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Case No. 2023-1126-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE LIQUIDATION OF ARROWOOD INDEMNITY COMPANY	:	C.A. 2023-1126-LWW

RECEIVER'S MOTION TO EXTEND BAR DATE PURSUANT TO 18 *Del. C.* § 5929

Plaintiff, the Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, in his capacity as Receiver of Arrowood Indemnity Company ("Arrowood") in Liquidation (the "Receiver"), and pursuant to 18 *Del. C.* § 5929, respectfully moves this Honorable Court to extend the date by which claims against Arrowood must be filed with the Receiver of the instant liquidation proceedings ("Bar Date") from January 15, 2025 to May 15, 2025 (121 days) ("Motion"). The Receiver has also contemporaneously filed a Motion for Expedited Entry of Order Extending the Bar Date to May 15, 2025 because the January 15, 2025 Bar Date is imminent.

In support of this Motion, the Receiver states as follows:

I. Introduction

This Motion seeks to extend the Bar Date based on three considerations. First, there was a substantial, unanticipated delay in the appointment of an ancillary receiver in the state where the majority of claims against Arrowood are located. This delay prevented the activation of that state's guaranty association until late September 2024 and left insureds and claimants in that state with a significantly reduced time to determine whether they need to file a proof of claim. Thus, the Bar

Date should be extended to accommodate this process, which has been stalled until recently.

Second, there are several open issues that impact the ability of policyholders and other claimants to timely determine whether they need to file a proof of claim in the Arrowood liquidation proceedings. Thus, the Bar Date should be extended out of fairness to these policyholders and creditors too.

Finally, attorneys for sexual abuse victims with claims against Arrowood insureds have recently contacted the Receiver with concerns about confidentiality in the proof of claim process. The subject matter of these claims is subject to confidentiality or non-disclosure agreements entered in related litigation. Accordingly, the Receiver is currently working to develop procedures that protect sensitive information relating to sexual abuse claims. The Bar Date should be extended to accommodate this delicate task.

II. Background

1. Upon the Verified Complaint of the Commissioner, this Court entered a Liquidation and Injunction Order with Bar Date ("Liquidation Order") on November 8, 2023. As requested in the Commissioner's application to the Court, the Liquidation Order fixed a date of January 15, 2025 for the timely filing of proof of claims ("POC") against the Arrowood insolvency estate ("Bar Date") (D.I. 9, ¶ 24).

2. Pursuant to 18 *Del. C.* § 5929(b), the Bar Date is the date by which "all persons who may have claims against the [insolvent] insurer" must "file such claims with the Commissioner . . . or such claims shall be forever barred."

3. The Verified Complaint requested a Bar Date of January 15, 2025 based upon two primary considerations. First, the Commissioner requested this date (approximately 14 months from the effective date of the Liquidation Order) based upon his prior experience as receiver of other insolvent Delaware domiciled insurers who had consented to liquidation. Second, the date also takes into consideration an estimate (as of November 2023) of: (a) the time it would take to complete an electronic transfer of data and other information from Arrowood concerning the over 7,000 insurance claims against Arrowood insureds to forty-eight (48) state guaranty associations and the guaranty association for the District of Columbia[1] ("Electronic Claims Transfer") for the associations to review and determine coverage under each state's guaranty association statute and for each guaranty association to begin taking over (defending and paying) the claims that it accepted and notifying Arrowood and the insureds of the claims they did not accept; and (b) additional time thereafter so that Arrowood insureds had sufficient time to determine whether they should submit a POC with the Arrowood Receiver in the proof of claims process.[2]

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[1] On the effective date of the liquidation, Arrowood was licensed in fifty (50) states and the District of Columbia. Of the fifty (50) states in which it was licensed, Arrowood did not have any policyholder claims in two (2) of them.

[2] All fifty states and the District of Columbia have statutes that establish guaranty associations ("GAs"), the role of which is to provide a safety net for the policyholders of insurers in liquidation, subject to coverage limitations and conditions contained in GA statutes. To this end, the regulation of delinquent insurance carriers assures that policyholders are paid timely notwithstanding a liquidation proceeding. Each GA pays the covered claims of policyholders who reside in that state, with the GA then becoming a creditor of the insolvent estate and, under some circumstances, succeeding to payment and reimbursement rights of the insolvent insurer. *See generally* Phillip A. O'Connell, et al., Feature Article, Insurance Insolvency: A Guide for the Perplexed, 27 No. 14 Ins. Litig. Rep. 669 (2005). The determination by a GA as to whether a claim is a "covered claim" under that

4. The Electronic Claims Transfer process is complex. It involves converting the insolvent insurer's existing claims management records, both electronic and paper, into uniform data standards – an electronic communication protocol that uses a series of defined computer file formats – so that the data can be received and ingested by the various guaranty associations and ultimately updated in reports back to the insurer. The Receiver began the predicate work for the Electronic Claims Transfer from Arrowood immediately after the entry of the Liquidation Order. This process was protracted and impeded by several factors including the complex work necessary to convert Arrowood's existing electronic data and paper storage systems given the fact that Arrowood had been in run-off for twenty (20) years prior to liquidation; and other issues specific to certain individual state guaranty associations. See Affidavit of Charles W. Basta, ¶¶ 4-5 (the "Basta Aff."). A true and correct copy of the Basta Affidavit is attached hereto as Exhibit 1.

