

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS**

**SUPERIOR COURT**

**Docket No. 03-E-0112**

**In the Matter of the Liquidation of  
US International Reinsurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL  
OF CLAIM AMENDMENT DEADLINE**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of US International Reinsurance Company ("USI Re"), hereby moves that the Court, after notice to claimants as provided in the proposed order of notice submitted herewith, enter an order establishing a claim amendment deadline of December 31, 2008 (the "Claim Amendment Deadline") for the final submission or amendment of proofs of claim in the USI Re liquidation. The Claim Amendment Deadline will facilitate the final determination of claims against USI Re and permit the closure of the USI Re estate. As reasons therefor, the Liquidator states as follows:

1. Order of notice. This motion seeks approval of the proposed Claim Amendment Deadline. The Liquidator as an initial matter requests that the Court issue an Order of Notice in the form submitted herewith setting a deadline of thirty days objections to the motion and directing the Liquidator to provide notice of the motion and the deadline for objections by mail to all claimants who have filed a proof of claim and to all cedents who have otherwise submitted a claim to the Liquidator in the ordinary course of business after entry of the Order of Liquidation, except those claimants/cedents whose claims have been resolved by a commutation agreement with the Liquidator that precludes the submission of additional claims. The

Liquidator will also post notice of this motion on the liquidation website and on the New Hampshire Insurance Department website. See paragraph 18 below.

2. Background. USI Re is a New Hampshire domiciled insurer and a wholly owned subsidiary of The Home Insurance Company (“Home”). USI Re’s only business from its inception in 1979 was the acceptance of risk from other insurers by reinsuring those risks. USI Re ceased writing business in 1990, when it went into run-off. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Claim Amendment Deadline (“Bengelsdorf Aff.”) ¶ 2.

3. Home, in turn, was USI Re’s principal reinsurer. As USI Re was unlikely to collect reinsurance from Home in light of Home’s insolvency, USI Re was declared insolvent and placed in liquidation by the Order of Liquidation entered by the Court on June 13, 2003. Bengelsdorf Aff. ¶ 3.

4. The Order of Liquidation established a claim filing deadline of June 13, 2004 for claims against USI Re (the “Claim Filing Deadline”). The Liquidator gave notice of USI Re’s liquidation and the Claim Filing Deadline in the notice of liquidation required by RSA 402-C:26, II. As reported in the Liquidator’s First and Second Reports, the Liquidator provided notice by mail and publication in accordance with the Order Approving Notice entered by the Court on June 11, 2003. Bengelsdorf Aff. ¶ 4.

5. A total of 241 claimants have filed proofs of claim asserting claims against USI Re as of June 30, 2008, fourteen of which were filed after the Claim Filing Deadline. Two hundred thirty-three of the proofs of claim were submitted by insurers or reinsurers that ceded reinsurance (“cedents”) to USI Re; eight were submitted by other creditors. All the claims against USI Re appear to fall in the general creditor class (Priority Class V) under RSA 402-

C:44. USI Re did not write direct insurance, so there are no policy-related (Priority Class II) claims. The absence of direct insurance also means that there is no guaranty fund involvement in the USI Re liquidation, although one guaranty fund has filed a proof of claim concerning asserted assessment claims (a Class V claim). Bengelsdorf Aff. ¶ 5.

6. Cedents' claims represent the vast majority of the claims against USI Re in amount. The proofs of claim filed by cedents as of June 30, 2008 assert quantified claims, including the claims allowed to date, totaling \$37,316,824. Many cedents' proofs of claim do not state a claimed amount. The asserted claims of other USI Re claimants total only \$449,909. Bengelsdorf Aff. ¶ 6.

7. As of June 30, 2008, the Liquidator has resolved 80 cedents' proofs of claim either through a negotiated agreement or issuing a notice of determination that has not been objected to. These allowed claims total \$2,879,362. Most of the remaining cedents' proofs of claim include projected liabilities and provide only limited information. The Liquidator has made partial allowances on certain of these proofs of claim that total \$937,541. Bengelsdorf Aff. ¶ 7.

