



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:)
) C.A. No. 8601-VCZ
INDEMNITY INSURANCE CORPORATION,)
RRG, IN LIQUIDATION)

**ORDER TO SHOW CAUSE CONCERNING THE RECEIVER'S
VERIFIED PETITION TO APPROVE SETTLEMENT AGREEMENT
AND RELEASE WITH BRANCH BANKING & TRUST**

Please read this Order carefully as it might affect your rights concerning Indemnity Insurance Corporation, RRG, in Liquidation (“ICRRG”). If you do not file a timely response to the Receiver’s Petition to Approve Settlement Agreement and Release With Branch Banking and Trust Company (the “Petition”) in accordance with the instructions in this Order, any objection to this Order and any objection to or comments you have concerning the relief sought by the Receiver of ICRRG, will be deemed waived and the Court may adjudicate the Receiver’s Petition and the relief sought therein on that basis. (If you have no objection or comment concerning the Petition or the relief sought therein, you do not need to take any further action in response to this Order to Show Cause.)

WHEREAS, pursuant to 18 *Del. C.* §5902(a), the Receiver of ICRRG filed the *Receiver’s Verified Petition to Approve Settlement Agreement and Release With Branch Banking & Trust* (“Petition”) seeking to have the Court approve the

settlement of a disputed claim with Branch Banking and Trust Company involving an Estate asset. A copy of the Settlement Agreement and Release is attached to the Petition as Exhibit 1.

WHEREAS, the relief requested in the Petition included that an Order to Show Cause be entered setting a date for objections to be filed, if any, to the Petition, and that the Order to Show Cause be served in accordance with the methods and procedures contained in the Service Plan attached as Exhibit B to the Receiver's Verified Petition for Approval of Two Plans Concerning The Proof Of Claims Process And the Service Of Related Filings By The Receiver (that Petition is attached as Exhibit "A" to the Receiver's Motion for Expedited Entry of Order to Show Cause) as they address the service of public filings made by the Receiver concerning the Proof of Claim process.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

HEARING

1. A hearing on the Petition has been scheduled for **December 18, 2019, at 1:30 p.m.** at the **Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware, 19801.** If there are no objections filed by the deadline of **December 16, 2019,** the hearing may be cancelled at the discretion of the Court. Please review the Objection Procedure and Objection Deadline set forth in Paragraph 2 below.

OBJECTION PROCEDURE AND OBJECTION DEADLINE

2. Any interested party who has an objection to the petition must file such objection with the Court so that the objection is actually received by the Court on or before **December 16, 2019** (the “Objection Deadline”). If an interested party does not file an objection on or before the Objection Deadline, any objection which such party has to the petition or the relief sought therein may be deemed to have been waived, and the court may grant the receiver’s Petition and approve the settlement.

3. Any objection must be filed in writing on or before the Objection Deadline by Delaware counsel through electronic service as required by the Court’s Rules or by unrepresented individuals with the Court at the Court's address at:

Register in Chancery
Court of Chancery of the State of Delaware
New Castle County Courthouse
500 North King Street
Wilmington, DE 19801

and shall include the following information:

- a. The caption of these proceedings:

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF)
THE LIQUIDATION OF) C.A. No. 8601-VCZ
INDEMNITY INSURANCE)
CORPORATION, RRG)

- b. the nature of the document being filed (i.e., Objection to the Receiver's Petition to Approve Settlement Agreement and Release With Branch Banking and Trust Company);
- c. the name, address, and telephone number of the person filing the document;
- d. the date the document is being filed; and
- e. the grounds for such party's objection to the Petition and the relief sought therein.

Please note that corporations and other entities are required to be represented by Delaware counsel to appear before the Court.

NOTICE OF THIS ORDER TO SHOW CAUSE

4. Within five (5) business days of receipt of this signed Order to Show Cause, the Receiver shall serve copies of this Order to Show Cause, the Petition, Exhibit 1 to the Petition, and the proposed form of Order Approving Settlement by sending a postcard or similar mailing via the United States Post Office to all Claimants who filed a Proof of Claim in this liquidation proceeding in substantially the form:

Indemnity Insurance Corp., RRG (“ICRRG”) in Liquidation

IMPORTANT NOTICE OF COURT FILING

A FILING HAS BEEN MADE WHICH MAY AFFECT YOUR RIGHTS. On November 14, 2019, the Court entered an Order to Show Cause concerning the Receiver’s Petition to Approve Settlement Agreement and Release With Branch Banking and Trust Company (the “Filing”). You may view or print a copy of the Filing (which includes the Petition) by opening the URL at https://insurance.delaware.gov/divisions/rehab_bureau/rehab_bureau_iicrrg and choosing the link for the Filing.

