



State of Vermont
Department of Financial Regulation
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March 12, 2021

Donna Waters, COM
Superior Court, Washington Unit
65 State Street
Montpelier, VT 05602

RE: Doctors and Surgeons National
Risk Retention Group IC Inc. 559-9-16 Wncv

Dear Ms. Waters:

I enclose for filing the status Report, Accounting and Fifth Report of Claims prepared by the Special Deputy Liquidator, along with a Motion for Approval and a Proposed Order.

Thank you for your cooperation.

Sincerely,

Jennifer Rood

Assistant General Counsel
State of Vermont
Department of Financial Regulation
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Montpelier, VT 05620
(802) 828-5672
Jennifer.rood@vermont.gov



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

**MOTION FOR ORDER APPROVING LIQUIDATOR'S
FIFTH REPORT OF CLAIMS**

Michael S. Pieciak, 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 moves for an order approving the Liquidator’s Fifth Report of Claims, attached as Exhibit A to the simultaneously filed Liquidator’s Status Report and Fifth Report of Claims (“Status Report”).

1. The Liquidator is required to “review all claims duly filed in the liquidation and... make such further investigation as he... shall deem necessary.” 8 V.S.A. § 7082(a); see Plan of Liquidation, ¶ 2. The Liquidator may “compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court”. *Id.* “When a claim is denied in whole or in part by the liquidator, written notice of determination shall be given to the claimant... by first class mail at the address shown in the proof of claim.” 8 V.S.A. § 7078(a). “Within 60 days from the mailing of the notice [of determination], the claimant may file

objections with the liquidator” and “[i]f no such filing is made, the claimant may not further object to the determination.” Id. “As soon as practicable” – i.e. after the Liquidator issues a determination and the objection period runs -- “the liquidator shall present to the court a report of the claims against the insurer with recommendations.” 8 V.S.A. § 7082(a) (report to include names, addresses, and amount recommended, if any). “The court may approve, disapprove, or modify the report on claims [filed] by the liquidator.” 8 V.S.A. § 7082(b)

2. On September 4, 2020, the Liquidator submitted his Status Report, Annual Accounting, and Fourth Report of Claims which provided an update on the status of the liquidation and submitted twelve finally determined claims, together with the Liquidator’s recommendations, for approval. See 8 V.S.A. §§ 7082(a) and 7082(b). The Court entered its Order Approving Liquidator’s Fourth Report of Claims on September 8, 2020.

3. Since filing of the Fourth Report of Claims on September 4, 2020, the Liquidator’s determination of an additional five POCs has become final. See 8 V.S.A. § 7078(a). These five POCs are submitted, together with the Liquidator’s recommendations, in the Liquidator’s Fifth Report of Claims attached to the Status Report as Exhibit A. See 8 V.S.A. § 7082(a).


4. The governing statute authorizes the Court to “approve, disapprove, or modify the report on claims by the liquidator.” 8 V.S.A. § 7082(b).

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

- (a) Granting this Motion for Order Approving Liquidator's Fifth Report of Claims; and,
- (b) Granting such other and further relief as justice may require.

Dated in Montpelier, Vermont, this 10th day of March, 2021.

MICHAEL S. PIECIAK, COMMISSIONER
DEPARTMENT OF FINANCIAL REGULATION
AS LIQUIDATOR OF DOCTORS AND
SURGEONS NATIONAL RISK RETENTION
GROUP IC, INC.



Jennifer Rood
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Assistant Attorney General
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A proposed form of order accompanies this Motion.

STATE OF VERMONT

SUPERIOR COURT
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COMMISSIONER OF THE
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DOCTORS AND SURGEONS
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IC, INC.
RESPONDENT.

CIVIL DIVISION
DOCKET NO. 559-916 Wncv

LIQUIDATOR'S STATUS REPORT AND FIFTH REPORT OF CLAIMS

I, J. David Leslie, Special Deputy Liquidator, hereby submit this status report regarding the liquidation of Doctors and Surgeons National Risk Retention Group IC, Inc. ("DSNRRG" or the "Company") as well as the Fifth Report of Claims attached hereto as Exhibit A.

1. Background. DSNRRG was placed in rehabilitation by the Court's Order for Rehabilitation of Doctors and Surgeons National Risk Retention Group IC, Inc. ("Rehabilitation Order") entered on October 6, 2016. On August 10, 2017, the Court entered its Order of Liquidation ("Liquidation Order") that, among other things, appointed the Commissioner of the Department of Financial Regulation as Liquidator ("Liquidator"), authorized him to appoint a special deputy liquidator, and approved the Plan of Liquidation. See Order of Liquidation ¶¶ 1, 5, 6, and 7. The Liquidator appointed me to serve as Special Deputy Liquidator on August 17, 2017.

