

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

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COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
REGULATION  
PLAINTIFF,

v.

ELITE TRANSPORTATION RISK  
RETENTION GROUP, INC.,  
RESPONDENT.

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CIVIL DIVISION  
DOCKET NO. 175-3-18 Wncv

**LIQUIDATOR’S MOTION FOR INTERIM DISTRIBUTION ON  
ALLOWED PRIORITY CLASS 9 CLAIMS**

Sandy Bigglestone, Acting Commissioner of the Vermont Department of Financial Regulation (“Commissioner”), in her capacity as Liquidator (“Liquidator”) of Elite Transportation Risk Retention Group, Inc. (“ETRRG” or the “Company”), hereby submits this Motion for Supplemental Interim Distribution requesting that the Court enter an order establishing a twenty-five percent (25%) interim distribution rate on priority class 9 and authorizing an interim distribution on allowed claims in priority class 9.

**Background**

1. On March 15, 2018, the then 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. See Affidavit of J. David Leslie, Special Deputy Liquidator, in Support of Motion for Interim Distribution, ¶ 1 (hereinafter, “Leslie Aff, ¶ \_\_”).

2. Upon entry of the Liquidation Order, the Liquidator proceeded to investigate filed proofs of claim (“POCs”), issue notices of determination, and collect estate assets. By the fall of 2023, the Liquidator had successfully collected more than \$11.8 million in estate assets with a further \$6.5 million in collections anticipated under ETRRG’s reinsurance agreements or pursuant to the Plan for Corrective Assessments approved by the Court on June 12, 2023.<sup>1</sup> In addition, the Liquidator had determined more than 98% of the POCs filed in the proceeding and established reserves with regard to the remaining POCs. The Liquidator therefore determined that it would be feasible to make interim distributions consistent with the statutory requirements. See 8 V.S.A. §§ 7081 (“Every claim in each [priority] class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment”); 7083 (Liquidator may request authority for interim distributions “in a manner that will assure the

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<sup>1</sup>From August 2016 to December 2017, ETRRG conducted three rounds of members assessments and was in the process of pursuing collections when the Liquidation Order entered. The Liquidator investigated the proposed collections actions and found that the assessments had been calculated in a manner inconsistent with the governing shareholder agreements, that the improper calculations and partial collections created inequities, that collection actions were not feasible, and that the most practical method of redressing these errors (consistent with the liquidation priority statutes – 8 V.S.A. § 7081) would be to conduct corrective assessments at the close of the ETRRG liquidation. See *Liquidator’s Report: Financial Condition, Collectability of Outstanding Assessments and Options*, attached as Exhibit A to the Liquidator’s Second Status Report filed on October 31, 2018. In June 2023, the Liquidator found that the claim determination process had advanced to a point where corrective assessments would be possible and submitted a Motion for Approval to Make Corrective Assessments under Shareholder Agreements (filed June 7, 2023) which the Court approved by its Order Approving Corrective Assessments under Shareholder Agreements (entered June 12, 2023). The Plan for Corrective Assessments contemplated that the corrective assessments would be collected through setoff against distributions otherwise owed to members from the ETRRG estate.

proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims...”). See Leslie Aff. ¶ 2.

3. The Plan for Interim Distributions. On October 10, 2023, the Liquidator filed a Motion for Interim Distribution seeking approval of a Plan for Interim Distribution and authority to make the associated disbursements. The Plan for Interim Distribution described the statutory requirements -- recognition of priorities and balancing between the interest of creditors with determined vs. unliquidated claims -- and noted that the ETRRG estate’s current liquid assets (plus corrective assessments to be collected through setoff) were sufficient to fund a 100% payment on claims falling in priority class 1 (administrative expenses), priority class 3 (policy-related claims), and priority class 6 (general unsecured claim).<sup>2</sup> The Plan for Interim Distribution therefore proposed that:

- i. The Liquidator establish reserves equal to 100% of the conservatively estimated claim values for POCs expected to be allowed in priority classes 1, 3, and 6;
- ii. The Court establish a 100% interim distribution rate for priority classes 1, 3, and 6;
- iii. The Court authorize interim distributions at this 100% rate for all claims allowed in priority classes 1, 3, and 6 (either previously or in subsequent claims reports); and,
- iv. The Liquidator defer action on claims allowed in priority class 9 subject to requirements that the Liquidator “[p]eriodically re-evaluate whether ETRRG’s liquidity and the level of uncertainty surrounding ultimate distributions will permit an interim distribution to be ordered on priority class 9 claims” and “[m]ake proposals for interim and final distributions when he deems such distributions could be made in

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<sup>2</sup> The Liquidator also reported that, for the ETRRG proceeding there were no: priority classes 2 (administrative expenses of guaranty funds), 4 (claims of the United States), 5 (certain employee claims), 7 (state and local claims for penalties), and 8 (late filed claims).

a manner that would ‘assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.’”

