

STATE OF VERMONT  
WASHINGTON COUNTY, SS

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2017 JUN 19 P 12:41

\_\_\_\_\_  
COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
REGULATION

PLAINTIFF,

v.

\_\_\_\_\_  
DOCTORS AND SURGEONS  
NATIONAL RISK RETENTION GROUP  
IC, INC.

RESPONDENT.  
\_\_\_\_\_

FILED  
SUPERIOR COURT  
DOCKET NO. 559-916 Wncv

**PETITION FOR ORDER OF LIQUIDATION FOR DOCTORS AND  
SURGEONS NATIONAL RISK RETENTION GROUP IC, INC.**

Now comes the State of Vermont Department of Financial Regulation (the “Department”), by its Commissioner Michael S. Pieciak (the “Commissioner”), pursuant to 8 V.S.A. § 7055(a) and petitions the Court for an Order of Liquidation for Doctors and Surgeons National Risk Retention Group IC, Inc. (“DSNRRG” or the “Company”) in the form filed herewith and approval of the Plan of Liquidation attached hereto as Exhibit A. As grounds therefor, the Commissioner states as follows:

1. Jurisdiction and Authority. This Court has exclusive jurisdiction of this action pursuant to 8 V.S.A. § 7032(e).

2. Petitioner is the Commissioner of the Vermont Department of Financial Regulation and currently serves as Rehabilitator (“Rehabilitator”) of DSNRRG pursuant to the Court’s Order for Rehabilitation of Doctors and Surgeons National Risk Retention Group IC,

Inc., entered October 7, 2016. Pursuant to 8 V.S.A. § 7032(a) the Commissioner has sole authority to commence a delinquency proceeding under Chapter 145 of the Vermont Statutes.

3. Respondent DSNRRG was originally formed as a risk retention group on September 20, 2007, in the Commonwealth of Kentucky as a wholly owned subsidiary of Doctors & Surgeons National Corporation, a Georgia holding company. The Company re-domesticated to Vermont on December 10, 2015, and was authorized to do business as a risk retention group as an incorporated protected cell within Novaris LLC, a Vermont captive insurance company sponsored by Physician's Insurance, A Mutual Company (DSNRRG's reinsurer). See 8 V.S.A. §§ 6001 and 6002. The Company is therefore a "domestic insurer" within the meaning of 8 V.S.A. § 7055(a) and 7056. See also 8 V.S.A. § 6018 and 7031(13)(H). Affidavit of J. David Leslie, Special Deputy Rehabilitator, filed herewith, at ¶ 2 (hereinafter, "Leslie Aff., ¶ \_\_\_\_").

4. Background. On September 15, 2016, the 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 DSNRRG. That petition was based in part on the Commissioner's conclusion that DSNRRG's liabilities plus the legally required capital reserve of \$1 million exceeded its assets. The Court granted the Commissioner's petition by its Order entered on September 15, 2016. Leslie Aff., ¶ 4.

5. On October 5, 2016, the Commissioner filed a Petition for Order of Rehabilitation of Doctors and Surgeons National Risk Retention Group IC, Inc. ("Rehab Petition"). The Rehab Petition alleged that DSNRRG was insolvent, that continuing operations on the current basis would be hazardous to the Company's policyholders, its creditors, and the public generally, and that liquidation remained premature until further information about the Company's financial position could be developed. The Commissioner accordingly requested an order appointing him

as rehabilitator and authorizing him, among other things, to cancel all in-force policies on 30 days' notice, to continue paying administrative expenses in the ordinary course, and to pay 50% of policyholder-level claims (the "Plan of Rehabilitation"). DSNRRG consented to entry of an order of rehabilitation. On October 7, 2016, the Court entered its Order for Rehabilitation of Doctors and Surgeons National Risk Retention Group IC, Inc. ("Rehab Order"), appointing the Commissioner as Rehabilitator and authorizing him to implement the Plan of Rehabilitation. Leslie Aff., ¶ 5.

6. Pursuant to the Rehab Order, the Rehabilitator canceled all in-force policies effective November 12, 2016, commenced the process of returning unearned premium to policyholders, authorized the contracted claim administrator (Western Litigation, Inc., "Western Litigation") to make case reserve adjustments recommended but not acted upon prior to entry of the Rehab Order, and requested that the Company's consulting actuaries (Merlinos & Associates, Inc., "Merlinos") produce an updated reserve analysis. Leslie Aff., ¶ 6.

7. Merlinos' updated analysis indicated the need for a substantial increase in reserves. This conclusion was driven by adverse results on several very large claims, changes in apparent trends as previously recommended case reserve increases now appeared on DSNRRG's books, and the fact that a significant number of claims were reported after June 30, 2016. Due to this adverse development and uncertainty over the Company's ultimate liabilities, the Rehabilitator requested that the distribution rate on policyholder-level claims be reduced from 50% to 35%. See Rehabilitator's Second Status Report filed December 20, 2016. The Court approved this reduction by its Order Approving Rehabilitator's Motion to Reduce Claim Distribution Level entered December 27, 2016. Leslie Aff., ¶ 7.

8. Since the Rehabilitator's Second Status Report was filed, the Rehabilitator has completed distribution of unearned premium to DSNRRG policyholders and resolved a number

of claims. The Rehabilitator also asked Western Litigation to offer its independent judgment on recommended case reserves. Leslie Aff., ¶ 8.

9. Western Litigation submitted an updated claims report on April 10, 2017 proposing approximately \$3.5 million of increases in case reserves on the 60 open claims. Merlinos reviewed that report and concluded the conditions necessary for producing a credible reserve estimate were not present. See Exhibit B (Letter from Merlinos & Associates, Inc., dated June 9, 2017). Reported amounts (case reserves) grew from \$18.3 million at June 30, 2016, to \$21.4 million at November 15, 2016, to \$24.4 million at April 10, 2017. With the additional \$3.5 million of case reserves proposed, reported losses at April 10, 2017 would be \$27.9 million which is \$2.6 million more than the Merlinos estimated ultimate amount at November 15, 2016. Including the additional case reserves proposed on April 10, 2017, reported amounts have grown by 52% in less than one year. Paid amounts have increased from \$13.9 million at June 30, 2016, to \$15.8 million at November 15, 2016 (including \$1.25 million of settled but unpaid amounts), to \$20.0 million at April 10, 2017 (including \$3.26 million of settled but unpaid amounts). In less than one year, paid amounts have grown by 44%. For these reasons Merlinos concluded that further increases to DSNRRG's reserves were necessary, but that the extent of those increases could not be estimated in an actuarially sound manner. See id. The corollary to this conclusion, which Merlinos makes clear, is that the prior estimates of ultimate liabilities used to set the 35% distribution rate are likely to have been understated. Likewise, it is not feasible, under these circumstances, to recommend a distribution percentage until the remaining open claims have been resolved. Therefore, after consulting with Merlinos about its conclusions, on May 16, 2017, the Special Deputy Rehabilitator instructed Western Litigation to stop seeking to settle claims on the basis of a 35% distribution level. See id. Leslie Aff., ¶ 9.