5. Despite the complexity, by June 21, 2024 Arrowood had completed the Electronic Claims Transfers to forty-three (43) states plus the District of Columbia. (Ex. 1, Basta Aff. at ¶ 6).

III. Three Primary Areas of Concern Now Presented by the January 15, 2025 Bar Date

6. At present, the Receiver has identified three primary areas of concern regarding the existing bar date of January 15, 2025. They arise from: (a) the un-anticipated delay in activating the state guaranty association in the state where a great

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state's statute guides an insured as to whether he should file a proof of claim in the insolvent insurer's delinquency proceedings. For example, if a GA's payment leaves a portion of the total claim unpaid, the insured will need to file a proof of claim for the remainder.

majority of the total outstanding claims against Arrowood are held; (b) open issues concerning the acceptance and rejection of claims and notice to the claimants; and (c) confidentiality issues associated with sexual abuse claims that have arisen due to the re-opening of the statute of limitations for such claims in several states in which Arrowood insureds reside.[3] These areas of concern support the Receiver's decision to extend that bar date. Each is addressed in turn.

A. Unanticipated Delay in Activation of State Guaranty Association

7. The state guaranty association where the great majority of the total outstanding claims against Arrowood are held was unable to assume the claims handling of Arrowood claims due to that state's requirement that an Ancillary Receivership be established in that state's court system prior to accepting claims files for processing. Despite a timely request to appoint an ancillary receiver having been filed on January 5, 2024, and Order appointing the ancillary receiver was not issued until September 27, 2024. (Ex. 1, Basta Aff. at ¶ 7).

8. Because the guaranty association in that state was unable to act in the absence of the Ancillary Receivership for two hundred sixty-six (266) days, Arrowood's policyholders in that state were unable to submit their claims for evaluation of coverage to the guaranty association until after September 27, 2024. This effectively reduced the existing bar date for that state's claimants to one hundred ten days (110) which is

[3] Further, it is notable that the majority of these new sexual abuse claims assert acts that occurred several decades ago and implicate paper records that have been similarly archived for decades.

significantly less than the six (6) month (180 day) minimum contemplated by Section 5929(b) and the fourteen (14) months projected by the Receiver as a reasonable bar date for POCs in the Arrowood liquidation.

B. Open Issues with Several State Guaranty Associations

9. The Receiver is also concerned that the complexity of the Electronic Claim Transfer process has resulted in several open issues remaining that might make it difficult for some policyholders to determine whether to file a POC. These concerns identified by the Receiver over the past thirty (30) days are evidenced by the following:

(a) Some policyholders/claimants have not been notified regarding net worth exclusions (Ex. 1, Basta Aff. at ¶ 8(a));

(b) Some policyholders/claimants cannot have their claims accepted by a guaranty association until the policyholder/claimant files a request with that guaranty association to accept coverage. Several policyholders/claimants have not yet done so (Ex. 1, Basta Aff. at ¶ 8(b));

(c) There are open issues regarding certain Federal Black Lung program claims (Ex. 1, Basta Aff. at ¶ 8(c));

(d) Arrowood has been unable to notify certain policyholder/claimants of the possible denial of their claims by state guaranty associations which may impact the decision of the policyholder/claimant whether to file a POC (Ex. 1, Basta Aff. at ¶ 8(d));

(e) There are potential issues regarding large deductible policies and self-insured retentions and whether they must be breached before the Bar Date to qualify for guaranty association coverage (Ex. 1, Basta Aff. at ¶ 8(e));

(f) Certain insureds and claimants may not yet be aware at this time of the individual state guaranty association claim level caps (Ex. 1, Basta Aff. at ¶ 8(f)); and

(g) Arrowood continues to receive requests for policy and claim information which may result in additional claims being rejected which may impact the decision of a policyholder/claimant whether to file a POC (Ex. 1, Basta Aff. at ¶ 8(g)).

