

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 ELEVENTH STATUS
REPORT AND SIXTH REPORT OF CLAIMS**

I, J. David Leslie, Special Deputy Liquidator, hereby submit this Eleventh Status Report regarding the liquidation of Elite Transportation Risk Retention Group, Inc. (“ETRRG” or the “Company”) and Sixth Report of Claims (attached as Exhibit A).

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 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. 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 to November 15, 2019. On December 23, 2019, I submitted the Liquidator's Annual Report and Status Report. I then submitted the Liquidator's Fifth Status Report on June 20, 2020 and the Liquidator's Sixth Status Report, Annual Accounting, and First Report of Claims on January 22, 2021. On August 12, 2021, I submitted the Liquidator's Seventh Status Report and Second Report of Claims and on March 29, 2022, I submitted the Liquidator's Eighth Status Report, Annual Accounting, and Third Report of Claims.

3. On January 31, 2023, I submitted the Liquidator's Ninth Status Report and Fourth Report of Claims advising, among other things, that the Liquidator expected to have all claims finally determined or reserved before April 30, 2023, and that a status report would be delivered to the Court shortly thereafter accompanied by an annual accounting and motions for corrective assessments. I submitted the Liquidator's Tenth Status Report, Annual Accounting, and Fifth Report of Claims on June 7, 2023 together with a motion for approval of a Plan for Corrective Assessments. The Court entered its order approving that motion and plan on June 13, 2023

(“Order on Assessments”). All of the filings described in ¶¶ 2 and 3 above have been publicly posted on the liquidation website (www.etrreg.com) along with other key liquidation materials.

4. The Liquidator typically files status reports on a semiannual basis. The Liquidator believes, however, that it is now possible to make material distributions of estate assets and therefore submits this Eleventh Status Report outside the semiannual cycle to provide background information regarding the potential for distributions and to advise regarding the determination of additional claims.

STATUS REPORT

5. **Balance Sheet.** A simplified balance sheet reflecting ETRRG’s financial condition as of August 31, 2023 is presented below in Table 1.

Table 1 – Simplified ETRRG Balance Sheet as of August 31, 2023

ASSETS	
Cash & Cash Equivalents	\$ 11,862,862
Assessments Receivable	4,600,000
Reinsurance Receivable	<u>1,975,000</u>
Total Assets	<u>\$ 18,437,862</u>
LIABILITIES	
Priority Class 1	
Administrative Expense Reserve	\$ 133,298
Approved or Finally Determined	<u>9,204</u>
Subtotal (Class 1)	142,502
Priority Class 3	
Approved or Finally Determined	13,482,147
Reserved or Estimated	<u>1,300,00</u>
Subtotal (Class 3)	14,782,147
Priority Class 6	
Approved or Finally Determined	225,963
Reserved or Estimated	<u>32,595</u>
Subtotal (Class 6)	258,558
Priority Class 9	
Approved or Finally Determined	400,000
Reserved or Estimated	<u>7,512,879</u>
Subtotal (Class 9)	<u>7,912,879</u>
Total Liabilities	<u>\$ 23,096,086</u>

6. Assets. The Company’s cash, cash equivalents, and other liquid assets have been marshalled and consolidated in either an account in the Vermont branch of a national banking institution or an investment account at Wilmington Trust. It should be noted that the cash figure includes proceeds of a settlement between the Liquidator and the Internal Revenue Service regarding ETRRG’s pre-liquidation claims for tax refunds that was approved by the Court on October 12, 2020. ETRRG’s cash equivalents figure is high because, as invested estate assets matured, the Liquidator has reinvested them in very short duration securities (i.e. cash equivalents) in anticipation of making distributions pursuant to 8 V.S.A. § 7083. See, *infra*, ¶ 12.