You may request a copy of the Filing by mail from the Receiver at Indemnity Insurance Corp., RRG (in Liquidation), The Nemours Building 1007 Orange St., Suite 1010, Wilmington, DE 19801, by email to iicdc.receiver@delrlb.com, or by calling 877-472-8360.

5. In addition, within five (5) business days of receipt of this signed Order to Show Cause, for those Claimants for which no confirmation of receipt of the Notice of Determination was returned by the claimant or the claimant’s attorney, the Receiver shall in addition to sending the mailing set forth in paragraph 4, above, provide the notice set forth in paragraph 4 above to such additional addresses the Receiver has identified for the claimant and the claimant’s attorney, and also serve the Order to Show cause by email if the Proof of Claim form or the Receiver’s records show an email for the claimant or the claimant’s attorney.

6. Additionally, within five (5) business days of receipt of this signed Order to Show Cause, the Receiver shall also serve copies of this Order to Show Cause, the Petition, Exhibits 1 to the Petition, and the proposed form of Order Approving Settlement by U.S. first class certified mail, postage prepaid, return

receipt requested, on all Delaware counsel of record, if any, who did not already receive the Order by electronic service from the Court.

7. If no objection is timely filed to the Petition, the Court may enter an Order granting the relief sought by the Receiver.

SO ORDERED this 14th day of November, 2019.

/s/ Morgan T. Zurn
Vice Chancellor Morgan T. Zurn



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE :
LIQUIDATION OF INDEMNITY : C.A. NO. 8601-VCZ
INSURANCE CORPORATION, RRG :

**RECEIVER’S VERIFIED PETITION TO APPROVE
SETTLEMENT AGREEMENT AND RELEASE WITH
BRANCH BANKING AND TRUST COMPANY**

The Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, in his capacity as the Receiver (“Receiver”) of Indemnity Insurance Corporation, RRG, in Liquidation (“IICRRG” or “Estate”), through the undersigned attorneys, hereby petitions this Honorable Court, pursuant to 18 *Del. C.* § 5902, for an Order approving the Settlement Agreement and Release between the Receiver and IICRRG and Branch Banking and Trust Company, successor to Susquehanna Bank (“BB&T” or the “Bank”). A copy of the Settlement Agreement and Release is attached hereto as Exhibit “1”.

THE DELINQUENCY PROCEEDINGS OF IICRRG

1. Prior to April 10, 2014, IICRRG was a Delaware-domesticated risk retention group that primarily offered property and casualty insurance to bars, nightclubs, restaurants and other businesses engaged in the entertainment industry.

2. IICRRG was owned by RB Entertainment, LLC (“RB”) which ultimately was controlled by Jeffrey B. Cohen (“Cohen”).

3. On April 10, 2014, this Court entered a Liquidation and Injunction Order with Bar Date (“Liquidation Order”) (D.I. 444) placing IICRRG into liquidation pursuant to the Delaware Uniform Insurer’s Liquidation Act (the “DUILA”) codified at 18 *Del. C.* §§ 5900, *et seq.* Prior to the Liquidation Order, the Court had issued a Confidential Seizure and Injunction Order (“Seizure Order”) (D.I. 4) and a Rehabilitation and Injunction Order (“Rehabilitation Order”) (D.I. 237).

4. The Liquidation Order, *inter alia*, consistent with the Seizure and Rehabilitation Orders, contained a provision requiring the turnover of all assets of IICRRG to the Receiver. The turnover requirement expressly included bank accounts.

THE COHEN FRAUDS AND COLLAPSE OF IICRRG

5. IICRRG’s delinquency proceedings and ultimate financial collapse were caused by multiple frauds committed by Cohen.

6. Cohen’s frauds are stated more particularly in the Seizure Petition and two Liquidation Petitions filed in this Court in the delinquency proceedings. (D.I. 1, D.I. 20, and 341 respectively).

7. These frauds, and others, were also the subject of a federal criminal indictment of Cohen which culminated in a criminal trial, a guilty plea, and a conviction on each count of the indictment to which Cohen pled guilty. Cohen was

sentenced to 240 months as to Count 1 (Wire Fraud); 180 months as to Count 24 (False Statements to a Regulator), to run consecutively with Count 1; 240 months as to Count 28 (Obstruction of Justice), to run concurrently with Counts 1 and 24; and 24 months as to Count 20 (Aggravated Identity Theft) to run consecutively to Counts 1, 24, and 28. In total, Mr. Cohen was sentenced to 444 months (37 years).

