

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0112

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

**MOTION FOR APPROVAL OF RELEASE
AGREEMENT AND DISTRIBUTION OF ASSETS**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire (“Commissioner”), as Liquidator (“Liquidator”) of US International Reinsurance Company (“USI Re”), hereby moves that the Court enter an order (a) approving a release agreement with the United States and (b) approving the distribution of USI Re’s assets to claimants with allowed Class V claims. As reasons therefor, the Liquidator states as follows:

Background

1. USI Re is a New Hampshire-domiciled reinsurance company subject to regulation by the New Hampshire Insurance Department. USI Re is an indirect, wholly-owned subsidiary of The Home Insurance Company (“Home”) which is the subject of a separate liquidation proceeding before the Court. USI Re has never had any employees, as it was operated until 1996 by employees of Home and thereafter, until commencement of the liquidation proceeding in June 2003, by employees of Risk Enterprise Management Limited. Prior to 1990, when it stopped writing business, USI Re wrote exclusively reinsurance. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator (“Bengelsdorf Aff.”) ¶ 2.

2. On June 13, 2003, the Court entered an Order of Liquidation placing USI Re in liquidation and appointing the Commissioner as Liquidator.¹ Since that time, the liquidation has been proceeding under the supervision of the Court and in accordance with the Insurers

¹ Also on June 13, 2003, the Court entered a separate Order of Liquidation for Home.

Rehabilitation and Liquidation Act, RSA 402-C. On August 19, 2008, the Court entered an order establishing December 31, 2008, as the deadline for final submission or amendment of proofs of claim in the USI Re estate. All 292 proofs of claim have been determined and the Court has approved the Liquidator's recommendations. Bengelsdorf Aff. ¶ 3.

3. To address concerns respecting the federal priority statute, 31 U.S.C. § 3713, the Liquidator has entered a release agreement with the United States, subject to approval by the Court. The Liquidator requests that the Court approve the release agreement with the United States. Bengelsdorf Aff. ¶ 4.

4. All assets of the USI Re estate that warrant collection have been collected. All claims in the USI Re estate have been determined and approved. Assuming that the release agreement with the United States is approved, the Liquidator believes that a final distribution of assets to Class V creditors of the USI Re estate is appropriate at this time pursuant to RSA 402-C:46, I. Accordingly, the Liquidator seeks the Court's approval of such as distribution. Bengelsdorf Aff. ¶ 5.

5. Following the final distribution to the Class V creditors of the USI Re estate, the Liquidator will address final administrative matters and move for approval to dispose of records. Once that is complete, the Liquidator will file a motion for discharge and for termination of the proceeding. Bengelsdorf Aff. ¶ 6.

The Release Agreement with the United States

6. The federal priority statute, 31 U.S.C. § 3713, provides that claims of the United States Government "shall be paid first" in an insolvency proceeding such as this receivership, 31 U.S.C. § 3713(a), and that a representative of an estate, such as a liquidator, who pays any part of a debt of the insolvent before paying a claim of the United States may be personally liable to the extent of the payment. 31 U.S.C. § 3713(b). The United States Supreme Court has construed the

federal priority statute in conjunction with the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-12, and held that administration costs and policyholder claims may be paid before non-policyholder federal claims. United States Dep't of Treasury v. Fabe, 508 U.S. 491, 493, 508-09 (1993). However, the First Circuit has held that the federal priority statute overrides claim-filing deadlines established in insurer liquidations. Ruthardt v. United States, 303 F.3d 375, 384-86 (1st Cir. 2002), cert. denied, 538 U.S. 1031 (2003).

7. As a result of the Ruthardt decision, the United States can – subject to any applicable statutes of limitation – assert claims at any time, regardless of claim-filing deadlines under state insurer liquidation statutes. Moreover, these decisions leave open the possibility that, if a liquidator distributed all the assets of the estate, the United States might file a late claim and contend that the estate's inability to pay the claim makes the liquidator personally liable for the claim under the federal priority statute. In view of the uncertainties created by the federal priority statute and related decisions, the Liquidator believed it prudent to obtain a waiver of federal priority claims from the United States before making a distribution. Bengelsdorf Aff. ¶ 7.

8. As described in the Liquidator's reports, the Liquidator requested a waiver of federal priority claims from the United States Department of Justice ("DOJ") on January 27, 2012. After a series of communications, the Liquidator received a proposed Release Agreement from DOJ on February 20, 2013. The Liquidator signed the Release Agreement, which is subject to approval by the Court, and it has now been executed by the United States. (The executed Release Agreement is attached as Exhibit A to the Bengelsdorf Affidavit.) The Release Agreement releases the Liquidator and the USI Re estate from any and all liability under 31 U.S.C. § 3713(b) except for possible federal tax, fraud, criminal liabilities, and reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b) (concerning potential Medicare reimbursement obligations). It also provides the United States with the right to inspect USI Re

records prior to their destruction and a right to notice of any motion for approval of document destruction. Bengelsdorf Aff. ¶ 8.