C. Confidentiality Issues Related to Sexual Abuse Claimants

10. In addition, the Receiver has recently received inquiries from several attorneys who represent sexual abuse victims who have confidentiality concerns regarding the POC process generally and specifically the interplay between the POC process and pending litigation matters in which personal information regarding those claimants is subject to confidentiality or non-disclosure agreements. (Ex. 1, Basta Aff. at ¶ 10). The Receiver acknowledges the concerns of these claimants and is in the process of evaluating and implementing internal procedures to address these concerns. This process requires additional time to develop and to notify and educate these claimants regarding the process. These tasks cannot reasonably be accomplished in sufficient time for these claimants to determine whether to file a POC and the content of those filings prior to January 15, 2025.

IV. Extension of Current Bar Date from January 15 to May 15, 2025

11. Based on the foregoing reasons, the Receiver is concerned that given the nearness of the January 15, 2025 Bar Date, Arrowood policyholders and other creditors may be prejudiced due to insufficient time to evaluate whether, and the manner in which, they should file a POC in the Arrowood POC process.

12. Delaware insurance delinquency proceedings are governed generally by 18 *Del. C.* ch. 59. Bar dates are governed by 18 *Del. C.* ch. 5929(b) which provides:

> § 5929. Order of Insolvency; time to file claims.
>
> * * *
>
> (b) After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the Commissioner shall notify all persons

> who may have claims against the insurer to file such claims with the Commissioner, at a place and within the time specified in the notice, or such claims shall be forever barred. The time specified in the notice shall be fixed by the court for filing of claims and which shall not be less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

13. The Liquidation Order was entered on November 8, 2023. It includes a finding of insolvency (D.I. 9, ¶ 1). More than six (6) months have passed since the entry of the Liquidation Order and the only remaining consideration under Section 5929(b) for the Court to amend the bar date is whether the amended bar date and the time for notice of the amended bar date are reasonable.

14. The Liquidation Order reasonably fixed an original bar date of January 15, 2025 for the submission and subsequent liquidation of claims (valuation).

15. By amending the bar date to May 15, 2025, the Receiver has determined that the Arrowood policyholders and creditors will benefit from this additional time to file a POC in the Arrowood POC process. It will also allow the Receiver to post information on the Arrowood website to provide guidance to Arrowood policyholders and creditors regarding the POC process and sufficient time for the creditors to view and review the information before determining whether to file a POC and the form and contents of the POC filing. By extending the bar date in this manner, policyholders and other claimants will be provided with more time and flexibility in determining whether to file claims and will have more certainty regarding those claims. Based upon the foregoing, the extension of the bar date as requested is reasonable under the circumstances.

V. Manner of Proposed Notice of Bar Date

16. There are several thousand potential policyholders and other creditors of Arrowood. (Ex. 1, Basta Aff. at ¶ 11). The Receiver proposes to send actual notice of the Amended Bar Date of May 15, 2025, and the requirement to file a POC form, if a policyholder or other creditor has not done so, or an amended POC if a policyholder or other creditor wishes to do so, along with information concerning how to obtain the proof of claim form and instructions, on a postcard in the form appended hereto as Exhibit 2. The revised POC form and instructions will also be posted on the Arrowood website at *https://insurance.delaware.gov/divisions/rehab_bureau/rehab_bureau_arrowood/*. The postcard also contains information for policyholders and other creditors without internet access to obtain information or the POC form and instructions.

17. The concerns stated above in Part II(A) through (C) each standing alone and collectively support the Receiver's determination to extend the bar date from January 15, 2025 to May 15, 2025.

18. In addition, the Receiver's determination to notify policyholders and other creditors of Arrowood of the extension of the bar date by postcard in the form attached hereto as Exhibit 2, presents a reasonable manner of notification and makes available the information important to the extension to the recipients of the notice.

WHEREFORE, the Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, in his capacity as Receiver of Arrowood Indemnity Company, in Liquidation, respectfully requests that this Honorable Court extend the Bar Date in this matter from January 15, 2025 to May 15, 2025 (121 days) with the manner of notice

to be made by postcard substantially in the form attached hereto as Exhibit 2. A proposed form of order is attached.

Dated: December 17, 2024

Respectfully submitted,

THE HONORABLE KATHY JENNINGS.
ATTORNEY GENERAL OF THE STATE
OF DELAWARE

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WORDS: 2,557/3000

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EXHIBIT 1

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE LIQUIDATION OF ARROWOOD INDEMNITY COMPANY	:	C.A. 2023-1126-LWW

AFFIDAVIT OF CHARLES W. BASTA
IN SUPPORT OF MOTION TO EXTEND BAR DATE

I, CHARLES W. BASTA, of full age, being duly sworn according to law, hereby depose and state that:

1. I am the Estate Manager for Arrowood Indemnity Company, in Liquidation ("Arrowood"). I assist the Deputy Receivers of Arrowood, James J. Black, III and Gene T. Reed, in discharging their duties in administering the Arrowood estate. I am part of a liquidation team that includes the Receiver, Deputy Receivers, consultants, certain remaining company personnel, and attorneys ('Liquidation Team"). I make these statements in support of the Receiver's Motion to Extend the Bar Date in the above matter.

