW YORK, CORP.
6
7 -----X

8 Index # 450500/2016 Proceedings

9 60 Centre Street
10 New York, New York
November 21, 2016

11 B E F O R E:

12 HONORABLE CAROL EDMEAD,
13 Justice.

14 A P P E A R A N C E S:

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New York, New York 10153
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23 DEBORAH A. ROTHROCK, RPR
24 Official Court Reporter
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1 THE COURT: This is an application to enjoin the
2 proceedings as a Friend of the Court, the movement, and your
3 argument as to why?

4 MR. VEACH: Your Honor, I meet the criteria set out
5 in the Kruger case, a case cited by counsel and a case that
6 your Honor cited, the Steglich case.

7 First of all, I moved by order to show cause
8 because that is the way you are to move in a trial court as
9 in Amicus.

10 I identified my interest on pages 7 and 10 of my
11 brief.

12 THE COURT: Briefly they are?

13 MR. VEACH: My primary interest here is in the case
14 and in the expense being incurred in this estate.

15 These policyholders are only going to get money
16 from the funds that Health Republic recover; and those funds
17 consist of monies from the federal government and their
18 premium. There is no guarantee association. There is no
19 other source of funds for these people. Every day is a
20 delay and every day reduces the value of the policyholder's
21 claim.

22 I have explained by affidavit the matters and the
23 areas of interest that I want to brief and I briefed them.

24 The first one is the clawback. Your Honor brought
25 up the issue of recovering these funds. I'm aware of no way
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2 to recover the monies once they have been disbursed other
3 than directing the liquidator to sue people to get the money
4 back.

5 THE COURT: When you say "sue people," clawback is,
6 essentially, not directed at policyholders. Clawback is
7 directed at expenditures made by, essentially, the attorneys
8 in giving out assignments or identifying further people to
9 work in a capacity to facilitate the process, whether or not
10 say something was an expenditure that was exorbitant. This
11 is not directed in any way to policyholders.

12 MR. VEACH: No, the policyholders will suffer.

13 THE COURT: No. You say, "I don't know of any way
14 of getting the money back." That is how you get it back
15 from the parties for whom the Court had an interest and was
16 thinking in terms of clawback. With respect to say,
17 hypothetically, if it was determined where Weil Gotshal did
18 something where they had \$100,000 expenditures, they should
19 not have had, they would be obligated to return it back to
20 the fund.

21 MR. VEACH: Your Honor, your Honor has the power
22 and the authority by Article 74 of the obligation to approve
23 all expenses in this case; that, to my knowledge is not
24 being done. Your Honor, to your great credit, required all
25 the expenses be posted and they have been posted by they
26 have never been approved.

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2 THE COURT: That's right. So the ability to
3 disapprove has not been lost.

4 MR. VEACH: Right.

5 THE COURT: When you say, "I don't see how you can
6 get it back?" Could not have been approved or even if
7 approved, rescinded; that is how one gets it back as of the
8 court.

9 MR. VEACH: If your Honor disapproves it--

10 THE COURT: Or rescinds or modifies.

11 MR. VEACH: But if the money has been disbursed and
12 spent and someone has gone bankrupt --

13 THE COURT: To counsel. Weil Gotshal is not going
14 bankrupt. I'm not talking about --you're making up a
15 hypothetical that is so far removed from what is really from
16 what this is about; it is almost inapplicable.

17 We are talking about clawback and the concern of
18 improper expenditures that you have raised, thus far, with
19 respect to how Weil Gotshal --and I'm only hypothetically,
20 I'm not saying --how Weil Gotshal has performed in its role.
21 That is clearly something that can be retrieved.

22 MR. VEACH: In the Union Indemnity case, the
23 Liquidation Bureau came to Judge Bransten and said, "Please
24 approve these expenses, these are the monies that we have
25 spent."

26 THE COURT: That is liquidation Bureau.

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2 MR. VEACH: And the Liquidation Bureau is also
3 spending money.

4 THE COURT: Yes, I understand.

5 MR. VEACH: But Judge Bransten said, no one ever
6 asked me or the previous judges for 20 years to approve any
7 of these expenses; now you're asking me to approve 20 years
8 of expenses, I won't do it.

9 THE COURT: Right.

10 MR. VEACH: And then said, I want further reports.

11 THE COURT: Sure.

12 MR. VEACH: She eventually got the further reports
13 and she eventually proved it. Some of that money had been
14 spent 20 years before and it was gone.

15 THE COURT: We are not there. I don't think-- I'm
16 thinking of in terms of being there for that. That is just
17 an outrageous example in that regard.

18 This is something where we are doing a very close
19 monitoring --at least this Court is --and they are moving a
20 pace. This has been moving very strenuously. This has been
21 aggressively moving and I intend to keep it that way so that
22 I will be able to, in a short window, be able to determine
23 when and where I need to look at expenditures.

24 So there's been the example is a Dooms Day example.
25 It is not applicable at this juncture to this case.

26 MR. VEACH: In the Consolidated Edison case that I

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cited --and this is a case that favors the bureau. It bars people from getting information from the bureau under the Freedom Information Law.

This is what the Court ruled: "All major decisions made by the Liquidation Bureau require court ordered under Section 7411, 12, and 34, specifically preclude the superintendent from disbursing any of the assets of the insolvent without court approval."

Monies are being spent --so far \$4 million has been spent without court approval. And I don't believe your Honor could approve it, given what they have done, all they have given is a summary; a one line summary and a number at the end of it. "Weil Gotshal, legal assistance, \$398,000." But there are many many far larger charges on there that are simply a line entry and number at the end.

THE COURT: What if I said with respect to how I would address that on previous occasions? What have I said?

MR. VEACH: Your Honor, I think your Honor has been talking about the clawback provision of taking money back.

THE COURT: From whom?

MR. VEACH: I assume from people who should not have gotten it.

THE COURT: No. See, you totally missed it. I'm sorry to say, you sat here and missed it.

