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Transaction ID 70419785
Case No. 2019-0175-JTL



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE :
REHABILITATION : C.A. No. 2019-0175-JTL
OF SCOTTISH RE (U.S.), INC. :

LIQUIDATION AND INJUNCTION ORDER

WHEREAS, the Honorable Trinidad Navarro, in his capacity as Insurance Commissioner of the State of Delaware and as the Receiver (the "Receiver") of Scottish Re (U.S.), Inc. ("SRUS"), has filed a Motion for Entry of a Liquidation and Injunction Order (the "Motion") seeking the entry of a Liquidation and Injunction Order concerning SRUS pursuant to 18 *Del. C.* §5901, et seq.;

WHEREAS, the Receiver was appointed as such by this Court's Rehabilitation and Injunction Order dated March 6, 2019;

WHEREAS, the Receiver has provided the Court with evidence sufficient to support the conclusion that: (a) SRUS is insolvent and remains impaired and in unsound condition, and that further efforts to rehabilitate SRUS would be useless; (b) SRUS has consented to the entry of a Liquidation and Injunction Order through the unanimous consent of its directors; and (c) liquidation is in the best interests of SRUS, its creditors, and the general public; and

WHEREAS, this Court finds that sufficient cause exists for the liquidation of SRUS pursuant to 18 *Del. C.* §§5905, 5906, and 5910(b) and for the entry of a Liquidation and Injunction Order concerning SRUS.

WHEREAS, a formal hearing on the Receiver's Motion is not necessary due to SRUS's consent to the relief requested in the Motion and SRUS's waiver of formal service of process and a formal hearing on the Motion;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE COURT, as follows:

1. The Commissioner has attached to the Motion evidence sufficient to support the conclusion that SRUS is impaired and in unsound condition. Because SRUS has not contested the Motion and has consented to its entry, the allegations of the Motion are deemed admitted as against SRUS for purposes of this proceeding.

2. These allegations are also supported by the Exhibits and affidavits filed contemporaneous with the Motion.

3. As a separate and independent basis for entry of the Liquidation and Injunction Order, evidence that a majority of the directors of SRUS have consented to the entry of the Liquidation and Injunction Order has been submitted in support of the Motion.

4. Given the determination set forth above, a formal hearing on the Motion is not necessary.

5. By this Court's March 6, 2019, Rehabilitation and Injunction Order, SRUS was declared impaired and in unsound condition, and this Court finds that

the impairment and unsound condition continues to exist. This Court also finds that SRUS is insolvent, that further efforts to rehabilitate SRUS would be useless, and that an order of liquidation is appropriate pursuant to 18 *Del. C.* §§5905, 5906, and 5910(b).

6. Pursuant to 18 *Del. C.* §5911, the appointment of the Commissioner and his successors in office as the Receiver of SRUS is hereby continued.

7. Pursuant to 18 *Del. C.* §5911, the Receiver shall forthwith take and continue possession of the property of SRUS, liquidate its business, and deal with SRUS's property and business in the name of the Receiver or in the name of SRUS. Further, the Receiver shall take and continue to control and be vested and continue to be vested with all right, title, and interest in, of, and to the property of SRUS including, without limitation, all of SRUS's assets, contracts, rights of action, books, records, bank accounts, certificates of deposits, collateral securing obligations to, or for the benefit of, SRUS or any trustee, bailee, or any agent acting for or on behalf of SRUS (collectively, the "Trustees"), securities or other funds, and all real or personal property of any nature of SRUS, including, without limitation, furniture, equipment, fixtures, and office supplies, wherever located, and including such property of SRUS or collateral securing obligations to, or for the benefit of, SRUS or any Trustee thereof that may be discovered hereafter, and all proceeds of or accessions to any of the foregoing, wherever located, in the

possession, custody, or control of SRUS or any Trustee therefore (collectively, the “Assets”).

8. If the Receiver has not already done so, the Receiver may change to his own name as Receiver, the name of any of SRUS’s accounts, funds, or other Assets held with any bank, savings and loan association, or other financial institution, and may withdraw such funds, accounts, and other Assets from such institutions or take any lesser action necessary for the proper conduct of this liquidation.

