IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE REHABILITATION OF MANHATTAN RE-INSURANCE COMPANY	: : :	C.A. No. 2844-VCP

MEMORANDUM OPINION

Submitted: June 13, 2011
Decided: October 4, 2011

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PARSONS, Vice Chancellor.

This action comes before the Court following the insolvency and proposed rehabilitation of a Delaware insurance company. In response to the rehabilitation plan for the company proposed by its receiver, a reinsurer of the company filed several objections. Among other things, the reinsurer argues that the plan should be rejected because the receiver improperly intends to dispose of certain cash holdings of the company that the reinsurer claims constitute cash collateral under its reinsurance agreements with the company. In addition, the reinsurer has moved to have the parties' dispute over the cash in question referred to arbitration and for a preliminary injunction to preserve the disputed cash until the arbitration is resolved.

As a threshold matter, the Court's ability to grant the relief requested by the reinsurer depends on whether the arbitration clause in the reinsurance agreements between the insolvent insurance company and the reinsurer is enforceable against the receiver under Delaware law. If so, the question then becomes whether this Court should, in its discretion, require the parties to honor their agreement to arbitrate in light of the ongoing rehabilitation of the insurer. For the reasons stated in this Memorandum Opinion, I find that Delaware law permits enforcement of the arbitration clause of the reinsurance agreements against the receiver and that the parties should be required to arbitrate their competing claims to the disputed cash. In addition, I will order a partial stay of the proceedings in this action pending resolution of the arbitration.

I. FACTUAL BACKGROUND

A. The Parties

Manhattan Re-Insurance Company ("Manhattan Re") is a Delaware insurance company. The matters in this case arise from Manhattan Re's 2007 insolvency and subsequently proposed rehabilitation.

Objector-movant, American Motorists Insurance Company ("AMICO"), is an Illinois insurance company. It is the successor in interest to a series of reinsurance contracts with Manhattan Re originally entered into in the 1970s by predecessors to both entities.

The receiver in the rehabilitation, and the petitioner in this action, is the Honorable Karen Weldin Stewart, Insurance Commissioner of the State of Delaware (the "Receiver"). The Receiver was appointed by this Court to handle the rehabilitation of Manhattan Re on April 2, 2007.[1]

B. Facts

Beginning in the 1970s, predecessors in interest to Manhattan Re and AMICO[2] entered into a series of reinsurance contracts (the "Agreements") in which Manhattan Re

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[1] At the time the Rehabilitation and Injunction Order was issued, the Insurance Commissioner was the Hon. Matthew Denn, who has since been succeeded by Commissioner Stewart.

[2] The initial reinsurance contracts entered into were between Martin Reinsurance Company and Hanseatic Eastern Insurance Company Ltd., the original predecessors of Manhattan Re and AMICO, respectively. Because the identities of the various successors in interest to these contracts are immaterial to the disposition of this case, I refer to all preceding entities as either Manhattan Re or AMICO.

ceded, and AMICO assumed, certain insurance policies originated by Manhattan Re. Over time, this arrangement has resulted in the payment by AMICO of approximately $30 million on almost 5,000 claims.

As security for its loss payment obligations under the Agreements, AMICO was required to provide and maintain a letter of credit (the "LOC") for Manhattan Re for as long as AMICO remained obligated to Manhattan Re under the contracts. Manhattan Re could draw on the LOC if AMICO defaulted on its obligations to pay claims it had assumed under the contract. It also could draw down the entire amount of the LOC if AMICO failed to renew or otherwise provide a replacement LOC as security for its obligations.[3]

In December 2003, AMICO notified Manhattan Re that it would be unable to obtain an extension of the LOC from Bank of America. Before the LOC expired, Manhattan Re drew down its full amount of $7,392,000. Manhattan Re held those funds, however, in a segregated account (the "AMICO Fund") for the purpose of covering AMICO's loss payment obligations under the Agreement. The central dispute between the parties is whether these funds represent unrestricted assets of Manhattan Re available to satisfy the claims of all creditors, as Manhattan Re contends, or are restricted cash collateral that can be used only to pay AMICO's obligations as a reinsurer of Manhattan Re, as AMICO argues.

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[3] Verified Pet. for Approval of the Plan of Rehab. of Manhattan Re-Insurance Company (hereinafter "Pet.") Ex. 2 at 2.

In or about 2007, Manhattan Re experienced financial difficulties and was placed into receivership by order of this Court.

C. Procedural History

On April 2, 2007, this Court entered a Rehabilitation and Injunction Order (the "Order") finding Manhattan Re to be in an unsound financial condition and appointing the Insurance Commissioner for the State of Delaware to act as Receiver in order to take possession of the company and conduct its business during the rehabilitation. Manhattan Re consented to the appointment.

