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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST (ChD)  
[2019] EWHC 2702 (Ch)



No. CR-2018-005187  
No. CR-2018-003568

Rolls Building  
Fetter Lane  
London, EC4A 1NL

Tuesday, 11 June 2019

Before:

MR JUSTICE NORRIS

IN THE MATTER OF:

AMT MORTGAGE INSURANCE LIMITED  
PEDIGREE LIVESTOCK INSURANCE LIMITED  
AMTRUST EUROPE LIMITED

Applicants

\_\_\_\_\_  
MR S. HORAN (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Applicants.

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**J U D G M E N T**

MR JUSTICE NORRIS:

- 1 I have before me two connected but not interconditional insurance business transfer schemes under Part 7 of the Financial Services and Markets Act 2000 (“FSMA”). The connectedness arises from the fact that the transferee and the transferors are all part of the same group and the transferor in each case is transferring the business to the same transferee, namely AmTrust Europe Limited (“AmTrust”).
- 2 The first transferor is Pedigree Livestock Insurance Limited (“Pedigree”). It is a monoline insurer offering pet insurance, which includes liability insurance in respect of pets covered. It is in a very small way of business. It has been in solvent run off since 2007 and no claims have been received since then. The present exposure is to those who, because of minority or otherwise, lack capacity to bring a claim during the term of any current policy, i.e. the latent claims on the liability part of the cover. No technical provisions are maintained and only the minimum regulatory capital requirement is maintained. That is in the sum of €3.9 million. The scheme provides that such of the transferring assets as is necessary to ensure that Pedigree continues to comply with its capital requirements will be retained and will not be transferred until the Prudential Regulation Authority (“PRA”) has confirmed that Pedigree’s authorisation under Part 4 of FSMA has been cancelled, following which those assets will be transferred to AmTrust. It is intended that Pedigree shall thereupon be dissolved.
- 3 The second transferor is AMT Mortgage Insurance Limited (“Mortgage”). It was incorporated in 1991 and operates another monoline business of credit insurance under which a mortgage lender is insured against any shortfall in the value of the security. The policies are written either on an individual basis at the time of the original loan or on a portfolio basis when loans are securitised. The transfer relates only to policies issued to UK lenders. There are, at present, ten policyholders, of whom five continue to issue new loans under six active policies. Policies which have been issued to non-UK EEA lenders will be the subject of a separate transfer. The UK sum insured is about 5.6 per cent of the total reserves and relates to some 6,452 mortgages.
- 4 Mortgage was acquired from a third party in 2016. On acquisition, the vendor guaranteed certain liabilities. Mortgage has also entered into various reinsurance arrangements. The guarantee provided by the third party was itself the subject of a back-to-back guarantee from Mortgage’s ultimate parent company. As is frequently the case on the transfer of a book, under the proposed arrangements the benefit of the guarantee and of the reinsurance arrangements are to be split. No real issue arises under this, save one that has emerged at the very last minute.
- 5 Under the terms of the proposed scheme, it is provided that the split guarantee provided by the ultimate parent company is to be varied so that it shall continue on its existing terms with the transferor as beneficiary to the extent that that guarantee relates to non-transferring policies, but shall constitute a new guarantee on the same terms as the existing guarantee to the extent that it relates to a transferring liability. The intention is that the guarantee should simply be split, but a doubt has arisen, no greater than “a cloud the size of a man’s hand”, as to whether the wording used is effective to split the guarantee (which is governed by New York law). In these circumstances, it is proposed that the ultimate parent will give an undertaking that the terms of the existing back-to-back guarantee will continue to apply, both to non-transferring and to transferring policies and a form of words with which I am

content has been devised to cover that eventuality. It has to be said that what is under consideration is an extremely remote possibility of the ultimate guarantee ever being called, given the level of capitalisation of each of the entities to which the guarantee relates. But nonetheless it is right that even small concerns, such as has arisen, should be addressed.

