

THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE REHABILITATION :
OF SCOTTISH RE (U.S.), INC. : C.A. 2019-0175-AGB
: _____ :
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**STIPULATION RESOLVING PLAN FOR THE TREATMENT OF
DISPUTED OBLIGATIONS OWED TO SCOTTISH RE (U.S.), INC. BASED
ON ASSERTED OFFSET, NETTING, OR SIMILAR ACTION AS
REFERENCED IN PARAGRAPH 12 OF THE REHABILITATION AND
INJUNCTION ORDER DATED MARCH 6, 2019**

WHEREAS, on March 6, 2019, the Delaware Court of Chancery (the “Court”) entered a Rehabilitation and Injunction Order (“Rehabilitation Order”) that placed Scottish Re (U.S.), Inc. (“SRUS”) into rehabilitation pursuant to 18 *Del. C.* ch. 59 of the Delaware Insurance Law;

WHEREAS, as noted in the Rehabilitation Order, the Receiver’s duties include, but are not limited to, conducting and continuing the business of SRUS, immediately taking possession and control of, and being vested with all right, title and interest in the property of SRUS, marshaling the assets of SRUS, examining the assets, business, and affairs of SRUS, and taking steps to remove the causes of SRUS’s impairment and unsound condition;

WHEREAS, on March 25, 2019, the Receiver filed with the Court a proposed “Plan for the Treatment of Disputed Obligations Owed to Scottish RE (U.S.), Inc. Based on Asserted Offset, Netting, or Similar Action as Referenced in Paragraph 12 of the Rehabilitation and Injunction Order Dated March 6, 2019” (the “Petition for

Offset Plan”);

WHEREAS, numerous objections to the injunctive provisions of Paragraph 12 of the Rehabilitation Order (the “Injunction”) and the Petition for Offset Plan were filed with the Court by multiple reinsurance and retrocession counterparties to SRUS (collectively, the “Objectors”);

WHEREAS, the Receiver filed a reply to the Objectors with the Court on May 8, 2019, which reply included certain amendments to the Petition for Offset Plan;

WHEREAS, the Injunction, the Petition for Offset Plan, as amended, and the Objectors’ objections came before the Court for a hearing on May 14, 2019, at which the Court gave the Receiver and the Objectors ten days to give the parties an opportunity to confer regarding an alternative offset plan proposed by the Objectors to see if there was an opportunity for compromise;

WHEREAS, the initial 10-day period to seek a compromise was extended by the Court until June 11, 2019 at the request of the Receiver and the Objectors;

WHEREAS, the Objectors identified in Exhibit A (the “Stipulating Objectors”) and the Receiver, through continued discussions, have agreed on the terms of a revised offset plan as tendered to the Court on June 11, 2019, by legal counsel for the Receiver (the “Revised Offset Plan”);

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

1. A true and correct copy of the Revised Offset Plan is attached as Exhibit B;
2. The Revised Offset Plan is intended to replace the Offset Plan attached as Exhibit A to the Petition for Offset Plan; and
3. The Receiver and the Stipulating Objectors will be submitting a revised form of order with the Court approving the Petition for Offset Plan, as amended by the Revised Offset Plan;

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EXHIBIT A

Exhibit A

List of Stipulating Objectors

Allianz Life Insurance Company of North America

Allstate Life Insurance Company and its affiliates which are cedents under reinsurance agreements with SRUS

American General Life Insurance Company and affiliated insurance company subsidiaries of American International Group

Ameritas Life Insurance Corp.

Ameritas Life Insurance Corp. of New York

AXA Equitable Life Insurance Company

Berkshire Hathaway Life Insurance Company of Nebraska

Brighthouse Life Insurance Company

Brighthouse Life Insurance Company of NY

Columbus Life Insurance Company

Companion Life Insurance Company

Employers Reassurance Corporation

Fidelity & Guaranty Life Insurance Company

Fidelity & Guaranty Life Insurance Company of New York

First Penn Pacific Life Insurance Company

Genworth Life and Annuity Insurance Company

Genworth Life Insurance Company

Genworth Life Insurance Company of New York

Great-West Life & Annuity Insurance Company of New York

Great-West Life and Annuity Insurance Company

Hannover Life Reinsurance Company of America and certain affiliates

Jackson National Life Insurance Company

John Hancock Life Insurance Company (U.S.A.)