8. The Liquidator has marshaled available assets of USI Re since the liquidation began in 2003. As of December 31, 2007, USI Re had \$5,454,924 in cash and marketable securities. Over the course of the liquidation, the Liquidator has resolved all matters with most of the reinsurers of USI Re other than Home through commutation agreements. (USI Re was principally reinsured by Home, which is insolvent and not expected to make a distribution to Priority Class V creditors such as USI Re.) During 2007, the Liquidator collected \$121,574 in reinsurance. Total receipts in 2007 (\$340,113 from reinsurance collections, investment income and other receipts) exceeded the liquidation's disbursements for administrative expenses during

the year (\$208,218) by \$131,895. The Liquidator believes that the collection of USI Re's assets is mostly complete with the potential exception of reinsurance recoveries from reinsurers other than Home on claims that remain to be determined. The proposed Claim Amendment Deadline will provide the Liquidator with updated information to permit determination of such claims. Bengelsdorf Aff. ¶ 8.

9. The statutory framework. As described below, the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C ("Act"), generally provides that the rights and obligations of an insolvent insurer and its creditors are fixed as of the date of the filing of the petition for liquidation. RSA 402-C:21. Claims against the insurer are to be asserted through the proof of claim process, which requires that claims be filed by a claim filing deadline but permits claims to be updated by excused late filings. RSA 402-C:37, 39. This process may continue so long as the orderly administration of the liquidation is not prejudiced. At some point, however, the liquidator, under the direction of the Court, must balance the interests of claimants with determined claims against the interests of those with undetermined claims and pay dividends on allowed claims. RSA 402-C:46. When the assets that warrant the expense of collection have been collected and distributed, the liquidator is to apply to the Court for discharge. RSA 402-C:48.

10. The Act provides that the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate are generally "fixed" as of the date of the petition for liquidation. RSA 402-C:21, II. Claims are to be asserted through the proof of claim process. Under RSA 402-C:37, proofs of claim must be filed with the Liquidator "on or before the last day for filing specified in the notice required under RSA 402-C:26" (referring to the claim filing deadline set forth in the notice). RSA 402-C:37, I. However,

late filings may be “excused”: “For good cause shown, the liquidator shall recommend and the court shall permit a claimant making a late filing to share in dividends, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation.” RSA 402-C:37, II (emphasis added). The Act defines “good cause” to include (i) that the existence of the claim was “not known” to the claimant and he files within 30 days after learning of it, and (ii) that “a claim was contingent and became absolute” and was filed within 30 days after it became absolute. RSA 402-C:37, II(a) and (e). See RSA 402-C:39, III.

11. The statutory reference to potential “prejudice to the orderly administration of the liquidation” reflects legislative recognition that continued acceptance of claims for an indefinite period can harm the administration of the estate, to the detriment of the persons with allowed claims, by preventing the determination of a distribution percentage and making of distributions. The Act expressly recognizes that the competing interests need to be balanced in determining the timing of distributions in RSA 402-C:46. That section provides that the Liquidator, under the direction of the Court, shall pay dividends in a manner that will assure “a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.” RSA 402-C:46. The Act also recognizes that a proceeding should not remain open indefinitely. It provides that “[w]hen all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge.” RSA 402-C:48, I.

12. The general scheme of the Act is thus to fix rights as of the date of the petition for liquidation and to require the filing of proofs of claim by the claim filing deadline, but to also permit late claims to participate provided that it does not prejudice the orderly administration of

the liquidation. Such prejudice may consist of delaying distributions to other creditors or requiring that the liquidation proceeding remain open and incur expenses.

13. The proposed claim amendment deadline. Since USI Re's assets have been marshaled with the exception of reinsurance on claims that remain to be determined, the principal remaining task of the Liquidator is the determination of claims in a manner that permits an earlier distribution to benefit creditors and closure of the proceeding to avoid unnecessary administrative expense. Given the relatively small amount of the available assets in relation to quantified claims, the Liquidator believes it would be imprudent to make a distribution before all claims are determined. The Liquidator has considered the most efficient and equitable way to determine the remaining claims against the company so that the distribution percentage can be determined, distributions made and the proceeding closed. The Liquidator is of the view that a claim amendment deadline would best serve this purpose. See Bengelsdorf Aff. ¶ 9.

