

STATE OF VERMONT
WASHINGTON COUNTY, SS

VT SUPERIOR COURT
CLERK OF COURT UNIT
11108

2018 DEC 23 P 1:59

COMMISSIONER OF THE)
DEPARTMENT OF FINANCIAL)
REGULATION)
PLAINTIFF,)

v.)

ELITE TRANSPORTATION RISK)
RETENTION GROUP, INC.,)
RESPONDENT.)

SUPERIOR COURT
DOCKET NO. 175-3-18 Wncv

ANNUAL ACCOUNTING & STATUS REPORT

I, J. David Leslie, Special Deputy Liquidator, hereby submit this annual accounting and general status report regarding the liquidation of Elite Transportation Risk Retention Group, Inc. ("ETRRG" or the "Company").

1. On March 15, 2018, the Commissioner of the Department of Financial Regulation ("Commissioner") filed an *ex parte* Petition for Seizure Order pursuant to 8 V.S.A. § 7042(b), seeking, among other things, authorization to take possession and control of ETRRG. The Court granted the Commissioner's petition by entering the requested order ("Seizure Order") on March 29, 2018. Following entry of the Seizure Order, the Commissioner further investigated the Company's condition, concluded that rehabilitation would be futile, and filed a Petition for Order of Liquidation on April 20, 2018. On May 7, 2018, the ETRRG board of directors voted unanimously to assent to the proposed Order of Liquidation. On May 15, 2018, the Court entered its Order of Liquidation ("Liquidation Order") that, among other things, appointed the

Commissioner as Liquidator (“Liquidator”) and authorized him to appoint a special deputy liquidator. The Liquidator appointed me to serve as Special Deputy Liquidator on May 15, 2018.

ANNUAL ACCOUNTING AND REPORT OF FINANCIAL CONDITION

2. The Liquidator is required to file an annual accounting with the Court including the assets and liabilities of ETRRG and all funds received or disbursed during the current period. See 8 V.S.A. § 7057(d); Liquidation Order ¶ 4. A report showing all ETRRG funds received or disbursed between entry of the Liquidation Order and November 30, 2019, is attached as Exhibit A. See 8 V.S.A. § 7057(d).

3. A simplified balance sheet reflecting ETRRG’s financial condition as of November 30, 2019 is presented below in Table 1.

Table 1 – Simplified ETRRG Balance Sheet as of November 30, 2019

ASSETS	
Cash	\$ 240,710
Cash Equivalents	7,471,897
Reinsurance Receivable	7,700,000
Total Assets	\$ 15,412,607
 LIABILITIES	
Priority Class 1 – Administrative Expenses	\$ 609,792
Priority Class 3 – Claims under Policies	20,089,424
Total Liabilities	\$ 20,699,216

4. Assets. The Company’s cash, cash equivalents, and other liquid assets have been marshalled and consolidated in a Vermont banking institution. The reinsurance receivable figure listed in Table 1 is more than twelve months old and is presented solely for purposes of context and scale.¹ ETRRG has other assets – e.g. a claim for federal income tax refunds, presently

¹ In 2018, the Liquidator commissioned actuarial reports from Merlinos & Associates, Inc., (“Merlinos”) and Casualty Actuarial Consultants, Inc., for purposes of analyzing the Company’s historical assessments and the feasibility of a future assessment at the close of this proceeding. Figures from the Merlinos report, including an estimate of reinsurance receivable, were presented in the *Liquidator’s Report: Financial Condition, Collectability of Outstanding Assets*

pending in the U.S. District Court for the District of Vermont (Docket no. 5:18-CV-77) – but this asset is deemed speculative so an estimate is omitted from this report.

5. Liabilities. The liquidation statutes require that payments on claims be made in accordance with the statutory priorities and that all claims in a class be paid in full (or adequate reserves established for such payment) before claims in subsequent classes receive any distribution. 8 V.S.A. § 7081. Accordingly, in Table 1 the Liquidator presents the Company’s estimated liabilities in terms of priority classification rather than the annual statement format that would be presented by an insurer operating as a going concern. The figure presented for priority class 1 reflects a conservative estimate of the total expense of liquidating the Company set forth for illustrative purposes in the 2018 Analysis (\$1 million) less approximately \$390,000 in expenses paid through November 30, 2019.² The figure presented for priority class 3 reflects the \$20,089,424 estimate of policyholder level claims developed by Merlinos for use in the 2018 Analysis. This figure includes case reserves plus IBNR (losses that have been incurred but not reported), net of deductibles for the years 2005-2018.