8. Cohen's frauds featured in the Liquidation Petitions, the Criminal Indictment, and the trial included Cohen's application to Susquehanna Bank for a \$5MM commercial loan transaction that closed on December 12, 2012, which also involved Cohen, RB, and other Cohen affiliated entities, IICRRG and IDG ("5MM Loan Transaction" or "5MM Loan"). In his application for the 5MM Loan, Cohen told Susquehanna that IICRRG would use the loan proceeds to create "equity" on IICRRG's balance sheet, thereby increasing IICRRG's ability to sell policies.

9. The 5MM Loan also ostensibly was to be used by RB as a cash contribution or loan to IICRRG to increase IICRRG's capital by 5MM in advance of an initial public offering ("IPO").

10. Although the loan was to RB, IICRRG, Cohen and other Cohen affiliated entities guaranteed the loan.

11. The loan proceeds were deposited directly into an IICRRG escrow account at Susquehanna Bank (“Account”) that was created specifically for holding such proceeds.

12. Pursuant to the relevant loan documents, the loan proceeds were fully encumbered, non-accessible, and under the complete control of Susquehanna Bank.

13. The \$5MM Loan Transaction was specifically addressed in the Receiver’s Liquidation Petition (“Liquidation Petition – I”) filed on July 26, 2013 as “The Bank 3 Susquehanna Loan as Unencumbered Cash Fraud” and “The IICRRG Financial Statement Frauds” referenced in paragraphs 97 through 117 of the Petition. (D.I. 20, ¶¶ 97-11).

14. The allegations in paragraphs 101 and 111 through 114 of Liquidation Petition – I summarized the frauds as follows:

* * * *

101. In other words, the IICRRG Susquehanna Bank Account No. 10011405809, identified generically as an account at Bank 4 on the IICRRG financial statements holding over \$5,000,000 in unencumbered and liquid cash of IICRRG, and the account that was the subject of the fraudulent confirmation, was in fact an account that consisted of borrowed money from Susquehanna Bank that was parked in an IICRRG account in name only and fully encumbered and under the sole dominion and control of Susquehanna Bank.

* * * *

111. If Susquehanna Bank was indeed Bank 4 on IICRRG's 3Q 2012 Financial Statement and 2012 Annual Statement, as previously represented by Cohen, then the Bank 4 unencumbered cash balance for Bank 4 on IICRRG's 3Q Financial Statement was fraudulent because the Susquehanna Bank account at issue, IICRRG Account No. 10011405809, was not opened until November 21, 2012, and funds were not deposited into the account until December 13, 2012 --- nearly sixty days after September 30, 2012 which was the close of the quarter represented by IICRRG's 3Q Financial Statement.

112. It was also fraudulent with respect to IICRRG's 2012 Annual Statement because the Bank 4 cash asset was in fact fully encumbered and pledged to Susquehanna Bank and could not be included as an unencumbered asset of IICRRG on its financial statements.

113. However, as noted in this Liquidation Petition, based upon the information provided by Susquehanna Bank, and other information learned after the seizure, the impact and depth of Cohen's misrepresentation was much worse because it meant that contrary to the misrepresentations made by Cohen, Bank 3 identified on IICRRG's 2012 Annual Statement was Susquehanna Bank, not Bank 4, and the representations in IICRRG's 2012 Annual Statement, Schedule E – Part I – Cash that \$10,173,760 unencumbered cash was on deposit at Susquehanna Bank was false.

114. In fact, \$5,001,049.09 of \$10,173,760 that were represented as on deposit and unencumbered were deposited in a restricted account at Susquehanna Bank, IICRRG Account No. 10011405809 – the same account that was the subject of the fraudulent confirmation – and were fully encumbered and pledged in their entirety to Susquehanna Bank towards Susquehanna loan #10010817756.

(Liquidation Petition – I, D.I. 20, ¶¶ 101 and 111-114).

15. In fact, Cohen's acts and omissions in that transaction, and the falsifying of IICRRG's financial statements by inflating the company assets by \$5MM, formed a predicate for his guilty plea and sentencing in the federal criminal action.

MARYLAND LITIGATION PRIOR TO THE DECLARATORY JUDGMENT ACTION

16. On or about June 17, 2013, subsequent to obtaining the Seizure Order from the Delaware Chancery Court, the Commissioner also filed a Verified Complaint to Enter, Enroll and Enforce, *ex parte*, the Seizure Order in the Circuit Court for Baltimore County, Maryland (“Maryland Court”). On June 17, 2013, the Maryland Court entered an Order enrolling the Seizure Order in Maryland (“Maryland Seizure Order”).

17. The Bank, then Susquehanna, contested the Maryland Seizure Order to the extent that it required the turnover of the \$5,000,000 held in the Account and on November 26, 2013 filed for relief from the Maryland Seizure Order.