7. This status report includes, for the first time, an “Assessment Receivable” as an estate asset. This figure reflects the portion of the corrective assessments that the Liquidator anticipates will be collected from the ETRRG members by setoff.¹ The Liquidator reports an estimated reinsurance receivable of \$1,975,000. This figure includes approximately \$820,000 that has been billed to the reinsurer and for which payment is anticipated within the next 90 days. This figure also includes approximately \$1,155,000 in respect of potential reinsurance claims on policy-related claims that remain “open” and for which the Liquidator has established a reserve.²

8. Prepaid Deductibles. In addition to Company assets, the Liquidator is holding \$67,127 in constructive trust as security against members’ deductible obligations under the conditions described in the Liquidator’s Plan for Administration of Prepaid Deductibles. (The

¹ The Plan for Corrective Assessments, contemplates that the Liquidator will impose assessments totaling \$7,512,879. Approximately \$2.65 million of the corrective assessments has already been converted to cash (i.e. funds contributed by members pursuant to improper pre-liquidation assessments) and the Liquidator anticipates that an additional \$4.6 million can be collected by setoff. The Liquidator anticipates that the remainder of the corrective assessments – approximately \$260,000 – will be uncollectable through setoff. The Liquidator also anticipates that efforts to pursue collections outside of the liquidation proceeding would not be cost-effective and does not, therefore, include that \$260,000 figure within estate assets.

² To ensure that ETRRG’s assets and liabilities are balanced, the Liquidator has calculated reinsurance recoveries under the assumption that “open” claims are ultimately resolved at the (conservative) level for which they have been reserved. See, *infra*, ¶ 9.b. If claims are resolved on a more favorable basis, there will be corresponding reductions to both ETRRG’s liabilities (priority class 3 claims) and its assets (reinsurance receivable).

Plan for Administration of Prepaid Deductibles was submitted as an exhibit to the Liquidator's Fifth Status Report and has been posted at www.etrreg.com.) This constitutes a substantial reduction from the security noted in the last status report (\$327,856 as of April 30, 2023) due to the fact that in the intervening months the Liquidator has been able to release excess security of \$262,486 to members pursuant to the Plan for Administration of Prepaid Deductibles. Any remaining security will either be drawn down to reimburse the ETRRG estate for deductible obligations or released to members as the final "open" claims are resolved.

9. Liabilities. Vermont law requires that payments on claims against insolvent insurers be made in accordance with statutorily established priorities and that all claims in a priority 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 standard format applicable to an insurer operating as a going concern.³

a. *Priority Class 1 (Administrative Expense)* – At the outset of the proceeding, the Liquidator established a \$1 million administrative expense reserve which was increased to \$1.25 million as of December 31, 2022. Pursuant to the Plan of Liquidation (¶ 2.a), the Liquidator has drawn this reserve down as he has paid administrative expenses in the normal course. Administrative expenses from the start of the proceeding through August 31, 2023, totaled \$1,116,702 leaving \$133,298 remaining in the reserve.⁴

³ The Liquidator has recommended and the Court has ordered allowance of claims falling in priority classes 1, 3, 6, 9, and 10. See 8 V.S.A. § 7081. The Liquidator does not anticipate that any claims will be recommended for allowance in the remaining priority classes.

⁴ Administrative expenses totaled \$243,973 in 2018, \$146,235 in 2019, \$225,662 in 2020, \$158,088 in 2021, and \$188,952 in 2022. Administrative expenses through the first eight months of 2023 -- \$153,791-- have been somewhat above-trend (approximately \$230,000 on an annualized basis) primarily as the result of intensified efforts to resolve the remaining "open" claims and the preparation of closing-related pleading s(e.g. corrective assessments

b. *Priority Class 3 (Claims Arising under Policies)* -- The \$14.7 million figure presented in Table 1 reflects the best-available information regarding policy-related exposure and is drawn from two data sources. First, the Liquidator has resolved more than 98% of the proofs of claim (“POCs” or a “POC”) filed in this proceeding that seek payment under ETRRG policies. The value of these claims, which include both those previously allowed by the Court and those submitted for approval in the Sixth Report of Claims (Exhibit A) is \$13,482,147. Second, for the remaining POCs (those that have not been determined or for which the Liquidator’s determination is not yet final), the Liquidator has either established a reserve (for claims where determination has been deferred) or produced a best estimate of claim value (for claims that require further investigation). This reserve/estimate figure -- \$1,300,000 -- is a projection regarding a small number of claims so the Liquidator cautions that it could be subject to material variability though it is intended to be conservative.

