



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE)
LIQUIDATION OF) C.A. No. 8601-VCZ
INDEMNITY INSURANCE)
CORPORATION, RRG)

ORDER APPROVING SETTLEMENT

WHEREAS:

A. The Honorable Trinidad Navarro, Insurance Commissioner of the State of Delaware (the “Commissioner”) in his capacity as the Receiver for Indemnity Insurance Company, RRG (“IIC”), in Liquidation, has petitioned (the “Petition”) for approval of a Settlement Agreement between the Receiver and Branch Banking and Trust Company (“the Bank”),¹ which Settlement Agreement was appended to the Petition as Exhibit “1.”²

B. The Commissioner investigated and seized IIC, and eventually placed it into receivership for liquidation, because of the fraudulent conduct of its founder and majority owner, Jeffrey Cohen.³ On May 30, 2013, the Court granted the Delaware Insurance Commissioner’s Petition for Entry of a Confidential Seizure and Injunction Order permitting the Commissioner to take immediate control of IIC.⁴

¹ Docket Item (“D.I.”) 759.

² D.I. 761, Ex. 1.

³ See, e.g., D.I. 20, 227, 341, 444.

⁴ D.I. 4.

The Petition was “supported by documentary evidence and averred that [IIC] was in a precarious financial position due to multiple acts of fraud by Cohen.”⁵

C. The injuries to IIC that resulted in its liquidation also resulted in Cohen’s federal criminal prosecution. Based on the findings of the IIC investigation, Plaintiff was charged with a number of federal crimes associated with Plaintiff’s work for IIC. Plaintiff eventually pled guilty to wire fraud, aggravated identify theft, making false statements to an insurance regulator, and obstructing justice.⁶ The United States District Court for the District of Maryland, Northern Division found IIC was underreserved and that IIC’s policyholders suffered losses as a result of Plaintiff’s crimes, sentenced Plaintiff to a thirty-seven year prison term and \$137 million in restitution, and entered judgment on December 14, 2015.⁷ Plaintiff appealed his sentence and other issues to the United States Court of Appeals for the Fourth Circuit, which denied Cohen’s appeal on April 25, 2018.⁸

D. The Bank brought its third-party complaint in this liquidation action as successor to Susquehanna Bank, based on a 2012 series of transactions with IIC, Cohen, and other entities controlled by Cohen and related to IIC (“the Loan”).⁹ The

⁵ *Matter of Indem. Ins. Corp., RRG*, 2014 WL 31710, at *1 (Del. Ch. Jan. 2, 2014).

⁶ *United States v. Cohen*, 2015 WL 4641072, at *1 (D. Md. Aug. 3, 2015).

⁷ *See United States v. Cohen*, 888 F.3d 667, 671 (4th Cir. 2018).

⁸ *Id.* at 686.

⁹ D.I. 512.

Loan has been discussed more fully elsewhere:¹⁰ for purposes of this Order, it is sufficient to describe it as a \$5 million “loan” to RBE, but benefitting IIC by increasing its ability to write premiums and thereby prepare for an initial public offering.¹¹ Susquehanna held the proceeds in a collateral account in IIC’s name, and IIC granted Susquehanna a security interest in those proceeds.¹² The agreement establishing that security interest between Susquehanna and IIC agreed that all funds held in the Loan collateral account “shall be under the sole dominion and control of” Susquehanna.¹³ In short, the funds were not available to IIC to fulfill policyholders’ claims.¹⁴

E. On May 27, 2016, the Bank as Susquehanna’s successor filed its third-party complaint to prevent the Loan funds from being marshalled into IIC’s Assets as defined by the Liquidation Order.¹⁵ The Bank claimed that the Loan was in default due to “nonpayment by RBE of principal and interest due, and the commencement of delinquency proceedings against” IIC.¹⁶ Additionally, as of the

¹⁰ See generally *Matter of Liquid. of Indem. Ins. Corp., RRG*, 2019 WL 2152844 (Del. Ch. May 15, 2019).

¹¹ *Id.* at *2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ D.I. 512.