10. Liquidation is Necessary. The Commissioner may seek an order converting a rehabilitation into a liquidation “[w]henever [he] believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile.” 8 V.S.A. § 7055(a). The Commissioner (as Rehabilitator) has concluded that both grounds for liquidation – futility and increased risk of loss – presently exist and that it is therefore appropriate to convert this proceeding from a rehabilitation to a liquidation. Leslie Aff., ¶ 10.

11. *Further attempts to rehabilitate DSNRRG would be futile.* DSNRRG is deeply insolvent and the Rehabilitator believes further attempts at rehabilitation will be futile. As of December 31, 2016, the Company’s assets were \$8,146,591 and its liabilities were \$12,332,407. DSNRRG’s assets decreased over the following months as the Rehabilitator paid several large claims and returned unearned premium (at the established distribution level). As of May 31, 2017, DSNRRG’s assets were \$4.3 million. As discussed further below (see ¶¶ 12.C and 12.D), Merlino no longer believes it is possible to credibly estimate DSNRRG’s liabilities but has advised that recent data suggests an increase in reserves is necessary and that prior estimates are likely to have been understated. Accordingly, the Rehabilitator believes that the Company’s liabilities exceed its assets by such a degree that there is no reasonable possibility it will ever be able to meet its obligations in full. Continued efforts to cure DSNRRG’s insolvency will therefore be futile and it is no longer appropriate to maintain this proceeding as a rehabilitation. See 8 V.S.A. § 7055(a). Leslie Aff., ¶ 11.

12. *Continuing the rehabilitation poses substantially increased risk of loss to creditors, policyholders, and the public.* The Rehabilitator believes that further attempts to rehabilitate DSNRRG would substantially increase the risk of loss to creditors, policyholders, and the public such that liquidation is necessary. See 8 V.S.A. § 7055(a). Specifically, for the

reasons recited below, Rehabilitator is concerned that uncertainty regarding the Company's ultimate liabilities has eroded the effectiveness of key protections contained in the Rehabilitation Plan. Leslie Aff., ¶ 12.

A. In addition to allowing for evaluation as to whether DSNRRG's insolvency could be cured, the Rehabilitation Plan was designed to manage the risk of loss to creditors, policyholders, and the public. Specifically, if the Company could not be returned to health, the Rehabilitation Plan sought to protect creditors by respecting the priorities that would apply in a liquidation and seeking equal treatment of similarly-situated claimants. See 8 V.S.A. §§ 7067 (regarding voidable preferences) and 7081 (establishing priority classes; prohibiting subclasses). The flexible structure of the Rehabilitation Plan was superior to liquidation in many ways. Most notably, the Rehabilitation Plan allowed third-party claimants and policyholders to continue resolving disputes in their home jurisdictions, it avoided the disruption and expense of establishing a claim determination procedure and moving such disputes to Vermont, and it permitted a partial payment to claimants in the ordinary course of business. Leslie Aff., ¶ 13.

B. The key to the Rehabilitation Plan was the distribution rate under which all policyholder-level claimants were to receive payment (and bear losses) at an equal rate. So long as the distribution rate was set at an appropriate level, it was possible to balance the interest of claimants with liquidated/determined claims (these claimants want prompt payment) and the interest of claimants with unliquidated/undetermined claims (these claimants want sufficient assets reserved to pay their claims). Cf. 8 V.S.A. § 7083 (requiring such balancing in liquidation proceedings). The Rehabilitator is now concerned, however, that the current 35% distribution rate is unsustainable, that it is impractical to establish a new (lower) distribution rate, and that continuation of the

rehabilitation process therefore presents significantly increased risk of loss to policyholder-level creditors, particularly those with unliquidated/undetermined claims. Leslie Aff., ¶ 14.

C. The Rehabilitator initially recommended a 50% distribution rate based on Merlinos' September 2016 actuarial report estimating DSNRRG's loss and loss adjustment expenses on outstanding claims were likely to be between \$6.6 million and \$8.8 million. Following receipt of updated loss data from Western Litigation in November of 2016, Merlinos revised its estimates upwards such that its December 2016 report estimated DSNRRG's loss and loss adjustment expenses on outstanding claims were likely to be between \$10.9 million and \$14.5 million. As described in the Rehabilitator's Second Status Report (¶¶ 5-6 and 10), this suggested that a 50% distribution rate was no longer appropriate and that a 35% rate would be prudent. Leslie Aff., ¶ 15.

D. Western Litigation's April 10, 2017 report reflects five more months of experience and its independent judgment as to recommended case reserves. See, *supra*, at ¶ 8 Merlinos' preliminary review of this information caused it to advise that estimates of outstanding loss and loss adjustment expenses may require significant upward revision. Upon further consideration, Merlinos concluded that the claim development stability and sample size necessary for reliable actuarial analysis are not present. Merlinos has therefore advised that it is no longer appropriate or practical to establish a distribution percentage based on its earlier actuarial analyses and that those prior estimates are likely to have understated DSNRRG's ultimate liability. This means that the 35% distribution rate is no longer supported and that there is reason to believe it is too high. See Exhibit A; Leslie Aff., ¶ 16.

E. If the 35% distribution rate is too high, continued payment to policyholder-level claimants at that rate under the Rehabilitation Plan will exhaust estate assets before all policyholder-level claimants received an equivalent payment. The risk could be reduced by establishing a lower distribution rate but, without reliable actuarial analysis, the new rate would be arbitrary and speculative. The risks inherent in applying an arbitrary distribution percentage are material and so significantly increased at this point in the rehabilitation proceeding that liquidation is appropriate. Leslie Aff., ¶ 17.

13. No Guaranty Fund Protection. As a risk retention group, an order of liquidation would affect DSNRRG policyholders more than policyholders of an insurance company. Most policyholders of insolvent insurance companies are eligible for guaranty fund coverage (e.g. 8 V.S.A. §3611-3626), but since the Company is a risk retention group, it cannot participate in the guaranty fund system. See 8 V.S.A. §6054(a); 15 US Code § 3902(a). In the absence of guaranty fund coverage, DSNRRG assets are the sole source of recovery on policyholder-level claims.

14. Because DSNRRG's insolvency does not trigger guaranty fund obligations, there is no need to submit a proposal for the distribution of assets to guaranty associations pursuant to 8 V.S.A. § 7073.