STATUS REPORT

6. Filing of Proofs of Claim. The Liquidator established May 15, 2019 as the claim filing deadline. See Liquidation Order, ¶ 6(b). The Liquidator thereafter requested a six month extension, however, which the Court granted on May 24, 2019. See Order Extending Claim

(“2018 Analysis”) that was attached as Exhibit A to the Liquidator’s Second Status Report, filed October 31, 2018. The “reinsurance receivable” figure presented in Table 1 is drawn directly from the 2018 Analysis and has not been updated since October of 2018.

² Administrative expenses totaled \$243,973.41 in 2018 and \$146,235 in 2019. See Exhibit A. More than half of the expenses incurred in 2018 consisted of non-recurring costs such as actuarial analysis and payments under the now-terminated TPA agreement. The Liquidator therefore sees expenses for calendar year 2019 as being more representative of administrative expenses going forward.

Filing Deadline. All claims in the ETRRG estate, therefore, were to have been filed on or before November 15, 2019. The Liquidator received 378 proof of claim forms (“POCs”) before the November 15, 2019 deadline. (Incomplete POCs have been returned to their senders with instructions for resubmission.) As of November 30, 2019, the Liquidator has received and acknowledged an additional two completed POCs. See 8 V.S.A. § 7074(d) (“The liquidator may consider any claim filed late... and permit it to receive distributions... if the payment does not prejudice the orderly administration of the estate.”). Because the claim determination process is at an early stage, the receipt of additional claims at this time would not prejudice the orderly administration of the estate though that situation will change as claims are determined in coming months.

7. A POC may present a single claim (e.g. recovery for loss resulting from a single motor vehicle accident) or multiple claims (e.g. the form encloses a schedule listing multiple motor vehicle accidents). Accordingly, the Liquidator has assigned separate control numbers to each claim presented in a POC -- e.g. POC No. 277 has been subdivided into sixty-five subclaims assigned POC Nos. 277a through 277bm. Counted in this manner, the Liquidator had received 546 claims before the November 15, 2019 deadline and two claims since that time. The Liquidator has also conducted initial review of these claims and made preliminary assessments as to the type of exposure presented and the priority class in which the claim might be allowed. The results of this analysis are presented in Table 2:

Table 2 – Preliminary Analysis of Claims by Priority Class

<u>Priority Class</u>	<u>Claims</u>
Priority Class 1 – Administrative Expenses	1
Priority Class 2 – Expenses of Guaranty Funds	--
Priority Class 3 – Claims under Policies	410
Priority Class 4 – Claims of the Federal Government	--
Priority Class 5 – Certain Employee Compensation	--
Priority Class 6 – Miscellaneous	110

<u>Priority Class</u>	<u>Claims</u>
Priority Class 7 – State & Local Penalties/Fees	--
Priority Class 8 – Late & Miscellaneous Claims	--
Priority Class 9 – Surplus or Contribution Notes	1
Priority Class 10 – Shareholder Claims	3
Unclear or invalid	23
Total	<u>548</u>

8. Because the insurance statutes permit third parties to file claims directly against the estate, a single incident may give rise to numerous related POCs that may seek overlapping recovery (e.g. a tort-claimant asserting the insured’s liability, another insurer asserting rights of subrogation/contribution, and a policyholder seeking indemnity). This means that raw POC counts are not a reliable metric for evaluating estate exposure or the amount of work remaining to crystalize ETRRG’s obligations and close the proceeding. The Liquidator has therefore attempted to group POCs by incident – determining the number of motor vehicle accidents requiring investigation and the number of disputes to be resolved. To date, the Liquidator has analyzed roughly 75% of the POCs received and identified 221 separate incidents.

9. Discussions with Reinsurer. ETRRG’s reinsurance agreements contemplate that communications will flow through an intermediary (the reinsurance broker). In light of the circumstances, however, the reinsurer contacted the Liquidator directly to discuss the liquidation process and its implications for the reinsurance relationship. As part of those discussions, the Liquidator requested the members’ assistance in generating (and updating) a survey of known or suspected claims. The Liquidator has also responded to various information requests and kept the reinsurer informed regarding potential resolution of large claims. The Liquidator is currently assisting the reinsurer in conducting a sample review of selected claims and will attempt to maintain open dialogue through the remainder of the proceeding.

