

demands of equity would trump it. The Court should enter an order under which the Receiver and the lawyers are treated the same when it comes to dividing up the limited, available insurance coverage.

ARGUMENT

This civil enforcement action arises from a \$190 million fraud. Hundreds of victims have collectively lost tens of millions of dollars. Many of them are senior citizens who have lost their retirement savings and homes. The Receiver is assiduously seeking to recover money which can be distributed to the victims. But despite his best efforts, the eventual distribution will fall far short of compensating the victims for their losses.

Among the claims being pursued by the Receiver is a claim by the Oxford Private Client Group (“Oxford PCG”) against Western International Securities, Inc. (“Western”). Both Oxford PCG and Western are insureds under the insurance policy at issue. (Doc. # 187-1, Ex. A.) That policy has a coverage limit of \$1 million per claim. (*Id.*)

The insurer, Everest Indemnity Insurance Company (“Everest”), wants to favor some of the persons covered by the policy—including Beckman—at the expense of other insureds—Western and Oxford PCG. Under Everest’s proposed relief, Beckman and some of his associates would have their current attorneys’ fees and expenses paid immediately. Without giving any reason why some insureds should be favored over others, Everest advocates a first-come-first-served regime for disbursing the limited money available under the policy. Moreover, Everest compounds the inequity of its request by seeking leave to pay all future fees and expenses, up to the \$1 million limit of

the coverage. Everest's motion leaves unanswered the question, why should some insureds be treated better than others? This omission is not surprising, because there is no good answer to the question.

Admittedly, Everest is in a difficult position. The benefits under the policy are being claimed by multiple persons. But the lawyers are demanding payment now. And Everest is vulnerable to litigation if it declines to pay the lawyers. That concern, however, can be easily ameliorated. If the Court denies Everest's motion, the insurer will have the protection of a Court order prohibiting it from making payment under the policy. If Beckman or the lawyers object, they can take the matter up with the Court.

In any event, on the present record there is no basis for concluding that the fees and expenses in question were reasonable and necessary. At the appropriate time, the Court and the Receiver should be allowed to review the pertinent billing statements *in camera* and determine independently whether the fees and expenses should be paid.

This is an equitable proceeding premised on the fundamental principle that equity requires equality. The relief proposed by Everest, however, would offend that fundamental principle by freezing Oxford PCG out of any recovery against the insurance policy. A simple remedy to the problem is readily apparent. The Court should exercise its inherent equitable powers and order that no payments will be allowed under the insurance policy until the Receiver is able to secure a judgment against or settlement from Western and assert any resulting claim for payment under the policy. At such time, all the claims against the policy can be resolved in a manner which treats all claimants equally.

Respectfully submitted,

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