John Hancock Life Insurance Company of New York

Lincoln Life and Annuity Company of New York

Lincoln National Life Insurance Company

Manhattan Life Assurance Company of America

Manhattan Life Insurance Company

Metropolitan Life Insurance Company

Midland National Life Insurance Company

MONY Life Insurance Company

MONY Life Insurance Company of America

MONY Life Insurance Company of the Americas, LTD.

Nassau Life and Annuity Company

Nassau Life Insurance Company

Nationwide Life and Annuity Insurance Company

Nationwide Life Insurance Company

New York Life Insurance and Annuity Corporation

North American Company for Life and Health Insurance

Ohio National Life Assurance Corporation

Pacific Life and Annuity Company

Pacific Life Insurance Company

PHL Variable Insurance Company

Protective Life and Annuity Insurance Company

Protective Life Insurance Company

S. USA Life Insurance Company, Inc.

SBLI USA Life Insurance Company, Inc.

SCOR Global Life Americas Reinsurance Company

SCOR Global Life Reinsurance Company of Delaware

SCOR Global Life USA Reinsurance Company

SCOR Reinsurance Germany, Branch Of SCOR SE,

Scottish Re (Dublin) dac,

Security Benefit Life Insurance Company

Security Life of Denver Insurance Company and certain affiliates

Shenandoah Life Insurance Company

State Mutual Insurance Company

Sun Life and Health Insurance Company (U.S.)

The Canada Life Assurance Company

The Nassau Companies and its subsidiary insurance companies

The Prudential Insurance Company of America

The U.S. Branch of Sun Life Assurance Company of Canada

TOA Reinsurance Company, Limited of Tokyo, Japan

Transamerica Life Insurance Company on behalf of itself and its affiliates which are cedents under reinsurance agreements with SRUS

U.S. Financial Life Insurance Company

United of Omaha Life Insurance Company

United States Life Insurance Company in the City of New York and affiliated insurance company subsidiaries of American International Group

USAA Life Insurance Company

USAA Life Insurance Company of New York

West Coast Life Insurance Company

EXHIBIT B

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE REHABILITATION :
OF SCOTTISH RE (U.S.), INC. : C.A. 2019-1075-AGB
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**PLAN FOR THE TREATMENT OF DISPUTED
OBLIGATIONS OWED TO SCOTTISH RE (U.S.), INC. BASED ON
ASSERTED OFFSET, NETTING, OR SIMILAR ACTION AS
REFERENCED IN PARAGRAPH 12 OF THE REHABILITATION AND
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I. Purpose

The purpose of these procedures (the “Offset Plan”) is to provide a framework to review and determine whether an Offset Claimant (as defined below) who seeks to effectuate offsets, netting, or similar action to reduce the amount of financial obligations that would otherwise be paid to the SRUS estate by amounts that are owed to such insurers from the estate, has satisfied the legal requirements for offsets, netting, or similar action.

II. Definitions

When used in connection with this Offset Plan:

1. “Asserted Offset” refers to the amount of the Offset that an Offset Claimant asserts it would have been entitled to exercise against SRUS on or after the date of entry of the Rehabilitation Order in the absence of paragraph 12 thereof.

For the avoidance of doubt, Asserted Offset shall not include Offsets taken prior to entry of the Rehabilitation Order.

2. “Bordereau” refers to a report that provides premium or loss data with identified specific risks that is periodically furnished to a reinsurer by one or more ceding insurers or reinsurers.

3. “Objection to Offset” refers to a written notification by the Receiver of a disagreement with respect to an Offset Claimant’s Asserted Offset, either as to its basis or amount, and which shall identify the specific reasons and bases for the Receiver’s disagreement.