18. Shortly thereafter, on December 16, 2013, the Bank also filed a declaratory judgment action against then Insurance Commissioner Karen Weldin Stewart, CIR-ML, in her capacity as the Insurance Commissioner and the Receiver of IICRRG in the United States District Court for the District of Maryland (“Maryland Declaratory Judgment Action”). In that action, the Bank sought to establish its rights to the funds in the Account.

19. Commissioner Stewart filed a Motion to Dismiss on the grounds that the Eleventh Amendment barred the Federal Court from exercising subject matter

jurisdiction. Alternatively, the Commissioner asserted that the Court should abstain in the matter due to other pending state court proceedings. On September 29, 2014, the Federal Court granted the Motion to Dismiss and dismissed the Maryland Declaratory Judgment Action.

20. In the meantime, because the Seizure Order (Delaware) was supplanted by the Rehabilitation and Liquidation Orders, the Commissioner moved to terminate the Maryland Seizure Order.

21. The Receiver enrolled the Liquidation Order in Maryland on June 16, 2014, and the Bank (Susquehanna) sought and was granted leave to intervene in Maryland. Afterward, on December 26, 2014, the Bank filed a Motion for Relief from the Liquidation Order in the Maryland Court. The Maryland Court denied the Bank's motion and dismissed the Bank's claim. The Bank appealed.

22. Ultimately, the Bank withdrew its appeal in Maryland and filed a Verified Petition in the IICRRG Liquidation proceedings seeking declaratory relief with respect to the Account (the "Declaratory Judgment Action").

THE BANK'S DECLARATORY JUDGMENT ACTION

23. On July 1, 2016, the Receiver filed an Answer with Affirmative Defenses ("Answer") to the Declaratory Judgment Action.

24. In the Receiver's Answer, the Receiver denied and disputed that IICRRG had any liability to the Bank, and alleged that because the Bank knew of

the intended purpose of the \$5MM Loan, the Bank aided and facilitated Cohen's fraudulent attempt to inflate IICRRG's balance sheet arising from the \$5MM Loan Transaction, and the Bank could not enforce its rights against IICRRG. The Receiver asserted several defenses. The Receiver sought a determination that the funds in the Account constituted an unencumbered asset of IICRRG. The Bank denied these allegations.

THE SETTLEMENT OF THE DECLARATORY JUDGMENT ACTION

25. After the pleadings closed, BB&T and the Receiver engaged in extensive discovery and motion practice. The trial of this matter was scheduled to begin on November 12, 2019.

26. On November 6, 2019, the parties reached a settlement to resolve all claims between them arising from the subject matter contained in the pleadings, discovery, and documents filed in the Liquidation proceedings with respect to the Declaratory Judgment Action ("Settlement").

27. The terms and conditions of the Settlement are contained in the Settlement Agreement and Release. See Ex. 1.

28. The material terms and conditions of the Settlement are as follows:

- (a) The terms and conditions of the Settlement are subject to the approval by the Delaware Court of Chancery in this Liquidation proceeding ("Approval Order") (Ex. 1, ¶ 4);
- (b) BB&T agrees to release the sum of TWO MILLION THREE HUNDRED THOUSAND DOLLARS (\$2,300,000)

(“Settlement Amount”) to the Estate of IICRRG from the Account. Payment shall be made within three (3) business days following the date of Approval Order. The Receiver, on behalf of the Estate of IICRRG, agrees to forgo receipt of the remainder of the funds in the Account (Ex. 1, ¶ 1);

- (c) Upon receipt of the Settlement Amount, BB&T and the Receiver and IICRRG, each releases the other, including their past and present attorneys, employers, officers, directors, owners, members, managers, employees, insurers, reinsurers, representatives, affiliates, family members, agents, predecessors, successors and assigns, individually and in their official capacity, of and from all claims, debts, demands, causes of action, suits, damages, obligations, costs, fees, losses, expenses, compensation, liens and liabilities whatsoever, at law or in equity, known or unknown, asserted or un-asserted, contingent or accrued, discovered or undiscovered, which occurred or existed at any time on or before the Effective Date of this Agreement. Nothing shall be construed as releasing the Parties from their obligations under this Agreement (Ex. 1, ¶ 2);
- (d) No Party to the Settlement Agreement and Release makes any acknowledgment or admission of any liability, fault or wrongdoing to the other Party to this Agreement, and each Party expressly agrees that this Agreement is made for the sole purpose of compromising claims that are disputed as to validity (Ex. 1, ¶ 6);
- (e) The parties will bear their own attorneys’ fees and expenses (Ex. 1, ¶ 8), the Settlement Agreement and Release is the entire (final) agreement between and among the parties (Ex. 1, ¶ 9), the agreement is binding on the parties and their representatives, assigns, transferees, predecessors and successors (Ex. 1, ¶ 13, and all modifications of the agreement must be in writing (Ex. 1, ¶ 12); and
- (f) The Settlement Agreement and Release will be governed by Delaware law, disputes arising under or related to the agreement shall be adjudicated by the Delaware Court of Chancery, and the Delaware Court of Chancery shall have

continuing jurisdiction over the terms of the agreement (Ex. 1, ¶ 14).