The point I've made-- and I've made it I thought

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2 pretty clearly --was that my first and primary purpose was
3 to address the policyholders, set up a procedure --I'm not
4 going to say it again, by the way, make sure you get it this
5 time --

6 MR. VEACH: Yes.

7 THE COURT: --to make sure I set up a procedure by
8 which the policyholders one, would get full information
9 right away and two, be able to put forth their claims--
10 policyholders put forth their claims and three, set up a
11 mechanism to start figuring out how we could get their is
12 claims addressed. And, simultaneously, while those three
13 things are going on, to get a sense of the pool of money
14 that I'm looking at. And those things I've set up, thus
15 far. And I think in a pretty rapid pace and schedule.
16 Plus, I have done something, which I don't think typically
17 done, I required everything be online so that everybody
18 could see and understand-- and including those who don't
19 speak English, know what is happening so that they will have
20 -- to create transparency. That we have done in a very
21 short window. I know I have pushed very hard.

22 And I don't think the time has yet elapsed that I
23 should be worried that the expenditures --and I'm only
24 giving it as an example and I am not being critical --the
25 expenditures of Weil Gotshal have not moved so far that I
26 cannot clawback if need be, that is all that I am saying. I

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2 am there. I'm pretty much there. I intend, in the early
3 months of 2017, of starting to do separate hearings and
4 reviews of expenditures of Weil Gotshal and related
5 entities. That I didn't need you for, sir.

6 MR. VEACH: Thank you, your Honor.

7 THE COURT: Point being, this was the natural way
8 to proceed and I have set it up.

9 So the concern that your services are necessary
10 because things are not moving -- your concern with respect
11 to both pace and expense, I'm not seeing it yet --

12 MR. VEACH: All right.

13 THE COURT: --based on how we have moved, thus far,
14 and the ability, I just don't think I have lost any ability
15 to rescind or clawback expenditures. Those are the
16 expenditures I'm concerned with.

17 I'm not concerned with the policyholder out there
18 who may have gotten \$2,000 that she or he should not have
19 gotten because it is duplicative of the expense of somebody
20 else --a provider. Yes, it is concern, but it is not my
21 primary concern. My primary concern with expenditures is
22 the big numbers. That is what I am saying I will be looking
23 at. I may lose based on not -- but I think we need to put
24 checks and balance in place on ability to check for
25 duplicates where we could check on a policyholder and
26 provider both seeking the same claim, the same pot. We have

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done that the last session.

MR. STACK: Right.

THE COURT: So we are really moving very -- I think you all are doing a great job in moving forward to setting up the mechanism to cover the primary goals, which is to protect the policyholders, to reimburse the policyholders and to make sure we have a sense of what is the pool.

So this inability -- this claim that, or your concern that there will be an inability to get back, I don't see it at this juncture, because we are moving pretty a pace.

MR. VEACH: Your Honor, I wasn't aware you were planning on having hearings --

THE COURT: I mentioned it at the last session on the record, that one of things I would do, would hold independent sessions, reviews, and hearings to assess the breakdown of expenditures. Not expenditures with respect to the policyholder provider pot, but expenditures relating to setting up this whole engine of liquidation.

MR. VEACH: Will the bills that have been paid be posted online? In other words, Ponco has a large number here --

THE COURT: You see, I understand that is your primary concern.

Your primary concern is these entities that are

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2 getting paid. The Court's primary concern is the
3 policyholders and making sure the policyholders and
4 providers are protected. You want the Court to leapfrog and
5 go to what you are concerned with, I am not doing it. Okay.

6 I'm not leapfrogging over what is most important,
7 which is the policyholders and the providers, and
8 determining the pot and making sure they are protected
9 first; that is the Courts primary concern. That is not
10 yours, but it is mine. And I'm not moving your concern
11 ahead of that at all. It will be addressed, but it will not
12 be moved ahead.

13 And what I needed to get done first online and
14 records, and making sure things were posted were concerning
15 my goals one, two, and three.

16 MR. VEACH: Right.

17 THE COURT: What I have said, in the early 2017, I
18 will start looking at the pulling out and addressing the
19 hearings related to, and the review related to expenditures;
20 this is not like the first time we have to do something like
21 look at somebody's records of expenditures and say, now give
22 me ever backup document that goes with that and bring them
23 in I want to know; that happened but it is not first, it is
24 not even second.

25 MR. VEACH: Well, your Honor, I have one
26 policyholders' written in support of my application.

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THE COURT: Mr. Young?

MR. VEACH: Mr. Young.

THE COURT: In Mr. Young's letter he said he opted out --

MR. VEACH: He choose not to pursue his appeal.

THE COURT: That's right. To me he choose not to participate, he's doing private lawsuit.

MR. VEACH: No, he dropped his appeal to the First Department on the scope of the injunction.

THE COURT: Okay.

He requested relief from the injunction. Right. Okay.

MR. VEACH: He took an appeal and he withdrew the appeal.

THE COURT: Yes. But is he a participate? We have an opt-in and opt-out. I call it opt-in and opt-out.

MR. STACK: He still has a claim. He has a \$5,000 claim as policyholder and he still has his \$5,000 claim that we will get resolved in the claims process.

THE COURT: Okay. But he has not opted-out, he's still in?

MR. STACK: Yes, he still has his \$5,000.

THE COURT: Go ahead.

I had the letter saying, essentially, I'm appealing, I want to make sure -- but I got the sense that

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he didn't intend at the juncture of this letter of November 18th that he didn't intend to participate; meaning he would that opt-out. Which is fine. But he has not opted-out as of yet. Okay. Yes, I have read his letters.

MR. VEACH: No policyholder objects and no health provider objects as a Friend of the Court.

THE COURT: Well, I only got one letter of support. No one objected. I got it.

MR. VEACH: No one objected.

THE COURT: You don't just get it because people want it. There's a criteria. There is a five point test essentially.

MR. VEACH: The first point, I moved by order to show cause.

Point two, I have explained my interests.

THE COURT: What are your interests again.

MR. VEACH: My interest is in the pot of money that is going to be available to the policyholders. That pot is their premium money and the federal money.

I understand that the Court has pushed this along very briskly. But, in fact, we are not even going to start the review of the claims because there's no one has been hired to audit them because of the faulty RFP put in place. That will not begin until 2017.

THE COURT: Which is how far away by the way?

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How far are we from 2017; we are not talking five years or five months, we are talking six weeks back.

MR. VEACH: I'm looking back at when the Board stepped down.

The Board stepped in Health Republic in October of 2015.