10. Communication with Members. The Liquidator has consistently advised ETRRG’s member insureds that the time and expense required to complete the proceeding can

be minimized if they engage directly with third-party claimants to resolve disputes. To facilitate such engagement, the Liquidator has informed each member of the third-party POCs received in this proceeding that seek payment under their ETRRG policies. The Liquidator will provide a post-filing deadline report to the members of all POCs implicating their ETRRG policies in the coming weeks and reiterate the importance of direct engagement with third-party claimants.

11. Claim Strategy. The Liquidator will continue the work of correlating POCs to incidents and verifying that the POCs received are complete. In parallel, the Liquidator will be conducting claim “triage” by identifying: i) POCs that can be determined on the basis of materials already submitted; ii) POCs where there is a significant opportunity for prompt resolution; and iii) POCs requiring more detailed investigation or for which it may be most efficient to await developments in ongoing/contemplated tort actions. In all cases, the Liquidator’s preference will be to reach a consensual resolution with the affected parties and minimize the likelihood of incurring administrative expense in a disputed claim proceeding.

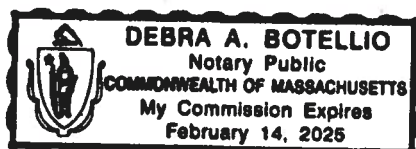
12. Next Steps. The Liquidator will continue to investigate/analyze the proofs of claim received and will then either pursue negotiated resolutions or issue notices of determination. In cases where the claimant is dissatisfied with the notice of determination, the claimant will be entitled to seek judicial review. See 8 V.S.A. § 7078(b). The Liquidator proposes making his next status report in six months.

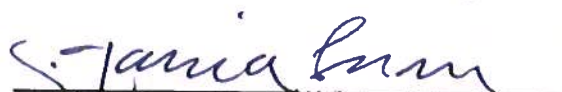
Dated this 20th day of December, 2019,

Subscribed and sworn before me
this 20th day of December, 2019



Notary Public
My commission expires:





J. David Leslie
Special Deputy Liquidator

EXHIBIT A

All ETRRG Receipts and Disbursements between May 15, 2018 and November 30, 2019¹

Date	Payee/Payor	Description	Amount
07/05/2018	Baker Tilly Virchow Krause LLP	Accounting Services	\$ (1,650.00)
07/05/2018	Harland Clarke Corp.	Check Order	(157.80)
07/05/2018	MK Claims Administrators, LLC	TPA Claim Fees	(15,500.00)
07/06/2018	Paul Frank & Collins	Tax Litigation	(3,815.53)
07/17/2018	Paul Frank & Collins	Tax Litigation	(6,783.13)
07/19/2018	Rackemann Sawyer & Brewster	Professional Services	(18,101.35)
07/25/2018	Baker Tilly Virchow Krause LLP	Accounting Services	(1,650.00)
07/31/2018	People's United Bank	Bank Fees	(15.00)
08/02/2018	MK Claims Administrators, LLC	TPA Claim Fees	(15,500.00)
08/24/2018	Merlinos Actuaries Consultants	Actuarial Services	(19,345.00)
09/04/2018	Marcello & Kivisto, LLC	Legal Services	(736.02)
09/04/2018	Marcello & Kivisto, LLC	Legal Services	(1,888.64)
09/04/2018	Marcello & Kivisto, LLC	Legal Services	(615.00)
09/04/2018	Marcello & Kivisto, LLC	Legal Services	(180.00)
09/11/2018	Risk Services, LLC	Captive Management Fees & Expenses	(13,233.40)
09/14/2018	Risk Services, LLC	Captive Management Fees & Expenses	(1,181.60)
09/17/2018	Rackemann Sawyer & Brewster	Professional Services	(34,471.09)
09/26/2018	Merlinos Actuaries Consultants	Actuarial Services	(36,137.50)
10/05/2018	Road Scholar Transport	Pre-Liquidation Assessment Paid	817.00
10/05/2018	MK Claims Administrators, LLC	TPA Claim Fees	(15,500.00)
10/19/2018	MK Claims Administrators, LLC	TPA Claim Fees	(15,500.00)
11/08/2018	Merlinos Actuaries Consultants	Actuarial Services	(19,795.00)
11/09/2018	Road Scholar Transport	Pre-Liquidation Assessment Paid	817.00
11/15/2018	Paul Frank & Collins	Tax Litigation	(1,733.29)
11/20/2018	Risk Services, LLC	Captive Management Fees & Expenses	(206.93)
11/21/2018	Rackemann Sawyer & Brewster	Professional Services	(18,235.13)
12/07/2018	Risk Services, LLC	Captive Management Fees & Expenses	(626.50)
		Receipts	\$ 2,451
		Disbursements	249,973.41
		2018 Net Cash Flow	\$ 241,522.41
01/08/2019	Paul Frank & Collins	Tax Litigation	\$ (1,518.59)
01/16/2019	Rackemann Sawyer & Brewster	Professional Services	(4,945.00)
01/16/2019	Rackemann Sawyer & Brewster	Professional Services	(20,267.19)
01/16/2019	Risk Services, LLC	Captive Management Fees & Expenses	(151.40)
02/08/2019	Road Scholar Transport	Pre-Liquidation Assessment Paid	1,634.00

