DONALD F. PARSONS, JR.
  VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Date Submitted: May 7, 2012
Date Decided: May 10, 2012

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RE: *IMO the Liquidation of Security Pacific Insurance Company, Inc.*
        Civil Action No. 6317-VCP

Dear Counsel:

Pending before the Court is an objection raised by Ryan Building Group, Inc.

("RBG") to the decision of the court-appointed receiver (the "Receiver") not to make an

application to the Delaware Captive Insurance Regulatory Fund (the "Captive Fund") for

liquidation expenses for certain insolvent captive insurers under the Receiver's

administration. The Receiver currently is administering four different captive insurance

companies: SPIC, SPI-202, SPI-203, and SPI-204. RBG is a policyholder and creditor of

SPI-202, which has substantially more assets than the other three captive insurers.[1]

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[1]   As of December 31, 2011, SPI-202 had $674,996 in assets. SPI-204 had
        approximately $106,516 in assets and SPIC had approximately $126,371 in assets.

Through its objections, RBG seeks to minimize the extent to which any liquidation fees or expenses of the other three captive insurers in this action are charged to or paid by SPI-202. Among other things, RBG argues that the Receiver should apply to the Captive Fund to have it pay for the liquidation expenses of SPI-203, which has assets of less than $2,000. RBG also asserts that the Receiver should make further applications for SPI-204 and SPIC, if and when their remaining assets are depleted during their liquidation. According to RBG, the Captive Fund exists to pay liquidation expenses for captive insurers where a captive estate has insufficient assets to pay for liquidation expenses on its own.

The Receiver argues that RBG misunderstands the purpose of the Captive Fund. According to the Receiver, the Captive Fund was established to pay for the administration and operation of the Delaware Department of Insurance's Bureau of Captive and Financial Insurance Products (the "Bureau"). The statutory provision establishing the Captive Fund, 18 *Del. C.* § 6917(a), states that the Captive Fund was created "for the purpose of providing the financial means for the Commissioner to administer [Chapter 69]."[2] The section further states that "[a]t the end of each fiscal year, the balance in the captive insurance regulatory and supervision fund, *in excess of such amount reasonably necessary to finance the Commissioner's administration of this*

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[2]   Chapter 69 of Title 18 of the Delaware Code governs captive insurance companies.

chapter during the upcoming fiscal year, shall be transferred to the General Fund."[3] The

Receiver contends that the plain language of § 6917 indicates that the Captive Fund is

intended to finance the Bureau's general business operations and that it does not operate

as a backstop fund for liquidation expenses incurred in receivership. In fact, as the

Receiver points out, although it is common for other types of insurers, such as casualty,

life, health, and property insurers, to have such backstop funds, under 18 *Del. C.* § 6913,

captive insurance companies explicitly are excluded from participating in, or even

contributing to, "any plan, pool, association, or guaranty or insolvency fund in this State

. . . ." Instead, the Receiver argues that the conduct of delinquency proceedings against

captive insurers is governed by 18 *Del. C.* § 5913, which requires that the costs of a

liquidation be paid from the funds or assets of the insurer itself.[4] Finally, the Receiver

notes that RBG has not identified any statutory provision that would enable a receiver to

borrow from the Captive Fund to finance the liquidation of a captive insurer.

This appears to be an issue of first impression in Delaware and is entirely

dependent on the construction of the statutory language highlighted by the parties.

Having considered the parties' opposing arguments, I find the Receiver's interpretation of

the relevant statutory language, and its construction of § 6917 in particular, to be more

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[3]   18 *Del. C.* § 6917(b) (emphasis added).

[4]   *Id.* § 5913(f).

reasonable than the one advanced by RBG. The plain language of the statute only entitles the Commissioner to withdraw monies from the Captive Fund up to "such amount reasonably necessary to finance the Commissioner's administration of this chapter." The statute does not reference liquidation expenses. Moreover, another relevant statute provides that any remaining funds are to be remitted to the Secretary of State for use by the City of Wilmington.[5] This provision further undermines RBG's interpretation. For example, such an arrangement would be unusual for the type of backstop fund RBG claims the Captive Fund represents, because the amount of funds necessary to cover liquidation expenses for captive insurers likely would be difficult to project. This would inject uncertainty into the determination of the remaining funds that should be remitted to the Secretary of State.

Furthermore, the Receiver has represented to the Court that the liquidation expenses for SPI-203, and its legal fees in particular, are being borne by the professionals currently providing services to SPI-203 in hopes that they will be paid out of any recovery achieved by SPI-203 against third parties. This type of arrangement makes sense and supports the Receiver's position that the Captive Fund was not intended to provide liquidation expenses for captive insurers.

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[5]   29 *Del. C.* § 2311.

For all of these reasons, I hold and declare that the Captive Fund is not a fund from which the Receiver may borrow or otherwise obtain money to pay for the costs associated with the liquidation of SPI-203, SPI-204, or SPIC. Therefore, I overrule RBG's objection on this issue.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor

DFP/ptp