MR. STACK: That is not true.

THE COURT: What is the date? When is the date that the Board stepped down?

MR. STACK: When the liquidation was --

THE COURT: What is the date?

MR. STACK: The liquidation was May.

THE COURT: Of?

MR. STACK: This year.

THE COURT: So, May, of 2016 is when the Board stepped down and we are now in November of 2016.

MR. VEACH: That is not correct.

In October of 2015 the Board consented by resolution to an entry of an order of liquidation.

In other words, the Board said liquidation --

THE COURT: When did they step down? When did they actually -- did they --

MR. VEACH: If they continued meeting, this is news to me because they resolved in October --

THE COURT: Did they continue meeting?

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2 MR. STACK: The way the structure of the statute
3 works, is that the Board consents but then doesn't actually
4 step aside until the liquidation is --

5 THE COURT: When did they consent?

6 MR. STACK: They consented in October of 2015. And
7 the liquidation was commenced by your Honor in May of this
8 year. And the important thing, your Honor, at that point,
9 obviously DFS, which is the regulator does step in.

10 THE COURT: At what point?

11 MR. STACK: As soon as October comes in, steps in
12 and takes a much larger role but the Board stays in place
13 until May of 2016.

14 THE COURT: So the Board --the liquidator steps in
15 but when can the liquidator start taking action?

16 MR. STACK: The superintendent --it is actually
17 DFS, which is regulator, steps in; when in May, when your
18 Honor commences the liquidation, a liquidator is appointed
19 which is the superintendent. And at that point the
20 superintendent, essentially, displaces the Board and at that
21 point you have a different governance of the company.

22 MR. VEACH: Your Honor, this is the way it works.

23 When a company is in trouble, the Board can fight it
24 or the Board can consent to liquidation. This Board
25 consented in October of 2015 to be liquidated. At that
26 point, that very day, the superintendent could have moved

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2 for an order of liquidation. She choose not to. There were
3 interim superintendant. For some reason, the
4 superintendent, the regulator, did not show up in court
5 until April 22nd, 2016. During the period a lot of money
6 was spent?

7 THE COURT: By?

8 MR. VEACH: That is an excellent question.

9 I don't know. I don't know.

10 THE COURT: I understand.

11 MR. VEACH: I don't know who approved those
12 expenses.

13 THE COURT: Okay. But why are you concerned?

14 MR. VEACH: Because the pot is shrinking.

15 THE COURT: How does the pot shrinking concern you?
16 You have an interest on behalf of the public.

17 MR. VEACH: The policyholders.

18 As that pot shrinks their payments and the approved
19 claims shrinks with it.

20 THE COURT: Okay. Your concern is the
21 policyholders, not the how they are expending. But the
22 policyholders -- making sure the policyholders are made as
23 whole as possible because I want to know how to focus your
24 limitations.

25 MR. VEACH: Well, my concern is on the entire
26 process.

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And first of all, I commend the Court for putting everything online, this is extraordinary; this has never been done before.

THE COURT: What is "this?"

MR. VEACH: Posting the information, the expenses and the contracts and the information online and the transcripts has never been done in a liquidation proceeding in New York.

THE COURT: And?

MR. VEACH: This is a gigantic step forward.

THE COURT: Still you think I need help?

MR. VEACH: No, I would love to support it, your Honor. I would love to support this process, that is all.

THE COURT: Okay. Sorry.

Off the record.

(Whereupon, a discussion was held off-the-record.)

THE COURT: Back on the record.

Now, again, we know that your concern is primarily that the pot be protected to the agree possible and, as we all -- at the point that I had to leave, we understand that I have done a lot to make the pot total transparent and I will continue to. But I will also consider --and as I said, I will be stepping in early, not late, to get to the-- starting to look at how the expenditures were made and are they in the best interest of the full pot. I'm there. I'm

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almost there.

So far I don't see why I need you. Let's go to the next point.

MR. VEACH: Your Honor, here are the areas I think that would benefit from briefing.

THE COURT: Benefit from what?

MR. VEACH: Briefing. An additional brief --

THE COURT: I'm not doing an additional brief, oh, no, keep going.

MR. VEACH: All right.

At the last hearing your Honor commented, it appeared that your Honor and the clerks were doing a lot of the work here and you directed a memo be prepared on the issue the assignment of policy proceeds, that was the Northwell issue. We have not seen that.

THE COURT: Did I put a timeframe on it?

MR. STACK: No, your Honor. And, you know, it is exactly --

THE COURT: That is one of the things I always try to do, is put a timeframe, so that things move at a certain pace and they are not just sitting there when I say something needs to be done. My question is: Why not?

MR. STACK: So, your Honor, if you remember what issue that relates to, it relates to the duplicates essentially.

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THE COURT: That's right.

MR. STACK: And the work being done on the duplicates is being done now and is going to take some amount of time.

THE COURT: Okay.

MR. STACK: So the timeframe that you're going to need that information, we will have that to you long in advance because the work that is being done is being done now.

There wasn't a time set, but we understand your Honor needs that before --

THE COURT: By the way, that came up at the last session by the person who joined the group who said, I would like to be able --I would like to understand how we are going to deal with duplicate claims. We set up a mechanism right away to deal with that.

What is it that you said I asked for?

MR. VEACH: The memo had to do with the Court's capacity to offer rule provisions in the policy.

THE COURT: Right.

MR. VEACH: That was the issue. It is clearly a legal issue.

THE COURT: And I did not give you timeframe to do that?

MR. STACK: No. Because, again, what that relates

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2 to, at the end of the day after you figure out whether there
3 are duplicates, what the issue was is, let's say that a
4 policyholders made a claim --

5 THE COURT: I understand. I understand the fact.
6 But if my direction was that I need a briefing on the
7 question of the Court's ability to override a policy
8 provision, which is independent of anything that is being
9 setup, that is just law.

10 MR. STACK: Right.

11 THE COURT: That is just law.

12 MR. STACK: Right. The question was when you
13 needed it for, which is when there are completing claims
14 between the policyholders and the provider and that is going
15 to come, literally, months and months and month down the
16 road.

17 THE COURT: There could be other circumstances in
18 which there may be a provision of the policy that the Court
19 needs to know under what circumstances can you override,
20 that is all. Why is that so emergent?