9. The Receiver is further authorized to take such actions as the nature of this cause and interests of the cedents, reinsurers, creditors, and stockholder of SRUS, and the public may require in accordance with 18 *Del. C.* ch. 59.

10. The Receiver is hereby authorized to continue to deal with the Assets, business, and affairs of SRUS including, without limitation, the right to sue, defend, and continue to prosecute suits or actions already commenced by or for SRUS, or for the benefit of SRUS's cedants, reinsurers, creditors, and stockholders in the courts, tribunals, agencies, or arbitration panels for this State and other states and jurisdictions in his name as the Insurance Commissioner of the State of Delaware in his capacity as the Receiver of SRUS or in the name of SRUS.

11. Pursuant to the March 6, 2019, Rehabilitation and Injunction Order and continuing through this Liquidation and Injunction Order, the Receiver is

vested with the right, title, and interest in and to all funds recoverable under treaties and agreements of reinsurance heretofore entered into by SRUS as the ceding insurer or as the assuming insurer, and all reinsurance companies involved with SRUS are enjoined and restrained from making any settlements with any claimant or cedent of SRUS other than with the express written consent of the Commissioner as Receiver, except as permitted by cut-through agreements or endorsements which were issued to the cedent, which were properly executed before the date of the Motion, which comply in all respects with 18 *Del. C.* §914, as amended by 72 *Del. Laws c.* 405, and which were approved by the Delaware Insurance Department if such approval was required. The amounts recoverable by the Receiver from any reinsurer of SRUS shall not be reduced or diminished as a result of this receivership proceeding or by reason of any partial payment or distribution on a reinsured policy, contract, or claim, and each such reinsurer of SRUS is hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy, reinsurance contract, or letter of credit.

12. All persons or entities that have in their possession Assets or possible Assets and/or that have notice of these proceedings or of this Order are, and continue to be, enjoined and restrained from transacting any business of, or on behalf of, SRUS or selling, transferring, destroying, wasting, encumbering, or

disposing of any of the Assets, without the prior written permission of the Receiver or until further Order of this Court. This prohibition includes, without limitation, Assets or possible Assets pertaining to any business transaction between SRUS and any of said parties. No actions concerning, involving, or relating to such Assets or possible Assets may be taken by any of the aforesaid persons or entities enumerated herein, without the express written consent of the Receiver, or until further Order of this Court.

13. All persons or entities, including but not limited to reinsurers and cedents, having notice of these proceedings or of this Order are hereby enjoined and restrained from exercising or relying upon any contractual right which would permit such third party or parties from withholding, failing to pay, setting-off, netting, or taking similar action with respect to any obligations owed to SRUS except as provided by 18 *Del. C.* § 5927.

14. All persons or entities, including but not limited to reinsurers and cedents, having notice of these proceedings or of the Rehabilitation and Injunction Order are hereby enjoined and restrained from commutating, terminating, accelerating or modifying any agreement of reinsurance, or asserting a default or event of default or otherwise exercising, asserting or relying upon any other right or remedy, based upon: (1) the filing of the Motion for Entry of Liquidation and Injunction Order, (2) the entry of this Liquidation and Injunction Order, (3) the

impairment or insolvency of SRUS, or (4) the facts and circumstances set forth in the Motion for Entry of Liquidation and Injunction Order, without the prior written permission of the Receiver or until further Order of this Court.

15. Except as otherwise indicated elsewhere in this Order or except as excluded by express written notice provided by the Receiver, all persons or entities holding Assets of, or on behalf of, SRUS shall file with the Receiver within ten (10) calendar days of the entry of this Order an accounting of those Assets, and possible Assets, regardless of whether such persons or entities dispute the Receiver's entitlement to such Assets.

16. Except as otherwise indicated elsewhere in this Order or except as excluded by express written notice provided by the Receiver, all persons or entities holding Assets and possible assets of, or on behalf of, SRUS shall within ten (10) calendar days of the entry of this Order, turn those Assets or possible Assets over to the Receiver, regardless of whether such persons or entities dispute the Receiver's entitlement to such Assets or possible Assets.