Plan for Interim Distributions, ¶ 4 (quoting 8 V.S.A. § 7083). The Court approved the Plan for Interim Distributions on October 25, 2023. Leslie Aff., ¶ 3.

4. Following approval of the Plan for Interim Distributions, the Liquidator notified creditors of the interim distributions, shared setoff calculations (if any), and requested payment instructions. As creditors returned payment instructions, the Liquidator issued payments through a series of “check runs” occurring between December 2023 and October of 2024 and resulting in a total disbursement of \$8,943,250.<sup>3</sup> A substantial number of claimants, however, have not returned payment instructions or responded to outreach from the Liquidator. The ETRRG estate therefore continues to hold \$930,662 that has been authorized for disbursement. The Liquidator will make additional efforts to contact these creditors but, if they remain non-responsive, the funds will ultimately be turned over to the State of Vermont and escheated pursuant to 8 V.S.A. § 7084(a). Leslie Aff., ¶ 4.

5. The Liquidator has evaluated ETRRG’s liquidity as of December 31, 2024, and the level of uncertainty surrounding ultimate distributions and concluded that it is now possible to make a substantial interim distribution on priority class 9. Leslie Aff., ¶ 5.

### **Proposed Interim Distribution Rates**

6. The Liquidator is charged with making distributions from estate assets, under the direction of the Court, “in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of

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<sup>3</sup> The Liquidator offered creditors the option of receiving either a physical check or disbursement through wire/ACH.

unliquidated and undetermined claims.” 8 V.S.A. § 7083. This means that “[e]very claim in each [priority] class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment.” 8 V.S.A. § 7081.

7. ETRRG’s current assets and liabilities are reported on a simplified balance sheet in the Liquidator’s Thirteenth Status Report, Annual Accounting, and Eighth Report of Claims, filed herewith (“Status Report”). That balance sheet, providing data as of December 31, 2024, is reproduced as **Error! Reference source not found..** Consistent with prior reports, the balance sheet shows that ETRRG’s assets will be sufficient to pay all allowed/reserved claims in priority classes 1, 3, and 6 such that priority class 9 will be the residual class. Leslie Aff, ¶ 6.

**Table 1 – Simplified ETRRG Balance Sheet as of 12/31/24**

<b>ASSETS</b>	
Cash & Cash Equivalents	\$ 4,494,055
Accrued Income	29,292
Assessments Receivable	700,000
Reinsurance Receivable	650,000
Total Assets	<u>\$ 5,873,348</u>
<b>LIABILITIES</b>	
Priority Class 1	
Administrative Expense Reserve	\$ 94,740
Priority Class 3	
Finally Determined	\$ 102,088
Reserved	1,050,000
Subtotal (Class 3)	<u>\$ 1,152,088</u>
Priority Class 6	\$ 32,595
Priority Class 9	
Allowed	\$ 7,671,896
Determined/Reserved	240,983
Subtotal (Class 9)	<u>\$ 7,912,879</u>
Unclaimed Distributions	\$ 930,662
Total Liabilities	<u>\$ 10,122,964</u>

8. The liquidation statutes require that claim be paid in full for a class (or that adequate funds be retained as a reserve) before claims in subsequent classes receive any payment. See 8 V.S.A. § 7081. For purposes of making a distribution, therefore, the Liquidator considers only assets that are currently liquid or can be realized (through setoff) during the course of a distribution. Applying this premise, the Liquidator has prepared various “waterfall” calculations showing the cash that would be disbursed, retained in reserves, and available for distribution to lower priority classes based on different distributions percentages, including the 100% interim distributions on priority classes 1, 3, and 6 that have already been approved by the Court. A summary of the “waterfall” calculation applying these distribution percentages and a proposed 25% interim distribution on priority class 9 is presented as Table 2. Leslie Aff, ¶ 7.

