

**State of Vermont**  
**Department of Financial Regulation**  
89 Main Street  
Montpelier, VT 05620-3101  
[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

For consumer assistance:  
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[Securities] 877-550-3907

October 9, 2020

Donna Waters, COM  
Superior Court, Washington Unit  
65 State Street  
Montpelier, VT 05602

RE: Elite Transportation Risk Retention Group Inc. 175-3-18 Wncv

Dear Ms. Waters:

I enclose for filing the Liquidator's Motion to Approve Settlement with IRS, Affidavit of J. David Leslie, and Proposed Order.

Thank you very much.

Sincerely,



Jennifer Rood

Assistant General Counsel  
State of Vermont  
Department of Financial Regulation  
89 Main Street, Third Floor  
Montpelier, VT 05620  
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[Jennifer.rood@vermont.gov](mailto:Jennifer.rood@vermont.gov)



STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
REGULATION

PLAINTIFF,

v.

ELITE TRANSPORTATION RISK  
RETENTION GROUP, INC.,  
RESPONDENT.

CIVIL DIVISION

DOCKET NO. 175-3-18 Wncv

**LIQUIDATOR’S MOTION FOR APPROVAL OF SETTLEMENT WITH THE  
INTERNAL REVENUE SERVICE**

Michael S. Pieciak, Commissioner of the Vermont Department of Financial Regulation, in his capacity as Liquidator (“Liquidator”) of Elite Transportation Risk Retention Group, Inc. (“Elite”), hereby moves for an order approving the settlement (“Settlement”) of a matter now pending in the United States District Court for the District of Vermont entitled *Elite Transportation Risk Retention Group, Inc. v. Internal Revenue Service*, Docket No. 5:18-cv-77 (the “Claim”) on the basis described in the attached August 14, 2020 letter from the U.S. Department of Justice, as counsel for the Internal Revenue Service (“IRS”).

As grounds for approval of the Settlement, the Liquidator submits herewith the affidavit of J. David Leslie, Special Deputy Liquidator (“Leslie Aff. \_\_”).

1. The Claim was filed on May 2, 2018. Since entry of the Order of Liquidation for Elite (the “Order”) on May 15, 2018, the Special Deputy Liquidator has managed the Claim

including managing counsel representing Elite who were engaged prior to the Order, Paul Frank + Collins P.C. (“Claim Counsel”). Claim Counsel recommended that the Liquidator accept the August 14, 2020 IRS settlement offer. Leslie Aff. ¶¶ 3, 18.

2. In the Claim, Elite asserted that amended tax returns filed in 2016 for the 2008, 2009, and 2010 tax years entitled it to a tax refund for the 2008 and 2009 tax years. Leslie Aff. ¶ 4.

3. More specifically, in April 2016, following an IRS audit of Elite’s 2008 and 2009 tax years that began in 2011 and concluded in 2014, Elite amended its 2010 return to reflect new loss estimates, showing losses actually incurred, and policyholder dividend deductions to show dividends actually paid. The amended returns ultimately claimed a new loss of \$1,819,454. At that time, Elite also filed amended 2008 and 2009 returns to claim a refund based on the additional losses. Leslie Aff. ¶ 5.

4. On May 13, 2016, the IRS rejected the amended returns as untimely filed. If not timely filed, Elite would not have a viable claim for any refund. Elite appealed this determination, and the IRS Appeals Office eventually sided with the IRS. Leslie Aff. ¶ 6.

5. This ultimately led to the filing of the Claim on May 2, 2018, just prior to the expiration of the two-year statute of limitation that began to run after the IRS’s May 13, 2016 rejection of Elite’s returns. Leslie Aff. ¶ 7.

6. While pursuing the Claim, the Liquidator authorized retention of an expert to review its merits -- Matt Gravelin, a Principal of the national accounting firm of Johnson Lambert with experience in accounting for risk retention groups. Mr. Gravelin reviewed all available documents and expressed concern about Elite’s position. Leslie Aff. ¶ 13.

7. After the exchange of written discovery in 2019 and into 2020, Elite and the IRS engaged in settlement negotiations. Negotiations were delayed while the IRS reviewed all available documentation from Elite and formally responded to Elite's initial settlement demand. Leslie Aff. ¶ 14.

8. The IRS eventually provided a comprehensive analysis of Elite's Claim. The IRS primarily focused on Elite's inability to support its Claim with the necessary evidentiary record. Leslie Aff. ¶ 15.

9. The IRS settlement offer of \$44,443.58 was predicated upon its comprehensive analysis. It consisted of \$31,189 in carrybacks to tax year 2008 and \$105,753 in carrybacks to tax year 2009, both arising from policyholder dividend payments. The IRS tied its counteroffer entirely to the tax returns and evidentiary record provided by Elite. Leslie Aff. ¶ 16.

