

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 DISTRIBUTION OF ASSETS,
DISPOSAL OF RECORDS AND TERMINATION OF PROCEEDING**

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 the distribution of USI Re’s assets to claimants with allowed Class V claims, subject to receipt of a waiver from the United States, (b) approving the disposal of records of USI Re, and (c) upon the filing of a certificate by the Liquidator that the assets have been distributed and records disposed of, discharging the Liquidator and terminating this proceeding. As reasons therefor, the Liquidator states as follows:

1. USI Re is a New Hampshire corporation and a New Hampshire-domiciled insurance company subject to regulation by the New Hampshire Insurance Department. On May 8, 2003, the Commissioner filed a petition for an order of liquidation for USI Re. On June 13, 2003, the Court entered an Order of Liquidation declaring that USI Re was insolvent, appointing the Commissioner as Liquidator, and directing the liquidation of USI Re. Since that time, the liquidation has been proceeding under the supervision of the Court and in accordance with the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (“Act”).

Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval

of Distribution of Assets, Disposal of Records and Termination of Proceeding (“Bengelsdorf Aff.”) ¶ 2.

2. As described below, the assets of USI Re have been collected, and the claims against USI Re have been determined. The Liquidator accordingly seeks approval of the process set forth below to distribute assets, dispose of records, discharge the Liquidator, and terminate the proceeding in accordance with the Act. In light of potential claims of the United States and the federal priority statute, 31 U.S.C. § 3713, these final steps will be subject to receipt of a waiver of claims from the United States. The Liquidator will best be able to close this proceeding as promptly and efficiently as possible by obtaining approval for the closure process now, handling the few administrative matters and requesting the waiver, and then holding the matter in “suspense” pending resolution of the waiver issue and final distribution to creditors. Bengelsdorf Aff. ¶ 3.

Status of the Proceeding

3. Determination of claims. As described in the Liquidator’s various reports, the claim determination process has now concluded. The Order of Liquidation established June 13, 2004 as the claim filing deadline in the USI Re liquidation. On August 19, 2008, the Court entered an order establishing December 31, 2008 as the deadline for the final submission or amendment of proofs of claim in the USI Re liquidation. A total of 292 proofs of claim were submitted in the liquidation. All 292 proofs of claim have now been resolved. The Liquidator has submitted over forty reports of claims and recommendations to the Court, and the Court has issued orders approving the claim reports and establishing allowed amounts and priorities for all of the claims. In total, the Liquidator presented and the Court has approved claims recommendations with a total allowed amount of \$52,769,997 consisting of \$52,721,425 in Class

V and \$48,572 in Class VIII. As all proofs of claim have been determined, USI Re's liabilities have now been finalized. Bengelsdorf Aff. ¶ 4.

4. Collection of assets. As described in the Liquidator's various reports, the Liquidator has been collecting the assets of USI Re, which consisted mainly of reinsurance and security deposits. USI Re's principal reinsurer was The Home Insurance Company ("Home"). No amount has been collected from Home due to its insolvency and liquidation. (USI Re's claim in the Home liquidation is a Class V claim as to which no distribution is expected. Home has a smaller Class V claim in the USI Re liquidation which will be setoff against USI Re's claim and receive no distribution.) The Liquidator has collected \$3,234,744 in reinsurance from approximately 203 other reinsurers, including entering commutations with 65 reinsurers. It would not be economical for the Liquidator to attempt to collect the small remaining amount of potential reinsurance collectibles (involving approximately thirty reinsurers spread around the world), and the Liquidator has, for a payment received, assigned rights to those potential receivables to a firm specializing in such collections. The Liquidator has also collected a total of \$4,948,494 from eleven states by obtaining release of USI Re's security deposits. The Liquidator believes that all USI Re assets justifying the expense of collection have now been collected. See RSA 402-C:48, I. Bengelsdorf Aff. ¶ 5.

5. Financial reports and investments. The audited December 31, 2010 financial statements for USI Re and the unaudited March 31, 2011 financial statements for USI Re are attached as Exhibits 1 and 2 to the Bengelsdorf Affidavit.¹ The March 31, 2011 USI Re statements reflected \$5,828,719 in assets under the Liquidator's direct control at March 31, 2011. As of June 17, 2011, the assets of USI Re under the Liquidator's direct control – constituting all

¹ These financial statements were also attached as Exhibits F and G to the Liquidator's Forty-First Report. Annual and quarterly statements for prior periods have been submitted as exhibits to previous Liquidator's Reports.

of the assets of USI Re – totaled \$6,237,210. This includes recent reinsurance commutations, the assignment, and the collection of security deposits. The USI Re assets are invested in cash equivalent mutual funds (\$1,866,963) and U.S. Treasury notes and bills (\$4,370,247). Administrative expenses paid since March 31, 2011 have totaled \$47,976. Bengelsdorf Aff. ¶ 6.