14. The most effective way to obtain updated and complete information to facilitate an expeditious determination of the remaining claims is to establish a claim amendment deadline. Many of the open proofs of claim involve some projected liabilities based on presentations as of periods before the June 13, 2004 Claim Filing Deadline. As four years have passed since then, many cedents may have additional loss information. Moreover, most of the remaining proofs of claim do not provide sufficient information to permit determination of the claims. The Liquidator could request additional information on an individual cedent basis pursuant to RSA 402-C:38, II, but that would be time-consuming and would likely result in submission of information as of different points in time. Bengelsdorf Aff. ¶ 10.

15. A claim amendment deadline would provide a means of obtaining updated information on a consistent basis. Updated information will permit determination of claims and,

to the extent there is reinsurance on those claims, collection of reinsurance. Since the principal assets have been collected, the quantified claims greatly exceed those assets, and eighteen years have passed since USI Re ceased writing reinsurance, the Liquidator believes that it is appropriate to bring the estate to closure. Bengelsdorf Aff. ¶ 11.

16. A claim amendment deadline is consistent with the Act. The Act permits claims to be proven even after the Claim Filing Deadline so long as the orderly administration of the liquidation is not prejudiced. A claim amendment deadline would provide a clear demarcation between claims that do not prejudice the administration of the estate and those that do. The Act further recognizes that the interests of creditors with allowed claims must be balanced with the interests of other creditors in determining when to make distributions. A critical mass of claims must be determined before distributions can be made, and a claim amendment deadline would serve to expedite the determination of claims and facilitate distributions.

17. The Liquidator accordingly requests that the Court establish the Claim Amendment Deadline for claimants to make additional submissions to prove up their claims as a step “necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.” RSA 420-C:25, XXII. The December 31, 2008 Claim Amendment Deadline would allow at least eighteen years since USI Re stopped writing reinsurance, and more than four years since the Claim Filing Deadline for claims to be made. The Liquidator will promptly determine the claims. After resolving any claim disputes, the Liquidator will then be able to request approval of a distribution percentage, distribute assets and request discharge and closure of the USI Re proceeding. The Liquidator will not consider claims or submissions filed after the Claim Amendment Deadline, as they would prejudice the orderly administration of the liquidation.

Given the relatively small universe of claimants, it is feasible to provide notice of a claim amendment deadline at relatively low cost. Bengelsdorf Aff. ¶ 12.

18. The Liquidator proposes to provide notice both of this motion and of the Claim Amendment Deadline, when established, by mail to all claimants who filed proofs of claim with the Liquidator and to all cedents who have otherwise submitted a claim to the Liquidator in the ordinary course of business after entry of the Order of Liquidation, except those claimants/cedents whose claims have been resolved by a commutation agreement with the Liquidator that precludes the submission of additional claims. This would require mail notice to approximately 250 claimants/cedents. The Liquidator would also post notice of this motion and of the Claim Amendment Deadline on the liquidation website and on the New Hampshire Insurance Department website. Bengelsdorf Aff. ¶ 13.

19. The Liquidator submits that establishment of the Claims Amendment Deadline is fair and reasonable and that it is in the best interest of the liquidation and its creditors in that it will facilitate the resolution of claims and advance the distribution of the estate's assets and the closure of this proceeding without unnecessary administrative expense. Bengelsdorf Aff. ¶ 14.

WHEREFORE, the Liquidator respectfully requests that the Court:

- (a) Issue an Order of Notice in the form submitted herewith directing the Liquidator to provide notice of the motion and requiring any objection to be filed on or before a date thirty days from the Order of Notice;
- (b) After consideration of any objection filed by the deadline, grant this motion;
- (c) Enter an order in the form submitted herewith establishing a Claim Amendment Deadline of December 31, 2008 for claims against USI Re and providing for notice of the Claim Amendment Deadline; and



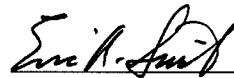
(d) Grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE  
COMMISSIONER OF THE STATE OF  
NEW HAMPSHIRE SOLELY AS  
LIQUIDATOR OF US INTERNATIONAL  
REINSURANCE COMPANY,

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July 18, 2008

**Certificate of Service**

As no one other than counsel for the Liquidator has appeared in this proceeding (No. 03-E-0112), there are no persons on whom to serve this motion.

  
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Eric A. Smith