

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Teresa D. Miller :
Insurance Commissioner of the :
Commonwealth of Pennsylvania, :
Plaintiff :
 :
v. :
 :
Excalibur Reinsurance Corporation, :
Defendant : No. 1 ERC 2016

MEMORANDUM and LIQUIDATION ORDER

AND NOW, this 18th day of July, 2016, upon consideration of the Amended Petition for Liquidation of Excalibur Reinsurance Corporation (Excalibur) filed by Teresa D. Miller, Insurance Commissioner of the Commonwealth of Pennsylvania and the record established at the hearing on July 6, 2016, the Court hereby finds as follows:

Excalibur is a domestic stock property and casualty insurance company that is organized pursuant to the laws of the Commonwealth of Pennsylvania and has its principal place of business in Philadelphia, Pennsylvania. Excalibur is part of an insurance holding company system. Trebuchet US Holdings, Inc., a Delaware company, is the 100% owner and sole shareholder of Excalibur. Excalibur, formerly PMA Capital Insurance Company, wrote reinsurance business from 1990 until 2003. The majority of its business was written with United States companies covering commercial auto, commercial general liability, products liability, workers' compensation and professional

liability lines of business.¹ Excalibur, through assumption reinsurance, is also responsible for the business written by a former New York Insurance Exchange Syndicate from 1980 through 1987. The remaining business stems from asbestos and environmental insurance coverages. Excalibur assumed the run-off liabilities of Caliber One Insurance Company, an excess and surplus lines insurer that went into run-off in 2002. Excalibur also wrote a minor amount of direct business, with two open claims for workers' compensation losses in Alabama. Excalibur entered into run-off status in 2003.

In 2009, Excalibur was acquired by Armour Group Holdings, Ltd. In connection with the acquisition, the Commissioner issued an order in December 2009 placing certain restrictions on Excalibur's operations. *See* PID Exhibit 1. On September 23, 2013, the Commissioner entered a supervision order that supplemented and clarified the 2009 order. *See* PID Exhibit 2. The 2013 supervision order recognized that Excalibur's risk-based capital (RBC) was at the mandatory control level, as it had been since 2010. It allowed Excalibur to continue running off its business but subject to a number of conditions and restrictions.

Pursuant to Sections 514(1), 519 and 520 of Article V of The Insurance Department Act of 1921 (Article V),² 40 P.S. §§221.14(1), 221.19, and 221.20, the Court may enter an order of liquidation upon a finding that the insurer is insolvent. An insurer is deemed to be insolvent if its admitted assets do not exceed its liabilities plus the greater of its capital and surplus required by law or its

¹ Excalibur is authorized to write the lines of business described in Section 202(b)(1)-(3) and (c)(1)-(14) of The Insurance Company Law of 1921, Act of May 17, 1921, P.L. 682, *as amended*, 40 P.S. §§382(b)(1)-(3) and (c)(1)-(14).

² Act of May 17, 1921, P.L. 789, *as amended*. Article V was added by the Act of December 14, 1977, P.L. 280, *as amended*, 40 P.S. §§221.1 – 221.63.

authorized and issued capital stock. Section 503 of Article V, 40 P.S. §221.3. Pursuant to Section 206(c), 40 P.S. §386(c), Excalibur is required to maintain minimum capital and surplus in the amount of \$3,525,000.

Excalibur's annual financial statement for the year-ended December 31, 2015, PID Exhibit 4, reflects that its liabilities, plus its authorized and issued capital stock, exceed its admitted assets by roughly \$5 million. This filing establishes that Excalibur is insolvent under Article V.

Pursuant to Article V-A,³ an insurer's RBC level can also support the entry of an order of liquidation. *See generally* Section 509-A, 40 P.S. §221.9-A (providing that mandatory control level event shall be deemed sufficient grounds for the Commissioner to seek order of rehabilitation). Specifically, a RBC report indicating that an insurer's total adjusted capital is less than its mandatory control level RBC is an independent basis to order receivership. Excalibur's RBC report for the year-ended December 31, 2015, indicates that its total adjusted capital of (\$2,213,518) is less than its mandatory control level RBC of \$1,520,736. PID Exhibit 5 at 35. Excalibur's RBC level provides a basis for its receivership.

Finally, an order of liquidation may be entered if:

The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in section 502, request or consent to rehabilitation under this article.

Section 514(12) of Article V, 40 P.S. § 221.14(12). *See also* Sections 519 (providing that order of liquidation may be issued on the same grounds as order of rehabilitation); 520(b) (providing that order of liquidation may be issued pursuant to written consent of insurer), 40 P.S. §§221.19, 221.20(b).

³ Sections 501-A – 515-A, added by the Act of June 25, 1997, 40 P.S. §§221.1-A – 221.15-A.

Deputy Insurance Commissioner Joseph DiMemmo testified that upon review of Excalibur's 2015 financial statement, he did not believe it would be prudent to allow Excalibur to remain in business even as a runoff company. Notes of Testimony, July 6, 2016, at 10. Specifically, DiMemmo observed that Excalibur's liabilities exceeded its assets by approximately \$5 million; Excalibur's \$87,000 capital and surplus was far less than its required \$3.525 million minimum capital and surplus; Excalibur was discounting reserves at a 4% rate, which was less than its return on investments; Excalibur had booked an asset worth "a couple of million dollars" that related to future services; and Excalibur had taken a credit of approximately \$13 million on its balance sheet for reinsurance that did not adequately transfer risk. *Id.* DiMemmo further testified that Excalibur's RBC report, as detailed above, indicated a mandatory control level event. *Id.* at 16. In light of the company's financial condition, DiMemmo met with Katherine Barker, the President of Excalibur, in April 2016 to formally request her consent to liquidate the company.

On May 12, 2016, Excalibur's Board of Directors unanimously consented to the entry of an order of liquidation. PID Exhibit 6, Exhibit I. On that same date, Trebuchet US Holdings, Inc., the sole shareholder of Excalibur, also consented to the entry of an order of liquidation. PID Exhibit 6, Exhibit II. Finally, on May 12, 2016, Barker executed a consent to entry of an order of liquidation and waived Excalibur's right to a hearing under Section 520(b) of Article V, 40 P.S. §221.20(b). PID Exhibit 6. The consent of the Board and Trebuchet to the entry of an order of liquidation, along with the waiver of a hearing, provides a third basis to order Excalibur into liquidation.

Based upon the foregoing, it is hereby ORDERED that:

1. The Amended Petition for Liquidation is GRANTED, and Excalibur is ordered to be liquidated pursuant to Article V of The Insurance Department Act of 1921 (Article V), 40 P.S. §§221.1 – 221.63.

2. The Insurance Commissioner, Teresa D. Miller, and her successor in office, if any, is hereby appointed Statutory Liquidator of Excalibur and directed to take possession of Excalibur's property, business and affairs in accordance with Article V and to administer them pursuant to the orders of this Court.

3. The Liquidator is hereby vested with all the powers, rights and duties authorized under Article V and other applicable statutes and regulations, including but not limited to the following enumerated authorizations and directives.

ASSETS OF THE ESTATE

4. The Liquidator is vested with title to all property, assets, contracts and rights of action (assets) of Excalibur of whatever nature and wherever located, as of the date of filing of the Petition for Liquidation. All assets of Excalibur are hereby found to be *in custodia legis* of this Court and this Court asserts jurisdiction as follows: (a) *in rem* jurisdiction over all assets wherever they may be located and regardless of whether they are held in the name of Excalibur or in any other name; (b) exclusive jurisdiction over all determinations as to whether assets belong to Excalibur or to another party; (c) exclusive jurisdiction over all determinations of the validity and amounts of claims against Excalibur; and (d) exclusive jurisdiction over the determination of the priority of all claims against Excalibur.

5. In order to protect the assets of the Excalibur Estate and facilitate this liquidation, the Liquidator is directed to:

a) Inform all banks, investment bankers, companies, other entities or other persons having in their possession assets which are the property of Excalibur, to deliver these assets immediately to the Liquidator, and not disburse, convey, transfer, pledge, assign, hypothecate, encumber or in any manner dispose of the same without the prior written consent of the Liquidator.

b) Inform all attorneys employed by or retained by Excalibur or performing legal services for Excalibur as of the date of this Order that, within 30 days of notification, they must report to the Liquidator the name, company, claim number (if applicable) and status of each matter they are handling on behalf of Excalibur; the full caption, docket number and name and address of opposing counsel in each case; an accounting of any funds received from or on behalf of Excalibur for any purpose and in any capacity; and further, that the Liquidator need not make payment for any unsolicited report.

c) Inform any entity that has custody or control of any data processing equipment and records, including all types of electronically stored information, belonging to Excalibur, to transfer custody and control of this equipment and information to the Liquidator, upon her request.

d) Inform any entity furnishing claims processing or data processing services to Excalibur to maintain such services and transfer any such accounts to the Liquidator, upon her request.

6. Excalibur's directors, officers and employees shall: (a) surrender peaceably to the Liquidator the premises where Excalibur conducts its business; (b) deliver all keys or access codes thereto and to any safe deposit boxes; (c) advise the Liquidator of the combinations and access codes of any safe or safekeeping devices of Excalibur or any password or authorization code or access code required for access to data processing equipment and to access the files and data stored or saved thereon; (d) identify and deliver to the Liquidator all the assets, books, records, files, credit cards, and other property of Excalibur in their possession or control, wherever located; (e) cease transacting business on behalf of Excalibur; and (f) advise and cooperate with the Liquidator in winding up the affairs of Excalibur.

NOTICE OF LIQUIDATION

7. In addition to the notice requirements of Section 524 of Article V, 40 P.S. §221.24, the Liquidator shall publish notice in newspapers of general circulation where Excalibur has its principal places of business that: (a) explains the procedure by which claims against the estate of Excalibur may be submitted to the Liquidator; (b) provides the address of the Liquidator's office for the submission of claims; and (c) notifies the public of the right to present a claim, or claims, to the Liquidator.

8. Within thirty (30) days of giving notice of the Order of Liquidation, as set forth in Section 524 of Article V, 40 P.S. §221.24, and of the procedures for filing claims against the Estate of Excalibur, the Liquidator shall file a report with the Court demonstrating, in reasonable detail, the date and manner notice was given.

DISTRIBUTION OF ESTATE ASSETS

9. Any and all distribution of assets pursuant to Sections 544 and 546 of Article V, 40 P.S. §§ 221.44, 221.46, including those in payment for costs and expenses of Estate administration, shall be made under the direction and approval of the Court.



MARY HANNAH LEAVITT, President Judge