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Transaction ID 53847411
Case No. 8802-CS



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF:)
)
STATE OF DELAWARE ex rel.)
THE HONORABLE KAREN WELDIN STEWART,)
CIR-ML, Insurance Commissioner of)
the State of Delaware,)
)
Petitioner,)
)
v.)
)
UNITED CONTRACTORS INSURANCE)
COMPANY, INC., A RISK RETENTION)
GROUP, a Delaware domestic risk)
retention group)
)
Respondent.)

) C.A. No. 8802

LIQUIDATION AND INJUNCTION ORDER -- Corrected

WHEREAS, the Honorable Karen Weldin Stewart, CIR-ML, in her capacity as the Insurance Commissioner of the State of Delaware ("Commissioner"), has filed a petition (the "Petition") seeking the entry of a Liquidation and Injunction Order concerning UNITED CONTRACTORS INSURANCE COMPANY, INC., A RISK RETENTION GROUP, a Delaware domestic risk retention group ("UCIC"), pursuant to 18 Del. C. §5901, et seq. and ch. 69.

WHEREAS, the Commissioner has provided the Court with evidence sufficient to support the conclusion that UCIC is impaired, insolvent in unsound condition and in such condition as to render their further transaction of insurance presently or prospectively hazardous to its policyholders, other creditors

and the public, and has consented to the entry of a Liquidation and Injunction Order through a majority of the directors of the corporation;

WHEREAS, it appears that sufficient grounds for the issuance of such an Order exist pursuant to 18 Del. C. §§5905 and 5906, as well as 18 *Del. C.* ch. 59 and 69; and

WHEREAS, a formal hearing on the Commissioner's Petition is not necessary due to UCIC's consent to the relief requested by the Commissioner and UCIC's waiver of formal service of process and a formal hearing on the Petition;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED and DECREED:

1. UCIC is hereby declared to be in an unsound condition and in such condition as to render its further transaction of insurance presently or prospectively hazardous to its policyholders.

2. The Commissioner is appointed as the Receiver of UCIC pursuant to the provisions of 18 *Del. C.* ch. 59 and 69.

3. Pursuant to 18 *Del. C.* §5911, the Receiver shall forthwith take exclusive possession of the property of UCIC, liquidate its business, deal with UCIC's property and business in the name of the Commissioner or in the name of UCIC.

Further, the Receiver shall take control and be vested and continue to be vested with all right, title, and interest in, of, and to the property of UCIC including, without limitation,

all of UCIC's assets, contracts, rights of action, books, records, bank accounts, certificates of deposits, collateral and rights to collateral of UCIC, securities or other funds, and all real or personal property of any nature of UCIC, including, without limitation, all proceeds or accessions to any of the foregoing, wherever located, in the possession, custody, or control of UCIC or any trustee, bailee, or any agent acting for or on behalf of UCIC (collectively, the "Assets").

4. The Receiver may change to her own name as Receiver, the name of any of UCIC'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.

5. The Receiver is further authorized to take such actions as the nature of this cause and interests of the policyholders, principals, obligees, claimants, creditors, and stockholder of UCIC and the public may require in accordance with 18 *Del. C.* ch. 59.

6. The Receiver is hereby authorized to continue to deal with the Assets, business, and affairs of UCIC including, without limitation, the right to sue, defend, and continue to prosecute suits or actions already commenced by or for UCIC, or for the benefit of UCIC's policyholders, claimants, cedants,

creditors, and stockholders in the courts, tribunals, agencies, or arbitration panels for this State and other states and jurisdictions in her name as the Insurance Commissioner of the State of Delaware in her capacity as the Receiver of UCIC.

7. 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 UCIC as the ceding insurer or as the assuming insurer, and all reinsurance companies involved with UCIC are enjoined and restrained from making any settlements with any claimant or policyholder of UCIC 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 policyholder, which were properly executed before the date of this Petition, 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 UCIC 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 UCIC 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. The Receiver may terminate, cancel or rescind any reinsurance policy or contract that is contrary to the best interests of the receivership.

8. 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, UCIC or selling, transferring, destroying, wasting, encumbering, or disposing of any of the Assets, without the prior written permission of the Commissioner or until further Order of this Court. This prohibition includes, without limitation, Assets or possible Assets pertaining to any business transaction between UCIC 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.

9. 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, UCIC shall file with the Receiver within ten (10) calendar days of the entry of this Order an accounting of those Assets, regardless of whether such persons or entities dispute the Receiver's entitlement to such Assets.