c. *Priority Class 6 (General Unsecured Obligations)* – All of the POCs evaluated by the Liquidator as giving rise to potential priority class 6 exposures have been finally determined. The total amount of these claims is \$225,963. The Liquidator had initially anticipated that there would be no further priority class 6 claims allowed. The Liquidator has concluded however, that two ETRRG members made payments to the Company pursuant to improper pre-liquidation assessments that are in excess of their obligations calculated under the Plan for Corrective Assessments. Because those pre-liquidation assessments were invalid, it is possible that claims for return of excess payments may constitute general unsecured obligations of the ETRRG estate (allowable in priority class

and interim distributions). The Liquidator remains hopeful that it will be possible to release substantial funds from the administrative expenses reserve at the conclusion of the proceeding.

6) rather than claims for refunds on assessable policies (allowable in priority class 9). For purposes of conservatism, the Liquidator has therefore established an associated reserve in priority class 6.

d. *Priority Class 9 (Surplus or contribution notes, similar obligations, and premium refunds on assessable policies)*. The Liquidator has received a single priority class 9 claim which has been allowed in the amount of \$400,000. Pursuant to the Plan for Corrective Assessments, the Liquidator has also established a reserve for additional priority class 9 claims.⁵

e. *Priority Class 10 (Shareholder claims)*. The Liquidator does not anticipate that estate assets will be sufficient to make distribution on shareholder claims. He has therefore declined to make a determination as to the amount of such claims and has issued determinations solely as to priority. See Plan of Liquidation, ¶ 2.c.

SIXTH REPORT OF CLAIMS

10. The Liquidator has issued notices of determination or received notices of withdrawal relating to 555 claims.⁶ The Liquidator's prior Reports of Claims have advised the Court with regard to 541 of those determinations/ withdrawals. Since the Fifth Report of Claims was filed on June 7, 2023, an additional 15 claims have become finally determined or withdrawn. See 8 V.S.A. § 7078(a) ("Within 60 days from the mailing of notice [of determination] the claimant may file objections with the liquidator" and "[i]f no such filing is made, the claimant may not further object to the determination.") Those 15 claims are reported in the Liquidator's

⁵ The Plan for Corrective Assessments provides that "the Liquidator shall recognize each of the Member's Corrective Assessments as giving rise to a priority class 9 claim against the ETRRG estate...deem each member to have filed such a claim... [and] issue notices of determination allowing them in priority class 9." See *id.*, ¶ 3. The Liquidator will report those claims to the Court when the determinations become final pursuant to 8 V.S.A. § 7078.

⁶ Claims are typically withdrawn as part of a settlement or where unilateral withdrawal might facilitate efforts in another proceeding (e.g. collections from another insurer/tortfeasor).

Sixth Report of Claims, attached as Exhibit A, together with the Liquidator's recommendations. 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.")

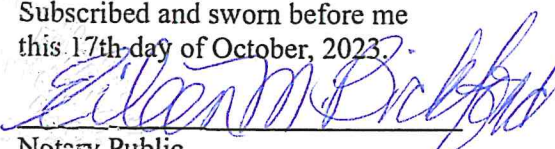
11. By his Motion for Order Approving Liquidator's Sixth Report of Claims (filed herewith), the Liquidator requests that the Court enter an order approving the Sixth Report of Claims. See to 8 V.S.A. § 7082(b) ("The court may approve, disapprove, or modify the report on claims [filed] by the liquidator.")

