

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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In Re: First Sealord Surety, Inc.)
in Liquidation)
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No. 1 FSS 2012

ORDER

Upon consideration of the Application for Limited Intervention by St. Paul Mercury Insurance Company, and any or all responses thereto, it is ORDERED, ADJUDGED and DECREED that the application is GRANTED. St. Paul is hereby granted the right to intervene in this proceeding. Further, the application for relief attached to St. Paul's intervention application is deemed filed as of the date of this Order. *See* Pa. R. App. P. 3775(d). Any response to the Application for Relief By St. Paul Mercury Insurance Company shall be filed within 20 days.

BY THE COURT,

DATED: _____

_____, J.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: First Sealord Surety, Inc.
in Liquidation

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ORDER

Upon consideration of the Application for Relief by St. Paul Mercury Insurance Company ("St. Paul"), and any responses thereto, it is hereby ORDERED, ADJUDGED and DECREED that the application is GRANTED. St. Paul is hereby authorized to expend Defense Costs under the subject Policy⁴ in connection with these matters: (1) *EEI Holding Corp. d/b/a EGIZII Electric, Inc. v. Gary Bragg et al.*, Case No. 2012 L 0172 (Ill. Cir. Ct.); and (2) *Michael Consedine v. Kenneth Brier et al.*, Case No. 11 FSS 2012 (Pa. Commw. Ct.).

BY THE COURT,

DATED: _____, J.

⁴ St. Paul's SelectOne for Insurance Companies Policy No. 563CM1812.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: First Sealord Surety, Inc.)
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No. 1 FSS 2012

NOTICE OF INTERVENTION

PLEASE TAKE NOTICE, that St. Paul Mercury Insurance Company moves to intervene in this matter and for other relieve, relying upon the accompanying pleadings dated the 6th day of December, 2012, and all pleadings and proceedings heretofore had herein. The known parties appearing in this action are:

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Preston M. Buckman
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his Official Capacity as Statutory*

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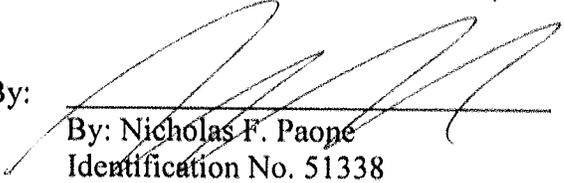
Liquidator of First Sealord Surety, Inc.
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Dated: December 6, 2012

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: First Sealord Surety, Inc.
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**APPLICATION FOR LIMITED INTERVENTION
BY ST. PAUL MERCURY INSURANCE COMPANY**

NOW COMES St. Paul Mercury Insurance Company (“St. Paul”), by undersigned counsel, and applies for limited intervention in this proceeding pursuant to Rule 3775 of the Pennsylvania Rules of Appellate Procedure. As set forth more fully below, St. Paul seeks entry of an order authorizing the expenditure of defense costs under a directors and officers liability policy issued to Sealord, LLC. This application presents the discrete issue of whether the D&O policy proceeds are an asset of the liquidation estate or, as St. Paul has concluded, a non-estate asset belonging to the former directors and officers (the “D&Os”) of First Sealord Surety, Inc. (“First Sealord”) that can be utilized to defend the D&Os in certain pending actions. If, however, the Court concludes that the D&O policy proceeds are an estate asset, St. Paul seeks leave, based on the Court’s equitable powers, to disburse policy proceeds to pay for the D&Os’ defense in the referenced pending actions. In further support of this application, St. Paul states as follows:

1. St. Paul issued a management liability insurance policy to Sealord, LLC for the policy period from October 17, 2011 to October 17, 2012 (the “Policy”). Subject to all of its terms and condition, the Policy affords \$3 million in coverage for the D&Os, as well as for First Sealord.

2. On June 29, 2012, certain D&Os were sued in a lawsuit styled *EEI Holding Corp. d/b/a EGIZII Electric, Inc. v. Gary Bragg et al.*, Case No. 2012 L 000172 (Ill. Cir. Ct.) (the “EEI Action”). On September 4, 2012, certain D&Os were also sued in *Michael Consedine v. Kenneth Brier et al.*, Case No. 11 FSS 2012 (Pa. Commw. Ct.) (the “Liquidator Action”). The D&Os have since tendered the EEI and Liquidator Actions for coverage under the Policy. St. Paul is not aware of any Claims made against Sealord that potentially could be covered under the Policy.

3. St. Paul is currently proceeding with these matters under a full and complete reservation of rights. St. Paul’s reservation includes the right to deny coverage or otherwise amend its coverage analysis as additional information becomes available. In the meantime, however, St. Paul has an obligation to defend the D&Os in response to the EEI and Liquidator Actions. Significantly, though, any incurred defense costs will reduce the Policy’s \$3 million limit of liability.

4. St. Paul therefore seeks the entry of an order authorizing the expenditure of defense costs in connection with the EEI and Liquidator Actions. As discussed in St. Paul’s Application for Relief (attached as Exhibit A), such an order would be appropriate because the defense costs are *not* property of First Sealord’s liquidation estate. Rather, they are insurance proceeds that belong exclusively to the D&Os, who qualify as insureds under the Policy. Moreover, even if the defense costs were deemed to be estate assets, there would be good cause to modify any applicable stay. The D&Os have already been sued in the EEI and Liquidator Actions. If St. Paul were barred from expending defense costs, St. Paul would be precluded from defending the D&Os in a manner consistent with the Policy and the D&Os could be denied a funded defense in accordance with the Policy’s terms.

5. Rule 3775 provides that intervention “shall be allowed if the proven or admitted allegations of the application establish a sufficient interest in the proceedings, unless the interest of the applicant is already adequately represented or intervention will unduly delay or prejudice the adjudication of the rights of the parties.” Pa. R. App. P. 3775(c).

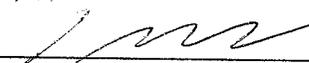
6. St. Paul has demonstrated a “sufficient interest” in this proceeding. As discussed in St. Paul’s Application for Relief, the threshold issue is whether the D&Os’ defense costs constitute non-estate assets. This issue falls squarely within the Court’s jurisdiction as set forth in its Liquidation Order of February 8, 2012. (*See* Order of Liquidation, ¶ 4 (stating that “this Court asserts . . . exclusive jurisdiction over all determinations as to whether assets belong to First Sealord or to another party”); *see also Koken v. Legion Ins. Co.*, 941 A.2d 60, 63 (Pa. Commw. Ct. 2007) (granting a motion to intervene because the relevant refunding agreement vested the Commonwealth Court with “exclusive jurisdiction” over the agreement’s enforcement)). Additionally, St. Paul’s interests are not adequately represented by any existing party to this proceeding and St. Paul’s intervention would not delay or prejudice any other party’s adjudication of rights. Instead, St. Paul’s intervention presents a limited issue that should affect St. Paul and the D&Os alone.

WHEREFORE, St. Paul respectfully requests that the Court grant its Application for Limited Intervention and allow the filing of its Application for Relief, which is attached hereto as Exhibit A.

Respectfully submitted,

WHITE, FLEISCHNER & FINO, LLP

By: _____


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