- 6 I have now outlined who the transferors are and I must deal shortly with who the transferee is. The transferee writes multiple lines of business, including mortgage credit re-insurance. It is, as I have indicated, part of the same group of companies. Amongst other lines of business, it writes medical malpractice business, particularly in Italy. The significance of that will become apparent later. It is a well-capitalised entity.
- 7 By way of contrast to the transferors' assets, which are respectively about €4 million and £135 million, the assets of AmTrust amount to some £1.6 billion. The incoming reserves arising from the transfer will amount to about 0.28 per cent of the AmTrust reserves. The objective of the proposed transfer is to simplify the group structure, to remove a number of regulated entities and to optimise the conduct of the intended business after Brexit, hence the split in Mortgage's policies (only some of which are being transferred).
- 8 In approaching the transfer, the court must be satisfied that all technical requirements arising under the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 and under s.111 of FSMA are satisfied. In that event, the court can then, under s.111(3), consider whether, in all the circumstances of the case, it is appropriate to sanction the scheme. The evidence establishes that in each of the Pedigree and Mortgage schemes all technical requirements are satisfied. I must therefore focus on the question of sanction.
- 9 The approach is very well settled and conveniently summarised in *Re Prudential Annuities Limited* [2014] EWHC 4770. Reference to further authority for the purposes of this judgment is unnecessary, but I should articulate and apply the following principles. First, the court has an absolute and independent discretion to be exercised in the light of the assistance provided by the views of the regulator and of the independent expert and paying proper regard to the views of the directors of the relevant companies. Secondly, the fundamental question is whether the scheme is fair as between the interests of the different parties affected. Third, it is primarily a question of actuarial judgment upon the rights and expectations before and after the implementation of the scheme: and it is the function of the report of the independent expert to assist the court on this issue. Fourthly, regulators have a right, if not a duty, to appear at the hearing for seeking sanction. The court is entitled to place reliance upon their views and to draw inferences from their attendance or non-attendance.
- 10 In the instant case, the independent expert is Mr Michael Tripp. He is a Fellow of the Institute and Faculty of Actuaries, a Member of the Council of the Institute and Faculty of Actuaries. He is the Head of Actuarial at Mazars UK LLP and has more than 35 years' experience in general insurance. He has prepared a detailed and, to my mind, impressive report, the terms of which I had the advantage of considering. He identified three groups of policyholders in relation to Mortgage whose interests must be addressed. They are the transferring UK policies from Mortgage, the remaining other non-UK policyholders with Mortgage and the existing policyholders of AmTrust, each of whom is affected by the proposed scheme. He has provided an update of his report, taking into account the latest

available figures. His view is that as regards the transferring UK policyholders of Mortgage he does not expect any material adverse impact on them. He has identified that from a policyholder perspective there will be a change in the nature and type of risk to their security to which they are exposed as a result of the transfer. His belief is that the greatest risk pre-transfer is a risk of a severe downturn in the Italian housing market, but post-transfer he considers their greatest risk is a severe increase in the claims of AmTrust's book of Italian medical malpractice cover. But although there is a change in the nature of the risk, he does not believe that this results in any adverse impact on their overall security. He has reached that conclusion by applying various stress tests contemplating adverse Italian housing markets and the growth in the claims of the Italian medical malpractice book. He has concluded that in all stresses capital is going to be required from the parent company in order to get the regulatory solvency ratio to the required level, but the transfer does not impact the extent of capital which would be required as a result of the stresses. Accordingly, there is no material adverse impact. With regard to the existing policyholders of AmTrust and the remaining non-UK policyholders of Mortgage, he expresses the view that he does not see any material adverse impact on their security as the result of the transfer.

- 11 In his updating report, he observes that on the latest figures there is a decrease in the coverage ratio of AmTrust from 152 per cent to 130 per cent, but he does not consider that that is a material development which changes his conclusions in regard to the transfer. Notwithstanding that reduction in the coverage ratio, his conclusion remains that AmTrust is a sufficiently capitalised company.
- 12 The reason why that opinion is a sound one may be explained by reference to the recent decision of Snowden J in *Re Prudential Assurance Company Limited* [2018] EWHC 3811. The judge there considered what the effect of a reduction in a solvency ratio had. He noted that the SCR insolvency coverage regime is intended to ensure that the company remains solvent over one year with a probability of 99.5 per cent. Any excess over this only increases the probability of solvency by a small degree. So, moving from a solvency ratio, for example, of 125 per cent to 110 per cent may involve a significant decrease in the solvency ratio, but not a significant decrease in the probability of remaining solvent over one year.
- 13 It is for that reason that notwithstanding the marginal decrease in the solvency ratio of AmTrust in the light of its latest figures Mr Tripp sees no need to revise his view that there is no material adverse effect on transferring policyholders, remaining policyholders or policyholders in AmTrust.
- 14 So far as his report on Pedigree is concerned, Mr Tripp identifies the two relevant groups as the transferring policyholders from Pedigree and the existing policyholders of AmTrust who are receiving the incoming business. He observes that there are no existing policyholders within Pedigree so that effectively his concern is with former Pedigree policyholders. As regards them, he does not expect any material adverse impact on their security as the result of the transfer. As for the receiving policyholders at AmTrust, he likewise does not expect any material adverse effect on them. He believes that AmTrust will be sufficiently capitalised for those purposes.
- 15 In his updating report, which again takes into account later year-end figures, he confirms that there have been no changes to the scheme and no material developments that change his

conclusions regarding the transfer. Accordingly, as regards the independent expert reports, there are no material adverse effects arising from those transfers to any class of the relevant policyholders.

- 16 I see no reason to go behind the view of the independent expert.
- 17 I observe that the FCA, in its final report, regards the scheme as a reasonable scheme and that the PRA, in its final report, expresses the view that it is currently not aware of any issue that would cause it to object to the scheme. Accordingly, the regulators are satisfied with the scheme, having previously approved (in consultation with the applicants) the means of communication of the intended scheme. There are no objectors to either scheme. In these circumstances, I will approve the transfers.
- 18 The transfer of Pedigree includes a provision that at the appropriate point it will be dissolved without winding up. I have considered and I am satisfied that such an order falls within the scope of orders contemplated in s.112 of FSMA. I accordingly approve the scheme transfer subject to the intended undertaking to be received from the ultimate parent embodied in a form of order which is to be lodged in due course.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

This transcript has been approved by the Judge