4. “Offset” (or “Set-Off”) refers to a right that allows parties to settle mutual debts and credits to each other by subtracting one from the other and paying any balance, whether arising within a single contract between the parties or under multiple contracts between the parties where mutuality exists, and for purposes of this Offset Plan specifically includes without limitation any right which would permit any person or persons from withholding, failing to pay, setting-off, netting, or taking similar action with respect to any obligations owed to SRUS as contemplated by Paragraph 12 of the Rehabilitation Order. The setoff capacity of SRUS shall not be altered by this Rehabilitation, and the Receiver shall be deemed to be acting on behalf of and in the same setoff capacity as SRUS for purposes of this Offset Plan.

5. “Offset Amount” refers to the amount of funds that the Receiver (with the agreement of the Offset Claimant) or Court determines are subject to the Offset Claimant’s Asserted Offset.

6. “Offset Claimant” refers to a person or business entity who expressly makes an Asserted Offset against SRUS, including an insurer (whether acting for itself or through its authorized administrator, agent or representative) that is a party to one or more reinsurance agreements, retrocession agreements or other agreements with SRUS.

7. “Offset Disagreement” refers to an Asserted Offset for which the Receiver has provided an Objection to Offset.

8. “Offset Retention” refers to the funds paid to the estate that are the subject of the Offset Claimant’s Asserted Offset and shall be deposited in the Offset Retention Account.

9. “Offset Retention Account” refers to the deposit account at The Bank of New York Mellon in the name of SRUS ending in account number (8400), into which all Offset Retentions are deposited pending the determination of Offset Amounts, which account shall at all times (i) be segregated and separate from accounts containing the general assets of the SRUS estate, and (ii) require the signature of the Receiver or Deputy Receiver authorizing such withdrawal as conditions to withdrawals therefrom. No withdrawals or disbursements shall be

made from the Offset Retention Account unless made (i) pursuant to an Order of this Court; (ii) pursuant to an agreement of the Receiver and the applicable Offset Claimant; or (iii) pursuant to Section III(D)(2) or (3), below.

10. “Receiver” refers to the Insurance Commissioner of the State of Delaware in his capacity as the Receiver of SRUS in rehabilitation. It also refers to the Receiver’s designees such as the Receiver’s Deputy Receiver(s), legal counsel, and other estate representatives.

11. “Undue Hardship” refers to situations where, under the special circumstances unique to a particular Offset Claimant, that Offset Claimant cannot comply with Paragraph 12 of the Rehabilitation Order and these Offset Procedures without jeopardizing or causing a financially hazardous impact to the solvency of the Offset Claimant, or violating a pre-existing judicial determination of the propriety of an Offset or Offsets regarding SRUS and subject to Paragraph 12 of the Rehabilitation Order and these Offset Procedures.

III. Offset Procedures

The following procedures shall apply to Offsets:

A. Asserting an Offset

1. Subject to other provisions of this Offset Plan, each Offset Claimant shall pay in the ordinary course any payment that would otherwise be due to the SRUS estate under any reinsurance agreement, retrocession agreement or other

agreement without application of any Asserted Offset for no more than two of the Offset Claimant's payment or billing cycles if settlements are monthly or no more than one of Offset Claimant's payment or billing cycles if settlements are quarterly (or less frequent) after the earlier of (i) entry of the Rehabilitation Order to the extent that: (x) the Offset Claimant made payments thereafter with no reduction for an Asserted Offset (but subject to the last sentence of this Section III(A)(1)), and (y) provided the information to the Receiver substantially in accordance with Section III(A)(2) below, or (ii) entry of an order by the Court approving this Offset Plan, provided the Offset Claimant complies with Section III(A)(2) below for each payment. Thereafter, the Offset Claimant may make future payments due and owing to the estate under any reinsurance agreement, retrocession agreement or other agreement after application of the Offset Claimant's Asserted Offsets applied consistently with the methodology of the Asserted Offsets identified in the Offset Claimant's said one or two prior payment or billing cycles in which the Asserted Offsets were not applied, until such time (if any) that an agreement is reached with the Receiver that identifies a different Offset Amount or there has been a judicial resolution of an Offset Disagreement that results in a different Offset Amount; **provided, however,** that nothing shall preclude a party from seeking adequate assurances, protections or other relief from the Court as a result of any Offset Amount determined by a judicial resolution until such time as a party can obtain