APPROVAL OF THE SETTLEMENT AMOUNT AND TERMS

29. By statute, the Receiver has several core duties or activities that he and his deputies perform in administering the Estate with the goal being, in most instances, to collect and conserve Estate assets and to maximize the later payment of legitimate policyholder claims and, to the extent possible, the claims of creditors below policyholders in priority under 18 *Del. C.* §5901, *et. seq.*

30. The terms and conditions of the Settlement Agreement and Release are fair and reasonable to the IICRRG Estate for several reasons.

31. First, the Settlement Amount provides the Estate with a significant recovery that can be applied toward the staggering losses suffered by the IICRRG policyholders and claimants.

32. As noted in the Receiver's pending Verified Petition For Approval Of Two Plans Concerning the Proof of Claims Process And the Service Of Related Filings By The Receiver (separately the "Petition to Approve POC Process" and "Petition to Approve Service Method") which was filed with the Court on September 10, 2019 (Trans. ID 64182794), risk retention groups such as IICRRG are barred from participating in, or receiving benefits from, insurance

guaranty associations.¹

33. As a result, there are a significant number of Proofs of Claim (“POCs”) because any policyholder or other Claimant seeking amounts on account of the insurance policies written by IICRRG must participate in the Claims process in the liquidation proceeding.

34. IICRRG has received over 2,900 POCs². Nearly all of the Claims

¹ Risk retention groups are included in the definitions of “Captive Insurance Company” found in Section 6902(12) of Ch. 69 of Title 18 of the Delaware Code. Pursuant to 18 *Del. C.* § 6913 “No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.”

² When a Claimant files a Proof of Claim Form with the Estate, a Claimant may assert more than one claim per form depending on the circumstances. As part of the Proof of Claims Process, the Claim Specialists (see paragraphs 29 through 31 of the Petition to Approve POC Process and the defined terms contained therein which are denoted here with a capital first letter) analyze and make a final determination as to classification and value for each Claim filed by a Claimant in the form of a separate Notice of Determination (NOD) for each Claim which may be contained in a Proof of Claim Form. In addition, on any one occurrence, more than one Claimant may file the same Claim. For example, an injured party and the insured may both file a Claim. Accordingly, issues such as the number of Claims stated in a Proof of Claim Form and whether there are multiple or duplicate Claims asserted from the same occurrence, are issues that in most instances are not fully known to Claims Specialists until they review the individual Proof of Claim Form and begin to analyze the Claims. Thus, the number and dollar amount of Claims has changed as Claims have been evaluated and more information regarding them is provided to the Claims Specialists. For this reason, POCs refers to the number of Claims versus the number of POC Claim Forms filed with the Estate as the number of Claims is the more meaningful metric.

contained in the POCS have been evaluated by the Receiver.

35. The Receiver has classified 2,415 of the evaluated Claims as Class III³ (policyholder level claims). The recommended aggregate value of those Claims exceeds \$127,500,000.

36. The Receiver has classified approximately 369 of the evaluated Claims as Class VI. These Claims have a face value in excess of \$10,650,000.⁴

37. As of October 31, 2019, total estate assets were \$19,379,706 comprised of the following:

Treasury Notes, at amortized cost	\$18,697,678
Cash and Short Duration Investments	<u>\$ 682,028</u>
Total	<u>\$19,379,706</u>

38. These assets will not only be used to pay the Court determined Claims of policyholders and claimants, but are also used to pay the administrative expenses of the Estate which include litigation and other expenses.

³ Class III is one of nine priority classes set forth in Section 5918 of the DUILA. Pursuant to 18 *Del. C.* § 5918(e): “Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class shall receive any payment.”

⁴ Only face value is used for Class VI Claims. These Claims are primarily for contract-based economic loss. Class VI Claims have not been valued because they will not share in any distribution. Class III Claimants will not be paid in full.

39. Accordingly, the Settlement Amount exceeds ten percent (10%) of the total amount of existing Estate assets and will increase the amount ultimately available to pay policyholders and claimants at the time of distribution and closure of the Estate.

40. Further, as with all complex litigation, the outcome of the trial of the Declaratory Judgment Action was uncertain and there were risks attendant with pursuing a larger recovery at trial.

41. Second, the Receiver and IICRRG's attorneys in this litigation are well versed in the liability and damage theories of the case and consider the Settlement and the Settlement Amount to be fair and reasonable.

