

COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
REGULATION  
PLAINTIFF,  
  
v.  
  
ELITE TRANSPORTATION RISK  
RETENTION GROUP, INC.,  
RESPONDENT.

SUPERIOR COURT  
DOCKET NO. 175-3-18 Wncv

I, J. David Leslie, Special Deputy Liquidator, hereby submit this Fifth 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”), authorized him to appoint a special deputy

liquidator, and approved the Plan of Liquidation. The Liquidator appointed me to serve as Special Deputy Liquidator on May 15, 2018.

2. The Liquidator's Prior Status Reports. On July 16, 2018, I submitted the Liquidator's First Status Report describing, among other things, the establishment of a claim filing deadline (May 15, 2019), the provision of notice to potential creditors of ETRRG, the consolidation of ETRRG's assets and administration, and next steps in the Liquidation. On October 31, 2018, I submitted the Liquidator's Second Status Report which provided (among other things) an update on the Company's assets, claims filed with the Liquidator, the Liquidator's analysis of historical member assessments, and next steps in the Liquidation. Additional detail regarding historical assessments and the Liquidator's plan for additional assessments was provided in the *Liquidator's Report: Financial Condition, Collectability of Outstanding Assessments and Options* ("Assessment Report") attached as Exhibit A to the Liquidator's Second Status Report. On January 14, 2019, I submitted the Liquidator's Third Status Report providing updated information on Company assets, claims, and administrative matters. The Court approved the Liquidator's request to extend the claim filing deadline so the Liquidator's accounting and next status report were deferred until December 23, 2019 so as to include information and analysis regarding the claims submitted before the extended deadline (November 15, 2019). All of these filings have been publicly posted on the liquidation website ([www.etrreg.com](http://www.etrreg.com)).

3. ETRRG Assets. As previously reported, ETRRG's cash and invested assets have been consolidated in a Vermont account. As of May 31, 2020, the value of those assets was \$7.02 million, consisting of approximately \$113,000 in cash and cash equivalents, \$6.88 million of invested assets, and approximately \$24,000 of accrued income. In addition, the Company is

currently holding approximately \$624,000, in constructive trust (see, *infra*, ¶ 11) as security against members' deductible obligations.

4. 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 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 May 31, 2020, the Liquidator has received and acknowledged an additional eight 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."). The claim determination process is no longer at an early stage but, depending on the circumstances, it may remain possible to accept additional POCs for a limited period without prejudicing the orderly administration of the estate.

5. 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 has received a total of 551 claims

6. Because the insurance statutes permit third parties to file claims directly against the estate, a single incident may give rise to numerous related claims 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 and claim counts are not a reliable metric for evaluating estate exposure or the amount of work remaining to crystallize ETRRG's obligations and close the proceeding. The Liquidator has therefore attempted to group POCs and claims by incident – determining the number of motor vehicle accidents requiring investigation and the number of disputes to be resolved. This analysis suggests that there are 306 separate incidents to be reviewed.

7. 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.

8. 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. The Liquidator has recently provided most members with an updated list of the POCs submitted by third-party claimants seeking recovery under their policies and reiterated the importance of direct engagement with third-party claimants.

9. Claim Determinations. Since the claim filing deadline passed, the Liquidator has issued notices of determination regarding 97 POCs. All of these determinations reflect claim approvals because, to avoid placing undue burdens on claimants that may wish to object to the denial of a POC, the Liquidator has deferred issuing notices of determination that deny a claim in

whole or in part. See, e.g., 8 V.S.A. § 7078(a) (“Within 60 days from the mailing of the notice [of determination denying a claim], the claimant may file objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.”). The Liquidator will begin issuing those denials beginning in July of 2020 and will continue the claim investigation and determination process over the coming months. The Liquidator proposes to submit his first report of claims detailing the determined claims in December of 2020 with his next status report and annual accounting. See 8 V.S.A. § 7082(a) (“As soon as practicable, the liquidator shall present to the Court a report of the claims against the insurer with recommendations.”)