The Closure Process

6. As the liabilities of USI Re have been determined and the assets collected, the next step in the liquidation is to distribute assets on allowed claims in accordance with the statutory priorities. See RSA 402-C:46 (“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.”). For the reasons described below, however, the distribution will be subject to a waiver from the United States. Accordingly, in order to minimize judicial proceedings and administrative expense, the Liquidator has determined to address other issues that need to be resolved together with the distribution issue and bring all matters concerning closure of the estate before the Court at the same time. These issues include disposal of records (RSA 402-C:50), dissolution of the company (RSA 402-C:23), handling of unclaimed funds (RSA 402-C:47), and discharge of the liquidator and termination of the proceedings (RSA 402-C:48). Bengelsdorf Aff. ¶ 7.

Distribution and United States Waiver

7. Distribution on allowed claims. USI Re is a reinsurance company and has no direct policyholders, only reinsureds. Accordingly, all claims other than administrative expenses have been assigned to Class V (the residual priority class) or Class VIII (penalty claims “postponed” to Class VIII under RSA 402-C:44, V) in the amounts set forth in the schedules to

the Liquidator's reports of claims and recommendations approved by the Court. See RSA 402-C:44. Administrative expenses (which are Class I priority) are being paid on an ongoing basis during the liquidation. The Liquidator accordingly proposes to make a distribution of all assets after payment of administrative expenses (and withholding a small reserve not to exceed \$34,000 for post-distribution expenses) to pay a first and final dividend to allowed Class V creditors based on the amounts of their respective allowed claims minus the \$50 deductible required by RSA 402-C:44. Bengelsdorf Aff. ¶ 8.

8. The available assets are \$6,237,210 as of June 17, 2011 (any interest earned or other cash received before the distribution will be added). The Liquidator projects that the administrative expenses from June 17, 2011 to closure of the estate, including incurred but unpaid amounts and the reserve for post-distribution expenses, will be approximately \$107,000. The Class V allowed claims total \$52,721,425. Home and certain other Class V creditors are also debtors of USI Re, and their allowed claims will be or have been offset against their obligations to USI Re in accordance with RSA 402-C:34. After removing these allowed claims, the allowed Class V claims eligible to receive a distribution total \$43,001,326.² The Liquidator accordingly estimates that the distribution will represent a payment of approximately 14.3% on each of these eligible Class V allowed claims. This estimate assumes that there will be no unexpected expenses or developments in closing the estate, that the process of obtaining the waiver is not prolonged, and that investment return on the USI Re assets does not decline. These factors individually or combined could result in a change in the distribution percentage. Bengelsdorf Aff. ¶ 9.

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

9. Waiver from the United States. Making a distribution is complicated by the federal priority statute, 31 U.S.C. § 3713. That statute provides that claims of the United States Government “shall be paid first” in an insolvency proceeding such as a receivership, 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 Government may be personally liable to the extent of the payment. 31 U.S.C. § 3713(a)(1), (b). The Supreme Court has construed the federal priority statute 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 in insurer liquidations. Ruthardt v. United States, 303 U.S. 375, 384-86 (1st Cir. 2002), cert. denied, 538 U.S. 1031 (2003).

10. 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. The Liquidator is not aware of any liability of USI Re to the United States Government or of any United States’ claim against USI Re. However, in view of the uncertainties created by the federal priority statute and the decisions, it is prudent for the Liquidator to raise these issues with the United States before making a distribution. The United States Department of Justice has provided waivers of federal priority claims to permit distributions in other liquidations, including waivers to permit early access distributions in the Home liquidation. See Bengelsdorf Aff. ¶ 10.

11. It is unknown how long it may take to obtain such a waiver from the United States. In order to move this matter forward, the Liquidator accordingly plans to resolve the other outstanding issues by this motion and then request a waiver from the United States. The proceeding will essentially be in “suspense” while the waiver issue is pending so as to minimize administrative expense. The process as described above is provided for in the proposed form of order submitted herewith. Bengelsdorf Aff. ¶ 11.

Other Steps

12. Disposal of records. With the approval of the Court, the Liquidator may dispose of records of an insurer in liquidation that are no longer useful. See RSA 402-C:50 (“Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court what records should be retained for future reference and what should be disposed of. Until further order of the court, the commissioner shall keep all records the court orders preserved and shall destroy the remainder whether or not the records have been photographed or otherwise reproduced.”) The Liquidator has disposed of many of USI Re’s paper records pursuant to orders of this Court entered December 16, 2004, August 12, 2005, August 19, 2008, and May 2, 2011. Bengelsdorf Aff. ¶ 12.