**Table 2 – ETRRG Claim Distribution Waterfall as of December 31, 2024**

Cash & Cash Equivalents	\$	4,494,055
Priority Class 1		
Admin. Expense Reserve		<u>(94,740)</u>
Remaining Cash	\$	4,399,315
Priority Class 3		
Dist. on Allowed Claims	\$	(102,088)
Claim Reserve		(1,050,000)
Unclaimed Distributions		<u>(930,662)</u>
Remaining Cash	\$	2,316,565
Priority Class 6		
Claim Reserve		<u>(32,595)</u>
Remaining Cash	\$	2,283,970
Priority Class 9		
Allowed	\$	(7,671,896)
Claim Reserve		<u>(240,983)</u>
Subtotal	\$	(7,912,879)
Proposed 25% Interim Distribution	x	25%
Contemplated Interim Distribution	\$	(1,978,220)
Corrective Assessment Collectable		492,792
Remaining Cash	\$	<u>798,543</u>

9. *Priority Classes 1 (100% authorized distribution)* – Priority Class 1 includes the cost and expenses of administration, including the actual and necessary costs of preserving or recovering the assets of the insurer as well as compensation for all services rendered in rehabilitation and liquidation. See 8 V.S.A. § 7081. Pursuant to the Plan of Liquidation approved by the Court on May 15, 2018, the Liquidator has paid most administrative expenses in the normal course and the administrative expenses submitted by POC have been determined, allowed, and distributed. Remaining administrative expense is addressed through an administrative expense reserve that the Liquidator draws down as costs are paid in the normal course pursuant to the Plan of Liquidation (¶ 2.a). After accounting for these priority class 1 expenses, the ETRRG estate has \$4,399,315 available to pay claims falling in lower priority classes. Leslie Aff, ¶ 8.

10. *Priority Class 2 (None)* -- Priority class 2 includes “[t]he administrative expenses of guaranty associations.” 8 V.S.A. § 7081(2). ETRRG is a risk retention group and therefore prohibited by federal law from participating in the guaranty association system such that priority class 2 is empty in this proceeding so there is no need to establish an interim distribution rate. See 8 V.S.A. § 6054(a); 15 U.S.C.A. § 3902(a); Leslie Aff, ¶ 9.

11. *Priority Class 3 (100% distribution authorized)* -- Priority class 3 includes “[a]ll claims under policies”. 8 V.S.A. § 7081. The Liquidator has resolved all but five of the POCs filed in this proceeding that seek payment under ETRRG policies. The claims previously allowed by the Court in priority class 3 have either received 100% distributions (in which case they are not reported as outstanding obligations in the “waterfall” calculation) or are eligible for such distributions but the funds are unclaimed (in which case they are reported in the “waterfall” calculation as “Unclaimed Distributions”). The Liquidator has reported additional determinations (totaling \$102,088) for allowance in the Eighth Report of Claims filed as Exhibit

A to the Thirteenth Status Report and has established reserves totaling \$1.05 million for the remaining open POCs asserting policy-related liabilities. After accounting for these priority class 3 obligations, the current estate assets leave \$2,316,565 available for distribution on claims falling in lower priority classes. Leslie Aff, ¶ 10.

12. *Priority Class 4 (None)* -- Priority class 4 includes “[c]laims of the federal government other than those included in Class 3.” 8 V.S.A. § 7081(4). The federal government has not submitted any POCs so priority class 4 is empty in this proceeding and there is no need to establish an interim distribution rate. Leslie Aff, ¶ 11.

13. *Priority Class 5 (None)* -- Priority class 5 includes “[d]ebts due to employees for services, benefits, [etc...] for services performed...”. 8 V.S.A. § 7081(5). No ETRRG employees have submitted POCs seeking compensation for services performed so priority class 5 is empty in this proceeding and there is no need to establish an interim distribution rate. Leslie Aff, ¶ 12.

14. *Priority Class 6 (100% distribution authorized)* -- Priority class 6 includes “[c]laims of any person... except those specifically classified elsewhere” in the priority statute. 8 V.S.A. § 7081. In this proceeding, priority class 6 consists primarily of ETRRG’s general unsecured pre-liquidation obligations and there are two remaining claims that might be allowed in priority class 6, both of which relate to the overpayment of pre-liquidation assessments. After setting aside funds sufficient to pay both of these claims at the 100% interim distribution rate previously approved by the Court, the ETRRG estate has \$2,283,970 available for distribution on claims falling in lower priority classes. Leslie Aff., ¶ 13.