21 MR. VEACH: Well, it is emergent only because this
22 is a discrete legal issue that we could get out of the way
23 quickly.

24 THE COURT: Oh, so you're saying if you were a
25 Friend of the Court you would do it?

26 MR. VEACH: I would comment on his brief.

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2 THE COURT: I don't need a comment. Why do I need
3 a comment? If I need a comment, I go upstairs to the Law
4 Department.

5 My point is, what I get is drafts and I then do my
6 own research and read. Basically what you want to do is be,
7 you know, the critic that sits -- you know, like the film
8 critic and says this is good here and this is bad here.

9 Why do I need that? Because I don't have an
10 inability to do it.

11 MR. VEACH: No. Your Honor, usually you're dealing
12 with adversaries in this courtroom.

13 In this liquidation proceeding the policyholders,
14 not a single policyholder has appeared in this courtroom
15 since May 10th.

16 THE COURT: Say that again? "Not a single
17 policyholder."

18 MR. VEACH: "Not a single policyholder has appeared
19 in court after May 10th."

20 THE COURT: That is not true. That's just not
21 true. I just happen to know because I know who is in the
22 courtroom.

23 MR. VEACH: The policyholders --

24 THE COURT: Some -- maybe not a lot but a few show
25 up. Even somebody who sat over in that corner who was
26 someone who bought policies. In other words he's still a

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policyholder. He bought claims.

MR. VEACH: He wanted to buy debt.

THE COURT: And he sat here. Your statement inaccurate. He was not the only one.

Then I had a couple of Asian Americans who was sitting over there, who nobody paid attention to who then came afterwards and I got an interpreter to come up and speak to them.

MR. VEACH: I did not know that, your Honor.

THE COURT: That is inaccurate. Keep going.

MR. VEACH: What I would like to do is provide a little bit of adversarial context here. Instead of hearing just one side of the story or from one party, simply to provide another voice.

I'm not going to brief anything that your Honor does not want to have briefed; you could say five pages, or one page, I'm not trying to burden the Court in any way. I'm just saying another voice could add value in a matter of great public interest.

THE COURT: Okay. Next point.

MR. VEACH: Next point is the balance sheet.

We have not seen the balance sheet.

THE COURT: No --

MR. VEACH: We have not seen the balance sheet. I would like to comment on the balance sheet.

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1 THE COURT: You have not seen yet?

2 MR. VEACH: It has been not been produced.

3 THE COURT: You want the ability to comment on the
4 balance sheet when it's provided. Yes?

5 MR. STACK: I would just say, the balance sheet has
6 been posted.

7 THE COURT: Posted.

8 MR. STACK: And --

9 THE COURT: Hold it. Why haven't you seen it, if
10 it was posted?

11 MR. VEACH: I wasn't aware it was posted.

12 THE COURT: You seem to be not aware of a few
13 things so far today. You say you want to be a Friend of the
14 Court, you're not keeping up.

15 MR. VEACH: I apologize if they put that one up on
16 the website without them seeing.

17 THE COURT: Well, they didn't do it around you.
18 They did it and you didn't see it.

19 MR. VEACH: I missed it, your Honor.

20 THE COURT: That is number three you missed. Keep
21 going.

22 If you want to comment on it, it is sitting right
23 there, ready for you to look at it.

24 MR. VEACH: Do I have permission to look at it?

25 THE COURT: If you are deemed a Friend of the
26

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Court, I did not get there yet.

MR. VEACH: Okay.

The other thing is a liquidation plan.

Article 74 talks about a plan where you have a Guaranty Association involved. There is no Guaranty Association in this case. I, respectfully, submit that the liquidator -- the Court consider asking the liquidator to propose a plan, to give a plan. How does the liquidator propose to wrap this estate up? How long will it take? Where is she going? A plan.

THE COURT: Go ahead.

MR. VEACH: The next area, the suites against the Federal Government.

On October 11th counsel mentioned in sort of an at the side comment, that the liquidator is considering suing the Federal Government. I would like to hear -- have an opportunity to address and comment on the suits and also ask, respectfully, why those suits have not been commenced. There are many suits across the country that have already been commenced.

THE COURT: Okay. The ability to say -- this is how I envision if he were allowed to take on the role as the Friend of the Court, that he would contact the Court and say, I think it would be timely for the liquidator-- hypothetically, to commence Federal actions and why; which

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2 is, say, something I may not be addressing at any given
3 point but he's beginning it to the fore, and then you would
4 get to respond and say why it isn't, or shouldn't be done or
5 isn't done at this juncture and why. So that is how I
6 envision some of what he could be able to do working.

7 MR. STACK: We would strenuously argue, your Honor,
8 that that is a mistake by the Court and I would like an
9 opportunity to argue. We think that --

10 THE COURT: That is the point. You see, without
11 somebody raising it in his capacity, it is not on my front
12 burner; you see what I am saying?

13 MR. VEACH: Yes.

14 THE COURT: And this is the ability to put things
15 before the Court that may not be on the Court's agenda but
16 maybe needs to be, or somebody who may say, let's say, can I
17 give you an outline of what should be some agenda items you
18 should follow or a timeline on what you should be looking at
19 that you may not have thought about.

20 Keep in mind, in the capacities that I'm in, I'm
21 not looking to organize the liquidation from here; I'm
22 managing and ruling. But having somebody else look at the
23 organization of the liquidation is not harmful to the Court.
24 And I will -- what I would like to understand is how is the
25 role he anticipates harmful to the liquidator?

26 MR. STACK: Your Honor, I think that is a fair

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question.

Let me start by saying that the motion to be a Friend of the Court, the way it is being positioned and the way Mr. Veach position it as raising issues with the Court is wholly unprecedented.

THE COURT: That is the second time I've been told unprecedented.

First I've been told by making everyone go on the web is unprecedented. If somebody thinks what I have done on that is wrong, they need to tell me so that I could slow down.

Unprecedented is not a word that frightens me and not a word with which I'm unfamiliar. So my thing is, if it is necessary, I do it. Unprecedented is not going to shake a tree; give me something better.

MR. STACK: Let me say it differently.

It is prohibited by the cases. It is prohibited --

THE COURT: Directly prohibited, expressly prohibited by case law that says one cannot be appointed, or assigned, or allowed to stand in as a Friend of the Court, direct case.