13. Now that the claims have been determined and the assets collected, the records of USI Re are generally no longer useful. The only exceptions are financial, tax, and corporate records necessary for preparation of the final USI Re tax returns (the consolidated returns for Home and USI Re are due in September, 2011); the investment records necessary to administer USI Re’s assets until distribution; and the records of the allowed claims necessary for making the distribution. Certain records may also be subject to a stipulation concerning retention of

documents approved in the Home liquidation on June 22, 2006. Accordingly, the Liquidator recommends pursuant to RSA 402-C:50 that the Court authorize the Liquidator to dispose of all remaining paper records of USI Re except documents in these categories. Documents that the Liquidator identifies as confidential or commercially sensitive will be shredded. The Liquidator proposes to retain records in the categories and imaged records until the distribution has been made, at which point the Liquidator recommends that all these remaining USI Re records be disposed of or deleted except for (1) the imaged records of the filings and orders in the liquidation proceeding itself, which will be retained on the Liquidation Clerk's website at www.hicilclerk.org, (2) a record of the allowed claims, which will be retained at the New Hampshire Insurance Department in the event it is needed by the state treasurer to address unclaimed funds as set forth in paragraph 15 below, and (3) USI Re tax records and those records identified as potentially subject to the 2006 stipulation, which will be turned over to the Liquidator of Home (Home and USI Re have always filed tax returns on a consolidated basis and the Home Liquidator was party to the stipulation). Bengelsdorf Aff. ¶ 12.

14. Dissolution of the company. The Act authorizes dissolution of the corporate existence of the insurer in liquidation by order at any time during the liquidation or, by operation of law, upon discharge of the liquidator. RSA 402-C:23. The Liquidator recommends that USI Re's corporate existence be dissolved at the time the Liquidator is discharged. A provision to that effect is included in the proposed form of order submitted herewith. Bengelsdorf Aff. ¶ 13.

15. Handling of unclaimed funds. The Act provides that unclaimed funds remaining at the time the Liquidator is ready to apply for discharge shall be deposited with the state treasurer. RSA 402-C:47, I. The Liquidator proposes that funds not collected within 120 days after the distribution checks are mailed to claimants be turned over to the state treasurer. Since

the claimants in the USI Re proceeding are insurance or reinsurance companies or other corporate entities, not individual claimants, this should not cause any hardship. Bengelsdorf Aff. ¶ 14.

16. Discharge of Liquidator and termination of proceeding. The Act provides for the discharge of the Liquidator and termination of the proceeding when assets have been collected and distributed. See RSA 402-C:48 (“When 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 a discharge. The court may grant the discharge and make any other orders deemed appropriate, including an order to transfer to the state treasury for the credit of the insurance department any remaining funds that are uneconomic to distribute.”). In order to minimize administrative expense, the Liquidator is proceeding with this closure motion to address all issues at one time. Bengelsdorf Aff. ¶ 15.

17. The Liquidator proposes that the Court enter an order that has two parts. First, it authorizes the distribution, subject to obtaining the waiver, and the other remaining steps in the closure process. Second, it provides for the subsequent discharge of the Liquidator and termination of the proceeding upon the Liquidator’s filing of a certificate of compliance after the remaining steps have been completed. This will minimize administrative expense and judicial proceedings by allowing the Liquidator to move forward with the closure process and proceed as far as possible now. The proceeding will then be placed in suspense until the United States acts on the request for waiver. Since there will be no activity other than monitoring the investments, the Liquidator’s reports should be limited to a description of progress with the federal government and unaudited statements of expenses and assets showing changes since the March 31, 2011 financial statement. When the waiver is received, the distribution will go

forward.³ Once it is completed, the Liquidator will file the certificate to obtain discharge and terminate the proceeding. A form of the certificate is attached to the proposed form of order. Bengelsdorf Aff. ¶ 15.

18. The Liquidator submits that the process described above for distributing assets, disposing of records, and terminating the liquidation proceeding for USI Re is reasonable, prudent and in the best interest of the creditors of USI Re. Bengelsdorf Aff. ¶ 16.

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

- A. Granting this motion;
- B. Authorizing the distribution of USI Re's assets, after payment of administrative expenses and a reserve not to exceed \$34,000 for post-distribution administration expenses, to claimants with allowed Class V claims in the USI Re estate previously approved by the Court, subject to receipt of a waiver from the United States;
- C. Authorizing the disposal of USI Re's records, with those records identified by the Liquidator as confidential or commercially sensitive being shredded;
- D. Providing for the dissolution of USI Re's corporate existence;
- E. Providing for the discharge of the Liquidator and termination of this proceeding upon the Liquidator's filing a certificate of compliance concerning the distribution of assets and disposal of records; and
- F. Granting such other and further relief as justice may require.

³ The Liquidator does not anticipate receiving any additional assets, but if any assets are received prior to the calculation of the dividend payments, they will be added to the distribution. If assets are subsequently received that are uneconomic to distribute, they will be transferred to the state treasury pursuant to RSA 402-C:48, I. The unexpected receipt of material assets would be cause to petition to reopen the proceeding under RSA 402-C:49.

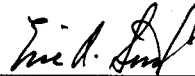
Respectfully submitted,

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

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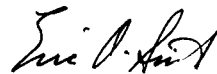


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July 15, 2011

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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