

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

JAMES H. BLEVINS, ETC.,)	
)	
Plaintiff,)	Case No. 2:02CV00043
)	
v.)	OPINION AND ORDER
)	
BHAGVAN SHESHADRI, M.D., ET AL.,)	By: James P. Jones
)	United States District Judge
Defendants.)	

Anthony M. Russell, Gentry Locke Rakes & Moore, Roanoke, Virginia, for Plaintiff; R. Lucas Hobbs, Woods, Rogers & Hazlegrove, P.L.C., Roanoke, Virginia, for Defendant Norton Community Hospital, Inc.

The defendant hospital in this medical malpractice case arising under state law seeks a stay of the proceedings because its liability insurance carrier, Reciprocal of America, is in financial difficulty. For the reasons set forth in this opinion, I will grant a temporary stay pending further state administrative proceedings.

I

The plaintiff filed this wrongful death action alleging that the plaintiff's decedent, James B. Blevins, died as a result of negligent medical care provided to him while undergoing surgery on August 19, 2000, in a facility operated by Norton Community Hospital, Inc. ("Hospital"). In addition to the claim against the Hospital,

the plaintiff also asserts that a surgeon, Bhagvan Sheshadri, M.D., and his employer, B. Sheshadri, M.D., P.C., are liable, as well as the estate of a deceased nurse anesthetist, James Preston Levya, and his employer, PMAG, Inc. These claims all arise under Virginia law.¹ Suit was filed by the plaintiff on March 14, 2002, and trial is now scheduled in this court to begin on June 30, 2003.

The Hospital is insured for the claim made in this action under a policy of liability insurance issued by Reciprocal of America (“ROA”). Under its insurance policy, ROA is bound to pay the Hospital’s costs of defense and any judgment that might be entered against it. ROA is a Virginia-domiciled reciprocal insurer.² On January 29, 2003, ROA was placed into receivership because of its financial difficulties. Under this receivership, ROA continued to pay claims. However, on April 30, 2003, the State Corporation Commission of Virginia (“SCC”) entered a temporary injunction suspending all hospital professional liability insurance claims

¹ Jurisdiction of this court exists pursuant to diversity of citizenship and amount in controversy. *See* 28 U.S.C.A. § 1332(a) (West 1993 & Supp. 2002).

² A “reciprocal” is defined under Virginia law and is permitted to engage in the insurance business when duly licensed. *See* Va. Code Ann. §§ 38.2-1201, -1202 (Michie 2002).

by ROA.³ The SCC further scheduled a hearing to be held on June 19, 2003, in order to determine whether ROA is insolvent and should be liquidated.⁴

Thereafter, on May 2, 2003, the Hospital filed the present motion in this court seeking a stay of further proceedings involving the Hospital. The Hospital primarily relies on a provision of Virginia insurance law, Va. Code Ann. § 38.2-1616 (Michie 2002), requiring that all court proceedings in which an insolvent insurer is obligated to defend a party be stayed for at least six months in order to permit the Virginia Property and Casualty Insurance Guaranty Association (“Guaranty Association”) to undertake the defense of the action. The Hospital’s Motion to Stay has been briefed and argued and is ripe for decision.⁵

³ See *In re Doctors Ins. Reciprocal, RRG*, No. INS-2003-00092 (Va. State Corp. Comm’n Apr. 30, 2003). ROA primarily wrote hospital professional liability and workers’ compensation insurance. The payment of workers’ compensation claims was not enjoined by the SCC.

⁴ The latest annual statement filed by ROA with the SCC indicates that its liabilities exceed its admitted assets by at least \$200 million. See Application for Orders at 3, *Commonwealth v. Reciprocal of Am.*, No. INS-2003-00024 (Va. State Corp. Comm’n Apr. 30, 2003).

⁵ The other defendants do not object to the Hospital’s motion; only the plaintiff objects.

II

In deciding the Hospital's motion, I assume (and the plaintiff does not contest) that principles of comity would likely persuade this court to apply the provisions of section 38.2-1616, even though the state statute is not binding. *See Estate of Hupp v. Howard County Sheriff*, No. IP00-1544-CH/K, 2002 WL 425405, at *2 (S.D. Ind. Feb. 22, 2002) (granting stay because of state liquidation order of party's insurer). However, as the plaintiff points out, the statute is not now applicable because ROA has not yet been declared insolvent. *See Va. Code Ann. § 38.2-1603* (Michie 2002) (defining "insolvent insurer" as one "against whom an order of liquidation with a finding of insolvency has been entered."). It may well be that a finding of insolvency is inevitable, but the same considerations of comity that would allow me to apply section 38.2-1616 also inhibit me from a premature prediction of the decision of the state adjudicatory body.

Nevertheless, under the circumstances of this case, because of the uncertain circumstances in which the Hospital finds itself, I believe it is appropriate to grant a limited stay in this case until the status of ROA is determined. It does not appear that the plaintiff will be prejudiced by such a stay and indeed may be benefitted if in fact

ROA is declared insolvent and the Guaranty Association undertakes the payment of claims.⁶

The other defendants, while not objecting to the Hospital's request for a stay, ask to be severed from any such stay, so that they might proceed to a determination of their liability. However, I agree with the plaintiff that because of the close interrelation of the claims that are the subject of this case, it would be unfair to the plaintiff not to stay the entire case. Because this stay will not permit the parties to adequately prepare for the trial now scheduled, the current trial date will be cancelled.

III

For the foregoing reasons, it is **ORDERED** as follows:

1. The Motion for Stay is granted in part;
2. This action is stayed pending the determination by the State Corporation Commission of Virginia of the pending application for the liquidation of Reciprocal of America, Case No. INS-2003-00024, now set for hearing on June 19, 2003;
3. The current trial date is cancelled; and

⁶ The plaintiff also contends that ROA is not eligible in any event for payment of claims by the Guaranty Association because it is a "risk retention group" and excluded by statute from coverage. *See* Va. Code Ann. § 38.2-1601(9) (Michie 2002). However, there is no evidence that ROA is so defined.

4. In the event that the application for liquidation as described above is refused or denied, the court will reset this case for trial; in the event that the application for liquidation is granted and there is a finding of insolvency, the stay of this action will continue in effect until further order of this court and the court will consider any further requests by the parties for a stay or for a termination of the stay.

ENTER: May 16, 2003

United States District Judge