MR. STACK: If you look at --

THE COURT: Case law.

MR. STACK: If you look at, for example, the Kemp case or if you look at the Kruger factors. Your Honor, as

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your Honor is aware in the Steglich, which your Honor had and applied the Kruger factors.

One of the Kruger factors specifically set out why you need a pending motion or application before you have a Friend of the Court. In other words, what a Friend of the Court cannot do is tell the Court, cure the issues that you have to decide. Here are the issues that the parties need to decide.

Instead, what a Friend of the Court or AMICUS has done, if you look at the factors it is clear is, where there is a pending motion --for example, your Honor, down the road, if your Honor says we are going to have a hearing on expenses, and here is what that hearing is going to be, at that point there can be an application for a Friend of the Court or AMICUS, and we could look at whether or not it is appropriate at that time for somebody to put in a motion. And the Kruger factors --and this is really critical -- the Kruger factors all, if you read them, anticipate a pending motion. And why is that? Because, for example, one of the things you would have to put in is a proposed AMICUS brief. You cannot put in an opposed AMICUS brief unless there's a specific pending motion in front of you.

THE COURT: That is actually accurate.

MR. STACK: Your Honor, let me back up a second --

THE COURT: Traditionally he is right.

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Historically, traditionally, it is an AMICUS brief. It is a submission related to an issue. It is not as if I am hiring a referee or a third law secretary-- not even that. But, you know, it is not --the factors go to, and when you go through the list, the factors go to what would allow to you make a submission before the Court on an issue that is a motion, essentially.

Let me just say, no one has given -- I don't think you've given me, and if you have I just haven't gotten to it, a case that says one can be in the role which you are seeking, which is not a brief but, basically, a seat at the table --

MR. STACK: And your Honor -- -

THE COURT: --generally.

MR. STACK: What is interesting about that your Honor --

THE COURT: No. No. If he has a case that says he could have a seat at the table, I want to know. I have to admit, if there is such a case I have not read it.

MR. STACK: There isn't.

MR. VEACH: I did cite a case. I'm looking at it here. It is an old case in which AMICUS appeared during the trial and actually questioned one of the witnesses in New York State Supreme Court case --

THE COURT: Who and when?

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1
2 MR. VEACH: It is an old case. It was 1940's. It
3 had to do with rent control.

4 THE COURT: Well old doesn't necessarily mean no
5 longer valuable.

6 MR. VEACH: The other --while I'm looking for that,
7 there's another point --

8 THE COURT: No, I cannot get off that point that.
9 Is a major point.

10 Point being that, if there is no precedent for
11 allowing you to basically just be deemed a Friend of the
12 Court, then let me just say I'm not inclined to make new
13 law like that. But keep in mind, I don't need you to be
14 officially made a Friend of the Court to keep you totally
15 appraised, advised, and allow you to let me know what you
16 think I need to be doing, which of course I would
17 appreciate.

18 MR. VEACH: One of the cases Dawn versus Silberman,
19 185 Misc. 335. And it is cited at Page 5 of my brief.

20 THE COURT: Okay.

21 MR. VEACH: In that one, here is what the Court
22 said "If the interrogations are competent at all, the Court,
23 in its discretion, should be able to enlist the aid of its
24 friend in obtaining the answers as long as it is done within
25 the issues. This is particularly true where the public has
26 a paramount interest in seeing that the regulations are

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enforced and not a mere stranger."

THE COURT: Who is the Judge by the way?

MR. VEACH: I don't know. I did not put it down.

This case goes back to 1944.

THE COURT: Right.

MR. VEACH: Here is another one --

MR. STACK: --your Honor let's --

MR. VEACH: If I may --

THE COURT: I interpreted you by the way, it wasn't him.

MR. VEACH: Quote "Where a person is uniquely qualified to give relevant testimony, the Court in exercising its discretion may call the amicus curiae to give testimony." That is Kruger 1 Misc.3d 196, citing Matter of George Joey S.

THE COURT: Let me ask you, when you say "it is prohibited." You've told me how it has been used in cases. But tell me where it is expressly prohibited. You said "it is prohibited by cases." I want to know what case prohibits the Court from saying, I am going to allow you to function in this proceeding as an informal Friend of the Court. Tell me where it says I can't do that.

MR. STACK: Well, if your Honor --

THE COURT: No, you said it is prohibited. I want

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to know.

MR. STACK: I think I am, your Honor; which is that, if you follow the Kruger factors, you can't allow -- it doesn't fit under the Kruger factors.

THE COURT: That is a different thing than saying something is prohibited. Saying that it doesn't fit as an amicus, which is Kruger; Kruger is amicus. Where it doesn't fit as amicus where it is a brief, it doesn't say it is prohibited as permissive discretionary act by the Court to have someone informally act as Friend of the Court during the proceeding with respect to this liquidation.

MR. STACK: So I would say, your Honor, when you look --

THE COURT: So we agree it is not prohibited?

MR. STACK: No, we don't.

THE COURT: You can't show me where it is.

MR. STACK: So, as I said, your Honor, if your applying some standard; otherwise, what I imagine is, your Honor, someone would say that someone without an interest in the case, and any case can come into the Court and say, your Honor, this seems like an interesting case. I was reading the docket and you know what? I think there are things here that you should know your Honor. So I would like to be a Friend of the Court.

And in the history of New York jurisdiction

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1
2 prudence there is not a single case that has set a standard
3 for or allowed that to happen. And there's a reason that
4 Kruger says you need an interest. There's been a little
5 skating here, right. You need an interest in order to be
6 Amicus or a Friend of the Court. There is no interest
7 here --

8 What you have, you have a lawyer who has
9 absolutely --

10 THE COURT: Put a period there and that is enough
11 to disqualify. You have a lawyer, that's it, kick him out.

12 MR. STACK: Absolutely no interest. If you can--
13 if the interest that he says he has, which is the
14 policyholders' interest; that would mean that any person --
15 any person would have a sufficient interest to be an Amicus.

16 Your Honor, what I think what I would like to do is
17 put this a little bit in context. I think your Honor is on
18 the exact right tract, which is, when you look at what has
19 happened in this case in a very very short time, there has
20 been a lot that has happened. So let's take it step-by-step
21 to make sure your Honor has this in mind because it is
22 important.

