

Unlocking Value in Run-Off: The Benefits of Rhode Island's Restructuring Act



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In the wake of the Providence County Superior Court's April 25th decision in the *GTE REinsurance Company Limited* case, solvent corporate captives, stand-alone run-off businesses and insurance and reinsurance companies with a U.S. run-off portfolio are undoubtedly considering the unique opportunities afforded by Rhode Island's Restructuring Act. Given the Court's endorsement of commutation plans, including upholding the Act's constitutionality, these entities can now focus on how to extinguish liabilities for past and future claims outside an insolvency proceeding, including the benefits associated with redomesticating to Rhode Island.

Rhode Island is the only state in the U.S. that allows a solvent insurer to liquidate its obligations in run-off. In light of the *GTE REinsurance* decision and the unique benefits provided by the Act, the Insurance Division of Rhode Island's Department of Business Regulation (the "DBR") expects an increase in inquiries regarding the commutation plan process. As a means of aiding interested parties, below are some general points to consider:

- 1. Statutory Basis.** Rhode Island's Insurance Statutes and Regulations (Title 27, Chapter 14.5, and Insurance Regulation 68) set forth the procedure by which commercial insurers and reinsurers in run-off, or no longer writing new business, may honor creditors' claims, liquidate future exposure to those claims and terminate operations. The statute applies to any commercial insurance or reinsurance company that is domiciled in Rhode Island, including companies that redomesticate to Rhode Island.
- 2. Role of the DBR.** The DBR's responsibility is to review and comment on the proposed commutation plan of the insurer or reinsurer and to determine that it is consistent with the state statute governing Voluntary Restructuring of Solvent Insurers and its enabling regulations. The DBR's approval is necessary before the proposed plan can be presented to the Superior Court.
- 3. Impact of the *GTE REinsurance* Decision.** Pursuant to the Act, GTE REinsurance Company Limited ("GTE RE"), a solvent reinsurer based in Providence, R.I., submitted to the DBR a proposed Commutation Plan designed to pay policyholders the value of the policies now and extinguish any future claims. The DBR, with the assistance of its counsel Morrison & Foerster LLP, evaluated the plan for compliance with the statutory and regulatory standards. After the DBR concluded its review and approved the plan, GTE RE submitted its request to the Court to call a Meeting of Creditors. Although a super-majority of policyholders voted to approve the Plan, two policyholders raised constitutional objections to the relevant provisions of the Act. In a landmark decision, the Court found that the Act was constitutional under both the United States and Rhode Island Constitutions.

The DBR, represented by Morrison & Foerster, participated in the defense of the statute's constitutionality. As noted by Joseph Torti III, Deputy Director and Superintendent of Insurance for the DBR, "The Court recognized that the exhaustive review and analysis of the Plan by the DBR provides important safeguards to protect the interests of all policyholders. We are pleased that the Court sustained the constitutionality of this innovative law and are committed to exercising a meaningful role in overseeing this and future commutations."

Rhode Island is proud to serve as a beacon for solvent insurers and reinsurers seeking to discharge liabilities and financial obligations in a strategic, streamlined, and time-tested fashion, all the while protecting policyholders from the problems presented by unsupervised run-offs of solvent companies. To that end, the DBR and Morrison & Foerster LLP look forward to assisting entities as they consider the benefits of the Act and explore how to unlock value in run-off. Should you be interested in discussing any such opportunity, please contact:

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About the State of Rhode Island Department of Business Regulation

The Department's primary function is the implementation of state laws mandating the regulation and licensing of designated businesses, professions, occupations and other specified activities. The industries regulated include insurance, banking, securities, liquor, real estate, racing and athletics, among others. For more information please visit: <http://www.dbr.ri.gov>

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