

RSA RUNOFF SALE OK'D WITH SOME RESTRICTIONS

DaimlerChrysler appeals decision by Delaware regulator

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A major policyholder has filed an appeal in state court in Delaware in response to Delaware insurance commissioner's conditional approval of the disputed sale of Royal & SunAlliance USA Inc. to a management group. Insurance Commissioner Matthew Denn's decision and final order was issued Feb. 20.

Observers say one unusual aspect of the order is that RSA USA's parent, London-based Royal & Sun Alliance Insurance Group P.L.C., must agree to submit to Delaware state courts' jurisdiction in the event policyholders sue it in the future.

David Wilks, a Wilmington, Del.-based partner with Reed Smith L.L.P., said client Auburn Hills, Mich.-based DaimlerChrysler Corp. filed an appeal of the commissioner's order and a motion for a stay on it. "We are asking the court to postpone the closing of the Royal transaction until the appeal is exhausted," said Mr. Wilks. Mr. Wilks said DaimlerChrysler objects in its appeal to a ruling in December by Delaware Insurance Department hearing officer Lawrence A. Hamermesh against policyholders' attempt to be named as formal parties in the proceeding, which would have entitled them to conduct discovery. Ruling otherwise, "we think would have led to a different result," he said.

A statement issued by Janno Lieber, World Trade Center project director for New York-based Silverstein Properties, a major RSA USA policyholder, said, "We are disappointed by today's decision and are reviewing our options." Royal & SunAlliance said in a statement that the deal's approval is subject to any number of conditions "which require further consideration and may have a bearing on the completion of the transaction."

A spokesman for Royal & SunAlliance's U.S. operations said in a statement, "Clearly, the Delaware commissioner has ruled in favor [of the transaction] as being in the best interest of policyholders. However it is a lengthy ruling—we are still working through the decision and have nothing to add at this point."

Charlotte, N.C.-based Arrowpoint Capital Corp., a vehicle established by RSA USA's management team, announced in September 2006 its agreement to acquire Royal Indemnity Co. and other members of RSA USA's insurance pool for \$300 million. RSA said upon completion of the transaction, it would contribute \$287.5 million in capital to U.S. entities. Major policyholders, which also include Detroit-based General Motors Corp., have protested the deal, contending it would leave RSA USA with inadequate capital.

Earlier this month, following a public hearing, Mr. Hamermesh recommended that Mr. Denn approve the deal. In issuing his order conditionally approving the deal, Mr. Denn said, it "should not be mistaken for an endorsement of the business practices of the British parent company. The actions of Royal UK, though legal, are unfortunate and not the actions of fair businesspeople."

Mr. Denn said the proposed \$287.5 million capital infusion "may be barely sufficient to cover all outstanding claims." However, although major policyholders "would like me to gamble that I can get an even better deal by rejecting the application," there is no evidence to suggest they are correct, and there are a "vast number of other policyholders' who stand to lose everything if I accept the objectors' request to roll the dice and end up being wrong."

RSA RUNOFF SALE OK'D WITH SOME RESTRICTIONS (CONTINUED)

Among the conditions presented by Mr. Denn for the deal's approval is that Royal & SunAlliance "submit to personal jurisdiction in the courts of this state for the purpose of resolving any legal claims brought by policyholders." Mr. Denn also asks that RSA and its relevant units submit to the Delaware Insurance Department's ongoing jurisdiction with respect to its obligations, including making reinsurance claims.

Mr. Denn is also requiring that no dividends be paid to the holding company until "all policyholder claims reasonably capable of resolution have been paid" and that there are additional funds to pay claims that "cannot be resolved in a timely fashion," he said.

He also requires that no member of management receive any compensation beyond base salary until this determination has been made.

In addition, Mr. Denn said he will name a claims monitor to hear all policyholder complaints and to monitor indemnity reserve adequacy, litigation management, claims denial and other aspects of "sound claims practice." The claims monitor will report to the commissioner monthly. Observers say the condition that RSA submits to personal jurisdiction in Delaware courts is unusual in the United States.

Rachel S. Kronowitz, an attorney with Gilbert Heintz & Randolph L.L.P. in Washington, said it will enable policyholders in the future to pursue lawsuits against RSA in the United States rather than the United Kingdom, "which may not be as hospitable a jurisdiction for them." This "can only be advantageous to policyholders," said Ms. Kronowitz.

Robert M. Horkovich, a partner with Anderson, Kill & Olick P.C. in New York, said the only other place he has seen this provision is in London market policies. "It is unusual and it's very helpful" to policyholders, he said. Without it, "it becomes very difficult to sue foreign insurance companies," he said.

Bruce C. Shulan, managing director at Stamford, Conn.-based Princeton Partnership L.L.C., said, "I think it's the result of specific, underlying factual circumstances, which gave the commissioner good cause to want to make sure that claimants have access to Royal UK in the United States."

Conditions of sale

- RSA USA's parent, London-based Royal & Sun Alliance Insurance Group P.L.C., must submit to "personal jurisdiction" in Delaware state courts to resolve any legal claims brought by policyholders.
- A claims monitor—who will report monthly to the insurance commissioner—will be available to receive policyholder complaints and monitor claims payments.
- Insurers will not pay any dividends until the Delaware Insurance Department concludes all policy claims reasonably capable of resolution have been paid.
- No management personnel will be paid compensation beyond base salary until the aforementioned determination has been made.
- RSA must submit to the Delaware Insurance Department's ongoing jurisdiction with respect to obligations, including making reinsurance claims.

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