23 Prior to the liquidation order being signed in
24 November. So, the Board at the end of October consents to a
25 liquidation.

26 THE COURT: 2015.

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MR. STACK: That's right.

In November the Regulator, that is the Department of Financial Services, issued a stop payment order. What that meant was that --

THE COURT: Yes. 11/20/15 --

MR. STACK: There's stop payment order. What that meant was, is that there were no expenses of Health Republic that could be paid without the regulator's approval prior to the liquidation. That added the protection to make sure that there weren't just expenses and money that was going out the door prior to your Honor issuing a liquidation order which occurred in May of 2016. So we have only had the liquidation going on for six months. At that time the superintendent is designated as the liquidator. This is really an important piece.

The Legislature has determined that the superintendent -- this is all statutory -- acts as the independent voice for policyholders and creditors.

In other words, it didn't say I want management of Health Republic to continue on like you might in bankruptcy. It takes management out and says, we are going to have an independent liquidator come in, whose completely independent. And that is why you don't need -- and, in fact, it is contrary to the statute to have what Mr. Veach says, is an adversarial context to the liquidation. It is

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1 exactly what the Legislature did not want. Because what it
2 said was, that you have an independent liquidator that is
3 coming in, not management, a new person who has no stake in
4 this other than to see that policyholders and creditors get
5 the highest recovery. And what happened in those six
6 months?
7

8 You're exactly right when you say you've been
9 pushing us and we have been pushing ourselves.

10 At the time of the liquidation notice was provided
11 to more than 200,000 policyholders and creditors. The
12 liquidator set up a website and call center where
13 policyholders could obtain information and help resolve
14 issues that they have.

15 And it is really important. Mr. Veach says, well
16 there's no policyholders that is come in; that is a good
17 thing. Because there has been an awful lot of information.

18 As Mr. Veach says, we have an unprecedented amount
19 of information on the website and no policyholders coming in
20 is a good thing, it shows that the --

21 THE COURT: And in English and Spanish.

22 I made sure you covered people who for English who
23 was not --you had a lot of Latino policyholders on that
24 first day, which clearly indicated to the Court. And I
25 asked them to raise their hand if they needed an interpreter
26 and so many hands went up. So we are covering the real

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important people, the policyholders.

But the other factor that is critical is to secure the pot. And to me, that is the area that your interest is the securing of the pot, to make sure the pot is not being dissipated improperly to the detriment of the policyholders.

As I said earlier, I'm really on top of making going to make sure that happens. And let me just say, not that I'm adverse to taking on something and doing something that no one has done; but I don't -- if it doesn't appear to be warranted, I don't need to do it. And my point is, I don't have to give you any official title for you to continue to be the fly in the ointment, in a good way ointment. All you have to do is just keep doing what you are doing. If you write to the Court and say, you know, I think you should really speak to them and get them to consider Federal cases. I will follow-up on it. I follow-up -- as you all know, I do everything online and I would like you to think in terms of Skype, which I can do, and you don't have to calm down here. We could do this without making a trip.

But the point is, you could do all of what you are doing without my writing a case of first impression, creating something that may -- the Appellate Division will probably reverse immediately because they don't want to open a flood door. They don't want to open a flood gate of

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1 saying, Oh, anybody could do that, as he argues, which I
2 would be doing. Anybody without a direct interest could
3 step in and say, I'm concerned about the policyholders;
4 anyone could do it.
5

6 MR. VEACH: Weil Gotshal has a thriving Amicus
7 practice. They are to Supreme Court and other courts all
8 the time.

9 THE COURT: That is an amicus practice with a
10 brief.

11 MR. STACK: With a client, your Honor.

12 MR. VEACH: I understand. And they go in by
13 stipulation, people allow them to file these briefs. And
14 they bring to the Court's attention the things that they
15 think are important.

16 THE COURT: By brief. They don't do it --

17 MR. STACK: With a client by brief. We have
18 clients.

19 MR. VEACH: Now, this proceeding is a special
20 proceeding, as counsel keeps reminding us. It is special
21 proceeding. It is unique.

22 This Court has the complete and total authority.
23 The liquidator could do nothing. I would cite a couple of
24 cases here including Bondholders versus Joyce. They can
25 take no step of consequence without this Court's approval.
26 This Court has the right -- evert court shapes it is

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1 liquidation proceeding the way they choose. Justice
2 Stallman does it a way, Justice Gammerman does it a certain
3 ways, there is no such thing as a precedent in these
4 proceedings.
5

6 THE COURT: If there has never been a Friend of the
7 Court appointed who had no interest and not related to the
8 brief, that is considered precedent.

9 MR. VEACH: But there have been committees of
10 policyholders -- of sedente and major policyholders and the
11 insurers--

12 THE COURT: Those are policyholders, people with
13 interest; policyholders, insurers, they have an interest.

14 You see, what I said was not a amicus, not a
15 policyholder; you know what I mean? Those examples you gave
16 are people with an interest.

17 Look, nothing is preventing you from continuing to
18 interject, Interceed, volunteer, write to the Court and say
19 why don't you have them look into -- as you did -- why
20 federal cases were brought and I will, of course, do it
21 forthwith.

22 But also, like you just brought up today, you said,
23 why haven't they yet given you a brief and they have a
24 brief, the ability to override a policy provision. And
25 you're saying, well, we decided you don't need that now.
26 That is my fault. I should have given you a timeline and

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1
2 said I want it by "X."

3 MR. STACK: And we apologize --

4 THE COURT: You see --

5 MR. STACK: --if you wanted it earlier.

6 THE COURT: You see, I should have -- I try to put
7 timelines, closed dates on everything so that things are not
8 open ended indefinitely.

9 MS. HOEHNE: Your Honor, we do have a draft in
10 progress. We have a new special deputy superintendent who
11 joined and we would like for him to review the draft before
12 it is submitted.

13 THE COURT: Let me just say, I want a draft
14 in 60 days.

15 MS. HOEHNE: Perfect. He could have it to you by
16 then.

17 MR. STACK: Not a problem.

18 THE COURT: I want a draft in 60 days. I will try
19 to remember that any time I ask for something to put
20 timeline on it.