15. Standard Liquidation Practice. In a liquidation of DSNRRG, each policyholder would be responsible for defending his or her claims and paying all claims and defense costs. Actions against DSNRRG would be barred (8 V.S.A. § 7063) and policyholders/creditors (including third-party claimants) would instead be required to submit their claims to the liquidator together with proof sufficient to allow a determination. See 8 V.S.A. §§ 7074 (filing of claims), 7075 (proofs of claim), and 7078 (claim determinations). Claimants dissatisfied with



the liquidator's determination could request reconsideration and, if still dissatisfied, could file objection with the Court (with rights of appeal to the Vermont Supreme Court). See 8 V.S.A. § 7078. All policyholders would likely be paid at the same time, though this may not occur for several years if there is significant claim litigation. See 8 V.S.A. § 7083.

16. Standard liquidation practice is likely to involve significant administrative expense because the liquidator must retain counsel to represent the estate in disputed claim proceedings and the Court might choose to appoint one or more referees. Claimants will also incur increased expense to the extent they must litigate complicated questions of medical malpractice in Vermont rather than in their home jurisdiction.

17. Proposed Plan of Liquidation. To reduce inconvenience to claimants and minimize the overall expense of a liquidation proceeding, the Commissioner proposes a Plan of Liquidation that follows the outlines of standard liquidation practice described above but adds an element of alternative dispute resolution. This addition is designed to divert disputes from litigation and reduce overall administration costs. Leslie Aff., ¶ 18.

18. Pursuant to the Plan of Liquidation, the liquidator would issue notice in the manner specified by statute and specify a claim filing deadline not less than six months after entry of the liquidation order. See 8 V.S.A. § 7061. As proofs of claim are received, the liquidator would review them and make determinations as to priority.<sup>1</sup> See 8 V.S.A. §§ 7074 (filing of claims with liquidator and establishment of deadline); 7075 (proof of claim); and 7081 (defining priority classes). Estate assets are unlikely to permit full payment of class 3 claims. Accordingly, if the liquidator concludes that a claim falls in priority classes 4 through 10, he would typically issue a determination as to priority classification only. See 8 V.S.A. § 7081

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<sup>1</sup> A proposed Proof of Claim form and Notice of Liquidation are attached to the Plan of Liquidation.

(“Every claim in each class shall be paid in full... before the members of the next class receive any payment...”). Claimants receiving notices of determination assigning their claims to subordinate priority classes would have the standard statutory rights to request reconsideration and to file objections with the Court. See 8 V.S.A. § 7078; Leslie Aff., ¶ 19.

19. For medical malpractice claims falling in priority class 3, the liquidator would refer the file to an “adjudicator” (engaged by the liquidator) for the purpose of reviewing such claims. Acting under the authority of the liquidator, the adjudicator would be authorized to investigate such claims, provide a recommendation as to their fair value, and assist in the negotiation of settlement. Based on the adjudicator’s recommendation and analysis, the liquidator would convey offers of settlement to claimants. If settlement can be promptly effectuated, the liquidator will recommend the claim in the agreed amount in priority class 3. If settlement cannot be promptly effectuated, the liquidator will commence the standard claim review procedure and issue a notice of determination subject to the usual objection/judicial appeal process. See 8 V.S.A. § 7078. Leslie Aff., ¶ 20.

20. The liquidator will closely monitor DSNRRG’s financial condition, and as circumstances warrant, petition the Court to establish a distribution percentage for making interim payments on finally determined claims in priority class 3. Leslie Aff., ¶ 21.

21. Payment to creditors with claims in lower priority classes will be deferred. 8 V.S.A. § 7081 (“Every claim in each class shall be paid in full ... before the members of the next class receive any payment.”) In the unlikely event it appears that DSNRRG may have sufficient assets to pay such creditors, the Liquidator will petition the Court to authorize a distribution. Leslie Aff., ¶ 22.

22. Assent. DSNRRG's board of directors has assented to entry of the proposed Order of Liquidation. Leslie Aff., ¶ 2.

23. Proposed Order of Liquidation. As discussed above, the Rehabilitator believes grounds exist for entry of an order of liquidation. The Rehabilitator therefore requests entry of such an order and files herewith a proposed form of order appointing him as liquidator, vesting him with the authority provided for by statute, and directing implementation of the Plan of Liquidation.

WHEREFORE, the Rehabilitator requests that this Court enter an order in the form filed herewith:

- A. Finding that, pursuant to 8 V.S.A. § 7055, further attempts to rehabilitate DSNRRG would be futile and would substantially increase the risk of loss to creditors, policyholders, or the public;
- B. Appointing the Commissioner of the Department of Financial Regulation and his successors in office as liquidator of DSNRRG pursuant to 8 V.S.A. § 7057; and,
- C. Vesting the liquidator with the powers and authority contemplated by 8 V.S.A. ch. 145.

Dated in Montpelier, Vermont, this 17<sup>th</sup> day of June, 2017.

VERMONT COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
REGULATION AS REHABILITATOR OF  
DOCTORS AND SURGEONS NATIONAL  
RISK RETENTION GROUP IC, INC.

By: 

Jennifer Rood  
Assistant General Counsel  
Vermont Department of Financial Regulation  
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## EXHIBIT A – PLAN OF LIQUIDATION

### **Plan of Liquidation for Doctors and Surgeons National Risk Retention Group IC, Inc.**

This Plan of Liquidation (the “Plan”) will govern the liquidation of Doctors and Surgeons National Risk Retention Group IC, Inc. (“DSNRRG”). The Superior Court, Washington County (the “Court”) entered the Order for Rehabilitation of DSNRRG on October 7, 2016 in Commissioner of the Department of Financial Regulation v. Doctors and Surgeons National Risk Retention Group IC, Inc., Docket No. 559-9-16 Wncv. This Plan was approved by the Court by the Order for Liquidation entered on \_\_\_\_\_, 2017 (the “Liquidation Order”), based on the facts set forth in an Affidavit of J. David Leslie, Special Deputy Rehabilitator, filed with the Petition for Order of Liquidation for Doctors and Surgeons National Risk Retention Group IC, Inc.

1. Impact of Liquidation on Policyholders. The order to liquidate DSNRRG significantly affects policyholders. Most policyholders of insolvent insurance companies are eligible for guaranty fund coverage, e.g. 8 V.S.A. §3611-3626, but since DSNRRG is a risk retention group, it cannot participate in the guaranty fund system, 8 V.S.A. §6054(a); 15 US Code § 3902(a). Accordingly, as a result of the liquidation of DSNRRG, management of claims by DSNRRG has ceased and each policyholder is responsible for claims management and paying all defense costs. DSNRRG policyholders and other claimants are required to file claims in the liquidation. 8 V.S.A. §§ 7074 and 7075. Claimants may, therefore, be required to shift the venue for medical malpractice disputes from their home forum to Vermont. This presents the possibility of increased expense, inconvenience, and delay. All claimants will likely be paid at the same time, though this may not occur for several years if there is significant claim litigation.

