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REINSURANCE LAW BULLETIN

Re: Rejecting Liquidator’s “Alchemy” New Jersey Court Strikes Attempt to Convert IBNR Claims into “Absolute” Claims

In closing the estate of an insolvent insurance company, a liquidator proposed a plan whereby policyholders would submit actuarial estimates of their incurred but not reported (“IBNR”) claims discounted to present value. The Plan initially permitted the liquidator to accept and allow IBNR claims to share in distributions. The liquidator would then bill such claims to reinsurers.

The Reinsurance Association of America (“RAA”) challenged the plan arguing that the plan violated state law prohibiting contingent claims from sharing in the distribution of an insolvent estate. The trial court approved the plan, but the appellate court reversed. Under the insolvency statute, only “absolute” claims could participate in estate distribution. The court interpreted “absolute” to mean: “conclusive and not liable to revision.” Since IBNR claims were merely actuarial estimates, they did not satisfy this requirement. Thus, the court rejected the liquidator’s “alchemy” of “transmuting a contingent claim into an absolute claim.” Although “the Liquidator has substantial discretion in choosing” a distribution mechanism, “she may not select one that contravenes the plain language” of the state’s insolvency laws.

For further information or a copy of the decision, please contact Daryn Rush at 215.399.5773 or drush@fblaw.com. Please visit our website at www.fblaw.com.

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