



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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

**CORRECTED<sup>1</sup> OMNIBUS ORDER CONCERNING  
SECOND REPORTED CLAIM RECOMMENDATIONS**

WHEREAS:

A. On April 10, 2014, the Delaware Chancery Court placed Indemnity Insurance Corporation RRG (“IICRRG”) into liquidation by a Liquidation and Injunction Order with Bar Date (“Liquidation Order”), pursuant to Delaware Uniform Insurers Liquidation Act (“DUILA”), 18 *Del. C.* § 5901, *et seq.*

B. The Liquidation Order appointed the Delaware Insurance Commissioner as Receiver (“Receiver”) and set a bar date of January 15, 2015, for the filing of proofs of claims against IICRRG and information for filing claims, including a Proof of Claim (“POC”) form, was sent to potential claimants of IICRRG.

C. Pursuant to 18 *Del. C.* § 5902(a) and the Plan for the Receiver’s Claim Recommendation Report and Final Determination of Claim By The Court (the “Claim Final Determination Plan”),<sup>2</sup> the Receiver has filed the Second Report of

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<sup>1</sup> POC # 0745 was incorrectly referenced as POC # 0705 in the April 4, 2023 Omnibus Order.

<sup>2</sup> Docket Item (“D.I.”) 899.

Claims Recommendations Pursuant to Paragraph (C) 8 and 9 of the Claim Final Determination Plan (“Second Report”);<sup>3</sup> the Court has entered an Order to Show Cause fixing a time, date, and objection deadline to respond to the claim recommendations in the Second Report;<sup>4</sup> the Court and Receiver have given notice to claimants whose claims are in the Second Report;<sup>5</sup> and the March 3, 2023, Objection Deadline has passed with the submission of three objections via the Claimant Portal, in POC #s 0745, 2731, and 2172 (the “Objections”).<sup>6</sup>

D. A telephonic hearing on the Objections was held on April 4, 2023, at 1:30 p.m. Claimants for POC #s 0745 and 2731 appeared. The Court considered the Receiver’s Claim Recommendation in view of the Objections and supporting materials as submitted through the Claimant Portal under an abuse of discretion standard.<sup>7</sup>

E. The Receiver submitted to the Court for *in camera* review its notices of determination for the First Report claims for which no objection was received (the

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<sup>3</sup> D.I. 907.

<sup>4</sup> D.I. 926.

<sup>5</sup> D.I. 926, 928.

<sup>6</sup> Materials submitted by the claimant and Receiver via the Claimant Portal in connection with this objection are submitted under seal as an exhibit to this Order.

<sup>7</sup> *Matter of Scottish Re (U.S.), Inc.*, 273 A.3d 277, 293 (Del. Ch. Mar. 31, 2022) (“Black letter authorities generally state that an abuse of discretion standard applies when a court reviews the decision of an insurance commissioner acting as a receiver for a delinquent insurer.” (collecting authorities)).

“Unopposed Determinations”). The Court reviewed the Unopposed Determinations under an abuse of discretion standard.<sup>8</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Objection in POC # 0745 is GRANTED IN PART. The Receiver valued the claim at \$235,000, noting a \$1,000,000 consent judgment was entered against the policyholder while the driver’s insurer paid \$765,000. The Receiver’s valuation “reflects any judgment against the policyholder would be reduced by the pro rata share of the driver.”<sup>9</sup> The claimant offered contemporaneous evidence that counsel for the insured agreed to a consent judgment at \$1,000,000 against the insured that was not to be reduced by the prior settlement with the driver. In rejecting the claimant’s initial objection, the Receiver offered no explanation as to why this stipulated consent judgment was not dispositive. “A lack of reasons, a lack of substantial evidence to support those reasons, or the absence of any correspondence between the two indicates an ill-considered, unsupported decision that is therefore arbitrary and capricious.”<sup>10</sup> At the April 4, 2023 telephonic hearing, the Receiver agreed the claim should be valued at \$1,000,000.00. POC # 0745 shall be valued at \$1,000,000.00.

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<sup>8</sup> *See id.*

<sup>9</sup> POC # 0745 Notice of Determination Claim Review Summary.

<sup>10</sup> *See Matter of Scottish Re (U.S.), Inc.*, 273 A.3d at 293.

2. At the hearing, the claimant in POC # 0745 also requested interest. By statute, “[i]nterest shall not be allowed or paid on Class III claims, except that the value arising from valid preliquidation judgments, other than judgments by default or collusion, may include prejudgment and postjudgment interest up to the date of liquidation if such interest is required by law or contract.”<sup>11</sup> No argument has been made that the consent judgment was tainted by collusion.<sup>12</sup> Neither has it been shown that interest was required on the consent judgment by law or contract such that the Receiver abused its discretion by not including it. On this point, the Objection in POC # 0745 is DENIED.

3. The Objection in POC # 2172 is GRANTED IN PART. The claimant initially demanded \$250,000, and the Receiver initially valued the claim at \$25,000, noting questionable liability against the assured. In June 2018, the claimant sought an additional \$75,000 for ongoing care. In December 2018, the Receiver revised its valuation to \$30,000, noting “Claimant or Claimant’s counsel was agreeable to that amount.”<sup>13</sup> Since then, the claimant has experienced and documented additional medical issues and now seeks to value his claim at \$800,000, asserting (but not documenting) incurred costs of \$100,000 and predicting future costs of \$100,000.

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<sup>11</sup> 18 *Del. C.* § 5918(e)(3).

<sup>12</sup> *See Phila. Indemnity Ins. Co. v. Bogel*, 269 A.3d 992, 1013–14 (Del. Super. 2021).

<sup>13</sup> POC # 2172 Ltr. From M. Johnson to [Claimant] dtd. Nov. 27, 2018 (“Notice of Determination: Revised with Consent”).

The claimant has offered no proof of the origin or cost of those issues, nor any basis to conclude the Receiver's discount for questionable liability was an abuse of discretion. POC # 2172 shall be valued at \$100,000.

4. The Objection in POC # 2731 is DENIED. In 2019, the Receiver adjusted the class of this claim based on the claimant's 2018 objection based on lack of notice. The Receiver has maintained in these proceedings that POC # 2731 should be classified in Class III, and it shall be so classified. As to value, the claimant submitted a \$300,000 claim, then did not object to the Receiver's 2019 \$195,000 valuation.<sup>14</sup> In these proceedings, as clarified at the telephonic hearing on this matter, the claimant objects on the grounds that his claim should be valued at the policy limit of \$1 million, to encompass bodily injury, pain and suffering, and attorneys' fees. This objection as to value was not presented to the Receiver in the first instance; I therefore have no basis to conclude the Receiver abused its discretion.

5. The Unopposed Determinations are confirmed. The Court saw no basis to conclude the Receiver abused its discretion in making those Determinations.

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<sup>14</sup> POC # 2731 Proof of Claim ("Amount of Claim: \$300,000" and seeking damages for bodily injury, without mention of attorneys' fees); POC # 2731 Ltr. From P. Altieri to M. Johnson dtd Aug. 31, 2018 (objecting to priority class but not to value).

6. This Order shall be sent to the Objectors through the Claimant Portal, and served on counsel for the Receiver. This Order will be publicly available to claimants in the Unopposed Determinations.

SO ORDERED this 11th day of April, 2023.

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