42. Third, the Settlement gives certainty to recovery, and the result protects the value of Estate assets that will ultimately be available for distribution to the policyholders and claimants of IICRRG through the Estate administration and Proof of Claim Process.

43. Fourth, trial of the Declaratory Judgment Action was expected to take five days and involved the testimony of over ten witnesses, including five expert witnesses retained by the parties.

44. Settlement of the parties' claims reduced the significant costs and expenses that would have been incurred due to continued pre-trial preparation, trial

attendance and preparation, expert witness fees, and the preparation of post-trial filings.

45. In addition, based upon several important legal issues decided and to be decided in the case, it was very likely that regardless of the Court's decision post-trial, one or both of the parties would have filed an appeal.

46. This appellate practice would likewise be costly to the Estate, result in continued uncertainty, and could involve a re-trial of the parties' dispute. The expense and uncertainty associated with an appeal and possible re-trial were eliminated by the Settlement.

47. Fifth, one of the important roles of the Receiver is to marshal assets into the Estate so that the assets are available to pay Estate expenses and make distributions to policyholders, claimants, and creditors under the Proof of Claim process. Approval of this Settlement serves that goal.

48. Sixth, the non-monetary terms and conditions of the Settlement are typical of the terms and conditions frequently found in the settlement of commercial litigation.

46. Based upon the foregoing, the Receiver respectfully submits that the approval of the terms and conditions of the Settlement and Release Agreement is in the best interests of IICRRG and its policyholders and other claimants. The

Receiver recommends approval of the terms and conditions of the Settlement and the Settlement Amount.

WHEREFORE, the undersigned attorney on behalf of The Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, in his capacity as Receiver of Indemnity Insurance Corporation, RRG, in Liquidation, respectfully requests that this Honorable Court grant the Receiver's Petition to Approve the Settlement Agreement and Release with Branch Banking and Trust Company and for such further relief as the Court deems just.

Dated: November 14, 2019 **CROSS & SIMON, LLC**

/s/ Kevin S. Mann

Christopher P. Simon (No. 3697)

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*Attorneys for the Honorable Trinidad Navarro,
Insurance Commissioner of the State of Delaware,
in his capacity as Receiver for Indemnity Insurance
Company, RRG, in Liquidation*

(Word Count: 3,317)



Exhibit "1"

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (including Exhibit A hereto, the “**Agreement**”) is made as of this 14th day of November, 2019 (the “**Effective Date**”), by and between BRANCH BANKING AND TRUST COMPANY (“**BB&T**”) and the Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, in his capacity as Receiver (the “**Receiver**”) for Indemnity Insurance Corporation, RRG (“**IICRRG**”), in liquidation. BB&T and the Receiver are sometimes referred to herein collectively as the “**Parties**” and individually as a “**Party**”.

WHEREAS, on May 27, 2016, BB&T, as successor to Susquehanna Bank, filed a third-party Petition in the liquidation proceeding pending in the Delaware Chancery Court captioned *In the Matter of Indemnity Insurance Corporation, RRG, in Liquidation*, C.A. No. 8601-MTZ (the “**Action**”) seeking declaratory relief with respect to the account formerly titled “Indemnity Insurance Corporation RRG, Susquehanna Bank Escrow Agent,” bearing account number 10011405809 (the “**Account**”);

WHEREAS, the Receiver has asserted various defenses to the Action; and

WHEREAS, the Parties, without admitting or conceding any liability or wrongdoing whatsoever, have chosen to enter into this Agreement to resolve the Action, including any other causes of action or defenses, known or unknown, suspected or unsuspected, that were or could have been asserted in the Action.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Settlement.** As full and complete compromise of all released claims as set forth in Section 2 of this Agreement:

- (i) Within three (3) business days of the entry of an Order by the Delaware Chancery Court approving this Agreement, as set forth below, BB&T agrees to deliver the amount of \$2,300,000.00 (the “**Settlement Payment**”) from the Account to the Receiver, in accordance with the payment instructions attached hereto as Exhibit A. To the extent that the Account is subject to the Liquidation and Injunction Order with Bar Date entered on April 10, 2014, (the “Injunction Order”), which the Receiver claims but BB&T disputes, the Receiver, on behalf of the Estate of IICRRG stipulates and agrees that BB&T shall have relief from the Injunction Order to foreclose on its security interest as to the remaining funds in the Account.