10. At the Liquidator's direction Claim Counsel attempted to increase the IRS's settlement offer, the IRS refused unless Elite could provide additional evidentiary support for its claimed refunds. Leslie Aff. ¶ 17.

11. The Special Deputy Liquidator and Claim Counsel hosted a conference call with ETRRG members on September 29, 2020 in order to discuss the history of the Claim, the chronology of the Claim-related litigation, and the reasons for recommending the proposed settlement with the IRS. The Special Deputy Liquidator advised the ETRRG members participating in the well-attended call that this motion would not be filed for another week in order to afford an opportunity for members to raise any questions they might have about the proposed settlement. No such questions were raised. Leslie Aff. ¶ 18.

12. For the reasons described above and more fully set forth in the Special Deputy Liquidator's Affidavit submitted herewith, the Liquidator asserts that the proposed settlement is

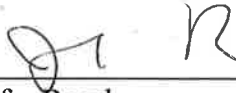
fair and reasonable and its approval is in the best interest of Elite's creditors.

WHEREFORE, the Liquidator requests that the Court enter an order:

- (a) Granting this Motion for Order Approving Settlement with the Internal Revenue Service; and,
- (b) Granting such other and further relief as justice may require.

Dated in Montpelier, Vermont, this 9<sup>th</sup> day of October 2020.

MICHAEL S. PIECIAK, COMMISSIONER  
DEPARTMENT OF FINANCIAL REGULATION  
AS LIQUIDATOR OF ELITE  
TRANSPORTATION RISK RETENTION GROUP,  
INC.



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Jennifer Rood  
Assistant General Counsel and Special  
Assistant Attorney General  
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(802) 828-5672  
[jennifer.rood@vermont.gov](mailto:jennifer.rood@vermont.gov)

A proposed form of order accompanies this Motion.

STATE OF VERMONT

SUPERIOR COURT  
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COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
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PLAINTIFF,

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ELITE TRANSPORTATION RISK  
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RESPONDENT.  
\_\_\_\_\_

CIVIL DIVISION

DOCKET NO. 175-3-18 Wncv

**SPECIAL DEPUTY LIQUIDATOR'S AFFIDAVIT IN SUPPORT OF SETTLEMENT  
WITH THE INTERNAL REVENUE SERVICE**

I, J. David Leslie, Special Deputy Liquidator, hereby being duly sworn, state under oath as follows:

1. I am a Director at the law firm of Rackemann, Sawyer & Brewster, P.C., located in Boston, Massachusetts. I have been appointed Special Deputy Liquidator with respect to Elite Transportation Risk Retention Group, Inc. ("Elite") by the Commissioner of the Vermont Department of Financial Regulation.

2. This affidavit supports my recommendation to settle a matter now pending in the United States District Court for the District of Vermont entitled *Elite Transportation Risk Retention Group, Inc. v. Internal Revenue Service*, Docket No. 5:18-cv-77 (the "Claim").

3. The Claim was filed on May 2, 2018. Since entry of the Order of Liquidation for Elite (the "Order") on May 15, 2018, I have managed the Claim (in my role as Special Deputy

Liquidator) including managing counsel representing Elite who were engaged prior to the Order, Paul Frank + Collins P.C. ("Claim Counsel").

4. In the Claim, Elite asserted that amended tax returns filed in 2016 for the 2008, 2009, and 2010 tax years entitled it to a tax refund for the 2008 and 2009 tax years.

5. More specifically, in April 2016, following an Internal Revenue Service ("IRS") audit of Elite's 2008 and 2009 tax years that began in 2011 and concluded in 2014, Elite amended its 2010 return to reflect new loss estimates, showing losses actually incurred, and policyholder dividend deductions to show dividends actually paid. The amended returns ultimately claimed a new loss of \$1,819,454. At that time, Elite also filed amended 2008 and 2009 returns to claim a refund based on the additional losses.

6. On May 13, 2016, the IRS rejected the amended returns as untimely filed. If not timely filed, Elite would not have a viable claim for any refund. Elite appealed this determination, and the IRS Appeals Office eventually sided with the IRS.

7. This ultimately led to the filing of the Claim on May 2, 2018, just prior to the expiration of the two-year statute of limitation that began to run after the IRS's May 13, 2016 rejection of Elite's returns.

8. Due to the lack of available documentation in Elite's possession and imminent expiration of the statute of limitation, Claim Counsel and Elite did not have an opportunity to obtain and review all relevant documentation related to the Claim prior to filing suit. Elite instead filed suit days before the expiration of the statute of limitation based upon the amended returns and representations and information from its accountant who prepared and filed the amended returns -- Larry Shores of Shores, Tagman, Butler & Co., P.A., located in Orlando,

Florida. Mr. Shores affirmed the accuracy, timeliness, and legal basis of the returns, and therefore provided the good faith basis for filing suit.