21 The point is, you're getting all the ability to do
22 what you want without me taking an official unprecedented
23 posture. And I'm inclined to stay that way unless things
24 change.

25 MR. STACK: I would like to give you a little
26 comfort on one thing --

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THE COURT: One thing.

MR. VEACH: Your Honor, with respect to the letter. When I wrote my September 30th letter, and I appreciate your Honor putting it on the website, no one ever responded to my letter. And, you know, I would ask that there be a response to the letter; that is one thing.

THE COURT: No. I am going to tell you right now, no.

I'm not going to require the liquidator or counsel to the liquidate to respond to your letters. That is doing what I just said I am not going to do. You write to the Court, the Court will decide what the Court wants to do and I may add you to the agenda or create or say I'm bringing everyone in and I want to discuss an issue. I'm not going to require that they respond to your letters, no.

Off the record.

(Off-the-record discussion held.)

THE COURT: Back on the record.

That is unofficially doing what I just said I am disinclined to do.

I'm not going to require that they respond to whatever you decide you feel like writing about what is going on, I'm not doing that, that is a no.

MR. VEACH: Your Honor --

THE COURT: You said one thing. That was one

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1
2 thing. Yes.

3 MR. STACK: I just want to give your Honor the
4 comfort to know that the liquidator --

5 THE COURT: Off the record.

6 (Whereupon, a discussion was held off-the-record.)

7 THE COURT: Go ahead.

8 MR. STACK: Mr. Veach raised an issue that I can
9 tell you is like a laser beam is being considered and
10 actively considered by the liquidator; and that is the
11 claims portion of bringing in money from the Federal
12 Government.

13 What I will tell the Court, your Honor, and your
14 Honor obviously recognizes this. We are looking at claims,
15 as had, by the way, a number of other insurers who under
16 Obama Care, who were under the same federal program. But
17 all the work being done is an attorney-client and work
18 product. It would be completely inappropriate for us to be
19 sharing publicly our strategy for litigation, our research
20 for litigation, our timing for litigation.

21 What I can tell you --

22 THE COURT: You see, that is another reason why I
23 could not give you that that category. Because then I would
24 almost be obligated to share with you all of what they are
25 doing and I'm never going to do that. That would just be --
26 that would be an unnecessary --I would be giving you another

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layer of review which I am not going to do.

Yes.

MR. STACK: Look, your Honor, where feel very strongly. I think your Honor is on the right tract here.

The only other point I would point out is, the scheme of Article 74 is --and I think it is important here -- as I have said, the Legislature appointed the liquidator. There's one very key difference between Article 74 and other special proceedings.

Article 74 specifically prohibits interveners. Why is that?

The Legislature decided, since I am putting in an independent liquidator I don't need a watch dog.

THE COURT: Tell me the sentence and the section that says interveners are prohibited. Tell me the section and the sentence that says interveners are prohibited?

MR. STACK: Your Honor --

THE COURT: No. No. You said that they specifically --

MR. STACK: They are prohibited --

THE COURT: No. No.

The Legislature you said expressly said interveners are prohibited. No one says anything in this courtroom that they can not backup and not by just talking. You said they did. Show me the section that says that. I know it is not

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there.

Move on. Move on. You mean the intent was --that is what you believe was the intent. There's not a sentence that says interveners are prohibited.

MR. STACK: Let me say it differently. Your Honor asked a fair question.

THE COURT: Thank you.

MR. STACK: Because of Article 74 does not provide for, the Courts --and other special proceedings have -- the Courts have expressly stated that Article 74 does not allow intervention. That is the Fidget Court. And I could get you the cite for that.

THE COURT: Do you have it?

MS. HOEHNE: 975 NYS2d 709 (2013).

MR. STACK: That is based on an interpretation of the statute where it doesn't provide --

MS. HOEHNE: It was in Supreme Court, New York County.

THE COURT: What judge?

MS. HOEHNE: Judge Ling-Cohan.

THE COURT: Move on.

MR. STACK: And not surprisingly there has never been an intervener in an Article 74.

THE COURT: Let me just say, without any conditions, I would not follow that without doing my own

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research and writing.

MR. STACK: Fair enough, your Honor.

THE COURT: But back to the point. At this juncture, the Court greatly appreciates -- I appreciate all that you have done thus far and I anticipate and expect that you will continue.

MR. VEACH: Thank you.

THE COURT: I appreciate your role.

But I am going to deny, with great appreciation for what you have done and what I hope you will continue to do, I'm going to deny the application. But I invite you to continue to support and help.

MR. VEACH: Thank you, your Honor. I think you've done me a favor also and I appreciate those kind words.

THE COURT: Okay. Now, the transcript is so Ordered and I want that one uploaded too. I really do appreciate it.

MR. VEACH: Thank you.

THE COURT: We will see.

If at some point I feel the need to revisit this and say I do need someone, I will have prepared my own decision sufficiently to support it.

MR. STACK: So, your Honor, I would say one other thing.

Your Honor, we have, as a liquidator, we invite

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anybody who wants to raise issues with the liquidator,
instead of the Court --

THE COURT: Go directly to them.

MR. STACK: We agree that we don't necessarily,
because of the time and effort, and because of the
attorney-client work product that goes-- your Honor, we
cannot respond necessarily.

What I could tell your Honor is that we also will
look at whatever someone --not Mr. Veach but anybody sends
us --has issues. As I said, we've had 20,000 calls to our
call center.

THE COURT: Wow.

MR. STACK: We have resolved all of the issues that
people have had given us.

MS. HOEHNE: Over 45,000 visits to the website,
33,000 unique users. There is a lot of public
participation.

THE COURT: This is not the first time you have
done the website, right, but you have had a great response.

MR. STACK: Yes.

THE COURT: But this website has a lot on it whole
lot on it and you have links, people can link.

MR. STACK: Yes.

THE COURT: Excellent.

MR. STACK: The point is, your Honor, what is

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1 particularly damaging here is to try to be adversarial. Mr.
2 Veach wants to provide information and say, hey, liquidator,
3 make sure you're looking at this. I promise you, the
4 liquidator is doing her job and is in fact looking at it; we
5 don't need adversarial process. We can do this.
6

7 THE COURT: I will ask that you remind the Court
8 because I do have a pretty -- I have almost 900 cases. So
9 it would not be -- it would not offend if you remind the
10 Court sometime around MLK Day in January that the Court said
11 it would start setting up and looking at expenditures. I do
12 want to do that.