2. I have over thirty-six (36) years of experience in accounting and finance in the property and casualty insurance industry. I have been a property and casualty insurance industry consultant over the last ten (10) years, including serving as an estate manager of an insolvent insurer that has been in liquidation since 2014.

3. My duties as Estate Manager for Arrowood that apply to the subject matter of this Affidavit include, but are not limited to: overseeing the transfer of Arrowood's electronic and paper claims records to the guaranty associations in those

states and territories where the Arrowood insureds/claimants reside; communicating and exchanging information with the guaranty associations regarding claims and related issues; interacting with policyholders and claimants; and notifying them of matters regarding the proof of claims process.

4. Immediately after Arrowood was placed into liquidation in November 2023, the Liquidation Team began the work to convert the insolvent insurer's existing claims management records, both electronic and paper, into uniform data standards – an electronic communication protocol that uses a series of defined computer file formats – so that the data can be received and ingested by the various guaranty associations and ultimately updated in reports back to the insurer ("Electronic Claims Transfer Process").

5. The Electronic Claims Transfer Process is complex and protracted. It was impeded by several factors including the complex work necessary to convert Arrowood's existing electronic data and paper storage systems given the fact that Arrowood had been in run-off for twenty (20) years prior to liquidation; and other issues specific to certain individual state guaranty associations.

6. Despite the complexity, by June 21, 2024 Arrowood had completed the Electronic Claims Transfers to forty-three (43) states plus the District of Columbia. The remaining states guaranty associations are in various stages of completion. Several open issues remain which can be divided into three categories.

7. First, there was an un-anticipated delay of over two hundred sixty-six (266) days in activating the state guaranty association in the state where a great majority of the total outstanding claims against Arrowood are held.

8. Second, the complexity of the Electronic Claim Transfer process has resulted in several open issues remaining that have been identified over the last thirty (30) days. They are evidenced by the following:

(a) Some policyholders/claimants have not been notified regarding net worth exclusions;

(b) Some policyholders/claimants cannot have their claims accepted by a guaranty association until the policyholder/claimant files a request with that guaranty association to accept coverage. Several policyholders/claimants have not yet done so;

(c) There are open issues regarding certain Federal Black Lung Program claims;

(d) Arrowood has been unable to notify certain policyholder/claimants of the possible denial of their claims by state guaranty associations which may impact the decision of the policyholder/claimant whether to file a POC;

(e) There are potential issues regarding large deductible policies and self-insured retentions and whether they must be breached before the Bar Date to qualify for guaranty association coverage;

(f) Certain insureds and claimants may not yet be aware at this time of the individual state guaranty association claim level caps; and

(g) Arrowood continues to receive requests for policy and claim information which may result in additional claims being rejected which may impact the decision of a policyholder/claimant whether to file a POC.

9. Third, Arrowood has received inquiries from claimants regarding confidentiality issues associated with sexual abuse claims that have arisen due to the re-opening of the statute of limitations for such claims in several states in which Arrowood insureds reside.

10. Providing additional time for policyholders and claimants to file their proof of claims should minimize any prejudice against them associated with the above issues.

11. Furthermore, there are several thousand potential policyholders and other creditors of Arrowood. Providing actual notice of an amended bar date and the requirements to file a proof of claim form along with information concerning how to obtain the proof of claim form and instructions on a postcard is an efficient and cost-effective means of sending notice for the estate.

CHARLES W. BASTA, Estate Manager
Arrowood Indemnity Company, in Liquidation

SWORN TO AND SUBSCRIBED before me this 17 day of December 2024.

Notary Public
My Commission Expires: 05/07/2025

Commonwealth of Pennsylvania - Notary Seal
Donna Storms, Notary Public
York County
My Commission Expires May 07 2025
Commission Number 1396407

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EXHIBIT 2

Arrowood Indemnity Company in Liquidation ("Arrowood")

IMPORTANT NOTICE OF COURT FILING

A FILING HAS BEEN MADE WHICH MAY AFFECT YOUR RIGHTS. On [Month] [day], [year] the Court of Chancery of the State of Delaware entered an *Order Extending Bar Date* ("Order") that extends the deadline by which claims against Arrowood must be filed with the Receiver from January 15, 2025 to May 15, 2025.

You may view or print a copy of the Order or related filings by visiting: https://insurance.delaware.gov/divisions/rehab_bureau/rehab_bureau_arrowood and choosing the link for Order or related filings.

You may request a copy of the Order or related filings by mail from the Receiver at Arrowood Indemnity Company, in Liquidation, 1 Righter Pkwy, Suite 280, Wilmington, DE 19803, by email to receiver@ arrowoodliq.com or by calling (302) 543-2496.