2. Plan of Liquidation. To reduce the effect of DSNRRG’s liquidation on policyholders and other claimants, the Liquidator shall conduct the liquidation proceedings under the following conditions:

- a. The Liquidator will furnish notice of the Liquidation Order as provided in 8 V.S.A. § 7061. The notice will include a copy of the Proof of Claim (in the

form attached hereto) and will specify a claim filing deadline not less than six months from the date of the Liquidation Order.

- b. The Liquidator will receive completed proofs of claim and make a determination as to priority classification pursuant to 8 V.S.A. § 7081. If the claim falls within priority classes 4 through 10, the Liquidator may decline to make a determination as to the amount of such claim and instead issue a determination solely as to priority.
- c. If the claim falls within priority class 3 and relates to allegations of medical malpractice against a DSNRRG insured, the Liquidator shall refer the matter to an adjudicator. The adjudicator will be engaged by the Liquidator for the purpose of reviewing medical malpractice claims, conducting such investigation as may be necessary, identifying a fair value for the claim, and assisting in settlement discussions. If settlement cannot be promptly achieved, the Liquidator shall determine the claim pursuant to 8 V.S.A. § 7078 and claimants will be entitled to judicial review.
- d. The Liquidator will monitor DSNRRG's financial condition, and as circumstances warrant, petition the Court to establish a distribution percentage for making interim payments on finally determined claims in priority class 3.
- e. Payment to creditors with claims in lower priority classes will be deferred, 8 V.S.A. § 7081 ("every claim in each class shall be paid in full ... before the members of the next class receive any payment.") If it appears that DSNRRG may have sufficient assets to pay such creditors, the Liquidator will petition the Court to authorize a distribution.

3. Vermont law. In all other respects, the Liquidation of DSNRRG will comply with the Order of Liquidation and 8 V.S.A. ch. 145. The Court retains jurisdiction of all matters arising under this Plan.

## PROOF OF CLAIM

### DOCTORS AND SURGEONS NATIONAL RISK RETENTION GROUP IC, INC. ("DSNRRG")

The deadline for filing a Proof of Claim is [6 months + 1 day from Liquidation Order]

IF YOU DO NOT FILE A PROOF OF CLAIM BY THE DEADLINE, YOU  
MAY NOT RECEIVE ANY PAYMENTS FROM DSNRRG.

*ADDITIONAL INSTRUCTIONS ARE ON THE REVERSE SIDE OF THIS FORM. PLEASE PRINT OR TYPE.*

1. Description of Claim(s). Provide a detailed description of the basis for your claim(s) against DSNRRG. Include reference to any claim or docket numbers, amounts spent in defending claims, and amounts paid. To preserve your right to submit claims asserted after you sign this proof of claim and before the claim filing deadline, state "all rights under policies":

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If your claim arises from an insurance policy, provide the following information for each claim:

Policyholder name: \_\_\_\_\_  
Policy number(s): \_\_\_\_\_  
Claim number(s): \_\_\_\_\_  
Date of loss: \_\_\_\_\_

(If you have multiple claims, policyholders, and/or policies to be included in this Proof of Claim, you may attached additional pages as required.)

2. Amount of the claim. If the amount of the claim will increase, state the known amount and then add that the amount is "subject to increase." If you do not know the amount, state "unknown": \$ \_\_\_\_\_.
3. Type of security. If your claim is secured, state the type and amount of such security. If none, state "none": \_\_\_\_\_.
4. Offsets/Reductions. Payments made by DSNRRG that reduce the claim. If none, state "none": \$ \_\_\_\_\_.
5. Priority. Right of priority to payment or other specific right asserted by the claimant. \_\_\_\_\_.
6. Attach copies of any documents that provide support for the claim. If your claim is currently being administered through DSNRRG, no additional documentation is required at the time you submit this proof of claim.

**Under penalties of law, I state that the facts set forth in this Proof of Claim are true to the best of my knowledge, that the sum claimed is justly owed, and that there is no known setoff, counterclaim or defense to the claim.**

Your Name and Address:

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Name and Address of your Attorney:

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Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**MAIL THIS FORM TO:**  
[Special Deputy Liquidator address]

The Special Deputy Liquidator of DSNRRG  
acknowledges receipt of this Proof of Claim.

Date Received: \_\_\_\_\_

Proof of Claim No.: \_\_\_\_\_

## NOTICE OF LIQUIDATION

By Order of the Superior Court for Washington County, Vermont, dated \_\_\_\_\_, 2017, (the "Liquidation Order"), the Commissioner of the Department of Financial Regulation for the State of Vermont, was appointed Liquidator of Doctors and Surgeons National Risk Retention Group IC, Inc. ("DSNRRG"). This notice will serve as notice of the Liquidation Order as required by 8 V.S.A. § 7061.

**IF YOU BELIEVE THAT YOU ARE PRESENTLY OWED MONIES BY DSNRRG, OR MAY BE OWED MONIES AT ANY TIME IN THE FUTURE, YOU MUST FILE A PROOF OF CLAIM ON OR BEFORE [\_\_\_\_\_] OR YOUR CLAIM AGAINST DSNRRG MAY BE BARRED.**

### INSTRUCTIONS FOR COMPLETION OF PROOF OF CLAIM FORM

If you believe that you have a claim now, or may have a claim in the future, against DSNRRG for any reason, you must file a Proof of Claim form in order to preserve your claim. If a claim has been filed against you, include details of the claim. Such details should include a brief narrative description of the claim, any claim or docket numbers, and identification of any costs incurred or payments you have made to date. If you wish to preserve your rights as to any claim that might be filed in the future, describe the claim as "unreported claim."

- You must print your name and address in the space provided and sign and date the Proof of Claim form. If you have an attorney, include his or her contact information.
- Your Proof of Claim must be postmarked on or before [\_\_\_\_\_] and mailed to the following address:

[Special Deputy Liquidator address]

- Priority rights are governed by statute (8 V.S.A. § 7081). If you do not assert a right of priority or do not know the priority class that applies to your claim(s), write "none".
- You may be requested to submit supporting documentation to facilitate the Liquidator's determination of your claim(s).
- If you need more information or have any questions, you may mail your inquiry to the above address or contact [Liquidation staff name, e-mail address, and telephone number].
- If you file a Proof of Claim and your address changes, you are required to notify the Liquidator of such change.

After you file your Proof of Claim, the Liquidator will acknowledge receipt. If you do not receive an acknowledgement within three weeks, please call [Liquidation staff telephone number].

[\_\_\_\_\_] , SPECIAL DEPUTY LIQUIDATOR OF  
DOCTORS AND SURGEONS NATIONAL RISK RETENTION GROUP IC, INC.