10. 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, UCIC shall within ten (10) calendar days of the entry of this Order, turn those Assets over to the Receiver.

11. 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 UCIC, 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 UCIC or the Assets, or exercising any right adverse to the right of UCIC 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.

12. All persons or entities that have notice of these proceedings or of this Order, are hereby enjoined and restrained from instituting or further prosecuting any action at law or in equity, including but not limited to any arbitration or mediation, or other proceeding with any pretrial conference,

trial, application for judgment, or proceedings on judgment or settlements and such action at law, in equity, special, or other proceedings in which UCIC is obligated to defend a party insured or any other person it is legally obligated to defend by virtue of its insurance contract for a period of 180 days from the date hereof.

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

14. Pursuant to 18 *Del. C.* §5924, the rights and liabilities of UCIC and of its creditors, policyholders, claimants, stockholders, members, subscribers and all other persons interested in its estate shall, unless otherwise directed by the Court, be fixed as of the date this Liquidation and Injunction Order with Bar Date is docketed, subject to the provisions of Chapter 59 of Title 18 of the Delaware Code with respect to the rights of claimants holding contingent claims.

15. 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 potential creditors, all current and former stockholders of UCIC, all former Board members of UCIC, its third party adjusters, its managing general underwriters, its brokers, its agents, its reinsurer(s), and any reinsurance intermediaries, all other known vendors, all state insurance guaranty associations providing coverage for the lines of business written by UCIC, and all State Insurance Commissioners 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.

16. Within thirty (30) calendar days after docketing of this Order, the Receiver shall also publish a legal notice, concerning the entry of the Liquidation and Injunction Order one time in the New York Times, and such other news publications of general circulation as the Receiver in her discretion deems appropriate to provide notice to such parties.

17. Within thirty (30) calendar days after docketing of this Order, the Receiver shall also publish this Liquidation and Injunction Order on the Delaware Department of Insurance website.

18. Pursuant to the provisions of 18 Del. C. §§5904(b) and 5928(c), no judgment against UCIC and/or one or more of its insureds taken after the date of entry of this Liquidation and Injunction Order with Bar Date shall be considered in the liquidation proceedings as evidence of liability or of the amount of damages, and no judgment against UCIC and/or one or more of its insureds taken by default or by collusion prior to the entry of the Liquidation and Injunction Order with Bar Date shall be considered as conclusive evidence in the liquidation proceedings, either of the liability of UCIC and/or one or more of its insureds to such person or entity upon such cause of action or of the amount of damages to which such person or entity is therein entitled.

19. The Receiver shall submit claim Recommendation Reports to the Court within a reasonable time after the Receiver's investigation concerning all claims submitted by a particular claimant has been completed.

20. 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 UCIC'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 UCIC of all potential claims against UCIC under such policies and shall constitute the perfection of a lien in favor of UCIC under the Uniform Commercial Code or any like Federal or state law, regulation, or order dealing with the priority of claims.

21. The Receiver is hereby authorized to transfer some or all of UCIC's Assets and liabilities to a separate affiliate or subsidiary for the overall benefit of UCIC, its policyholders, principals, creditors, and stockholders, subject to approval by this Court.

22. The Receiver may, in her discretion, reject any executory contract to which UCIC is a party.

23. The Receiver may, in her discretion, appoint 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.

24. 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 UCIC and conducting this proceeding shall be paid out of the funds and assets of UCIC as administrative expenses under 18 *Del. C.* § 5913(f). The Receiver may also retain those of UCIC's current management personnel and other employees as Designees as she in her discretion determines would facilitate the liquidation of UCIC. 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.

25. 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 UCIC. The Indemnitees in their capacities as such shall not be deemed to be employees of the State of Delaware.

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

"IN THE MATTER OF THE LIQUIDATION
OF UNITED CONTRACTORS INSURANCE COMPANY, INC., A
RISK RETENTION GROUP"

27. 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 policyholders, claimants, creditors, stockholders of UCIC 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 _____, 2013.

CHANCELLOR

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

Court: DE Court of Chancery Civil Action

Judge: Leo E Strine

File & Serve

Transaction ID: 53840202

Current Date: Aug 22, 2013

Case Number: 8802-CS

Case Name: IState of Delaware ex rel vs United Contractors Insurance Co Inc et al

Court Authorizer: Strine, Leo E

/s/ Judge Strine, Leo E