¹⁶ *Id.* ¶ 21.

date of the Bank's complaint, the amount due under the Loan was \$5,314,538.24, against a balance in the Loan's collateral account of only \$5,060,601.09.¹⁷ For its part, the Receiver contended the Loan and its corollary agreements were invalid and unenforceable due to, essentially, fraud by Susquehanna.¹⁸ The Bank and Receiver litigated the Bank's claims through summary judgment and expert discovery, all the way to a pretrial conference in advance of a six-day trial.¹⁹ But the Receiver and the Bank came to a settlement agreement, and on November 14, 2019, the Receiver filed the Petition seeking this Court's approval of the Settlement Agreement with the Bank.²⁰

F. This Court issued an Order to Show Cause to the member policyholders and other interested parties for such parties to file their objections, if any, to the Settlement Agreement and the Petition for Approval thereof.²¹ Two claimants filed objections, but withdrew them.²²

G. The sole pending objection belongs to Cohen.²³ This is not surprising. Cohen unsuccessfully sought to intervene in the liquidation action four times,

¹⁷ *Id.* ¶ 22.

¹⁸ *See* D.I. 519.

¹⁹ *See* D.I. 756, 765.

²⁰ D.I. 759.

²¹ D.I. 762.

²² D.I. 769, 770, 772, 773.

²³ D.I. 767.

although he never attempted to intervene in the specific dispute between the Receiver and the Bank.²⁴ Cohen has filed numerous other actions in connection with the Receivership Proceedings, in this Court and others. Cohen’s litigation efforts are focused on dismantling his criminal convictions and sentence.²⁵ So is his objection to the Settlement Agreement.²⁶

H. Cohen objects to what he sees as “flip-flopping” in the Receiver’s position on whether the Loan funds were an asset of the Estate, and accuses the Receiver of pursuing expensive, frivolous litigation.²⁷ Cohen raises this objection from three different standpoints.²⁸ None prevail.

I. First, Cohen asserts a personal interest, alleging that the restitution he must pay as part of his criminal sentence is somehow affected by the Receiver’s “abandonment” of its claim to the full amount from the Bank, and that resolving the dispute between the Receiver and the Bank will compromise his ability to challenge the validity of his criminal sentence.²⁹ To be blunt, Cohen’s personal interest is irrelevant to the approval of the Settlement Agreement. In considering that approval,

²⁴ See, e.g., *Matter of Liquid. of Indem. Ins. Corp., RRG*, 2018 WL 6431747, at *2–4 (Del. Ch. Dec. 6, 2018) (discussing the four failed attempts to intervene).

²⁵ See, e.g., C.A. No. 2018-0269-MTZ, D.I. 31; C.A. No. 2018-0268-MTZ, D.I. 22, 32.

²⁶ See D.I. 767 ¶¶ 6, 14, 16, 20.

²⁷ See *id.* ¶¶ 19, 23.

²⁸ *Id.* ¶¶ 19–23.

²⁹ *Id.* ¶¶ 16, 19–20.

the Court asks whether such a settlement is in the best interests of the Estate and the policyholders,³⁰ and whether the “Receiver acted on an informed basis and with a good faith, honest belief that the settlement was in the best interest of the policyholders and other . . . estate creditors.”³¹ This Court has already declined to compromise an orderly and equitable claims administration process, which would further prejudice claimants left holding the bag after Cohen’s frauds, to accommodate Cohen’s personal and liberty interests.³² So long as the Settlement Agreement is in the best interests of IIC’s policyholders and the estate, its approval will not be withheld to give Cohen yet another avenue for attacking his criminal conviction and sentence.

J. Second, Cohen asserts an interest in the settlement agreement as a guarantor on the Loan. He contends that he and his entities “will be subject to litigation to collect the balance by the Bank.”³³ This issue, too, is outside the

³⁰ See, e.g., *In re Liquid. of Carrier Sols. Risk Retention Grp., Inc.*, 2017 WL 5133329, at *1 (Del. Ch. Nov. 3, 2017); *In re Rehab. of Manhattan Re-Ins. Co.*, 2013 WL 796635 (Del. Ch. Mar. 4, 2013); *In re Liquid. of Int’l Underwriters Ins. Co.*, 1998 WL 928383, at *6 (Del. Ch. Dec. 30, 1998).

