

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

INSURANCE CORPORATION OF NEW YORK,

Plaintiff,

No. C 07-5214 WHA

v.

H&H PLASTERING INC., CONCRETE SHELL STRUCTURES, INC., and DOES 1 through 10, inclusive,

Defendants.

**ORDER GRANTING  
EXTENSION OF STAY**

---

In June 2009, plaintiff Insurance Corporation of New York in this long-running insurance-contract action was placed in rehabilitation proceedings in New York (where it is domiciled) due to its insolvency. On February 4, 2010, this action was stayed for 60 days pursuant to California Insurance Code § 1063.6. California Insurance Code § 1063.6 states that California courts must automatically stay any legal action in which an insolvent insurer is a party for 60 days after an order of receivership with a finding of insolvency. This stay may be extended “to permit proper defense or conduct” of the pending action. *See Superior Dispatch, Inc. v. Insurance Corp. of New York*, 2010 WL 187957 (Cal. App. 2 Dist., Jan. 21, 2010). It is undisputed that California state law applies — including California Insurance Code § 1063.6 — because this is an action in diversity.

Plaintiff’s previous motion for an indefinite stay was denied. Plaintiff seeks reformation of its insurance policies with claimants, and a declaration that it not be held responsible for their

1 legal defense in an underlying arbitration. The claimants (via the arbitration) have been trying  
2 to collect on the insurance policy since 2004 and plaintiff, through the rehabilitator, is using the  
3 New York proceeding as a vehicle to deny that claim.

4 Plaintiff now moves to extend the stay for an additional 60 days. For the following  
5 reasons, the extension is **GRANTED**.

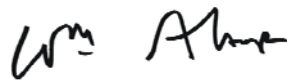
6 On March 4, 2010, an order of liquidation was entered against plaintiff in New York  
7 Supreme Court. The order appoints the Superintendent of Insurance of the State of New York  
8 as liquidator (Fama Decl. Exh. A at 2). California Insurance Code § 1063.6 provides for an  
9 additional stay upon the entry of an order of liquidation. It provides in pertinent part:

10 “All proceedings in which the insolvent insurer is a party . . . shall  
11 . . . be stayed for 60 days from the date that an order of liquidation  
12 . . . has been entered . . . by a court in the state of domicile of the  
insurer.”

13 Because a stay of 60 days after an order of liquidation is mandatory under California  
14 law, plaintiff’s motion is **GRANTED**. The final pretrial conference scheduled for April 19, 2010,  
15 is continued to **JUNE 21, 2010, AT 2:00 P.M.** The trial scheduled for May 3, 2010, is continued  
16 to **JULY 26, 2010, AT 7:30 A.M.** If plaintiff or its liquidator believe that pursuit of this action  
17 would violate New York state’s rehabilitation scheme, it is free to dismiss its complaint. If  
18 plaintiff is going to abandon this action then it must so elect in writing by **JUNE 7, 2010**.

19 **IT IS SO ORDERED.**

20 Dated: April 1, 2010.

21   
22 \_\_\_\_\_  
23 WILLIAM ALSUP  
24 UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28