17. All persons and entities that have notice of these proceedings or of this Order are hereby prohibited from instituting or further prosecuting any action at law or in equity, including but not limited to any arbitration or mediation, or other proceedings against the Commissioner as Receiver, the Deputy Receiver(s), or the Designees in connection with their duties as such, or from obtaining

preferences, judgments, attachments, or other like liens or encumbrances, or foreclosing upon or making any levy against SRUS or the Assets, or exercising any right adverse to the right of SRUS to or in the Assets, or in any way interfering with the Receiver, the Deputy Receiver(s), or the Designees either in their possession and control of the Assets or in the discharge of their duties hereunder.

18. All persons and entities are hereby enjoined and restrained from asserting any claim against SRUS, the Assets, the Commissioner as Receiver of SRUS, the Deputy Receiver(s), or the Designees in connection with their duties as such, except insofar as such claims are brought in the liquidation proceedings of SRUS.

19. All persons or entities that have notice of these proceedings or of this Order are hereby enjoined and restrained from asserting claims for refunds of premium resulting from the cancellation of agreements of reinsurance issued by SRUS except insofar as such claims are brought in the liquidation proceedings of SRUS.

20. (a) All agreements of reinsurance issued by SRUS by which SRUS reinsures a cedent, whether issued in the State of Delaware or elsewhere, in effect as of the date of this Liquidation and Injunction Order shall only continue in force until the earlier of the following events: (i) the stated expiration or termination date and time of the contract of the reinsurance agreement; (ii) the effective date

and time of a reinsurance agreement with a third party reinsurer that replaces the reinsurance agreement with SRUS, regardless of whether the coverage is identical coverage; (iii) the effective date and time of any legally authorized transfer of SRUS's liabilities under the reinsurance agreement to a third-party reinsurer; and (iv) for all other reinsurance agreements not addressed above, such reinsurance agreements would be cancelled at 11:59 p.m. on the last day of the financial quarter following the date of this Order, regardless of whether such day is a Saturday, Sunday, or holiday. The Receiver shall notify promptly all cedents as applicable of such cancellation and termination by United States first class mail at the last known address of such cedent.

(b) The Receiver may terminate, cancel, or rescind any reinsurance contract with a retrocessionaire of SRUS, in which that retrocessionaire reinsures SRUS that is contrary to the best interests of the receivership. The Receiver shall notify promptly any such retrocessionaire of such cancellation and termination by United States first class mail at the last known address of such retrocessionaire.

21. (a) Pursuant to 18 *Del. C.* §5924, the rights and liabilities between SRUS and its retrocessionaires shall be fixed as of a date to be later determined by the Court upon application by the Receiver.

(b) Pursuant to 18 *Del. C.* §5924, the rights and liabilities between SRUS and of its cedents, creditors, stockholders, and all other persons interested in its

estate, except for its retrocessionaires (which will be governed by paragraph 21(a)), shall, unless otherwise directed by this Order, be fixed as of 11:59 p.m. on the last day of the financial quarter following the date this Liquidation and Injunction Order is docketed (the “Effective Date”), subject to the provisions of Chapter 59 of Title 18 of the Delaware Code with respect to the rights of claimants holding contingent claims.

22. Within thirty (30) calendar days after docketing of this Order, or as soon as possible after an interested party or potential creditor subsequently becomes known to the Receiver, the Receiver shall serve a copy of this Liquidation and Injunction Order on all interested parties, all known cedents, all known potential creditors, all stockholders of SRUS, all Board members of SRUS, its reinsurer(s), and any reinsurance intermediaries, all other known vendors, by United States first class mail, postage prepaid, provided that in the Receiver's discretion such notice may be mailed instead by United States first class certified mail, return receipt requested, or other United States mail providing proof of mailing, to such interested party or potential creditor's last known address in the company's files.