13 MR. STACK: I think this is also an important thing
14 because your Honor will remember this as this happened.

15 So, when the liquidation is started --and this is
16 very typical. It has happened in a number of other cases.
17 There's a liquidation order put in place. And the
18 liquidation order provides a number provisions-- remember we
19 are talking 200,000 policyholders and the like -- one of
20 provisions, very standard, it makes sense it is standard,
21 the Court authorizes and needs to authorize because
22 otherwise it would completely hamstring the ability to
23 administer the estate, that expenses could be paid in the
24 ordinary course.

25 THE COURT: That was done way back by this Court.

26 MR. STACK: Yes.

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1
2 THE COURT: But that doesn't stop review and say
3 let's go through it, you see what I mean?

4 MR. VEACH: Yes.

5 MR. STACK: What happens, your Honor, this is
6 typical in these and I can tell you is what we intend to do
7 is somewhere out -- it is right in your Honor's timeframe,
8 between a year and 18 months, that would typically be a
9 report filed with the Court which goes through the expenses,
10 so your Honor is aware of the expenses that had been paid
11 according to the Court authorization but had been paid.
12 That is very typical in these and that is, in fact, what the
13 liquidator was planning on doing.

14 THE COURT: When you say a year and 18 months --if
15 you are talking a year and 18 months from the time the Court
16 intervenes, it will be much sooner than that.

17 MR. STACK: That is May. We can work with the
18 Court and provide a report in the timeframe that your Honor
19 wants to see it.

20 THE COURT: Sure.

21 MR. STACK: That would be very typical and,
22 obviously, we are working towards that and I just want you
23 to know that things are happening exactly the way they
24 should be happening here.

25 THE COURT: Good. Good.

26 Okay. The transcript is so Ordered. I'm sorry for

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the interruption I had but I had to take care of that.

First, have a wonderful Holiday season but also stay in touch.

MR. STACK: Thank you.

MR. VEACH: Thank you.

THE COURT: You were very convincing.

MR. VEACH: Thank you.

(Whereupon, the proceedings concluded.)

* * *

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.


DEBORAH A. ROTHROCK, RPR
Official Court Reporter


SO ORDERED

CAROL EDMOND
J.S.C.

\$				
\$100,000 (1)	adversarial (4)	appeared (4)	17:15	beginning (1)
3:18	21:13;32:26;44:2,6	17:13;20:14,18;	assignments (1)	24:3
\$2,000 (1)	adversaries (1)	27:23	3:8	behalf (1)
8:18	20:12	Appellate (1)	assistance (1)	15:16
\$398,000 (1)	adverse (1)	34:24	6:14	benefit (2)
6:14	advised (1)	applicable (1)	association (3)	17:6,7
\$4 (1)	28:15	5:25	2:19;23:6,7	best (1)
6:10	affidavit (1)	application (5)	assume (1)	16:26
\$5,000 (3)	2:23	2:2;10:26;26:5,15;	6:22	better (1)
11:18,19,23	afterwards (1)	42:12	attention (2)	25:16
	21:8	applied (1)	21:7;35:14	big (1)
	again (5)	26:3	attorney-client (2)	8:22
	7:4;12:17;16:19;	applying (1)	39:17;43:7	bills (1)
	18:26;20:16	30:19	attorneys (1)	9:21
A	against (1)	appointed (4)	3:7	bit (2)
ability (11)	23:13	14:18;25:20;36:7;	audit (1)	21:13;31:17
4:2;8:14,14,24;	agenda (3)	40:8	12:24	Board (13)
19:7;22:4;23:22;	24:15,17;38:14	appraised (1)	authority (2)	13:4,6,10,16,19,21;
24:14;36:24;37:21;	aggressively (1)	28:15	3:22;35:22	14:3,14,20,23,24,24;
44:22	5:21	appreciate (6)	authorization (1)	31:24
able (6)	agree (3)	28:17;38:4;42:5,9,	45:11	Bondholders (1)
5:22,22;7:9;18:15;	16:20;30:15;43:5	15,18	authorize (1)	35:24
24:6;28:23	ahead (5)	appreciates (1)	44:21	both (2)
absolutely (2)	10:11,12;11:24;	42:5	authorizes (1)	8:11,26
31:9,12	23:12;39:7	appreciation (1)	44:21	bought (2)
according (1)	aid (1)	42:10	available (1)	20:26;21:2
45:11	28:23	appropriate (1)	12:19	Bransten (2)
accurate (1)	allow (6)	26:17	aware (6)	4:23;5:5
26:24	27:6;28:15;29:22;	approval (4)	2:26;9:13;22:12,13;	breakdown (1)
across (1)	30:4;35:13;41:11	6:9,11;32:9;35:25	26:2;45:10	9:18
23:20	allowed (3)	approve (5)	away (3)	brief (18)
act (2)	23:23;25:21;31:3	3:22;4:24;5:6,7;	7:9;12:26;18:17	2:12,24;17:8,9;
30:10,11	allowing (1)	6:12	awful (1)	19:26;21:16;26:21,
action (1)	28:11	approved (5)	33:17	22;27:2,12;28:19;
14:15	almost (4)	3:26;4:6,7;15:11,18		30:9;35:10,16,17;
actions (1)	4:16;17:2;39:24;	April (1)	B	36:8,23,24
23:26	44:8	15:5	back (16)	briefed (2)
actively (1)	along (1)	area (2)	3:4,14,14,19;4:6,7;	2:24;21:17
39:10	12:21	23:13;34:4	6:20;9:10;13:3,4;	briefing (3)
acts (1)	always (1)	areas (2)	16:18;26:25;29:6;	17:6,8;19:6
32:18	17:20	2:24;17:5	38:19;42:4;44:25	Briefly (1)
actually (5)	Americans (1)	argue (2)	backup (2)	2:13
13:23;14:3,16;	21:6	24:7,9	10:22;40:25	briefs (1)
26:24;27:24	Amicus (16)	argues (1)	bad (1)	35:13
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