June 9, 1017

Mr. J. David Leslie  
Special Deputy Rehabilitator  
Doctors & Surgeons National Risk Retention Group IC, Inc., in Rehabilitation  
Rackemann, Sawyer & Brewster, PC  
160 Federal Street  
Boston, MA 02110

Re: Doctors & Surgeons National Risk Retention Group IC, Inc., in Rehabilitation

Dear Mr. Leslie:

Per your request, we have reviewed updated claim experience for Doctors & Surgeons National Risk Retention Group IC, Inc., in Rehabilitation ("DSNRRG") evaluated as of April 10, 2017, for the purposes of producing an estimate of loss and loss adjustment expense reserves. Actuarial methods of reserve estimation require stability in claim development and sufficient volume to ensure that projections are not subject to extreme levels of variability. We have identified several issues that have reduced our ability to provide an estimate of DSNRRG's unpaid claim liabilities that is not subject to material adverse deviation. We have also concluded that our prior estimates likely understate the ultimate liabilities and that it is no longer appropriate to use our prior estimates to assess the distribution percentages for policy-level claim obligations.

*Variability in Claim Development*

Over the course of the last three claims evaluations (6/30/16, 11/15/16, and 4/10/17), there has been significant payment and case reserving activity that is well in excess of both our expectations and past historical patterns for the company. We have observed significant deterioration at each evaluation.

- Paid amounts have grown from \$13.9 million at 6/30/16, to \$15.8 million at 11/15/16 (including \$1.25 million of settled claims classified as unpaid payable), to \$20.0 million at 4/10/17 (including \$3.26 million of settled claims classified as unpaid payable). In less than one year, paid to date amounts have grown by 44%.
- Reported amounts have grown from \$18.3 million at 6/30/16, to \$21.4 million at 11/15/16, to \$24.4 million at 4/10/17. With the additional \$3.5 million of case reserves estimated by Western Litigation, Inc. ("WLI"), reported losses at 4/10/17 are \$27.9 million. Including the additional case reserves, reported to date amounts have grown by 52% in less than one year, with 35 points of this growth occurring in the last five months.



- Reported losses with the additional case reserve amounts have exceeded our 11/15/16 estimated ultimate amounts by \$2.6 million for report years 2013 to 2016 (approximately 15% greater than our previous estimates of ultimate).

#### Characteristics of Open Claims

As of 4/10/17 there are 60 unsettled open claims, of which 34 are located in New York, 4 are in other high limit states, 16 are located in states with low policy limits, and 6 have been essentially settled or are defense only. Of the 38 New York and other state high limit claims we note the following:

- The majority of these claims are in early stages of discovery and little is known to develop a refined estimate of case reserves.
- The claims in New York are in a legal venue where the notice of a claim does not contain much, if any, detail of the facts underlying the complaint. Observation of prior New York claims recently settled by DSNRRG has shown that once additional information is received, the assessment of these claims changes considerably, subjecting them to potentially very high development given the \$1.0 million or \$1.3 million per claim policy limit.
- Of these 38 claims, only 13 are covered by reinsurance.

#### Changes in Claims Management and Case Reserving

WLI has been handling DSNRRG's claims since the end of 2014. We understand that prior to that period, claims had been handled and settled by the management of DSNRRG. Since 6/30/16, we have noted significant changes in the manner by which case reserves are established.

- Between 6/30/16 and 11/15/16 we observed considerable strengthening of case reserves.
- Per a recent request of the Rehabilitator, WLI completed a claim by claim review of all open claims evaluated as of 4/10/17. WLI's case reserve recommendations results in an increase in case reserves of \$3.3 million, for both indemnity and for attorney expenses. This increase, along with the increase in reported amounts prior to the new assessment, is well above our expectations given our prior estimates and emergence patterns.
- Our assessment of WLI's recent claim by claim review suggests that 25 of the 60 remaining open claims are early in the evaluation process and therefore subject to considerable variance as the facts and circumstances of the cases become known.
- Consistent with diagnostics on closed claims, reserves for attorney expenses are growing as well, with large increases for New York cases. We note that New York claims that remained open for at least two years prior to closing typically incurred a high level of attorney expenses. As many of the open claims have report dates within the last two years, there is uncertainty not only regarding ultimate indemnity amounts, but also ultimate expenses.

In summary, because of the rapidly changing claim development patterns, the relatively low number of open claims, the characteristics of these open claims, and the recent changes in case reserving, we have concluded that any actuarial reserve estimates we produce would result in a significant increase in estimates from our prior work and would also be subject to the potential for significant adverse deviation. Further, we have concluded that it is no longer appropriate or practical to use the estimates from our report dated 12/22/16 to assess the distribution percentages for policy-level claim obligations.

We are available to discuss any questions you have regarding our conclusion, or to discuss our observations that are outlined in this letter.

Sincerely,



Matthew P. Merlino, FCAS, MAAA



Brett E. Miller, FCAS, MAAA, ARM

1. On October 7, 2016, the Court entered an Order for Rehabilitation of Doctors and Surgeons National Risk Retention Group IC, Inc. (“Rehab Order”), appointing the Commissioner of the Department of Financial Regulation (“Commissioner”) as Rehabilitator. The Rehabilitator appointed me Special Deputy Rehabilitator. I submit this Affidavit in support of the Rehabilitator’s Petition for Order of Liquidation for Doctors and Surgeons National Risk Retention Group IC, Inc. (the “Petition”). The facts and information set forth in this affidavit are either within my own knowledge and gained through my involvement in this matter, in which case I confirm they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.
2. DSNRRG’s board of directors has assented to entry of the proposed Order of Liquidation.

3. Respondent DSNRRG was originally formed as a risk retention group on September 20, 2007, in the Commonwealth of Kentucky as a wholly owned subsidiary of Doctors & Surgeons National Corporation, a Georgia holding company. The Company re-domesticated to Vermont on December 10, 2015, and was authorized to do business as a risk retention group as an incorporated protected cell within Novaris LLC, a Vermont captive insurance company sponsored by Physician's Insurance, A Mutual Company (DSNRRG's reinsurer). The Company is therefore a "domestic insurer" within the meaning of 8 V.S.A. § 7055(a) and 7056.

4. On September 15, 2016, the 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 DSNRRG. That petition was based in part on the Commissioner's conclusion that DSNRRG's liabilities plus the legally required capital reserve of \$1 million exceeded its assets. The Court granted the Commissioner's petition by its Order entered on September 15, 2016.