INTERIM DISTRIBUTION RECOMMENDED

12. By his Motion for Interim Distribution (filed herewith) the Liquidator requests that the Court order a 100% distribution on allowed claims in priority classes 1, 3, and 6. The Liquidator also seeks approval of this proposed Plan for Interim Distributions. If that motion is granted and the Plan for Interim Distributions is approved, the Liquidator will contact claimants for payment instructions, apply setoffs to collect approximately \$3.87 million of the corrective assessments, and remit approximately \$9.85 million to claimants.

13. Next Steps. If the Plan for Interim Distribution is approved, the Liquidator will request payment instructions from claimants and issue distributions pursuant to that plan. In addition, the Liquidator will continue working with claimants toward resolution of the remaining "open" claims, issue notices of determination/re-determination, and present any disputed claims to the Court. The Liquidator proposes to file his next status report (to include an annual report of receipts/disbursements) with the Court in six months.

Subscribed and sworn before me
this 17th day of October, 2023.


Notary Public

My commission expires:


J. David Leslie

Special Deputy Liquidator



EILEEN M. BICKFORD
Notary Public
Commonwealth of Massachusetts
My Commission Expires
February 3, 2028

EXHIBIT A

Liquidator's Sixth Report of Claims for ETRRG

October 17, 2023

Claims Recommended for Allowance in Priority Class 1

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority</u>	<u>Amount</u>
None in Sixth Report of Claims				
				Allowed in Prior Reports of Claims \$ 9,204.06

Claims Recommended for Allowance in Priority Class 3

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority</u>	<u>Amount</u>
338	Citimedical I, PLLC	800A Paxton Street, Harrisburg, PA 17104	3	\$ 5,429.76
339	Optimum Health Acupuncture,	800A Paxton Street, Harrisburg, PA 17104	3	2,616.27
368(S)	Calex Express, Inc.	58 Pittston Ave, Pittston, PA 18640	3	700,000.00
372a	Clark Transfer, Inc.	800A Paxton Street, Harrisburg, PA 17104	3	270.00
392	Calex Express, Inc.	58 Pittston Ave, Pittston, PA 18640	3	208,751.68
				Recommended for Allowance in Sixth Report of Claims \$ 917,067.71
				Allowed in Prior Reports of Claims 12,565,079.55
				Total if Sixth Report of Claims is Allowed \$ 13,482,147.26

Claims Recommended for Allowance in Priority Class 6

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority</u>	<u>Amount</u>
None in Sixth Report of Claims				
				Allowed in Prior Reports of Claims \$ 225,962.91

Claims Recommended for Allowance in Priority Class 9

None in Sixth Report of Claims				
				Allowed in Prior Reports of Claims \$ 400,000.00

Claims Recommended for Allowance in Priority Class 10

None in Sixth Report of Claims				
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Claims Denied or Withdrawn

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority</u>	<u>Amount</u>
15	Advanced Orthopedics	80-02 Kew Gardens Road, 5th Floor, Kew Gardens, NY, 11415	n/a	n/a
45	Kenny Marshall	702 Regency Court, Middletown, NY 10940	n/a	n/a
48	Richard Wilk	1600 E. Dogwood Lane, Mount Prospect, IL 60056	n/a	n/a
76	Progressive Premier Insurance	P.O. Box 24344, Chicago, IL 60673-1243	n/a	n/a
118	Thomas George Assoc.	P.O. Box 30, East Northport, NY 11731	n/a	n/a
372b	Clark Transfer, Inc.	800A Paxton Street, Harrisburg, PA 17104	n/a	n/a
372c	Clark Transfer, Inc.	800A Paxton Street, Harrisburg, PA 17104	n/a	n/a
372d	Clark Transfer, Inc.	800A Paxton Street, Harrisburg, PA 17104	n/a	n/a
372e	Clark Transfer, Inc.	800A Paxton Street, Harrisburg, PA 17104	n/a	n/a
372f	Clark Transfer, Inc.	800A Paxton Street, Harrisburg, PA 17104	n/a	n/a