¹ Exhibit A reflects receipts/disbursements from the ETRRG estate. The transactions by which the Liquidator closed Company's operating accounts and consolidated assets in a Vermont financial institution are omitted from Exhibit A because they reflect transfers rather than receipts/disbursements.

Date	Payee/Payor	Description	Amount
02/08/2019	Alabama Department of Insurance	Filing Fees	\$ (10.00)
02/08/2019	Arkansas Insurance Dept.	Filing Fees	(10.00)
02/12/2019	Kentucky State Treasurer	Filing Fees	(6.00)
02/18/2019	Marcello & Kivisto, LLC	Legal Services	(3,198.04)
02/21/2019	Socius Insurance Services, Inc.	D & O Insurance Premium	(9,862.65)
02/28/2019	Risk Services, LLC	Captive Management Fees & Expenses	(1,101.50)
02/28/2019	Delaware Insurance Department	Filing Fees	(10.00)
02/28/2019	TN Dept of Commerce & Insurance	Filing Fees	(10.00)
03/12/2019	Wyoming Insurance Department	Filing Fees	(10.00)
03/12/2019	Zimmerman Truck Lines, Inc.	Pre-Liquidation Assessment Paid	45.00
03/22/2019	Paul Frank & Collins	Tax Litigation	(536.50)
03/28/2019	Rackemann Sawyer & Brewster	Professional Services	(3,993.40)
04/03/2019	Risk Services, LLC	Captive Management Fees & Expenses	(1,345.50)
04/26/2019	TN Dept of Commerce & Insurance	Filing Fees	(10.00)
05/10/2019	Rackemann Sawyer & Brewster	Professional Services	(5,029.86)
05/10/2019	Rackemann Sawyer & Brewster	Professional Services	(11,920.36)
05/15/2019	Paul Frank & Collins	Tax Litigation	(552.20)
05/15/2019	Rackemann Sawyer & Brewster	Professional Services	(14,825.50)
06/07/2019	Rackemann Sawyer & Brewster	Professional Services	(6,350.37)
06/17/2019	Risk Services, LLC	Captive Management Fees & Expenses	(502.50)
06/24/2019	Rackemann Sawyer & Brewster	Professional Services	(8,704.72)
06/24/2019	Risk Services, LLC	Captive Management Fees & Expenses	(39.85)
07/11/2019	Risk Services, LLC	Captive Management Fees & Expenses	(296.70)
07/17/2019	Risk Services, LLC	Captive Management Fees & Expenses	(574.70)
07/17/2019	Paul Frank & Collins	Tax Litigation	(1,207.50)
08/02/2019	Johnson Lambert	Tax Return Preparation (2017 & 2018)	(7,000.00)
08/16/2019	Rackemann Sawyer & Brewster	Professional Services	(2,435.20)
08/28/2019	Risk Services, LLC	Captive Management Fees & Expenses	(1,877.49)
09/10/2019	Rackemann Sawyer & Brewster	Professional Services	(5,038.20)
09/18/2019	Risk Services, LLC	Captive Management Fees & Expenses	(83.70)
09/18/2019	Paul Frank & Collins	Tax Litigation	(2,617.35)
09/18/2019	Rackemann Sawyer & Brewster	Professional Services	(12,008.30)
10/28/2019	Risk Services, LLC	Captive Management Fees & Expenses	(224.70)
11/12/2019	Risk Services, LLC	Captive Management Fees & Expenses	(1,307.50)
11/12/2019	Johnson Lambert	Tax Litigation	(2,365.00)
11/27/2019	Rackemann Sawyer & Brewster	Professional Services	(14,287.60)
		Receipts	\$ 1,679.00
		Disbursements	(146,235.07)
		2019 Net Cash Flow	\$ (144,556.07)