On February 3, 2011, the Receiver petitioned the Court for approval of a plan of rehabilitation of Manhattan Re (the "Plan"). Under the Plan, the Receiver would treat the AMICO Fund as an unrestricted asset of Manhattan Re to be used to satisfy its general obligations to policyholders and creditors, as well as any administrative fees and expenses incurred by the Receiver during the rehabilitation.[4] After receiving notice of the Receiver's request for approval of the Plan, AMICO filed its objections on March 22, 2011. In addition, AMICO moved to refer the parties to arbitration for a binding determination of "the proper amount of the AMICO Fund and the specific rights and obligations of the Receiver and AMICO with respect thereto."[5] AMICO's motion also

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[4] The Plan lists Manhattan Re as having $7,069,377 in unrestricted cash assets. AMICO, however, claims that the overwhelming majority, if not all, of Manhattan Re's cash is part of the AMICO Fund and is therefore restricted collateral.

[5] Pl.'s Mot. for Referral to Arbitration and Pres. of the AMICO Fund (the "Motion to Arbitrate") 9.

seeks a preliminary injunction to preserve the disputed funds during the pendency of the arbitration.

D. Parties' Contentions

AMICO makes three primary objections to the Plan. First, and most importantly, AMICO seeks rejection of the Plan because it erroneously proposes to treat the AMICO Fund as unrestricted cash. AMICO claims that Manhattan Re holds the AMICO Fund exclusively as security for AMICO's loss payment obligations, that the Fund is an asset "belonging to AMICO that Manhattan Re holds," and that the Fund, therefore, cannot be used to pay general obligations of Manhattan Re, such as, for example, the Receiver's fees and expenses.[6]

AMICO's second objection seeks rejection of the Plan because it contains a number of incorrect and misleading representations. These include the omission of the following facts: (1) that AMICO is administering and paying all outstanding policyholder claims; (2) that AMICO has paid certain claims in excess of its $500,000 exposure limit; and (3) that modifications to the current plan would implicate the participation of the Delaware Insurance Guaranty Association. AMICO also objects to the Plan because it contains material accounting errors, provides only a confusing description of how policy claims are to be settled, and contains a confusing definition of "General Assets" that appears to include assets that have been mortgaged or otherwise encumbered.

AMICO's final objection is that the Plan should be rejected because it will deplete the AMICO Fund on unnecessary and duplicative administrative expenses. AMICO

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[6] *Id.* at 18.

argues that the Receiver's claimed expenses appear excessive and that, in any event, the Receiver should be barred from using the AMICO Fund to pay administrative expenses arising from the rehabilitation.

The Receiver categorically opposes all of AMICO's objections and requested relief. Additionally, the Receiver asserts that AMICO's ownership claim over the AMICO Fund is barred by laches or the analogous statute of limitations.

II. ANALYSIS

A. Does Delaware Law Provide the Court of Chancery with Exclusive Jurisdiction over Disputes Related to Insurance Rehabilitations?

The first question to be addressed is whether Delaware law provides for exclusive jurisdiction over all disputes related to insurance rehabilitation proceedings in the Court of Chancery. This is a question of first impression in Delaware. The relevant statute to be construed is 18 *Del. C.* §§ 5901-5932, which is the section of the Delaware Code dealing with the rehabilitation and liquidation of insurers (the "Act"). The Act includes Delaware's codification of the Uniform Insurers Liquidation Act (the "UILA").[7]

1. The Uniform Insurers Liquidation Act

The UILA was created to facilitate coordination among the states for the orderly resolution of insolvent insurance companies.[8] Because insurers are barred from seeking

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[7] 18 *Del. C.* §§ 5901(2)-(13), 5902, 5903, 5913-5920.

[8] *See* Jay M. Zitter, *Validity, Construction, and Application of Uniform Insurers Liquidation Act*, 44 A.L.R.5th 683 § 1(a) (1996) ("[T]he Uniform Insurers Liquidation Act was promulgated, so as to . . . provid[e] a uniform system for the orderly and equitable administration of the assets and liabilities of defunct multistate insurers.").

federal bankruptcy protection, the UILA establishes an alternative statutory scheme and provides its adopting states (the "States") with a "uniform method for processing claims against, and distributing assets of, distressed insurance companies" with assets and policyholders in multiple jurisdictions throughout the United States.[9] A central purpose of this scheme is "to avoid dissipating a distressed insurer's assets by allowing it to be sued, and requiring it to defend, litigations scattered in many jurisdictions throughout the country."[10]

The UILA employs two primary mechanisms to accomplish its uniform scheme. First, the UILA provides a uniform set of laws to determine issues such as preference and control and title to assets.[11] Second, and more relevant to the analysis here, the UILA establishes a receivership system among the States to coordinate the settlement of claims and disposal of assets located in various states.

Under the UILA, when an insurer is declared insolvent, a domiciliary receiver will be appointed to assume possession and control of the insurer and its assets in the state where the insurer is incorporated or organized.[12] The domiciliary receiver is then entitled

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9 *Checker Motors Corp. v. Exec. Life Ins. Co.*, 1992 WL 29806, at *2 (Del. Ch. Feb. 13, 1992).

10 *Id.* at *3.

11 John H. Binning & Timothy L. Moll, *Arbitration of Reinsurance Disputes in Liquidation of Insurance Companies*, 32 Tort & Ins. L.J. 937, 952 (1997).

12 18 *Del. C.* § 5901(6).

to recover the assets of the insurer in reciprocal states.[13] If the insurer has sufficient assets or claims located within another state, however, an ancillary receiver may be appointed in that state with the sole right to recover the assets of the insurer located within that state and to settle certain claims related to such domestic assets of the insurer that are under the ancillary receiver's control.[14]

2. The Delaware Act

The central dispute between the parties is whether the Delaware Legislature intended, in its adoption of the UILA, to provide for exclusive jurisdiction in the Court of Chancery over all disputes brought against the insurer during a rehabilitation proceeding. The Receiver contends that, consistent with the comprehensive plan for orderly resolution under the UILA, the Act confers upon this Court original and exclusive jurisdiction over all claims against the insurer while in rehabilitation. Thus, according to the Receiver, the arbitration clause at issue here cannot be given effect. AMICO, on the other hand, asserts that the language and overall purpose of the Act does not create exclusive jurisdiction in the Court of Chancery, and that enforcing the disputed arbitration clause would comport with Delaware law and the overall scheme of the UILA.

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[13] *Id.* § 5914. "Reciprocal state" is defined by the Act as any other state in which "in substance and effect the provisions of the Uniform Insurers Liquidation Act . . . are in force . . . ."

[14] *Id.* Under the Act, in the case of a rehabilitation of an insurance company organized in another state, ancillary proceedings in Delaware are intended to resolve claims related exclusively to special deposit and secured claims in Delaware, with all remaining assets to be transferred to the domiciliary receiver.

In reading the UILA as adopted in Delaware, I find that, while this Court does possess original and exclusive jurisdiction over the *in rem* proceedings of the rehabilitation, the UILA does not give the Court of Chancery exclusive jurisdiction over all claims brought against the insolvent insurer. Therefore, this Court is empowered to refer certain *in personam* claims, such as the claim AMICO seeks to assert in this case, to arbitration where doing so would not be inconsistent with the interests of achieving a prompt and orderly rehabilitation of the insurer.

a. Statutory construction

I begin this analysis by noting that the Act does not discuss explicitly either arbitration or the exclusive jurisdiction of this Court over collateral claims brought during rehabilitation proceedings.[15] Therefore, I must look to the overall scheme of the Act as a whole to determine whether the Legislature intended for this Court to have exclusive

[15] *See Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985) ("To apply a statute the fundamental rule is to ascertain and give effect to the intent of the legislature. If the statute as a whole is unambiguous, there is no reasonable doubt as to the meaning of the words used and the Court's role is then limited to an application of the literal meaning of the words. However, it is undisputed that when a statute is ambiguous and its meaning may not be clearly ascertained, the Court must rely upon its methods of statutory interpretation and construction to arrive at what the legislature meant.") (internal citations omitted). When the Legislature has conferred exclusive jurisdiction on the Court of Chancery, it frequently has done so expressly. *See*, *e.g.*, 8 *Del. C.* § 145 ("The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this section or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise."); 6 *Del. C.* § 2110 ("The Court of Chancery shall have exclusive jurisdiction of all actions or proceedings authorized by this chapter or relating to its enforcement.") (antitrust proceedings); 12 *Del. C.* § 3572 ("The Court of Chancery shall have exclusive jurisdiction over any action brought with respect to a qualified disposition.").

jurisdiction over all claims arising during the rehabilitation or liquidation of an insolvent insurance company.[16]

Turning now to the Act dealing with the rehabilitation and liquidation of insurers, § 5902(a) provides that "[t]he Court of Chancery shall have original jurisdiction of delinquency proceedings under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter."[17] A "[d]elinquency proceeding" is defined by § 5901(3) to be "any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer." Furthermore, § 5902(d) states that:

> [d]elinquency proceedings pursuant to this chapter shall constitute the *sole and exclusive method* of liquidating, rehabilitating, reorganizing, or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the State on the relation of the Commissioner.[18]

The language of § 5902, therefore, indicates that, at a minimum, the Court of Chancery possesses original and exclusive jurisdiction over the rehabilitation of an insurer. The Act defines "Rehabilitation" as the process by which the State Insurance Commissioner "take[s] possession of the property of the insurer and . . . conduct[s] the business thereof and . . . take[s] such steps toward removal of the causes and conditions which have made

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16 *See Coastal Barge*, 492 A.2d at 1245 ("A statute is passed by the General Assembly as a whole and not in parts or sections. Consequently, each part or section should be read in light of every other part or section to produce an harmonious whole.").

17 10 *Del. C.* § 5902(a).

18 *Id.* § 5902(d) (emphasis added).

rehabilitation necessary . . . ."[19] In other words, § 5902 grants the Court of Chancery original and exclusive *in rem* jurisdiction over the insurer and its assets during the rehabilitation proceeding.[20] The section is silent, however, as to whether this Court also possesses exclusive jurisdiction over all other claims brought against an insurer during a rehabilitation proceeding.

In arguing that this Court's original and exclusive jurisdiction extends to all claims brought against an insurer during a rehabilitation proceeding, the Receiver points to § 5904(b), which states:

> The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the Commissioner or the proceeding or waste of the assets of the insurer *or the commencement or prosecution of any actions or the obtaining of preferences, judgments, attachments or other liens or the making of any levy against the insurer or against its assets or any part thereof*.[21]

This statutory provision gives the Court significant power to enjoin collateral proceedings related to a rehabilitation. I do not agree with the Receiver, however, that the statute, on its face, provides the Court of Chancery with exclusive jurisdiction over such proceedings. The language of the statute is *permissive* in its grant, conferring upon the Court the *discretion* to enjoin collateral proceedings, but not prohibiting the commencement or continuation of such proceedings altogether. As a result, I find the

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19 *Id.* § 5910(a).

20 *See In re Nat'l Heritage Life Ins. Co.*, 656 A.2d 252, 259 (Del. Ch. 1994) ("[A] rehabilitation is an *in rem* proceeding.").

21 18 *Del. C.* § 5904(b) (emphasis added).

plain meaning of § 5904(b) to be that collateral actions may be brought outside of the Court of Chancery, subject to this Court's ability to enjoin any or all such proceedings if the Court determines that they would interfere with the orderly liquidation or rehabilitation of the insurer.

This reading comports with the Order governing the proceeding here. In the 2007 Order, the Court enjoined any actions against Manhattan Re from commencing or proceeding in any forum other than the Court of Chancery, but allowed the Receiver to continue pre-existing actions in other forums if it elected to do so.[22] Consistent with the permissive nature of § 5904(b), however, the Court still retains the ability to lift the injunction for an action that the Court determines, upon application of a party, would not be inconsistent with the statute or its goal of ensuring the prompt and orderly rehabilitation of insurance companies.[23]

I also find that the Legislature's direct prohibition of certain claims under 18 *Del. C.* § 5919 supports reading § 5904(b) as contemplating the initiation of actions in forums other than the Court of Chancery. Under § 5919:

> [N]o action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this State against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within 4 months prior to commencement of any such delinquency proceeding or at any time thereafter shall be void

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[22] Order ¶ 6.

[23] *Id.* ¶ 24.

> as against any rights arising in such delinquency proceeding.[24]

The direct prohibition the Legislature imposed in § 5919 against certain kinds of actions stands in stark contrast to the permissive language of § 5904(b). Indeed, in the specific context of the Act itself, § 5919 strongly suggests that had the Legislature intended to limit the commencement and prosecution of all claims exclusively to the Court of Chancery, the Legislature would have expressed that intent directly.

Furthermore, I view § 5919 as reflecting the Legislature's intent to distinguish between the exclusive *in rem* jurisdiction of the Court of Chancery over the insurer and its assets, and the Court's non-exclusive jurisdiction over other types of claims that might be brought against an insurer during delinquency proceedings, such as *in personam* claims like the one brought by AMICO to determine the amount of and title to the AMICO Fund. Attachment, garnishment, and execution are all *in rem* actions that directly act against the property of the insurer.[25] It is entirely consistent with the overall scheme of the Act, therefore, to prohibit all such actions during the pendency of a delinquency proceeding, while still allowing for other actions to be prosecuted either in the Court of Chancery or elsewhere, so long as any execution upon a judgment against

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[24] 18 *Del. C.* § 5919.

[25] *See Grannis v. Ordean*, 234 U.S. 385, 393 (1914) (describing an *in rem* proceeding as "one taken directly against property, [with] its object the disposition of the property, without reference to the title of individual claimants . . . . Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a mortgage, or enforce a lien").

the assets of the insurer must be pursued under the auspices of the Court of Chancery.[26] Such a scheme provides for an orderly, centralized process of disposing of the delinquent insurer's assets, while at the same time allowing for prompt and efficient resolution of disputes by providing the Court with the discretion to enable parties to litigate or arbitrate their disputes in a contractually-agreed upon forum of their choosing.

Finally, in relation to other, non-*in rem* actions brought against the insurer during a rehabilitation, § 5918 describes the relevant framework within the scope of the rehabilitation proceeding by which the Court of Chancery is to accept and apply determinations by other forums on such claims against the insurer. Section 5918 provides that in relation to deficiencies pertaining to secured creditor claims against the insurer:

> If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter or if it has been adjudicated *by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard*, such amounts shall be conclusive, otherwise, the amount shall be determined in the delinquency proceeding in the domiciliary state.[27]

This section not only contemplates the prosecution of claims against the insurer in other jurisdictions, beyond simply ancillary proceedings under the UILA, but it also provides a clear framework for how the results of those adjudications are intended to be given effect

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[26] *See Checker Motors Corp. v. Exec. Life Ins. Co.*, 1992 WL 29806, at *3 (Del. Ch. Feb. 13, 1992) ("Section 5919 operates as a blanket prohibition against attachments, garnishments, and executions in Delaware during the pendency of a delinquency proceeding in *any* state.").

[27] 18 *Del. C.* § 5918(d) (emphasis added).

by the Court of Chancery. Subject to the consent of this Court in certain instances, claims that fall outside of this Court's exclusive *in rem* jurisdiction may be brought in any forum of competent jurisdiction for a determination on the merits. So long as the domiciliary receiver has had notice and an opportunity to be heard in such proceedings, the determinations of that court will be considered conclusive and entered by this Court against the property of the insurer. Again, § 5918 is entirely consistent with a scheme in which the Court of Chancery has exclusive jurisdiction over the assets of the insurer and the authority to manage, in an orderly fashion, the final execution of claims against those assets, but which also allows for this Court, in its discretion, to permit claims against the insurer to be adjudicated in other forums or jurisdictions where doing so would lead to a more efficient resolution of the underlying dispute.

Reading the Act as a whole, I find that the Act grants the Court of Chancery original and exclusive *in rem* jurisdiction over the rehabilitation of an insurer, including exclusive jurisdiction over the disposition of its assets and property. I also find that § 5904(b) grants this Court discretion to enjoin any proceeding related to the orderly rehabilitation of the insurer. I do not find, however, that the Legislature granted or intended to grant the Court of Chancery exclusive jurisdiction over all claims brought against the insurer during the pendency of a rehabilitation.[28] Instead, absent an injunction

[28] *See In re Nat'l Heritage Life Ins. Co.*, 656 A.2d 252, 259-60 (Del. Ch. 1994) ("When it is said that in [an *in rem*] action the property of the corporation is brought into the court, it means that all of the right, title or interest of the corporation *are now held subject to court control* and that the *powers of the corporation are exercised subject to court control.* The res that is taken into court is the corporation itself, the fictive entity. But while the corporation is thus taken

issued by the Court of Chancery pursuant to § 5904(b), such claims may be brought in any court of competent jurisdiction, with the final entry of any judgment against the assets of the insurer to be made by application to the Court of Chancery pursuant to its exclusive *in rem* jurisdiction.

Additionally, as to whether an arbitration panel qualifies as a "court of competent jurisdiction" to hear claims related to a rehabilitation, nothing in the Act suggests that the Legislature intended to undermine this State's strong policy in favor of arbitration.[29] Therefore, I conclude that where, as in this case, there is a valid and enforceable arbitration agreement between the insurer and the claimant, the receiver, by stepping into the shoes of the insurer, may be required at the behest of a claimant who obtains the

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into court in this sense, it takes things too far to suppose that beyond the corporate entity, all of the corporation's property (right, title and interests including claims) is brought into the court *for the purposes of adjudicating adverse claims*.") (emphasis in original).

[29] *James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 79 (Del. 2006) ("This Court has recognized that the public policy of Delaware favors arbitration."); *Pettinaro Const. Co. v. Harry C. Partridge, Jr., & Sons, Inc.*, 408 A.2d 957, 961 (Del. Ch. 1979) ("The Uniform Arbitration Act reflects a policy designed to discourage litigation, to permit parties to resolve their disputes in a specialized forum more likely to be conversant with the needs of the parties and the customs and usages of a specific industry than a court of general legal or equitable jurisdiction, and to provide for the speedy resolution of disputes in order that work may be completed without undue delay. Accordingly, the public policy of this State is now to enforce agreements to arbitrate without regard to the justiciability of the underlying claims. It is no longer of any consequence that a court, otherwise competent to hear the dispute, is ousted of its jurisdiction by the arbitration process.").

permission of this Court, to submit to arbitration just as the insurer would have been so required absent the receivership.[30]

B. Delaware Law is the Controlling State Law as to Whether AMICO's Claims may be Submitted to Arbitration

AMICO reads the Receiver's Answering Brief as asserting that New York law, rather than Delaware law, controls on the issue of whether the Court of Chancery has exclusive jurisdiction over AMICO's claim to the AMICO Fund. I do not understand the Receiver to make such an assertion, but because AMICO has introduced the issue and there appears to be some confusion regarding it, I briefly discuss the issue here.

AMICO interprets the Receiver's discussion of New York law, as it relates to the jurisdiction of this Court, as asserting that the New York choice of law provision under the Agreements is controlling. I read the reference to New York law in the Receiver's Answering Brief, however, as intended simply to provide indirect support from another jurisdiction for the proposition that *Delaware* law provides for original and exclusive jurisdiction in the Court of Chancery. While the Receiver did discuss New York law, it

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[30] In their briefs, both parties devoted considerable attention to whether and to what extent the federal McCarran-Ferguson Act applies to this case. 15 U.S.C. §§ 1011-1015. That act is applied, however, only where there is a conflict between state and federal law regulating the business of insurance. *See id.* § 1012 ("No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . ."). The Receiver argued that the Federal Arbitration Act created such a conflict here. Because I find that Delaware law does not confer exclusive jurisdiction on the Court of Chancery over actions regarding insolvent insurance companies, there is no conflict between Delaware law and the FAA, and, therefore, no need to conduct a reverse preemption analysis under the McCarran-Ferguson Act.

was in the context of arguing how the Delaware version of the UILA should be construed, which the Receiver acknowledges is an issue of first impression before this Court.[31] Therefore, the only logical reading of the Receiver's discussion of New York law in its brief is in support of its contention that the Delaware Act should be interpreted in a manner similar to New York law, which provides for original and exclusive jurisdiction in a single trial court.[32] In this case, that would be the Court of Chancery, but I already have considered and rejected that argument above.

Finally, as the Receiver itself acknowledges in its Answering Brief, the narrow choice of law provision contained in the Agreements only involves the application of New York substantive law, not procedural law.[33] The issue presently before me, however, directly concerns the jurisdiction of the Court of Chancery and the arbitrability of claims against an insolvent insurer in Delaware. These issues are procedural and therefore controlled by Delaware law, as the law of the forum.

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31 Rcvr.'s Ans. Br. 21-22.

32 The New York courts have held that the New York Supreme Court has original and exclusive jurisdiction over claims brought against an insurer during a receivership. *See In re Knickerbocker*, 4 N.Y.2d 245, 252 (N.Y. 1958).

33 *See* Rcvr.'s Ans. Br. 39 (arguing that the Delaware statute of limitations should apply in this case because the New York choice of law provision only reaches issues of substantive law between the parties); *see also Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 59-60 (1995) (finding that a similarly-worded choice of law provision required the application of New York substantive law, but not New York procedural law).

C. This Court Has Jurisdiction to Decide Whether the Parties Must Arbitrate their Claims

In his Order, then-Vice Chancellor, now Chancellor, Strine enjoined all further proceedings related to the rehabilitation and required that any further application for relief be made to this Court.[34] In accordance with that Order, AMICO has moved to have the parties' dispute referred to arbitration and for entry of a preliminary injunction preserving the AMICO Fund during the pendency of the arbitration. Because AMICO has requested additional relief in conjunction with its arbitration claim, and because the Receiver has asserted the additional defense before this Court that AMICO's claims are time-barred, I briefly discuss the scope of this Court's authority to decide these issues and to refer all or some of them to arbitration.

First, as discussed *supra*, this Court has exclusive authority under § 5904(b) to decide, within its discretion, whether to allow a dispute related to a rehabilitation proceeding to proceed to arbitration pursuant to a contractually-enforceable arbitration clause between the claimant and insurer. Additionally, as it pertains to the particular arbitration clause in dispute here, I find that clause is such that this Court should decide questions of substantive arbitrability.[35] In light of this finding and § 5904(b), I find that

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[34] Order ¶ 24.

[35] *See* Pl.'s Obj'ns to the Verified Plan Ex. 1 at 3-4; *see also James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 78 (Del. 2006) (the general rule is that courts, not arbitrators, should decide questions of substantive arbitrability, *i.e.* whether a dispute is subject to arbitration, unless the parties have agreed to an arbitration clause that evidences a "clear and unmistakable" intent to submit such questions directly to the arbitrator). The arbitration clause in the Agreements here provides that "any irreconcilable dispute between the [parties] in connection with th[ese]

AMICO's motion is properly before this Court and that this Court possesses the discretion to lift the preliminary injunction established under the April 2, 2007 Order as to the issues in question and require the parties to submit to arbitration, if it determines that such an order would not interfere with the operation of the Act and would further the interests of an orderly resolution of the rehabilitation of Manhattan Re.

Turning now to the question of whether the injunction imposed by the Order should be lifted and the dispute between AMICO and the Receiver referred to arbitration, I answer that question in the affirmative. It is well-settled in Delaware that "[w]hen parties to an agreement decide that they will submit their claims to arbitration, Delaware courts strive to honor the reasonable expectations of the parties and ordinarily resolve any doubt as to arbitrability in favor of arbitration."[36] Before its insolvency, Manhattan Re negotiated and agreed with AMICO to submit "any irreconcilable dispute between [AMICO] and [Manhattan Re] in connection with th[ese] Agreement[s]" to arbitration before three disinterested executives from the insurance industry.[37] The Receiver, who has assumed the place of Manhattan Re, should be required to honor that contractual provision. There apparently are only eight remaining policy claims against the assets of

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Agreement[s] . . . shall be submitted to . . . arbitration." Although this language might be characterized as broad, *Willie Gary* requires something in addition to show a "clear and unmistakable" intent to arbitrate questions of substantive arbitrability, such as an explicit reference to the rules of the American Arbitration Association. *See id.* at 80. No such additional reference or indication is present in this case.

[36] *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 817 A.2d 149, 155-56 (Del. 2002).

[37] Pl.'s Obj'ns to the Verified Plan 4.

Manhattan Re, and all of those claims will be covered by either AMICO or the AMICO Fund.[38] Therefore, there is no question that the remaining policyholders will be protected, regardless of whether the dispute over the AMICO Fund is resolved through arbitration or litigation in this Court. Furthermore, the Receiver and AMICO are both sophisticated parties and there is no reasonable basis on which to believe that either party would suffer material prejudice by having an arbitral panel, rather than this Court, decide their dispute regarding the nature of the AMICO Fund.

Therefore, I conclude that, while this Court is not required to enforce the arbitration clause, it is appropriate in the circumstances of this case to grant AMICO's motion to require the parties to submit their dispute over the AMICO Fund to arbitration. Such an order is not inconsistent with the UILA or the Act and will further the orderly rehabilitation of Manhattan Re. Accordingly, the injunction in the Order precluding any entity from instituting an action or other proceeding against Manhattan Re will be lifted as to AMICO's claims regarding the AMICO Fund to enable the parties to submit these claims to arbitration pursuant to Article VII of the Agreements. Any such arbitration must be commenced within thirty days of the date of this Memorandum Opinion and the accompanying Order.

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[38] In the Plan, the Receiver asserted there were nine open claims against Manhattan Re, but AMICO claimed in its objections to be aware of only eight open claims. In its Answering Brief, the Receiver did not respond to AMICO's contention as to the number of open claims. If a ninth claim does exist, the Receiver promptly shall notify AMICO of its identity and its nature. If the parties are unable to agree on how that claim should be handled, the Receiver shall be required to obtain this Court's approval before taking any further action to settle it.

1. The arbitrators must decide whether AMICO's claims are time-barred

As for the Receiver's defense based on laches or the analogous statute of limitations, because I have decided to refer AMICO's dispute to arbitration, any question related to whether its claims regarding the AMICO fund are time-barred should be decided by the arbitrators. This case involves an agreement made in interstate commerce. Manhattan Re is a Delaware company, AMICO is incorporated in Illinois, and the reinsurance that is the subject of the Agreements has been provided in numerous states. As this Court noted in *Homsey Architects, Inc. v. Nine Ninety Nine, LLC*:[39]

> As a general rule, the FAA governs arbitral agreements made between parties in interstate commerce. Even when dealing with such agreements, however, a court will find that the [Delaware Uniform Arbitration Act ("DUAA")], rather than the FAA, applies to an arbitration agreement in two instances: (1) where the agreement requires arbitration in Delaware; and (2) where the parties to the agreement evidence a clear desire to be bound by the DUAA either through the language of the contract or their course of performing the agreement.[40]

The Agreements at issue here did not require arbitration in Delaware, nor have the parties manifested, explicitly or implicitly, any intent to be bound by the DUAA.[41] As a result, I find the FAA governs the relevant arbitration clause and, therefore, look to the FAA to determine whether a particular issue must be decided by this Court or by the arbitrators.[42]

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39 2010 WL 2476298 (Del. Ch. June 14, 2010).

40 *Id.* at *7.

41 *See* Pl.'s Obj'ns to the Verified Plan Ex. 1 at 3-4.

42 *See* 10 *Del. C.* § 5702(c) ("[If the arbitration agreement does not fall under the DUAA,] any application to the Court of Chancery to enjoin or stay an arbitration,

Under the FAA, issues of procedural arbitrability, such as statute of limitations defenses, are to be decided by the arbitrator.[43] Therefore, if AMICO pursues its claim regarding the AMICO Fund in arbitration, the Receiver's time-bar defenses to that claim also must be raised, if at all, before the arbitrators.

2. The Plan is stayed during the pendency of the arbitration

AMICO's motion also seeks to enjoin the Receiver from making any disbursements from the AMICO Fund, other than those necessary to cure any defaults on AMICO's loss payment obligations to policyholders.[44] Although AMICO's motion seeks a preliminary injunction, such an injunction is unnecessary based on the procedural posture of this matter. This Court has exclusive authority to approve the Receiver's Plan, and until such approval is granted, the Receiver cannot make any disbursements for administrative fees and expenses, nor can it make any disbursements to other general creditors. In other words, the Receiver only can make disbursements that have been authorized by the Court. Consistent with the purposes of the UILA and the Act, the relief granted in conjunction with this Memorandum Opinion is not intended to interfere with

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obtain an order requiring arbitration, or to vacate or enforce an arbitrator's award shall be decided by the Court of Chancery in conformity with the Federal Arbitration Act . . . .") (footnotes omitted).

[43] *See Homsey*, 2010 WL 2476298, at *7 ("Because the FAA does not expressly authorize courts to hear statute of limitations defenses, the default rule that matters of procedural arbitrability are to be decided by the arbitrators would apply . . . ."). At oral argument, the counsel for the Receiver effectively conceded that if the dispute was referred to arbitration, the time-bar defense would have to be presented to the arbitrators, and not this Court. Tr. 53.

[44] Pl.'s Mot. to Arbitrate ¶ 19.

the Receiver's prompt payment of any policy claims. Thus, the Receiver may continue to settle the eight open policy claims against Manhattan Re, as well as any claim for assessments due under the § 8(f) Insurance Fund administered by the United States Department of Labor. Indeed, to that end, the Receiver may make disbursements from the AMICO Fund in order to satisfy any defaults regarding AMICO's loss payment obligations, as permitted under the Agreements. Finally, because I have decided to refer the dispute over the AMICO Fund to arbitration, and because that dispute concerns the disposition of the vast majority of Manhattan Re's estate,[45] I will otherwise stay consideration of Manhattan Re's request for approval of the Plan during the pendency of the arbitration.

At the conclusion of the arbitration, the parties shall report the arbitral award to this Court. If AMICO succeeds on any or all of its claims, so that the arbitral award would conflict with any part of the current Plan, the Receiver promptly shall submit a revised Plan to this Court incorporating and reflecting the arbitral award. At that point, I will consider what additional proceedings may be necessary to evaluate the Receiver's request for approval of the Plan.

III. CONCLUSION

For the reasons stated in this Memorandum Opinion, I conclude that Delaware law confers upon the Court of Chancery original and exclusive jurisdiction over the *in rem* proceedings relating to an insurance rehabilitation. The exclusive jurisdiction of the

[45] Under the Plan, the Receiver reported that Manhattan Re had assets of $7,069,377. Pet. Ex. A at 10. According to AMICO, in 2007 the AMICO Fund totaled $7,036,841. Pl.'s Obj'ns to the Verified Plan 2.

Court does not extend, however, to all claims brought against the insurer during the course of the rehabilitation. As a result, it is permissible under Delaware law, for this Court, in the exercise of its discretion, to require the receiver of an insolvent insurance company to submit to arbitration where the insurer previously agreed to a contractually-enforceable arbitration agreement with a creditor. Applying these conclusions to this case, I hold that AMICO is entitled to submit to arbitration its dispute with the Receiver regarding the disposition of the AMICO Fund and that the Receiver cannot make any disbursements other than those necessary to settle policyholder claims and § 8(f) assessments, as discussed *supra*, during the pendency of the arbitration without prior Court approval. An Order implementing these rulings is being entered concurrently with this Memorandum Opinion.