15. *Priority Class 7 (None)* -- Priority class 7 includes “[c]laims of any state or local government for a penalty or forfeiture...”. 8 V.S.A. § 7081(7). No state or local government has



submitted a POC asserting such obligations so priority class 7 is empty in this proceeding and there is no need to establish an interim distribution rate. Leslie Aff., ¶ 14.

16. *Priority Class 8 (None)* -- Priority class 8 includes “[c]laims filed late or any other claims” other than those in priority classes 9 and 10. 8 V.S.A. § 7081(8). A number of POCs were filed after the claim filing deadline but all were received early enough in the proceeding that they did not prejudice the orderly administration of the estate and could be treated, pursuant to 8 V.S.A. § 7074, as if they were not late. There are, accordingly, no claims requiring distribution in priority class 8 and no need to establish an interim distribution rate. Leslie Aff., ¶ 15.

17. *Priority Class 9 (25% proposed interim distribution)* – Priority class 9 includes “[s]urplus or contribution notes, or similar obligations, and premium refunds on assessable policies.” 8 V.S.A. § 7081(9). The value of allowed priority class 9 claims is \$7.67 million which reflects determination and allowance of all but two potential priority class 9 claims. With reserves for these claims, the total value of all priority class 9 claims is \$7.91 million which substantially exceeds the \$2.29 million in cash available for distribution in priority class 9. The ETRRG estate will, however, be entitled to collect additional corrective assessments by applying them as setoff to priority class 9 distributions. Indeed, as the distribution rate for priority class 9 claims is increased, the opportunity for setoff increases, these realized setoffs increase estate assets, and it becomes possible to further increase the distribution rate. The Liquidator calculates that this dynamic may ultimately permit a final distribution rate on priority class 9 claims in excess of 40%. There is continuing uncertainty, however, regarding the resolution of the remaining POCs (priority classes 3 and 6), the possibility of a disputed claim proceeding, and the potential need to pursue reinsurance recovery. As a result, the Liquidator believes that it remains appropriate to adopt a conservative approach and therefore recommends a 25% interim

distribution rate for priority class 9. If approved, this 25% distribution would leave ETRRG with approximately \$798,543 in cash available for contingencies that would, if such contingencies do not arise, be available for distribution on priority class 9 claims in a final distribution at the close of the proceeding. Leslie Aff., ¶ 16.

18. For the foregoing reasons, the Liquidator requests that the Court establish a 25% interim distribution rate on priority class 9.

### **Proposed Interim Distribution**

19. Distributions are to be made “in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditions completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.” 8 V.S.A. § 7083. The Liquidator has calculated -- as shown in the “waterfall” presented above in Table 2 -- that a 100% distribution on allowed claims in priority classes 1, 3, and 6 and a 25% interim distribution on allowed claims in priority class 9 would leave the estate with a cash balance of nearly \$800,000 after setting aside funds in respect of the posted reserves. As additional estate assets are collected (e.g. reinsurance recoveries) an increased distribution may be possible while retaining a suitable margin for conservatism. Leslie Aff, ¶ 17.

20. The Liquidator believes that, under the circumstances, adding a 25% interim distribution on allowed claims in priority class 9 to the existing interim distributions (100% for priority classes 1, 3, and 6) would assure the proper recognition of priorities, balance the expeditious completion of the liquidation against the protection of unliquidated and undetermined claims, and otherwise be reasonable, appropriate, and in the best interests of policyholders, creditors, and the public. See 8 V.S.A. §§ 7056, 7081, 7083; Leslie Aff, ¶ 18.

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

- (a) Granting this Motion for Supplemental Interim Distribution;
- (b) Establishing a 25% interim distribution rate on priority class 9;
- (c) Authorizing an interim distribution on claims allowed in priority class 9; and,
- (d) Granting such other and further relief as justice may require.

Dated in Montpelier, Vermont, this 26th day of February, 2025.

SANDY BIGGLESTONE, ACTING  
COMMISSIONER, DEPARTMENT OF  
FINANCIAL REGULATION AS LIQUIDATOR OF  
ELITE TRANSPORTATION RISK RETENTION  
GROUP, INC.

/s/Jennifer Rood

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A proposed form of order accompanies this Motion