5. On October 5, 2016, the Commissioner filed a Petition for Order of Rehabilitation of Doctors and Surgeons National Risk Retention Group IC, Inc. ("Rehab Petition"). The Rehab Petition alleged that DSNRRG was insolvent, that continuing operations on the current basis would be hazardous to the Company's policyholders, its creditors, and the public generally, and that liquidation remained premature until further information about the Company's financial position could be developed. The Commissioner accordingly requested an order appointing him as rehabilitator and authorizing him, among other things, to cancel all in-force policies on 30 days' notice, to continue paying administrative expenses in the ordinary course, and to pay 50% of policyholder-level claims (the "Plan of Rehabilitation"). DSNRRG consented to entry of an order of rehabilitation. On October 7, 2016, the Court entered its Order for Rehabilitation of

Doctors and Surgeons National Risk Retention Group IC, Inc. (“Rehab Order”), appointing the Commissioner as Rehabilitator and authorizing him to implement the Plan of Rehabilitation.

6. Pursuant to the Rehab Order, the Rehabilitator canceled all in-force policies effective November 12, 2016, commenced the process of returning unearned premium to policyholders, authorized the contracted claim administrator (Western Litigation, Inc., “Western Litigation”) to make case reserve adjustments recommended but not acted upon prior to entry of the Rehab Order, and requested that the Company’s consulting actuaries (Merlinos & Associates, Inc., “Merlinos”) produce an updated reserve analysis.

7. Merlinos’ updated analysis indicated the need for a substantial increase in reserves. This conclusion was driven by adverse results on several very large claims, changes in apparent trends as previously recommended case reserve increases now appeared on DSNRRG’s books, and the fact that a significant number of claims were reported after June 30, 2016. Due to this adverse development and uncertainty over the Company’s ultimate liabilities, the Rehabilitator requested that the distribution rate on policyholder-level claims be reduced from 50% to 35%. The Court approved this reduction by its Order Approving Rehabilitator’s Motion to Reduce Claim Distribution Level entered December 27, 2016.

8. Since the Rehabilitator’s Second Status Report was filed, the Rehabilitator has completed distribution of unearned premium to DSNRRG policyholders and resolved a number of claims. The Rehabilitator also asked Western Litigation to offer its independent judgment on recommended case reserves.

9. Western Litigation submitted an updated claims report on April 10, 2017 proposing approximately \$3.5 million of increases in case reserves on the 60 open claims. Merlinos reviewed that report and concluded the conditions necessary for producing a credible reserve estimate were not present. See Exhibit B to the Petition (Letter from Merlinos &

Associates, Inc., dated June 9, 2017). Reported amounts (case reserves) grew from \$18.3 million at June 30, 2016, to \$21.4 million at November 15, 2016, to \$24.4 million at April 10, 2017.

With the additional \$3.5 million of case reserves proposed, reported losses at April 10, 2017 would be \$27.9 million which is \$2.6 million more than the Merlino's estimated ultimate amount at November 15, 2016. Including the additional case reserves proposed on April 10, 2017, reported amounts have grown by 52% in less than one year. Paid amounts have increased from \$13.9 million at June 30, 2016, to \$15.8 million at November 15, 2016 (including \$1.25 million of settled but unpaid amounts), to \$20.0 million at April 10, 2017 (including \$3.26 million of settled but unpaid amounts). In less than one year, paid amounts have grown by 44%. For these reasons Merlino's concluded that further increases to DSNRRG's reserves were necessary, but that the extent of those increases could not be estimated in an actuarially sound manner. The corollary to this conclusion, which Merlino's makes clear, is that the prior estimates of ultimate liabilities used to set the 35% distribution rate are likely to have been understated. Likewise, it is not feasible, under these circumstances, to recommend a distribution percentage until the remaining open claims have been resolved. Therefore, after consulting with Merlino's about its conclusions, on May 16, 2017, the Special Deputy Rehabilitator instructed Western Litigation to stop seeking to settle claims on the basis of a 35 % distribution level.

10. The Commissioner (as Rehabilitator) has concluded that both grounds for liquidation – futility and increased risk of loss – presently exist and that it is therefore appropriate to convert this proceeding from a rehabilitation to a liquidation.

11. DSNRRG is deeply insolvent and the Rehabilitator believes further attempts at rehabilitation will be futile. As of December 31, 2016, the Company's assets were \$8,146,591 and its liabilities were \$12,332,407. DSNRRG's assets decreased over the following months as the Rehabilitator paid several large claims and returned unearned premium (at the established

distribution level). As of May 31, 2017, DSNRRG's assets were \$4.3 million. Merlino no longer believes it is possible to credibly estimate DSNRRG's liabilities but has advised that recent data suggests an increase in reserves is necessary and that prior estimates are likely to have been understated. Accordingly, the Rehabilitator believes that the Company's liabilities exceed its assets by such a degree that there is no reasonable possibility it will ever be able to meet its obligations in full.

12. The Rehabilitator believes that further attempts to rehabilitate DSNRRG would substantially increase the risk of loss to creditors, policyholders, and the public such that liquidation is necessary. Specifically, for the reason recited below, the Rehabilitator is concerned that uncertainty regarding the Company's ultimate liabilities has eroded the effectiveness of key protections contained in the Rehabilitation Plan.

13. In addition to allowing for evaluation as to whether DSNRRG's insolvency could be cured, the Rehabilitation Plan was designed to manage the risk of loss to creditors, policyholders, and the public. Specifically, if the Company could not be returned to health, the Rehabilitation Plan sought to protect creditors by respecting the priorities that would apply in a liquidation and seeking equal treatment of similarly-situated claimants. The flexible structure of the Rehabilitation Plan was superior to liquidation in many ways. Most notably, the Rehabilitation Plan allowed third-party claimants and policyholders to continue resolving disputes in their home jurisdictions, it avoided the disruption and expense of establishing a claim determination procedure and moving such disputes to Vermont, and it permitted a partial payment to claimants in the ordinary course of business.

14. The key to the Rehabilitation Plan was the distribution rate under which all policyholder-level claimants were to receive payment (and bear losses) at an equal rate. So long as the distribution rate was set at an appropriate level, it was possible to balance the interest of

claimants with liquidated/determined claims (these claimants want prompt payment) and the interest of claimants with unliquidated/undetermined claims (these claimants want sufficient assets reserved to pay their claims). The Rehabilitator is now concerned, however, that the current 35% distribution rate is unsustainable, that it is impractical to establish a new (lower) distribution rate, and that continuation of the rehabilitation process therefore presents significantly increased risk of loss to policyholder-level creditors, particularly those with unliquidated/undetermined claims.

15. The Rehabilitator initially recommended a 50% distribution rate based on Merlinos' September 2016 actuarial report estimating DSNRRG's loss and loss adjustment expenses on outstanding claims were likely to be between \$6.6 million and \$8.8 million. Following receipt of updated loss data from Western Litigation in November of 2016, Merlinos revised its estimates upwards such that its December 2016 report estimated DSNRRG's loss and loss adjustment expenses on outstanding claims were likely to be between \$10.9 million and \$14.5 million. As described in the Rehabilitator's Second Status Report (§§ 5-6 and 10), this suggested that a 50% distribution rate was no longer appropriate and that a 35% rate would be prudent.

