



GRANTED

EFiled: Jun 20 2019 10:12AM EDT
Transaction ID 63381264
Case No. 2019-0175-AGB



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE REHABILITATION :
OF SCOTTISH RE (U.S.), INC. : C.A. 2019-0175-AGB
:

[PROPOSED] ORDER GRANTING RECEIVER’S PETITION FOR APPROVAL OF THE 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 25, 2019, Petitioner, the Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware, (the “Commissioner”)¹ in his capacity as the Receiver (the “Receiver”) of Scottish Re (U.S.), Inc. in Rehabilitation (“SRUS”), filed the Petition for Approval of the 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”), and the Court having held a hearing on the Petition for Offset Plan on May 14, 2019, and having considered the Petition, the objections thereto filed by multiple persons having reinsurance or retrocession agreements with SRUS (the “Objectors”), and a

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Petition and the Offset Plan.

Stipulation between and among the Receiver and Objectors regarding a revised Offset Plan (“Revised Offset Plan”):

IT IS SO ORDERED this _____ day of _____, 2019, that:

1. The Receiver’s Petition for Offset Plan as modified by the Stipulation and Revised Offset Plan is GRANTED;

2. The Revised Offset Plan, a copy of which is attached hereto as Exhibit “A,” is APPROVED.

3. The Receiver is hereby authorized to administer the Revised Offset Plan detailed in Exhibit “A” hereto, to execute any and all forms, agreements, or other documents necessary to fulfill the Revised Offset Plan, to delegate to his attorneys, deputies or agents the authority specified herein, and to incur expenses necessary for the administration of the Revised Offset Plan.

4. The Receiver is hereby authorized to resolve all disputed obligations owed to SRUS based on asserted Revised Offset, Netting, or similar action as referenced in Paragraph 12 of the Rehabilitation and Injunction Order Dated March 6, 2019, in accordance with the Revised Offset Plan.

5. Except as otherwise set forth in the Revised Offset Plan, nothing in this Order and the Revised Offset Plan shall modify the Rehabilitation and Injunction Order Dated March 6, 2019. The Revised Offset Plan is the sole and exclusive method for the resolution of disputed obligations owed to SRUS based on an asserted

Offset, Netting, or similar action as referenced in paragraph 12 of the Rehabilitation Order.

6. All contested proceedings in this case relating to relief from paragraph 12 of the Rehabilitation and Injunction Order Dated March 6, 2019, whether currently pending or initiated in the future, except those proceedings initiated in accordance with the Revised Offset Plan, are stayed and the claims asserted therein shall be resolved exclusively pursuant to the Revised Offset Plan unless otherwise ordered by the Court.

Chancellor Andre G. Bouchard

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

Court: DE Court of Chancery Civil Action

Judge: Andre G Bouchard

File & Serve

Transaction ID: 63379862

Current Date: Jun 20, 2019

Case Number: 2019-0175-AGB

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

/s/ **Judge Bouchard, Andre G**

EFiled: Jun 19 2019 04:33PM EDT
Transaction ID 63379862
Case No. 2019-0175-AGB



EXHIBIT A

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
_____ :

**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**

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 retrocessioneer does not agree with the offset applied by SRUS, or believes that additional Offsets should be applied, such retrocessioneer 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 retrocessioneer 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 retrocessioneer 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.