2. **Mutual Release of Claims.**

a. RELEASE OF THE RECEIVER

BB&T unconditionally and irrevocably discharges and releases the Receiver and IICRRG to the full extent permitted by law including, but not limited to, the Receiver's and IICRRG's past and present attorneys, employers, officers, directors, owners, members, managers, employees, insurers, reinsurers, representatives, affiliates, family members, agents, predecessors, successors and assigns, individually and in their official capacity, jointly and severally, of and from all claims, debts, demands, causes of action, suits, damages, obligations, costs, fees, losses, expenses, compensation, liens and liabilities whatsoever, at law or in equity, known or unknown, asserted or un-asserted, contingent or accrued, discovered or undiscovered, which occurred or existed at any time on or before the Effective Date of this Agreement. Nothing contained in this Section shall be construed as releasing the Parties from their obligations under this Agreement.

b. RELEASE OF BB&T

The Receiver, on behalf of himself and the Estate of IICRRG, unconditionally and irrevocably discharges and releases BB&T to the full extent permitted by law including, but not limited to, BB&T's past and present attorneys, employers, officers, directors, owners, members, managers, employees, insurers, reinsurers, representatives, affiliates, family members, agents, predecessors, successors and assigns, individually and in their official capacity, jointly and severally, of and from all claims, debts, demands, causes of action, suits, damages, obligations, costs, fees, losses, expenses, compensation, liens and liabilities whatsoever, at law or in equity, known or unknown, asserted or un-asserted, contingent or accrued, discovered or undiscovered, which occurred or existed at any time on or before the Effective Date of this Agreement. Nothing contained in this Section shall be construed as releasing the Parties from their obligations under this Agreement.

3. **Covenant Not to Sue.** Each of the Parties agrees that it will not institute or prosecute against the other Party any action or other proceeding based in whole or in part upon any claims released by this Agreement. Further, each of the Parties agrees that it will not authorize, encourage, solicit or assist the commencement or prosecution against the other Party of, any action or other legal proceeding related in whole or in part to any claims released by this Agreement. Nothing contained herein shall prevent or restrict any Party from providing truthful testimony or complying with any applicable law, court order or legal process. Each of the Parties warrants and represents that it has not assigned or transferred any claim, demand, right, action, or cause of action covered by or released in connection with this Agreement.

4. **Court Approval.** On or before November 14, 2019, the Parties shall submit this Agreement to the Liquidation Court, together with a Verified Petition and Order to Show Cause seeking expedited approval of this Agreement as fair and reasonable. The Parties shall use their best efforts to obtain the approval of the Delaware Chancery Court and to release the Settlement Payment to the Estate of IICRRG prior to December 31, 2019, including but not limited to, taking all reasonable steps necessary to effectuate the purposes of the Agreement and promptly addressing any issues raised by the Delaware Chancery Court or by objectors. The terms and conditions of this Agreement shall only be effective upon the Delaware Chancery Court approval, but upon such approval the terms will be effective as of the Effective Date defined above.

5. **Dismissal of Action.** Within five (5) business days of the release of the Settlement Payment, the parties shall file a Stipulation of Dismissal of the Action with prejudice and without costs and attorneys' fees.

6. **No Admission of Liability or Wrongdoing.** No Party to this Agreement makes any acknowledgment or admission of any liability, fault or wrongdoing to the other Party to this Agreement, and each Party expressly agrees that this Agreement is made for the sole purpose of compromising claims that are disputed as to validity.

7. **Notice.** All notices or other communications that are required or permitted under this Agreement shall be in writing and deemed sufficient if and when delivered personally or by a nationally recognized overnight courier service requiring acknowledgment of receipt of delivery, or if and when sent by First Class United States Mail, registered or certified, postage prepaid, return receipt requested, addressed as follows:

If to: Branch Banking and Trust Company
800 Route 130 N
Cinnaminson, NJ 08077
Attn.: Robert Sayre, Senior Vice President

With a required copy to: David S. Eagle, Esq.
Klehr Harrison Harvey Branzburg LLP
919 N. Market Street, Suite 1000
Wilmington, DE 19801

If to: The Receiver of IICRRG, in Liquidation
Michael J. Johnson, Deputy Receiver
Indemnity Insurance Corp., RRG, in Liquidation
The Nemours Building
1007 Orange St.
Suite 1010
Wilmington, DE 19801

With a required copy to: Christopher P. Simon, Esq.
Cross & Simon, LLC
1105 North Market Street
Suite 901
Wilmington, DE 19801

With a required copy to: Jeffrey B. Miceli, Esq.
Black & Gerngross, PC
1617 John F. Kennedy Boulevard
Suite 1575
Philadelphia, PA 19103

or to such other address as the Party to this Agreement to whom notice is to be given may have furnished to the other party to this Agreement in writing in accordance with this Section of this Agreement.

8. **Each Party to Bear Own Costs and Attorneys' Fees.** Each Party hereto shall bear its own respective costs, expenses, and attorneys' fees with respect to the Action and this Settlement Agreement.