final appellate review of the judicial resolution. The Receiver acknowledges that any payment made by an Offset Claimant in good faith before the entry of an order by the Court approving this Offset Plan without reduction for an Asserted Offset may qualify as a required payment for purposes of Section III(A)(1)(i)(x), notwithstanding any failure by such Offset Claimant to comply with the exact terms of this Offset Plan or the injunctive provisions in Paragraph 12 of the Rehabilitation Order with respect to such payment, and such Offset Claimant will not be deemed to have violated the Rehabilitation Order for any such non-compliance.

2. At the time that any such payment is made in accordance with Section III(A)(1) above without application of an Asserted Offset or no later than ten (10) business days after the later of (i) the date this Offset Plan is approved by the Court, or (ii) a payment is made with no reduction for an Asserted Offset, the Offset Claimant shall notify the Receiver, in writing, of its Asserted Offset, the precise legal identity of the Offset Claimant, and submit or make available electronically a copy of the Bordereau covering the applicable period (the “Initial Information”). Within twenty (20) days after the later of (x) providing the Initial Information or (y) approval of this Stipulated Offset Plan, the Offset Claimant shall provide to the Receiver, or otherwise make available to the Receiver electronically, the following information and documentation:

- (a) an accounting of the precise amount of the Asserted Offset to include a description of the methodology used to calculate the amount, a description of the mutual debts and mutual credits sought to be offset, and the dates on which the debts or credits became due, and information and documentation reasonably sufficient to explain and support the precise basis of the Asserted Offset, such documentation to include, but not be limited to:
 - (i) a description why the Asserted Offset is authorized by 18 Del. C. §5927 or a contract, including an identification of the provision or provisions of the contract(s) relied upon as authority for the Offset; and
 - (ii) identification of each contract referenced by the Offset Claimant as providing authority for the Asserted Offset or in lieu thereof a complete copy of each such contract.

The information required to be delivered, or made available electronically, to the Receiver may be delivered (or notice of electronic availability may be sent) via electronic mail to the Receiver at SRUSOffset@delrlb.com, with a copy to the Receiver's legal counsel at GFinizio@bayardlaw.com.

3. Within thirty (30) days after the information set out in Section III(A)(2) has been provided by an Offset Claimant, the Receiver shall identify for the Offset Claimant any additional information or documentation reasonably necessary for the Receiver to evaluate and determine the Offset Claimant's Asserted Offset or the Offset Amount.

4. To the extent any information provided by an Offset Claimant pursuant to Section III(A)(2) or (5) is (i) not typically disclosed in the ordinary course of business with a third party or (ii) is otherwise subject to confidential

treatment under the terms of the relevant agreement (including personally identifiable information), it shall be held by the Receiver as confidential, and shall not be disclosed to any other person except the Receiver's advisors and consultants who need the information for purposes of validating any Asserted Offset provided that such persons shall be informed of the confidential nature of the information and agree to hold the information subject to the confidentiality undertakings hereunder.

5. As soon as practicable after the receipt of a request under Section III(A)(3) above, the Offset Claimant shall deliver to the Receiver:

- (a) The requested information or documentation;
- (b) A written statement identifying any requested information or documentation that is not reasonably available; or
- (c) An objection to the request.

6. If the Offset Claimant responds to the Receiver in whole or in part under Section III(A)(5)(b) or (c) above, the Offset Claimant and the Receiver shall confer and collaborate to resolve consensually what information or documentation is available and relevant to address the Asserted Offset. If the Offset Claimant and Receiver are unable to resolve any disagreement over information and documentation to be delivered to the Receiver, either party may petition the Court for an order resolving the disagreement or other appropriate relief.

