### IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA,

No. 183 M.D. 2002

PENNSYLYANIA

v.

LEGION INSURANCE COMPANY,

Plaintiff,

Defendant.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_\_\_, 2011, upon consideration of the Petition for Approval of Commutation, Settlement and Release Agreement by and between Legion Insurance Company (In Liquidation) ("Legion") and RiverStone Insurance (UK) Limited (formerly known as Dai Tokyo Insurance Company(UK) Limited) of 161-163 Preston Road, Brighton, East Sussex, BN1 6AU ("RIUK") as successor in interest to Sphere Drake Insurance Limited (formerly known as Sphere Drake Insurance Plc) and Transatlantic Reinsurance Company ("TRC") filed by Michael F. Consedine, Acting Insurance Commissioner, in his official capacity as Statutory Liquidator of Legion Insurance Company (the "Liquidator"), and in which petition RIUK and TRC concur, the Court GRANTS the Petition and approves the Commutation, Settlement and Release Agreement.

MARY	HANNAH LEAVITT, Judge	

HIGH YEALTH COURT OF PENNSYLVANIA

2011 MAR 29 P 1: 21

### IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA,

•

Plaintiff,

No. 183 M.D. 2002

 $\mathbf{v}$ .

LEGION INSURANCE COMPANY,

:

Defendant.

:

## LIQUIDATOR'S PETITION FOR APPROVAL OF COMMUTATION, SETTLEMENT AND RELEASE AGREEMENT BETWEEN THE LIQUIDATOR AND RIVERSTONE INSURANCE UK LTD. AND TRANSATLANTIC REINSURANCE COMPANY

Petitioner Michael F. Consedine, Acting Insurance Commissioner of the Commonwealth of Pennsylvania in his official capacity as the Statutory Liquidator ("Liquidator") of Legion Insurance Company (In Liquidation) ("Legion"), respectfully requests that this Court enter an Order approving the Commutation, Settlement and Release Agreement ("Settlement Agreement") between Legion and RiverStone Insurance (UK) Limited (formerly known as Dai Tokyo Insurance Company (UK) Limited) of 161-163 Preston Road, Brighton, East Sussex, BN1 6AU ("RIUK") as successor in interest to Sphere Drake Insurance Limited (formerly known as Sphere Drake Insurance Plc) and Transatlantic Reinsurance Company ("TRC") of 80 Pine Street, New York, NY 10005.

The Liquidator asks the Court to approve the Settlement Agreement for the reasons set forth below:

- 1. On July 25, 2003, this Court found Legion insolvent and appointed the Commissioner as Liquidator of Legion pursuant to Article V of the Insurance Department Act of 1921, 40 P.S. §§ 221.1 221.63 (hereinafter, the "Department Act").
- 2. The Act confers broad powers on the Liquidator to marshal the assets of Legion's estate for eventual distribution to its policyholders and creditors.
- 3. Prior to receivership, Legion entered into contracts of reinsurance for the period 10/1/1993 to 9/30/1994 with RIUK and 10/1/1994 to 9/30/1998 with TRC (collectively the "Contracts") that obligated RIUK and TRC to accept from Legion the cession of a certain percentage of Legion's liabilities pertaining to business written on Legion's behalf under a number of property and casualty insurance programs. Lists of the Contracts are attached as Exhibit A and B to the Settlement Agreement which is attached as an Exhibit to the Confidential Affidavit of Gregg C. Frederick, which is attached to this Petition.
- 4. TRC reinsured 100% of the liabilities arising under the Contracts to RIUK. RIUK administered and paid all of the claims arising under the Contracts as if it were the direct reinsurer of Legion under all the Contracts.
- 5. Legion, TRC and RIUK desire to terminate their business relationship and the parties have agreed to commute all of their respective obligations under the Contracts.
- 6. RIUK's and TRC's obligations to Legion under the Contracts include obligations that may become payable in the future and that cannot be determined in an amount certain at this time.