10. Claim Strategy. To reduce administrative burdens on the members, the Liquidator has grouped POCs by member and attempted to address these groups serially. The idea is that the Liquidator can engage with a subset of the members about all of their claims in a condensed period rather than discussing some claims with each member in a piecemeal fashion over an extended period. Typically, this has involved the Liquidator reviewing all materials available for the POCs submitted with regard to a member; circulating a summary e-mail to the member with analysis and proposed courses of action regarding each incident; contacting third-party claimants to discuss their POCs for that member; drafting NODs where possible; and issuing those NODs that reflect approvals. The Liquidator believes that this approach will be most efficient for the members, third-party claimants, and the estate generally. Further, because the Liquidator does not anticipate recommending an interim distribution, all members will receive distributions at the same time and no member gains an advantage or suffers a harm by having its claims addressed earlier or later in the proceeding. In addition, the Liquidator will continue to address on an ad hoc basis any claims with urgent or pressing issues.

11. Administration of Prepaid Deductibles. Certain ETRRG policies included deductible features whereby the Company provided first dollar coverage but was entitled to seek reimbursement from members in the event it made payments directly to third-parties before the member satisfied its deductible obligation. While operating as a going concern, the Company collected funds from its members (“Prepaid Deductibles”) pursuant to an informal understanding that they would be held in trust as security for the deductible reimbursement obligation. The Company maintained detailed records as to the amount submitted by each member, interest earned, and any amounts returned or drawn down. These funds were transferred to a Vermont financial institution following entry of the Order of Liquidation and the Liquidator has continued to track the interest income that they have earned. As noted at ¶ 3, above, the present balance is approximately \$624,000.

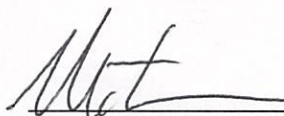
12. There is a continuing need for Prepaid Deductibles because the estate remains exposed to the risk that it will be required to make payment to third-parties that falls within a policy deductible. See 8 V.S.A. § 7077(a) (Third-party claimants may file POCs directly with the liquidator). As claims are determined, however, such risks will either be crystalized (i.e. ETRRG be entitled to draw down the security) or abate (i.e. the risk will be eliminated and the security will become unnecessary). It is therefore necessary to establish a process for administering, drawing down, and returning the Prepaid Deductibles.

13. The Liquidator does not believe that the standard proof of claim process can be used for the purpose of drawing down and returning Prepaid Deductibles for two reasons. First, it addresses incoming claims against the estate whereas Prepaid Deductibles are security for outgoing claims against members that arise when a third-party claim is allowed. Second, the proof of claim process addresses the claims of creditors seeking distribution from estate assets

but Prepaid Deductibles are not estate assets and are, instead, member funds being held in constructive trust.<sup>1</sup> See, e.g., 8 V.S.A. § 7081 (regarding “priority of distribution of claims from the insurer’s estate”). The Liquidator has therefore developed a Plan for Administration of Prepaid Deductibles (“Plan”) that is attached hereto as Exhibit A. The Plan clarifies the status of the Prepaid Deductibles, explains how they will be administered, and lays out the Liquidator’s intentions for returning the Prepaid Deductibles (when unneeded) or drawing from them (as required). The Plan provides pathways for any members dissatisfied with the Liquidator’s handling of the Prepaid Deductibles to submit objections and bring the matter before the Court. Because the Plan describes the Liquidator’s intentions and does not affect the members’ substantive rights, the Liquidator does not submit it by motion for approval by the Court. Instead, the Liquidator will post the Plan to ETRRG’s website and reference it to members in connection with any action (i.e. denial of a POC, return of funds, or draw down) regarding a member Prepaid Deductible.

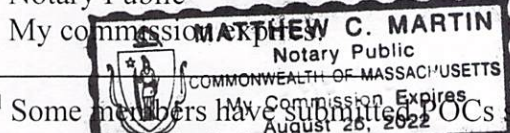
14. Next Steps. The Liquidator will continue to investigate/analyze the proofs of claim received and will then either pursue negotiated resolutions or issue notices of determination. In cases where the claimant is dissatisfied with the notice of determination, the claimant will be entitled to seek judicial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

Subscribed and sworn before me  
this 19th day of June, 2020



Notary Public

My commission



J. David Leslie

Special Deputy Liquidator

<sup>1</sup> Some members have submitted POCs seeking the return of Prepaid Deductibles. For the reasons described above, the Liquidator has not issued determinations on these claims.