7. In cases where a reinsurance or retrocessional contract provides for SRUS, as cedent or retrocedent, to submit billings or statements to its reinsurers or retrocessionaires (collectively “retrocessionaires”) on a net basis, SRUS shall submit such billings or statements to its retrocessionaires on a net basis, and the retrocessionaires may make payment to, or receive payments from, SRUS net of the Offset applied by SRUS notwithstanding Paragraph 12 of the Rehabilitation Order or any other provision of this Offset Plan. If the retrocessionaire does not agree with the offset applied by SRUS, or believes that additional Offsets should be applied, such retrocessionaire shall provide to the Receiver a written statement within thirty (30) days after the receipt of the Receiver’s or SRUS’s calculation of any amount payable by or due to such retrocessionaire that, consistent with Section III(A)(2) above, specifically identifies the disagreement, the grounds on which it is based and provides the documentary support on which it is based. Thereafter, SRUS and the retrocessionaire will follow the procedures set forth in III(A)(3) – (A)(6) and any dispute will be resolved pursuant to Section III(B) and (C).

B. Receiver's Objection to Offset

1. After the Receiver is provided with all of the information and documentation referenced in Section III(A)(2), (3), (5) and (7) above, as applicable, the Receiver will determine whether to object to all or any part of the Offset Claimant's Asserted Offset and, if so, the amount of the Asserted Offset to which the Receiver objects and the basis for the objection.

2. The Receiver will deliver to the Offset Claimant his Objection to Offset within sixty (60) days after the later of (i) the date the Offset Claimant delivered the information required under Section III(A)(2) if no additional information was requested under Section III(A)(3), or (ii) the date information responsive to a request under Section III(A)(3) is delivered by the Offset Claimant, or it is agreed by the Receiver and Offset Claimant that such information is not necessary, or determined by the Court or other tribunal of competent jurisdiction, if allowed by the Court, in a ruling ("Ruling") that such information is not required. Where practicable, the Receiver will deliver his Objection to Offset to the Offset Claimant prior to sixty (60) days.

3. In the event the Receiver does not object to the methodology used by an Offset Claimant during the Rehabilitation of SRUS, then notwithstanding any other provision of this Plan or the Rehabilitation Order the Offset Claimant will not be required to pay any Offset Retention but may instead apply offsets against

premiums or other sums due to the estate on an ongoing basis using the methodology it used in its Asserted Offset; and for any such future Offsets, the Offset Claimant will provide to the Receiver information pursuant to Section III(A).

C. Court Determination of Offset Amount(s)

1. If the Receiver and Offset Claimant are unable to resolve any portion of any Objection to Offset, then either party may file a petition with the Court for a determination as to the Offset Amount or other appropriate relief, including in connection with any disagreement over the terms of any reinsurance agreement, retrocession agreement or other agreement, a request for relief from the Rehabilitation Order to compel arbitration as to any such disagreement as provided in the agreement.

2. In the interests of judicial economy and the preservation of the resources and assets of SRUS, the Receiver may, from time to time, and where applicable and feasible, seek an order to consolidate the briefing and adjudication of two or more petitions filed pursuant to Section III(C)(1) above being heard by the Court where the underlying facts or legal issues presented by the petitions are the same or similar.

D. Retention/Disposition of Offset Amount(s)

1. All Offset Retention paid to SRUS shall be held by the Receiver in the Offset Retention Account. In the event an Offset Claimant makes a payment to SRUS without reduction to account for an Asserted Offset, the Receiver shall (i) transfer an amount equal to the Asserted Offset to the Offset Retention Account within fifteen (15) business days after receiving from the Offset Claimant notice of the Asserted Offset, the precise legal identity of the Offset Claimant, and a copy of the Bordereau covering the applicable period for the Asserted Offset as provided by Section III(A)(2), and (ii) provide prompt written evidence of such deposit to the Offset Claimant. The Receiver shall file a monthly status report with the Court setting forth the aggregate amount of funds held in the Offset Retention Account, a list of the Offset Claimants that have a pending Asserted Offset and the amount of each such Offset Claimant's Asserted Offset still being held in the Offset Retention Account, the amounts deposited into the Offset Retention Account through the end of the preceding month and the amounts disbursed from the Offset Retention Account during the preceding month.

