

STATE OF VERMONT
WASHINGTON COUNTY, SS

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

v.)

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

SUPERIOR COURT
DOCKET NO. 175-3-18 Wncv

LIQUIDATOR'S THIRD STATUS REPORT

I, J. David Leslie, Special Deputy Liquidator, hereby submit this third status report concerning 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 petition was based in part on the Commissioner's conclusion that ETRRG's liabilities plus the legally required capital reserve exceeded its assets such that the Company was insolvent. 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 which was assented to by ETRRG's Board of Directors. 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, approved the Plan of Liquidation, and ordered that the Liquidator provide creditors and others with notice of the Liquidation Order and a claim filing deadline no less than 120 days after the date of the Liquidation Order. See Order of Liquidation ¶¶ 1, 5, 6, and 7. 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. Both status reports were posted on ETRRG’s former website – www.etrrg.com.

3. Receipt of Proofs of Claim. The Liquidator’s Second Status Report advised that, as of October 26, 2018, the Liquidator had received and acknowledged 97 proofs of claim. Since that time, the Liquidator has received and acknowledged an additional 15 claims, for a total of 112 proofs of claim received. (Incomplete proofs of claim were returned to their senders with

instructions for resubmission.) The Liquidator will continue to receive and acknowledge proofs of claim through the claim filing deadline on May 15, 2019.

4. Notice to Members. A number of proofs of claim have been filed by third-party claimants. See 8 V.S.A. § 7077(a) (“Whenever any third party asserts a cause of action against an insured... the third party may file a claim with the liquidator.”) These claims assert that ETRRG members are liable to the claimant and seek recovery under the members’ policies. Because members are responsible for defending claims made against them, it is important that they be aware of such third-party claims. The Liquidator has therefore advised the members of third-party claims made against them and will provide periodic updates as additional proofs of claim are filed. This notice will allow ETRRG members to contact all claimants against them, present their defenses, and resolve these matters as promptly as possible.

5. ETRRG Assets. As previously reported, ETRRG’s cash and invested assets have been consolidated in a Vermont account. As of December 31, 2018, the value of those assets was \$7.34 million, consisting of \$1.12 million of cash and cash equivalents, \$6.19 million of invested assets, and approximately \$30,000 of accrued income.

6. Consolidation of Administrative Functions. In the Liquidator’s Second Status Report, I advised that most ETRRG administrative functions had been consolidated with Risk Services, a large captive management organization and that the Liquidator continued to review the Company’s pre-liquidation structures. The most important aspect of that review process involved ETRRG’s services agreement with its third-party claims administrator -- MK Claims Administrators, LLC (“MK Claims”). Since ETRRG was its sole client, MK Claims chose to terminate its operations effective December 31, 2018, rather than continue work on a reduced basis. The Liquidator is working with MK Claims to transfer the Company’s claim files and

does not anticipate that it will be necessary to engage a successor third-party claims administrator.

7. ETRRG's Tax Litigation. While the Seizure Order was in place, the Company requested authorization from the Commissioner to file a complaint against the Internal Revenue Service ("IRS") seeking payment of \$1.3 million in tax refunds alleged to be wrongfully withheld. The Commissioner authorized filing of the complaint to avoid running of the statute of limitations. The matter is presently pending in the United States District Court for the District of Vermont (No. 5:18-CV-00077). Following the IRS's Answer to ETRRG's Complaint on October 15, 2018, the parties agreed to a seven month stay of the case while the IRS and Justice Department consult and then conduct a substantive review of ETRRG's tax returns. This could resolve the litigation in its entirety via a negotiated settlement, or at least narrow issues for discovery. On November 27, 2018, the District Court granted the parties' joint request for this stay.

8. In support of the tax litigation, ETRRG has recently retained an accounting firm, Johnson Lambert, LLP, to consult. Johnson Lambert will conduct an independent review of the Company's tax filings to provide a second opinion as to the strength and weaknesses of its case. While ETRRG's accountant who prepared the relevant tax returns remains entirely confident in the Company's positions, a second expert opinion is necessary now that this claim is in litigation. Johnson Lambert will conduct its review in the coming weeks.

9. Next Steps. The Liquidator will continue to receive, acknowledge, investigate, and determine proofs of claim as they are submitted. (The goal will be to reach consensus with claimants where reasonably possible so as to minimize or avoid disputes requiring adjudication. ETRRG's assets will be managed in a prudent and conservative manner in the meantime.) The

Liquidator anticipates that claim filing activity will be minimal over the coming months and will then intensify as the May 15, 2019 deadline approaches. After the claim filing deadline passes, the Liquidator will be in a position to value claims obligations and make a recommendation to the Court on how best to proceed.

Dated this 14th day of January, 2019,



J. David Leslie
Special Deputy Liquidator

Subscribed and sworn before me
this 14th day of January, 2019



Notary Public
My commission expires:

