

## Rhode Island Superior Court Approves First Commutation Plan for Solvent Reinsurer under Rhode Island's Voluntary Restructuring of Solvent Insurers Act

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**O**n April 25, 2011, the Rhode Island Superior Court, per Justice Silverstein, made history by approving the first solvent commutation plan under Rhode Island's Voluntary Restructuring of Solvent Insurers Act (Restructuring Act), GL 1956 Section 27 – 14.15 – 1, *et seq.*

Following the creation of a task force in 1995, Rhode Island adopted the Restructuring Act in 2002, which became effective in 2004. Essentially, the Restructuring Act, based to a large degree on U.K. legislation, sets forth a scheme pursuant to which a solvent insurance or reinsurance company in runoff may propose a commutation plan extinguishing its liabilities for past and future claims of its creditors and then terminate its business. The scheme has a fairly cumbersome procedure, which first requires that the company seeking discharge under the commutation plan domicile itself in Rhode Island and then be subject to an elaborate review process by the Rhode Island Department of Business Regulation and the Insurance Department, and finally ultimate approval by the courts.

The particular plan, submitted by GTE Reinsurance Company Limited (GTE) involved making present lump sum payments to each of GTE's creditor/policyholders rather than waiting for claims to arise in the future, in exchange for a complete release of all liabilities under its reinsurance contracts. The plan was objected to by one of the creditors, a group of insurers managed by Odyssey America Reinsurance Corporation (Odyssey Re) on various grounds. Notwithstanding the objection, the plan was approved by the Department of Insurance after an extensive investigation and analysis process, which included numerous amendments and actuarial review, and by approximately 87 percent of the Creditors Committee representing 97 percent of the value of the liabilities owed to the voting members of the Creditors Committee.

Five cedents, including Odyssey Re, voted against the plan and filed objections upon submission of the plan for approval by the court.

In a detailed and thorough opinion, which is worth specific review, the court first upheld the Restructuring Act, finding that it did not violate the Contract Clause of the U.S. and Rhode Island Constitutions, that there was no substantial impairment of Odyssey Re's contract rights, that despite certain risks that acceleration of GTE's payments under the plan might expose Odyssey Re to some risk that the payments would not amount to actual claims, such an eventuality did not constitute a substantial or unconstitutional impairment of Odyssey Re's contract rights, and that Odyssey Re's due process rights had not been violated. In essence, although the court determined that Odyssey Re clearly had a property interest created by contract, the Restructuring Act was not found to violate any of Odyssey Re's procedural due process rights, given the adequate notice, the reasonable and fair mechanism for the approval of the commutation plan and the vote of the solvent reinsurance company's creditors.

This is a very significant development and may bode further use of the Restructuring Act, although it can be reasonably anticipated that the provisions of the statute may be subject to appellate review and possibly review by the Supreme Court of the United States, given the U.S. Constitutional implications of the statute.

Professionals involved in runoff operations seeking to wind up businesses may wish to seriously consider a study of the Rhode Island Reorganization Act and seek advice on the potential for a solvent commutation plan along the lines of the plan described in the GTE decision. The GTE plan and decision are a blueprint for further use of the statute.

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*To discuss any questions you may have regarding the opinion discussed in this Alert!, or how it may apply to your particular circumstances, please contact Christopher B. Kende (212.908.1242 or [ckende@cozen.com](mailto:ckende@cozen.com)).*