

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

In the Matter of the Application of

**TRIAL/IAS, PART 9
NASSAU COUNTY**

**ANDREA LUND, as Proposed Administratrix of
the Estate of PETER LUND, deceased,**

INDEX NO.: 006265/07

MOTION DATE: 05/03/07

Petitioner,

MOTION SEQ # 001

-against-

SHELBY CASUALTY INSURANCE CO.,

Respondent.

**For a pre-action disclosure to aid in
bringing an action.**

The following papers having been read on the motion: [numbered 1-]

- Order To Show Cause, Affirmation in Support & Exhibits.....1**
- Affirmation in Opposition & Exhibits.....2**

Application by petitioner pursuant to CPLR 3102(c) for an order directing Shelby Casualty Insurance Company (Shelby) to produce its entire cause and origin file relating to claim number 40216684 concerning a fire at the home of respondent's insured on June 14, 2005, is **denied** and the petition for pre-action disclosure is dismissed.

Petitioner seeks pre-action disclosure of respondent insurance company's cause and origin file regarding the fire in the single family home of respondent's insured, Aaron Goldberg, located at 753 Longacre Avenue, Woodmere, New York. During the course of fire operations, petitioner's decedent, Peter Lund, a member of the Woodmere Fire Department, felt unwell. He collapsed and died of cardiac arrest shortly thereafter.

Respondent Shelby is subject to the ancillary receivership order of the Hon. Leland DeGrasse, entered September 19, 2006, the insurer having been declared insolvent on August 1, 2006 by a court of competent jurisdiction of the State of Texas.

Pursuant to the order of the Hon. Karen V. Murphy, a prior petition [index no. 14593/06], brought by Andrea Lund, as proposed administratrix of the Estate of Peter Lund, her deceased husband, was dismissed and petitioner's request for pre-action disclosure denied on the grounds that all proceedings, including those which seek pre-action discovery, must be brought in the liquidation proceeding.

Petitioner once again seeks the same disclosure previously denied contending that the 180 day temporary stay set forth in paragraph 6 of Justice DeGrasse's September 19, 2006 order has expired.

Insurance Law Article 74 sets forth procedures for the liquidation and dissolution of insurance companies including the vesting of exclusive jurisdiction of all claims involving the insolvent carrier in the liquidation court. As stated in *Corcoran v Frank B. Hall & Co.*, 149 AD2d 165, 172 [1st Dept. 1989] "New York insurance laws have been interpreted to confer expansive jurisdiction upon the Superintendent in liquidation and rehabilitation proceedings" with the Supreme Court and the Superintendent of Insurance having "exclusive jurisdiction of claims for and against an insurance company in liquidation." *Matter of Knickerbocker Agency v Holz*, 4 NY2d 245, 250 [1958].

Pre-action disclosure may only be obtained upon court order. CPLR 3102(c). Inasmuch as petitioner has commenced a proceeding [a request for pre-action disclosure brought by a special proceeding (*Robinson v Government of Malaysia*, 174 Misc2d 560 [Sup. Ct. N.Y. County, 1997]), against respondent Shelby, the matter at hand is governed by paragraph 5 of the order which reads as follows:

"[t]he officers, directors, trustees, depositories, policyholders, agents and employees of Shelby Casualty and all other persons, including but not limited to claimants, plaintiffs and petitioners who have claims against Shelby Casualty, be and

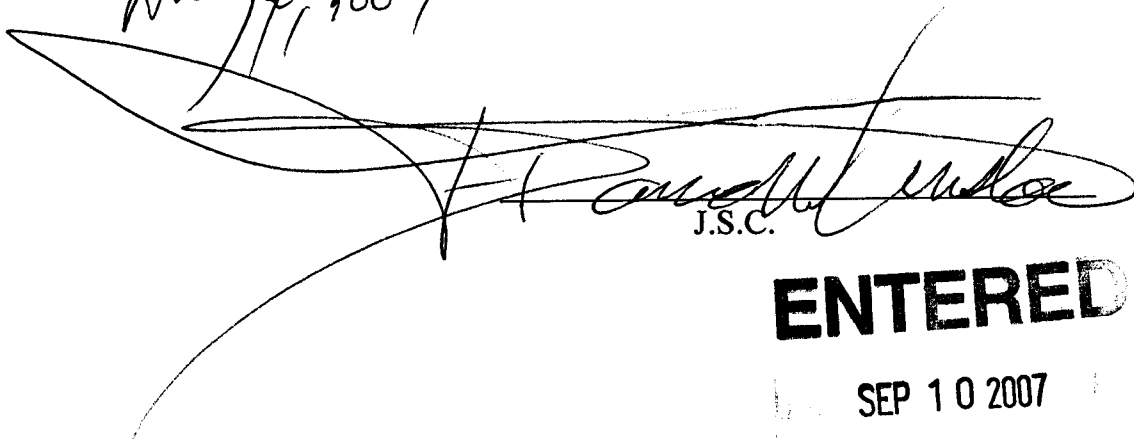
they are hereby enjoined and restrained from bringing or further prosecuting any action or proceeding, including, but not limited to actions at law, suits in equity, special or other proceedings against Shelby Casualty or its estate, the Superintendent and his successors in office, as Ancillary Receiver thereof, or the New York Liquidation Bureau with respect to claims against Shelby Casualty, or from making or executing any levy upon the property or estate of said company, or the Superintendent as Ancillary Receiver, or the New York Liquidation Bureau, or from in any way interfering with the Superintendent or his successors in office, in his or their possession, control or management of the property of said company, or in the discharge of his or their duties as Ancillary Receiver thereof."

The court notes that petitioner has offered no reply to the argument advanced by respondent that, under the facts at bar, it is paragraph 5, and not paragraph 6, that governs petitioner's request.

Accordingly, the petitioner is prevented by the liquidation order from seeking pre-action disclosure from respondent outside the liquidation proceeding presently pending before Justice DeGrasse who retains jurisdiction over all claims against the insolvent respondent. The instant proceeding is, therefore, hereby dismissed.

This constitutes the Order of the Court.

Dated: *Aug 4, 2007* ENTER:



J.S.C.

ENTERED

SEP 10 2007

NASSAU COUNTY
COUNTY CLERK'S OFFICE