16. Western Litigation's April 10, 2017 report reflects five more months of experience and its independent judgment as to recommended case reserves. Merlinos' preliminary review of this information caused it to advise that estimates of outstanding loss and loss adjustment expenses may require significant upward revision. Upon further consideration, Merlinos concluded that the claim development stability and sample size necessary for reliable actuarial analysis are not present. Merlinos has therefore advised that it is no longer appropriate or practical to establish a distribution percentage based on its earlier actuarial analyses and that those prior estimates are likely to have understated DSNRRG's ultimate liability. This means



that the 35% distribution rate is no longer supported and that there is reason to believe it is too high.

17. If the 35% distribution rate is too high, continued payment to policyholder-level claimants at that rate under the Rehabilitation Plan will exhaust estate assets before all policyholder-level claimants received an equivalent payment. The risk could be reduced by establishing a lower distribution rate but, without reliable actuarial analysis, the new rate would be arbitrary and speculative.

18. To reduce inconvenience to claimants and minimize the overall expense of a liquidation proceeding, the Commissioner proposes a Plan of Liquidation (Exhibit A to the Petition) that follows the outlines of standard liquidation practice but adds an element of alternative dispute resolution. This addition is designed to divert disputes from litigation and reduce overall administration costs.

19. Pursuant to the Plan of Liquidation, the liquidator would issue notice in the manner specified by statute and specify a claim filing deadline not less than six months after entry of the liquidation order. As proofs of claim are received, the liquidator would review them and make determinations as to priority.<sup>1</sup> Estate assets are unlikely to permit full payment of class 3 claims. Accordingly, if the liquidator concludes that a claim falls in priority classes 4 through 10, he would typically issue a determination as to priority classification only. Claimants receiving notices of determination assigning their claims to subordinate priority classes would have the standard statutory rights to request reconsideration and to file objections with the Court.

20. For medical malpractice claims falling in priority class 3, the liquidator would refer the file to an “adjudicator” (engaged by the liquidator) for the purpose of reviewing such

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<sup>1</sup> A proposed Proof of Claim form and Notice of Liquidation are attached to the Plan of Liquidation.

claims. Acting under the authority of the liquidator, the adjudicator would be authorized to investigate such claims, provide a recommendation as to their fair value, and assist in the negotiation of settlement. Based on the adjudicator's recommendation and analysis, the liquidator would convey offers of settlement to claimants. If settlement can be promptly effectuated, the liquidator will recommend the claim in the agreed amount in priority class 3. If settlement cannot be promptly effectuated, the liquidator will commence the standard claim review procedure and issue a notice of determination subject to the usual objection/judicial appeal process.

20. The liquidator will closely monitor DSNRRG's financial condition, and as circumstances warrant, petition the Court to establish a distribution percentage for making interim payments on finally determined claims in priority class 3.

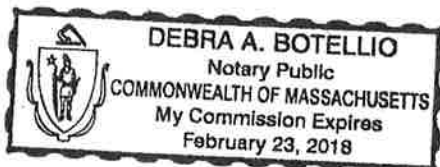
21. Payment to creditors with claims in lower priority classes will be deferred. In the unlikely event it appears that DSNRRG may have sufficient assets to pay such creditors, the Liquidator will petition the Court to authorize a distribution.

Dated this 15th day of June, 2017.

Subscribed and sworn before me  
this 15th day of June 2017.

Debra A. Botellio  
Notary Public  
My commission expires:

J. David Leslie  
J. David Leslie  
Special Deputy Rehabilitator



COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
REGULATION  
PLAINTIFF,  
  
v.  
  
DOCTORS AND SURGEONS  
NATIONAL RISK RETENTION GROUP  
IC, INC.  
RESPONDENT.

SUPERIOR COURT  
DOCKET NO. 559-916 Wncv

This matter came before the Court on the Petition for Order of Liquidation for Doctors and Surgeons National Risk Retention Group IC, Inc., (“Petition”) of the Commissioner of the Department of Financial Regulation (“Commissioner”) as Rehabilitator of Doctors and Surgeons National Risk Retention Group IC, Inc. (“DSNRRG”), for an order of liquidation for DSNRRG pursuant to 8 V.S.A. § 7055(a). In support of the Petition, the Rehabilitator filed an Affidavit of J. David Leslie, Special Deputy Rehabilitator. Based on the evidence presented, the Court finds that further attempts to rehabilitate DSNRRG would be futile and would substantially increase the risk of loss to creditors, policyholders, or the public, and it is hereby ORDERED:

1. Appointment of Commissioner as Liquidator. Pursuant to 8 V.S.A. § 7057(a), the Commissioner, and any successor in the office of Commissioner, is hereby appointed the Liquidator of DSNRRG (the "Liquidator").

2. Liquidator to Take Possession of Assets. Pursuant to 8 V.S.A. § 7057(a), the Liquidator is directed forthwith to take possession of the assets of DSNRRG wherever located, and to administer these assets under the general supervision of this Court and pursuant to the terms of this Order and 8 V.S.A. ch. 145.

3. Title to Property and Assets. Pursuant to 8 V.S.A. § 7057(a), the Liquidator is vested by operation of law with the title to all of the property, contracts and rights of action, and to all of the books and records of DSNRRG, wherever located, as of the date of entry of this Order.

4. Accountings. Pursuant to 8 V.S.A. § 7057(e), within one year of this Order and at least annually thereafter the Liquidator shall file an accounting with the Court. The accountings shall include (at a minimum) the assets and liabilities of DSNRRG and all funds received or disbursed by the Liquidator during the current period.

5. Powers of the Liquidator. Pursuant to 8 V.S.A. § 7060:

A. The Liquidator shall have the power to:

i. Appoint a special deputy to act for the Liquidator and to determine reasonable compensation for the special deputy. The special deputy shall have all the powers of the Liquidator granted by this section. The special deputy shall serve at the pleasure of the Liquidator;

ii. Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as may be deemed necessary by the Liquidator to assist in the liquidation;

iii. Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the Court;

iv. Pay reasonable compensation to persons appointed and to defray from the funds or assets of DSNRRG all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of DSNRRG. In the event that the property of DSNRRG does not contain sufficient cash or liquid assets to defray the costs incurred, the Commissioner may advance the costs so incurred out of any appropriation for the maintenance of the department. Any amounts so advanced for expenses of administration shall be repaid to the Commissioner for the use of the department out of the first available moneys of DSNRRG;

v. Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to testimony after it has been correctly reduced to writing; and in connection with such proceedings, require the production of any books, papers, records or other documents which the Liquidator deems relevant to the inquiry;

vi. Audit the books and records of all agents of DSNRRG insofar as those records relate to the business activities of DSNRRG;

vii. Collect all debts and moneys due and claims, belonging to DSNRRG, wherever located, and for this purpose:

- a. institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
- b. do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the Liquidator deems best; and

- c. pursue any creditor's remedies available to enforce the Liquidator's claims;
- viii. Conduct public and private sales of the property of DSNRRG;
- ix. Use assets of the estate of DSNRRG to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities,
- x. Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of DSNRRG at its market value or upon such terms and conditions as are fair and reasonable. The Liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
- xi. Borrow money on the security of DSNRRG's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of distribution;
- xii. Enter into such contracts as are necessary to carry out this Order, and affirm or disavow any contracts to which the insurer is a party;
- xiii. Continue to prosecute and institute in the name of DSNRRG or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the Liquidator deems unprofitable to pursue further. If DSNRRG is dissolved, the Liquidator shall have the power to apply to

any court in this state or elsewhere for leave to substitute the Liquidator for DSNRRG as plaintiff;

xiv. Prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of DSNRRG against any officer of DSNRRG, or any other person;

xv. Remove any or all records and property of DSNRRG to the offices of the Liquidator or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;

xvi. Deposit in one or more banks in this state such sums as are required for meeting current administration expenses;

xvii. Invest all sums not currently needed, unless the Court orders otherwise;

xviii. File any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located;

xix. Assert all defenses available to DSNRRG as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by DSNRRG after a petition in liquidation has been filed shall not bind the Liquidator;

xx. Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law;

xxi. Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;

xxii. Enter into agreements with any receiver or commissioner of any other state relating to the liquidation or dissolution of DSNRRG if DSNRRG was doing business in both states; and,

xxiii. Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of 8 V.S.A. ch. 145.

B. The enumeration of the powers and authority of the Liquidator shall not be construed as a limitation upon the Liquidator, nor shall it exclude in any manner the Liquidator's right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of DSNRRG's liquidation.

6. Notice to Creditors and Others. Pursuant to 8 V.S.A. § 7061:

A. The Liquidator shall give or cause to be given notice of the issuance of this Order as soon as possible:

i. By first class mail and either by telecopier or telephone to the insurance commissioner of each jurisdiction in which DSNRRG is doing business;

ii. By first class mail to all insurance agents listed as agents of record on in-force policies as of October 7, 2016, at their last known address as indicated by the records of DSNRRG;

iii. By first class mail to all persons known or reasonably expected to have claims against DSNRRG, including to all policyholders at their last known address as indicated by the records of DSNRRG; and



iv. By publication in a newspaper of general circulation in the county in which DSNRRG has its principal place of business and in such other locations as the Liquidator deems appropriate.

B. The notice to potential claimants shall require claimants to file with the Liquidator their claims, together with proper proofs thereof pursuant to 8 V.S.A. § 7075 and this Order, before a date specified by the Liquidator in the notice, which must be no less than six months after the date of this Liquidation Order. All claimants shall have a duty to keep the Liquidator informed of any changes of address.

C. If notice is given in accordance with this section, the distribution of assets of DSNRRG under 8 V.S.A. ch. 145 shall be conclusive with respect to all claimants, whether or not they received notice.

7. Approval of the Plan of Liquidation. The Liquidator is authorized to implement the Plan of Liquidation attached to the Petition as Exhibit A, which is hereby found to be in the best interests of the policyholders of DSNRRG and the public.

8. Stay of Proceedings Involving Claims Defended by DSNRRG. Pursuant to 8 V.S.A. § 7033(a)(6) and (a)(11), for a period of sixty (60) days from the date of the entry of this Order for Liquidation, to the extent of the jurisdiction of this Court and the comity given to its orders, all persons are hereby enjoined from (a) the further prosecution of any action that involves a claim presently being defended by DSNRRG, and (b) any other action that might lessen the value of the insurer's assets or prejudice the rights or policyholders, creditors or shareholders, or the administration of the liquidation proceeding. Such time is necessary for the implementation of the Liquidation Plan and for the orderly transition of the defense of claims.

9. Actions By and Against Liquidator.

A. Pursuant to 8 V.S.A. § 7063, upon issuance of this Order, no action at law or equity shall be brought against DSNRRG or the Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after issuance of such Order. Whenever, in the Liquidator's judgment, protection of the estate of DSNRRG necessitates intervention in an action against DSNRRG that is pending outside this state, the Liquidator may intervene in the action. The Liquidator may defend any action in which the Liquidator intervenes under this section at the expense of the estate of DSNRRG.

B. DSNRRG, its officers, directors, trustees, agents, employees, and all other persons, are hereby enjoined and otherwise prevented from:

- i. instituting or further prosecuting any actions or proceedings of any nature whatsoever, including matters in arbitration, against DSNRRG, its assets or the Liquidator or any Special Deputy;
- ii. interfering with the Liquidator or with a proceeding under 8 V.S.A. ch. 145;
- iii. causing waste of DSNRRG's assets;
- iv. obtaining preferences, judgments, attachments, garnishments or liens against DSNRRG or its assets;
- v. levying execution against DSNRRG or its assets;
- vi. withholding from the Liquidator books, accounts, documents, or other records or information relating to the business of DSNRRG, or failing to preserve such material;

vii. any other threatened or contemplated action that might lessen the value of DSNRRG's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of the liquidation; or

viii. the setoff of any debt owing to DSNRRG; provided, however, that nothing herein shall prohibit the setoff of mutual debts or mutual credits in accordance with 8 V.S.A. § 7069.

10. Attachment, Garnishment and Levy of Execution. Pursuant to 8 V.S.A. § 7098, during the pendency in this or any other state of a DSNRRG liquidation, whether called by that name or not, no action or proceeding in the nature of an attachment, garnishment or levy of execution shall be commenced or maintained in this state against DSNRRG or its assets.

11. Effectiveness of Provisions of this Order. Each of the provisions of this Order of Liquidation shall be effective unless it is found by this Court in a proceeding expressly addressing the issue to be prohibited by 8 V.S.A. Ch. 145.

12. Retention of Jurisdiction. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

13. Finality of Order. Notwithstanding the retention by this Court of jurisdiction under section 12 hereof, or any other provisions hereof, this is a Final Order.

14. Incorporation of Provisions of 8 V.S.A. ch. 45. To the extent that any applicable provisions of 8 V.S.A. ch. 145 are not explicitly incorporated in this Order of Liquidation, such provisions shall be deemed to be incorporated herein.

Dated at Montpelier, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Superior Court Judge



John Oxendine, 4370 Peachtree Road, NE, Atlanta, GO 30319

And by electronic mail to Robert Zack at [rzacklaw@verizon.net](mailto:rzacklaw@verizon.net)

Jonathan McKenzie at [jmckenzie@alternamanagers.com](mailto:jmckenzie@alternamanagers.com) and

John Oxendine at [jwolaw@gmail.com](mailto:jwolaw@gmail.com)

19 June 2017

Date

JR

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