23. Within thirty (30) calendar days after docketing of this Order, the Receiver shall also publish this Liquidation and Injunction Order on the website maintained for the SRUS Receivership.

24. After the Effective Date, the Receiver shall, pursuant to 18 *Del. C.* § 5929(b), notify all persons who may have claims against SRUS to file such claims with the Receiver in the manner specified in the notice and within the time(s) fixed by the Court for filing such claims upon application by the Receiver.

25. The filing or recording of this Order or a certified copy hereof with the Register in Chancery and with the recorder of deeds of the jurisdiction in which SRUS's corporate and administrative offices are located or, in the case of real estate or other recorded property interests, with the recorder of deeds of the jurisdictions where the property is located, shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds. Without limiting the foregoing, the filing of this Order with the Register in Chancery also constitutes notice to all sureties and fidelity bondholders of SRUS of all potential claims against SRUS under such policies and shall constitute the perfection of a lien in favor of SRUS under the Uniform Commercial Code or any like Federal or state law, regulation, or order dealing with the priority of claims.

26. The Receiver is hereby authorized to transfer some or all of SRUS's Assets and liabilities to a separate affiliate or subsidiary for the overall benefit of SRUS's cedents, reinsurers, creditors, and stockholder, subject to approval by this Court.

27. The Receiver may, in his discretion, reject any executory contract to which SRUS is a party.

28. The Receiver may, in his discretion, appoint or continue the appointment of one or more consultants or other persons to serve as Deputy Receiver to assist the Receiver in accomplishing the directives of this Order. The Deputy Receiver(s) shall serve at the pleasure of the Receiver and, subject to the approval of the Receiver, shall be entitled to exercise all of the powers and authorities vested in the Receiver pursuant to this Order and applicable law.

29. The Receiver may employ or continue to employ and fix the compensation of such deputies, counsel, clerks, employees, accountants, actuaries, consultants, assistants, and other personnel (collectively, the “Designees”) as considered necessary, and all compensation and expenses of the Receiver, the Deputy Receiver(s), and the Designees and of taking possession of SRUS and conducting this proceeding shall be paid out of the funds and assets of SRUS as administrative expenses under 18 Del. C. § 5913(f). The Receiver may also retain those of SRUS’s current management personnel and other employees as Designees as he in his discretion determines would facilitate the liquidation of SRUS. All such Designees shall be deemed to have agreed to submit disputes concerning their rights, obligations, and compensation in their capacity as Designees to this Court.

30. The Receiver, the Deputy Receiver(s), and the Designees (collectively, the “Indemnitees”) shall have no personal liability for their acts or omissions in connection with their duties, provided that such acts or omissions are or were undertaken in good faith and without willful misconduct, gross negligence, or criminal intent. All expenses, costs, and attorneys’ fees incurred by the Indemnitees in connection with any lawsuit brought against them in their representative capacities shall be subject to the approval of the Receiver, except that in the event that the Receiver is the Indemnitee this Court’s approval shall be required, and such expenses, costs, and attorneys’ fees shall be exclusively paid out of the funds and assets of SRUS. The Indemnitees in their capacities as such shall not be deemed to be employees of the State of Delaware.

31. Hereafter the caption of this cause and all pleadings in this matter shall read as:

"IN THE MATTER OF THE LIQUIDATION
OF SCOTTISH RE (U.S.), INC."

32. This Court shall retain jurisdiction in this cause for the purpose of granting such other and further relief as this cause, the interests of the cedents, reinsurers, creditors, and stockholders of SRUS, and the public may require. The Receiver, or any interested party upon notice to the Receiver, may at any time make application for such other and further relief as either sees fit.

SO ORDERED this _____ day of _____, 2023.

Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: J Travis Laster

File & Serve

Transaction ID: 70388883

Current Date: Jul 18, 2023

Case Number: 2019-0175-JTL

Case Name: CONF ORDER State of Delaware ex rel. The Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware vs Scottish Re (U.S.), Inc., A Delaware Domestic Life and Health Insurance Company

Court Authorizer: J Travis Laster

/s/ Judge J Travis Laster