9. The Liquidator is not aware of any liability of USI Re to the United States or of any United States claim against USI Re. With respect to federal taxes (carved out of the Release Agreement), USI Re has never had any employees so there are no unpaid federal withholding and unemployment taxes. Federal income tax returns have been filed through 2011 and there are no reported federal tax liabilities. As of January 1, 2013, USI Re had approximately \$58 million in net operating losses to carry forward. With regard to Medicare, USI Re is a reinsurer that reinsurers other insurance companies. It does not make payments to claimants or medical providers, so it has no Medicare secondary payer or related reporting obligations. None of the claims determined and approved in the USI Re liquidation provide for payment to an injured claimant or a medical provider. Bengelsdorf Aff. ¶ 9.

10. In the circumstances, the Liquidator is of the view that the Release Agreement provides reasonable and sufficient protections for the Liquidator to make distributions from the estate of USI Re notwithstanding the federal priority statute. The Liquidator accordingly requests that the Release Agreement be approved by the Court. Bengelsdorf Aff. ¶ 10.

The Proposed Distribution

11. On August 19, 2008, the Court entered an order establishing December 31, 2008, as the deadline for final submission or amendment of proofs of claim in the USI Re estate. All 292 proofs of claim in the USI Re estate have been determined and the Court has approved the Liquidator's recommendations. Since USI Re issued no insurance policies to policyholders, there are no allowed Class II (policy-related) claims under RSA 402-C:44. The claims of reinsured insurance companies and other general creditors of USI Re fall in the Class V (residual) priority class. The allowed Class V claims total \$52,721,425. Certain claims were

filed late, and those claims were assigned to Class VIII. The allowed Class VIII claims total \$48,572. USI Re has claims totaling \$9,768,671 against certain of the Class V creditors, and these offsetting claims will be deducted from the creditors' allowed claim amounts. Bengelsdorf Aff. ¶ 11.

12. As the claims have all been determined, and the United States has now agreed on the release agreement to address concerns over the federal priority statute, the Liquidator believes it is appropriate to apply for approval to distribute USI Re's assets to claimants with Class V priority claims. See RSA 402-C:46, I ("Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims."). Bengelsdorf Aff. ¶ 12.

13. Administrative expenses have been paid on an ongoing basis during the liquidation. The Liquidator estimates that expenses relating to distribution, disposal of records, tax returns and motions and closure of the USI Re estate (as well as incurred but unpaid administrative expenses) will total not more than \$100,000. The Liquidator proposes to establish a reserve in this amount. Bengelsdorf Aff. ¶ 13.

14. As of February 28, 2013, the assets of the USI Re estate totaled \$6,243,100. After establishing the administrative expense reserve, the estimated assets of the USI Re estate available for distribution will total \$6,143,100. The Liquidator proposes to make a distribution of the \$6,143,100 to pay a pro rata dividend to Class V creditors based on the amounts of their respective allowed claims minus (1) any amount due USI Re from the creditor, and (2) the \$50 deductible required by RSA 402-C:44.² The proposed distribution is intended to exhaust the remaining assets of the USI Re estate (less the administrative expense reserve), so any

² As the Class V claims will not be paid in full, Class VIII claims will receive no distribution. See RSA 402-C:44.

investment income earned or other cash received before the distribution will be added to the amount to be distributed. As described in paragraph 11 above, the Class V allowed claims total \$52,721,425 and offsetting claims of USI Re total \$9,768,671. The Liquidator accordingly estimates that the distribution will represent a payment of approximately 14.3% on the Class V creditors' allowed claims after offset ($\$6,143,100 \div [\$52,721,425 - \$9,768,671] = 14.3\%$). This estimate assumes that there will be no unexpected expenses or developments in closing the estate, and that investment results between March 1, 2013 and the date of distribution will not have a material effect. These factors, individually or combined, could result in a change in the distribution percentage. Bengelsdorf Aff. ¶ 14.

15. The Liquidator submits that the proposed distribution of USI Re assets will assure the proper recognition of priorities and will promote the expeditious completion of the USI Re liquidation in which there are no remaining undetermined claims. See RSA 402-C:46, I. Bengelsdorf Aff. ¶ 15.

Next Steps

16. Following the final distribution of assets to creditors with Class V claims, the Liquidator will file a report with the Court and motions regarding closure of the USI Re estate. The matters addressed in these motions will include disposition and destruction of liquidation records, preparation and filing of final tax reports on USI Re's behalf, distribution of any remaining or unclaimed funds, and discharge of the liquidator. Bengelsdorf Aff. ¶ 16.

WHEREFORE, the Liquidator respectfully requests that this Court enter an order in the form submitted herewith:

- A. Granting this motion;
- B. Approving the Release Agreement with the United States;
- C. Authorizing the distribution of USI Re's assets (after establishment of a reserve not to exceed \$100,000 for the Liquidator's administration costs) to claimants with allowed Class V claims in the USI Re estate previously approved by the Court; and,
- D. Granting such other and further relief as justice may require.

Respectfully submitted,

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

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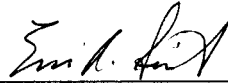


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March 14, 2013

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.



Eric A. Smith
NH Bar ID No. 16952

March 14, 2013