2. With regard to all funds in the Offset Retention Account that relate to an Asserted Offset where the Receiver notifies the Offset Claimant of his agreement with the Asserted Offset, the Offset Claimant shall notify the Receiver within ten (10) business days of the Offset Claimant's election for the Receiver to either (i) return the Asserted Offset to the Offset Claimant within twenty (20)

days; or (ii) to apply the Asserted Offset as an additional offset to the Offset Claimants future payment obligations to the SRUS estate. The Receiver shall comply with the written notification.

3. With regard to an Asserted Offset to which the Receiver has not provided an Objection to Offset pursuant to Section III(B), above, the Offset Claimant shall notify the Receiver that the Offset Amount should either be: (i) returned to the Offset Claimant within twenty (20) days, or (ii) applied as an additional offset to the Offset Claimant's future payment obligations to the SRUS estate. Within ten (10) business days, the Receiver will either provide an Objection to Offset, or will notify the Offset Claimant that it will comply with the Offset Claimant's notification.

4. With respect to any Offset Retention for which the Receiver has provided a timely Objection to Offset where the Receiver and Offset Claimant reach an agreement that establishes, or a Ruling results in, an aggregate Offset Amount that is less than the aggregate Offset Retention, then funds equal to the difference between the aggregate Offset Retention and the aggregate Offset Amount shall be withdrawn from the Offset Retention Account and may be deposited by the Receiver into an account holding the general assets of SRUS, and the use of such funds shall be subject to the discretion of the Receiver in accordance with the Rehabilitation Order.

5. With respect to any Asserted Offset for which the Receiver provided a timely notice of an Objection to Offset, any amounts in the Offset Retention Account attributable to the Offset Claimant's aggregate Offset Amount shall be either (i) returned to the Offset Claimant within twenty (20) days after the date that an agreement is reached or the date of a Ruling which in either case establishes the Offset Amount, or (ii) may at the Offset Claimant's option be applied as an additional offset to the Offset Claimants future payment obligations to the SRUS estate.

6. Any Asserted Offset that is agreed, allowed or otherwise determined pursuant to the provisions of this Offset Plan shall not constitute a violation of Paragraph 12 of the Rehabilitation Order, and any Offset Claimant that complies with this Offset Plan or a separately executed Stipulation or written Agreement with the Receiver shall be deemed to have complied fully with Paragraph 12 of the Rehabilitation Order.

7. The Receiver shall pay any premium due to a reinsurer or retrocessionaire of SRUS that is either net of or not subject to an Asserted Offset by the Receiver in the parties' then current billing or payment period or cycle.

IV. Hardship Relief

1. To the extent that an Offset Claimant contends that compliance with the above provisions would impose Undue Hardship on such Offset Claimant, the

Offset Claimant may petition the Court for, and shall bear the burden of establishing entitlement to, relief from one or more of these procedures and Paragraph 12 of the Rehabilitation Order.

V. Effect of Plan

1. Nothing in this Offset Plan is intended to contradict or amend the Parties' respective setoff rights under 18 Del. C. §5927.
2. Nothing in this Offset Plan precludes any party from petitioning the Court for other or further relief.
3. Nothing in this Offset Plan precludes the Receiver from later asserting that a previously allowed offset was improper, except to the extent of a Ruling that finds an offset was proper, the Ruling shall be entitled to preclusive effect on the issues it decides.
4. Upon approval by the Court of this Offset Plan, the Rehabilitation and Injunction Order shall be deemed to have been modified solely to the extent necessary to permit the implementation of the Offset Plan in accordance with its terms.