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Arrowood Indemnity Company Enters Liquidation - Important Deadlines and Implications for Policyholders

Legal Alert

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The Delaware Court of Chancery entered an order placing Arrowood into liquidation on November 8, 2023 and set the proof of claim deadline for January 15, 2025.

Arrowood was formed in 2006 to take on Royal Sun Alliances run-off insurance operations, much of which were saddled with legacy claims (environmental, asbestos, etc.), allowing Royal to rid itself of its legacy claims albatross. Not surprisingly, having been cut off from the financial backing of Royal but left with Royals troubled run-off business, Arrowood has run out of money.

As with other recent liquidations *(e.g.*, Bedivere (OneBeacon)), this insolvency will disproportionately affect policyholders with long-tail environmental, asbestos or other legacy liabilities that purchased coverage from a Royal insurer prior to the mid-1980s, when pollution exclusions were narrower and before the advent of asbestos exclusions. In particular, any policyholder being defended or indemnified by Arrowood (based on an old Royal policy) pursuant to a cost-sharing agreement with multiple insurers can expect to be forced to revisit that agreement. For this reason and others, insolvencies such as this one tend to have a significant ripple effect across the long-tail or legacy claims landscape.

In addition to traditional long-tail claims such as environmental and asbestos, there are newer and emerging long-tail risks that may trigger old Royal policies, such as PFAS litigation and sex abuse claims. These emerging risks highlight the far ranging impact an insurer insolvency can have.

What should policyholders do? Among other things:

- Identify any Royal policies in your companys (or a predecessors) insurance program history.
- Determine whether Arrowood is currently defending or indemnifying your company in any claim, or whether there is any known or potential liability that may trigger an old Royal policy.
- Determine whether your company has any pending insurance claim that has not been resolved with Arrowood (*i.e.*, there is a coverage issue). The liquidation order imposes an automatic stay on any pending or planned coverage litigation against Arrowood.
- File Proofs of Claim by the deadline with the requisite supporting documentation. Prepare to continually submit additional support for the claim(s) going forward.
- Identify the appropriate state insurance guaranty fund and its procedures, rules and regulations for paying claims to policyholders whose insurers have become insolvent.

- Prepare to submit a claim to the appropriate state insurance guaranty fund(s), if eligible. In some states (such as New Jersey, Pennsylvania and Illinois, but *not* New York), there are net-worth caps that reduce eligibility for larger policyholders.
- Determine whether Arrowood was defending or indemnifying the policyholder pursuant to a cost-sharing arrangement with other insurers. If so, assess what impact the Arrowpoint liquidation will have on that cost-sharing arrangement pursuant to applicable state law. Prepare to reallocate responsibility under that cost-sharing arrangement.

Flaster Greenberg has helped many policyholders reallocate coverage obligations to other solvent insurers after a liquidation, recover from state guaranty funds, and mitigate losses caused by an insurer insolvency. We would be pleased to assist you if the Arrowood liquidation may affect your company.

ATTORNEYS MENTIONED

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