9. **Entire Agreement.** The undertakings set forth in this Agreement constitute the entire and only consideration for this Agreement. This Agreement comprises the entire agreement of the Parties and supersedes and cancels any and all previous negotiations and agreements in connection with the subject matter of this Agreement.

10. **Severability.** If any provision of this Agreement or application thereof is held to be invalid, the invalidity shall not affect other provisions or applications of the Agreement.

11. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same document. Delivery of an executed signature page of this Agreement by facsimile transmission or by electronic delivery of a PDF will be as effective as delivery of a manually signed counterpart.

12. **Modifications.** This Agreement may not be modified in any manner, except in writing signed by each of the Parties hereto and approved by the Liquidation Court.

13. **Binding Effect.** The rights and obligations of this Agreement shall be binding on the Parties and on their respective predecessors, successors, assigns, and heirs, as applicable.

14. **Controlling Law and Continuing Jurisdiction.** This Agreement is made under, and shall be governed by, construed and enforced in accordance with, the laws of Delaware, and the Parties shall submit to the continuing personal and subject matter jurisdiction of the Delaware Chancery Court for the enforcement of, and resolution of any disputes arising under, or related to this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date set forth above.

BRANCH BANKING AND TRUST COMPANY

By:

Rob Sayre

Digitally signed by Rob Sayre
DN: cn=Rob Sayre, o=BB&T,
email=rsayre@bbandt.com, c=US
Date: 2019.11.14 12:24:21 -05'00'

Name: Robert D. Sayre

Title: Senior Vice President

**THE HONORABLE TRINIDAD NAVARRO,
INSURANCE COMMISSIONER OF THE
STATE OF DELAWARE, IN HIS CAPACITY
AS RECEIVER OF INDEMNITY INSURANCE
CORPORATION RRG, IN LIQUIDATION**

By:

Name:

Title:

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date set forth above.

BRANCH BANKING AND TRUST COMPANY

By:

Name:
Title:

**THE HONORABLE TRINIDAD NAVARRO,
INSURANCE COMMISSIONER OF THE
STATE OF DELAWARE, IN HIS CAPACITY
AS RECEIVER OF INDEMNITY INSURANCE
CORPORATION RRG, IN LIQUIDATION**

By:



Name: MICHAEL JOHNSON
Title: DEPUTY RECEIVER

EXHIBIT A

Payment Instructions

The Settlement Payment shall be made by check or wire transfer.

If payment is made by check, such payment shall be made to:

Indemnity Insurance Corporation RRG

If payment is made by wire transfer, such payment shall be made according to the following wiring instructions:

ABA # 121000248
Wells Fargo Bank
420 Montgomery
San Francisco, CA 94104

Account Number: 4122023377
Indemnity Insurance Corporation RRG



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:)
INDEMNITY INSURANCE) C.A. No. 8601-MTZ
CORPORATION, RRG,)
IN LIQUIDATION)

**[PROPOSED] ORDER GRANTING RECEIVER’S VERIFIED
PETITION TO APPROVE SETTLEMENT AGREEMENT
AND RELEASE WITH BRANCH BANKING AND TRUST COMPANY**

Upon the Verified Petition (the “Petition”) of the Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, in his capacity as Receiver for Indemnity Insurance Company, RRG (“IICRRG”), in Liquidation (the “Receiver”) to approve the settlement agreement and release between the Receiver and Branch Banking and Trust Company; and the Court having considered the Petition and any responses thereto; and having found that cause exists for granting the relief requested in the Petition; it is hereby ORDERED that the Petition is GRANTED.

SO ORDERED this ____ day of _____, 2019.

Vice Chancellor Morgan T. Zurn



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:)
)
INDEMNITY INSURANCE CORPORATION,) C.A. No. 8601-CB
RRG, IN LIQUIDATION)

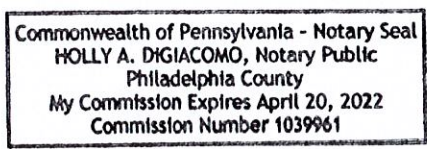
VERIFICATION OF MICHAEL JOHNSON

COMMONWEALTH OF PENNSYLVANIA :
: SS
CITY AND COUNTY OF PHILADELPHIA :

I, MICHAEL J. JOHNSON, being duly sworn, according to law, depose and state that I have read the foregoing Receiver’s Verified Petition for Approval Settlement Agreement with Branch Banking & Trust in the above-captioned matter, do hereby verify that the factual statements set forth therein are true and correct to the best of my knowledge, information, and belief.

Michael J. Johnson, Deputy Receiver
Indemnity Insurance Corporation RRG,
In Liquidation

SWORN TO AND SUBSCRIBED before me this 19 day of November, 2019.



Notary Public
My Commission Expires: 4/20/22