9. Procedurally, after the IRS formally responded to the Claim and at the request of the IRS, the Court stayed the Claim for months to allow the IRS to substantively review the amended returns. Counsel for the U.S. Department of Justice representing the IRS at the time, informed Claim Counsel that he believed Elite timely filed its amended returns and requested a stay to allow time for the IRS to substantively review the matter. IRS counsel suggested this could lead to a relatively straight-forward settlement.

10. The Claim ultimately resumed in mid-2019. By that time, initial counsel for the IRS had retired. Successor counsel sided with the IRS and took the position that Elite did not timely file its amended returns.

11. Throughout this time, Elite and Claim Counsel attempted to obtain all relevant documents to support the Claim. With the Liquidator's assistance, Claim Counsel sought documents from Mr. Shores, Elite's captive and program managers, and the accounting firm who initially prepared the 2008 – 2010 tax returns. Unfortunately, Mr. Shores took many months to provide copies of his files. Once received, they did not contain the documentation expected by Claim Counsel.

12. Ultimately, Claim Counsel obtained some limited spreadsheets and basic information about the numbers in the amended returns from Mr. Shores. This information was incomplete, however, and lacked key information needed. These gaps undermine Elite's ability to meet its burden in demonstrating entitlement to the tax refunds.

13. While pursuing the Claim, the Liquidator authorized retention of an expert to review its merits -- Matt Gravelin, a Principal of the national accounting firm of Johnson Lambert with



experience in accounting for risk retention groups. Mr. Gravelin reviewed all available documents and expressed concerns about Elite's position.

14. After the exchange of written discovery in 2019 and into 2020, Elite and the IRS engaged in settlement negotiations. Negotiations were delayed while the IRS reviewed all available documentation from Elite and formally responded to Elite's initial settlement demand.

15. The IRS eventually provided a comprehensive analysis of Elite's Claim. While Elite presented a strong negotiating front, the IRS identified the same weaknesses identified by Claim Counsel and Mr. Gravelin, and primarily focused on Elite's inability to support its Claim with the necessary evidentiary record.

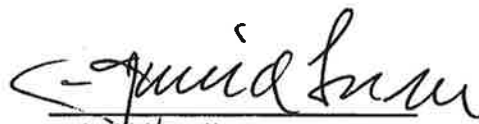
16. As a result, the IRS settlement offer of \$44,443.58 was viewed favorably by Claim Counsel and Mr. Gravelin. The IRS offer consisted of \$31,189 in carrybacks to tax year 2008 and \$105,753 in carrybacks to tax year 2009, both arising from policyholder dividend payments. The IRS tied its counteroffer entirely to the tax returns and limited evidentiary record provided by Elite.

17. While Claim Counsel, at the Liquidator's request, attempted to increase the IRS's settlement offer, the IRS refused unless Elite could provide additional evidentiary support for its claimed refunds. Despite the best efforts of Claim Counsel and the Liquidator to obtain a more complete record from various parties, Elite cannot do so.

18. I, as Special Deputy Liquidator, and Claim Counsel hosted a conference call with ETRRG members on September 29, 2020 in order to discuss the history of the Claim, the chronology of the Claim-related litigation, and the reasons for recommending the proposed settlement with the IRS. The Special Deputy Liquidator advised the ETRRG members participating in the well-attended call that this motion would not be filed for another week in

order to afford an opportunity for members to raise any questions they might have about the proposed settlement. No such questions were raised.

19. After considering these facts, I agree with the advice and recommendation of Claim Counsel and Mr. Gravelin to accept the IRS offer and settle this Claim for a payment to Elite of \$44,443.58. This payment represents a fair and reasonable settlement in light of the limited evidentiary record available to Elite to meet its burden at trial.

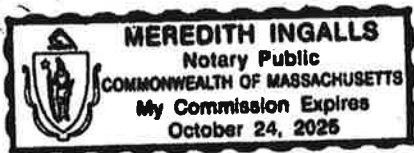


J. David Leslie  
Special Deputy Liquidator

Subscribed and sworn before me this 7<sup>th</sup> day of October, 2020.



Notary Public  
My commission expires:



STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

\_\_\_\_\_  
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ELITE TRANSPORTATION RISK )  
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CIVIL DIVISION

DOCKET NO. 175-3-18 Wncv

**ORDER APPROVING LIQUIDATOR’S MOTION FOR APPROVAL OF  
SETTLEMENT WITH THE INTERNAL REVENUE SERVICE**

This matter having come before the Court by motion (“Motion”) of the Commissioner of the Vermont Department of Financial Regulation in his capacity as Liquidator (“Liquidator”) of Elite Transportation Risk Retention Group, Inc. (“Elite”), for an order approving the proposed August 14, 2020 settlement with the Internal Revenue Service attached to the Motion (“Settlement”), it is:

ORDERED that the Settlement is hereby APPROVED.

Dated in Montpelier, Vermont, \_\_\_\_\_, 2020.

\_\_\_\_\_  
Superior Court Judge