

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

COMMISSIONER OF THE
DEPARTMENT OF FINANCIAL
REGULATION
PLAINTIFF,

v.

DOCTORS AND SURGEONS
NATIONAL RISK RETENTION GROUP
IC, INC.
RESPONDENT.

CIVIL DIVISION
DOCKET NO. 559-916 Wncv

LIQUIDATOR'S MOTION FOR FINAL DISTRIBUTION

Kevin J. Gaffney, Commissioner of the Vermont Department of Financial Regulation (“Commissioner”) in his capacity as Liquidator (“Liquidator”) of Doctors and Surgeons National Risk Retention Group IC, Inc. (“DSNRRG”), hereby submits this Motion for a Final Distribution (“Motion for Final Distribution”) requesting that the Court enter an order for a final distribution on allowed priority class 3 claims at a 47.75% rate.

1. The liquidation statutes establish priority classes for particular types of claims and require that “[e]very claim in each 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. The liquidation statutes also permit the distribution of estate assets “[u]nder the direction of the Court... in a manner that will ensure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.” 8 V.S.A. § 7083.

2. In recognition of these directives, the Plan of Liquidation approved by the Court on August 10, 2017, required that the Liquidator “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.” See id., ¶ 2.d. Pursuant to that instruction, the Liquidator petitioned the Court in August 2019 for an order authorizing a 100% distribution on allowed claims in priority class 1 (administrative expenses) and a 20% distribution on allowed claims in priority class 3 (policy-related claims). The Court granted that motion by its Order Authorizing Distributions on Allowed Priority Class 1 Claims and an Interim Distribution on Allowed Class 3 Claims entered September 6, 2019. When all but one of the claims filed in this proceeding had been determined, the Liquidator petitioned the Court for an increase in the distribution percentage on allowed priority class 3 claims -- from 20% to 42.9% -- so as to distribute substantially all estate assets not required for either administrative expenses or a reserve on the final remaining claim. The Court granted that motion on September 26, 2022, by its Entry Regarding Motion. Affidavit of J. David Leslie, Special Deputy Liquidator, in Support of Motion for Final Distribution (“Leslie Distribution Aff., ¶ __”), ¶ 2.

3. On September 12, 2024, the Liquidator filed his Status Report, Annual Accounting, and Eighth Report of Claims which advised the Court that, among other things, the final claim in this proceeding had been determined. By its Order Approving Liquidator’s Eighth Report of Claims entered on September 17, 2024, the Court allowed the final remaining claim and completed the process of valuing the DSNRRG estate’s obligations. Leslie Distribution Aff., ¶ 3.

4. With all estate obligations valued, it is now possible for the Liquidator to make a final distribution and apply to the Court for discharge and termination of the proceeding. The Liquidator must first estimate the remaining costs of administration so that “adequate funds [may be] retained for such payment.” 8 V.S.A. § 7081. For this purpose, the Liquidator has developed a plan for termination of the proceeding and -- by his Motion for Approval of Plan of

Termination (“Plan of Termination Motion”) filed herewith -- requested approval from the Court. The Liquidator has also solicited cost estimates from service providers and established a \$45,000 budget for making the final distribution contemplated by this motion (including collecting payment instructions from creditors, issuing checks/wires, and disposing of unclaimed funds), making certain filings with the National Practitioner Data Bank and similar entities, preparing DSNRRG’s final tax returns, destroying estate records, and taking the other steps necessary to terminate DSNRRG’s corporate existence and close this proceeding. These costs fall within priority class 1. See 8 V.S.A. § 7081; Leslie Distribution Aff., ¶ 4.

5. All estate assets remaining after establishing a reserve for the payment of priority class 1 expenses are available for distribution to allowed claims in priority class 3.¹ See 8 V.S.A. § 7081. Those assets include both the cash remaining in DSNRRG’s accounts after establishment of the administrative expense reserve (approximately \$878,000) as well as credits for earlier distributions from the estate. The Liquidator calculates that these assets are sufficient to support a 47.75% distribution on allowed priority class 3 claims. Leslie Distribution Aff., ¶ 5.

6. The Liquidator recommends that the Court increase the distribution percentage on allowed priority class 3 claims to 47.75% so as to distribute all estate assets not held in reserve to creditors in the residual priority class. This will constitute the final distribution from the DSNRRG estate. See 8 V.S.A. § 7083; Leslie Distribution Aff., ¶ 6.

¹ Priority class 2 will necessarily be empty in this proceeding because it applies to the administrative expenses of guaranty associations (see 8 V.S.A. § 7081) and risk retention groups such as DSNRRG are prohibited by federal law from participating in the guaranty fund system. See 15 U.S.C.A. § 3902(a) and 8 V.S.A. § 6054(a) (conforming provision in State law).

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

- (a) Granting this Motion for Final Distribution;
- (b) Setting the final distribution rate on priority class 3 claims at 47.75%; and,
- (c) Granting such other and further relief as justice may require.

Dated in Montpelier, Vermont, this 14th day of October, 2024.

KEVIN J. GAFFNEY, COMMISSIONER
DEPARTMENT OF FINANCIAL REGULATION
AS LIQUIDATOR OF DOCTORS AND
SURGEONS NATIONAL RISK RETENTION
GROUP IC, INC.

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A proposed form of order accompanies this Motion for Final Distribution.