³¹ *In re Liquid. of Int’l Underwriters Ins. Co.*, 1998 WL 928383, at *6.

³² *Matter of Liquid. of Indem. Ins. Corp., RRG*, 2018 WL 6431747, at *6.

³³ D.I. 767 ¶ 16 & n.5.

purview of whether the Settlement Agreement is in the best interests of the policyholders: it is a contractual issue between Cohen and the Bank.³⁴

K. Finally, Cohen contends that his sole proprietorship, JB Cohen Enterprises, was an IIC policyholder. Accordingly, Cohen claims he is financially adversely affected by a smaller estate and by the inability to challenge the Receiver's actions as breaches of fiduciary duty.³⁵ In the first instance, Cohen's individual standing to lodge this objection is questionable, where the harm was suffered by an entity.³⁶ Further, the Manager of the IIC estate affirmed that neither Cohen nor JB

³⁴ I note, without offering any opinion or interpretation, that Section 2(a) of the Settlement Agreement provides the following release:

BB&T unconditionally and irrevocably discharges and releases the Receiver and IICRRG to the full extent permitted by law including, but not limited to, the Receiver's and IICRRG's past and present attorneys, employers, officers, directors, owners, members, managers, employees, insurers, reinsurers, representatives, affiliates, family members, agents, predecessors, successors and assigns, individually and in their official capacity, jointly and severally, of and from all claims, debts, demands, causes of action, suits, damages, obligations, costs, fees, losses, expenses, compensation, liens and liabilities whatsoever, at law or in equity, known or unknown, asserted or un-asserted, contingent or accrued, discovered or undiscovered, which occurred or existed at any time on or before the Effective Date of this Agreement. Nothing contained in this Section shall be construed as releasing the Parties from their obligations under this Agreement.

D.I. 761, Ex. 1 § 2(a).

³⁵ D.I. 767 ¶¶ 16–18, 21–22.

³⁶ See *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1039 (Del. 2004). Whether a claim belongs to the stockholder individually or to the corporation itself “must turn *solely* on the following questions: (1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?” *Id.* at 1033 (emphasis in original).

Cohen Enterprises filed a proof of claim, and that he was unable to identify Cohen or JB Cohen Enterprises as an IIC policyholder.³⁷

L. Even assuming Cohen has standing in fact and in law to assert an objection as a claimant, that objection fails to demonstrate that the Settlement Agreement is not in the best interests of the estate and JP Cohen Enterprises' co-claimants. The estate will add a significant recovery of \$2.3 million to its current assets of \$19 million, in view of 2,400 Class III claims that have been valued at approximately \$127 million.³⁸ It will do so without the expense and risk of a six-day trial with a deep bench of both attorneys and expert witnesses, and subsequent appeal.³⁹ And it will do so on an informed basis, as the parties honed their positions through comprehensive discovery and motion practice. Cohen's conclusory desire for the settlement amount to be larger fails to disturb these findings.⁴⁰

M. This Court finds that the Settlement Agreement is in the best interests of the IIC estate, the member policyholders, the other creditors, and the public.

³⁷ D.I. 775 ¶¶ 3–6.

³⁸ D.I. 759 ¶¶ 31–39, 47.

³⁹ *Id.* ¶¶ 40–46.

⁴⁰ Of course, if Cohen had not committed his extensive frauds, there would be no need to seek every available penny to remit to those he defrauded.

NOW, THEREFORE, IT IS HEREBY ORDERED as of December 23rd, 2019, that:

1. The Receiver's Petition is hereby **GRANTED**.
2. The settlement set forth in the Settlement Agreement attached as Exhibit "1" to the Receiver's Petition is hereby **APPROVED** and the Receiver is hereby **AUTHORIZED and ORDERED** to implement the terms thereof, subject to the provisions of such agreement.
3. This Court shall retain jurisdiction over any matters relating to the implementation of this Order.

IT IS SO ORDERED.

/s/ Morgan T. Zurn
Vice Chancellor Morgan T. Zurn