- 7. Legion believes that it is in its best interest to adjust and settle RIUK's and TRC's obligations, including their future obligations, to Legion.
- 8. Accordingly, Legion has negotiated the Settlement Agreement with RIUK and TRC, which is attached as Exhibit 1 to the Confidential Affidavit of Gregg C. Frederick, which is attached to this Petition.
  - 9. Pursuant to the Settlement Agreement, RIUK will pay \$9,854,974.52 to Legion.
- 10. Pursuant to the Settlement Agreement, Legion and TRC will release each other from liability arising out of, or in connection with the Contracts, and Legion will release TRC and RIUK from any claim of right of direct action against RIUK.
- 11. Legion entered into this Settlement Agreement in reliance on its independent investigation and analysis of the Contracts and Legion's rights and obligations under the Contracts.
- 12. The Liquidator believes that the Settlement Agreement is in the best interest of Legion's policyholders, claimants, creditors and the public generally.
- 13. Particularly, the Liquidator believes that Legion's receipt of approximately \$9.855 million dollars is reasonable and adequate consideration for the commutation of TRC's obligations to Legion under the Contracts. In the event the Court does not grant the approval sought in this Petition, the Settlement Agreement will become null and void.
- 14. The Liquidator believes that the agreed commutation payment of \$9,854,974.52 in cash is reasonable given the time value of money, the results of arbitrations that Legion initiated against other reinsurers, the costs and fees that would have been expended in arbitrating due and owing balances from the reinsurer and the benefit of certain payment now versus potential payments in the future. The Liquidator also hopes that this Settlement Agreement will

lead to additional commutations with other reinsurers and, as a result, the more timely and orderly liquidation of Legion's estate for the ultimate benefit of the policyholders and creditors.

- 15. Gregg C. Frederick, Executive Vice President for Reinsurance at Legion, is responsible for all facets of ceded and assumed reinsurance at Legion including billing, claims, commutations, coverage analysis, and dispute management. He has specific knowledge regarding the risks to Legion of attempting to collect reinsurance through billing, negotiation or the dispute resolution process. As set forth in his Confidential Affidavit (attached as "Sealed Exhibit A"), Mr. Frederick has identified several specific advantages to the Estate arising from the consummation of the transaction memorialized in the Settlement Agreement.
- Thus, based on the terms of the Settlement Agreement and the evaluation of the transaction as a whole by the Liquidator, his staff, and Legion staff members familiar with the company's dealings with RIUK and TRC, the Liquidator has determined that the Settlement Agreement is a fair and reasonable commutation of Legion's, RIUK's and TRC's obligations to each other under the Contracts. The Insurance Department Act authorizes the Liquidator to take such actions as she deems "necessary or expedient to . . . conserve or protect [the insolvent insurer's] assets or property [,]" including the power to "compromise" claims involving assets of the insolvent insurer in order to accomplish or aid in achieving the purposes of liquidation. See 40 P.S. § 221.23(6), (9), and (23).
- 17. The Liquidator further believes that the Settlement Agreement will help him in achieving the objectives of liquidation under the Act, 40 P.S. §§ 221.1 221.63. The Settlement Agreement will assist the Liquidator in marshalling and maximizing Legion's immediately available assets and minimize any unavoidable loss to policyholders, claimants and creditors resulting from Legion's insolvency. See 40 P.S. § 221.1(c).

- 18. TRC and RIUK agree to the Settlement Agreement as evidenced by their execution of the Settlement Agreement and concur in requesting the Court's approval of this petition.
- 19. For all of these reasons, the Liquidator requests that the Court approve the Settlement Agreement.

Respectfully submitted,

Amy L. Weber (I.D. # 45447)
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Dated: 3/29/11

#### IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MICHAEL F. CONSEDINE, ACTING INSURANCE COMMISSIONER OF THE COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

No. 183 M.D. 2002

v.

LEGION INSURANCE COMPANY,

Defendant.

In Re: Commutation, Settlement and Release Agreement between Legion Insurance Company (In Liquidation), RiverStone Insurance (UK) Limited (formerly known as Dai Tokyo Insurance Company(UK) Limited) of 161-163 Preston Road, Brighton, East Sussex, BNI 6AU ("RIUK") as successor in interest to Sphere Drake Insurance Limited (formerly known as Sphere Drake Insurance Plc) and Transatlantic Reinsurance Company ("TRC")

# SEALED EXHIBIT A TO PETITION FOR APPROVAL OF COMMUTATION, SETTLEMENT AND RELEASE AGREEMENT BETWEEN THE LIQUIDATOR AND RIVERSTONE INSURANCE UK LTD. AND TRANSATLANTIC REINSURANCE COMPANY

THIS ENVELOPE IS SEALED AND CONTAINS INFORMATION DESIGNATED CONFIDENTIAL IN THIS CASE. IT IS NOT TO BE OPENED OR THE CONTENTS THEREOF TO BE DISPLAYED OR REVEALED EXCEPT BY OR UPON ORDER OF THE COURT.

Respectfully submitted,

Amy L. Weln
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Dated: 3/29/11