

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EXCALIBUR REINSURANCE CORPORATION	:	CIVIL ACTION
	:	
	:	No. 15-2522
v.	:	
	:	
SELECT INSURANCE COMPANY, et al	:	

ORDER

AND NOW, this 2nd day of June, 2015, it is ORDERED Plaintiff Excalibur Reinsurance Corporation's Request for an Order to Show Cause (Document 3) is DENIED.¹

¹ In its request, Plaintiff Excalibur Reinsurance Corporation seeks a preliminary injunction enjoining Defendants Select Insurance Company and the Travelers Indemnity Company from proceeding with litigation on the same issues in the District of Connecticut. A preliminary injunction is "an extraordinary remedy" to be granted only if "(1) the plaintiff is likely to succeed on the merits; (2) denial will result in irreparable harm to the plaintiff; (3) granting the injunction will not result in irreparable harm to the defendant; and (4) granting the injunction is in the public interest." *NutraSweet Co. v. Vit-Mar Enterprises, Inc.*, 176 F.3d 151, 153 (3d Cir. 1999). A plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate. *Id.* at 153.

Excalibur argues in the absence of a preliminary injunction it will need to post security in the Connecticut action, which would deplete its limited assets and seriously affect its liquidity. However, Excalibur has not demonstrated it will be irreparably harmed as a result. First, Excalibur may not need to post security in Connecticut. *See* Conn. Gen. Stat. § 38a-27(a) (giving a court discretion to dispense with the requirement to post security if the insurer shows it maintains adequate funds in Connecticut to satisfy any final judgment or procures proper authorization to do business in the state). Even if Excalibur were required to post security, any resultant harm is not irreparable as Excalibur would presumably recover the funds posted if judgment is entered in its favor. Finally, Excalibur's assertion that being required to post security would seriously impact its liquidity is not sufficiently supported by the record. *See Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 802 (3d Cir. 1989) (rejecting a plaintiff's claim of irreparable harm based on the possibility it might no longer be in business to collect money damages because the record lacked financial statements or projections indicating the plaintiff would be forced into bankruptcy absent a preliminary injunction). Excalibur has offered the sworn statement of Assistant Vice President Angela Aloisio that posting security would mean Excalibur's "remaining limited assets would be severely depleted and its liquidity seriously affected." That alone is not enough to support a finding that Excalibur is "likely to cease its existence and thereby suffer irreparable injury." *See id.* Accordingly, Excalibur's request for a preliminary injunction is denied.

It is further ORDERED an oral argument on Defendants' Motion to Dismiss shall be held on June 22, 2015, at 1:30 p.m. in Courtroom 11A.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J