2. Annual Accountings. As required by the liquidation statutes and the Liquidation Order, I have submitted annual accountings to the Court. The first annual accounting was

approved by the Court on August 22, 2018, the second on September 5, 2019, and the third on September 8, 2020.

3. Status Reports. In addition to annual accountings, the Liquidator has filed semiannual status reports with the Court beginning on May 9, 2018. After the Liquidator's first status report, subsequent reports have been submitted approximately six months after each annual accounting to keep the Court regularly apprised of the work performed and plans going forward. The Court has entered orders approving each such status report.

4. Reports of Claims. As the Liquidator has investigated and resolved the claims filed against DSNRRG, he has submitted claim reports to the Court in connection with each status report. These claim reports advise of finally determined proofs of claim ("POCs"), together with the Liquidator's recommendations, for approval. See 8 V.S.A. §§ 7082(a) ("[T]he liquidator shall present to the court a report... of the claims against the insurer with recommendations") and 7082(b) ("The court may approve, disapprove, or modify the report on claims [filed] by the liquidator.") The Liquidator's first four claim reports were submitted on January 31, 2019, August 29, 2019, February 28, 2020, and September 4, 2020, and each has been approved by the Court.

5. Interim Distribution. On August 29, 2019, the Liquidator also filed his Motion for an Order Authorizing Distributions on Allowed Priority Class 1 Claims and an Interim Distribution on Allowed Class 3 Claims ("Motion for Interim Distributions") which requested authority to make a 100% distribution on allowed priority class 1 claims and a 20% interim distribution on allowed priority class 3 claims. See 8 V.S.A. §§ 7081 (establishing statutory priorities) and 7083 (describing the circumstances under which a distribution may be ordered). The Court granted the motion, entering its Order Authorizing Distribution on Allowed Priority Class 1 Claims and an Interim Distribution on Allowed Class 3 Claims on September 5, 2019.

6. Priority class 1 claims have been paid in full. See, *infra*, 10 (regarding withdrawal of certain class 1 claims). With regard to interim distribution on priority class 3 claims, the Liquidator's authorization to make payment was "[c]ontingent upon having first received a federal priority act release from the United States".¹ *Id.*, ¶ iv. The Liquidator requested such a release in October of 2019 and one was provided by the United States in June of 2020.

7. Upon receipt of the federal priority act release, the Liquidator contacted claimants with allowed priority class 3 claims that would be entitled to receive disbursements in the 20% interim distribution.² At present, there are seventeen claims on which creditors are entitled to receive a total of \$627,790.50. If the Court approves the Liquidator's Fifth Report of Claims (see, *infra*, ¶ 11), an additional 5 claims will be eligible for distribution of an additional \$270,738.90.) The Liquidator provided each claimant with an interim distribution calculation, requested payment instructions, and sought confirmation as to the status of any liens. Fifteen of seventeen creditors returned responses and fourteen of those creditors have cashed their disbursement checks. The Liquidator will repeat that process if the Court approves the Fifth Report of Claims.

¹ As discussed in the Liquidator's Motion for an Order Authorizing Distributions on Allowed Priority Class 1 Claims and an Interim Distribution on Allowed Class 3 Claims (filed August 29, 2019), the federal priority act renders the liquidator of an insolvent insurer personally liable to the extent of distributions from the estate if federal claims are not paid. See *id.*, ¶ 13; 31 U.S.C.A. § 3713. Federal courts have held, however, that claim filing deadlines established under State law are ineffective against the United States and that this means that the United States might assert a new claim at any time and attempt to hold a liquidator personally liable in the event that a distribution was previously made. See *id.* Federal courts have recognized that this is "simply terrible public policy" and means that liquidators "cannot ever pay off creditors with lower priorities" – i.e. those below priority class 1 – "unless [they] can wrangle a waiver from the United States." *Ruthardt v. United States*, 303 F.3d 375, 385 (1st Cir. 2002) *cert. denied*, 538 U.S. 1031 (2003).

² As discussed in the Motion for Interim Distributions (see ¶¶ 9 and 20), during the course of rehabilitation, DSNRRG creditors with policy-related claims received payments that, in most cases, were equivalent to a 35% distribution. When making distributions in the liquidation proceeding, the estate is entitled to credit for such payments. Effectively, therefore, a claimant with an allowed priority class 3 claim that received a 35% distribution in rehabilitation will not receive further disbursements from the estate until the Court orders a class 3 distribution at a rate greater than 35%.

8. Liquidation website. All annual accountings, status reports, and reports of claims have been posted on the Company's former website (www.dsnrrg.com) to keep creditors and other interested parties apprised of progress in the liquidation proceeding. Other key liquidation records posted to the site include the Liquidation Order, POC form, instructions for filing, the Liquidator's Motion for Interim Distributions, and the Court's order approving that motion.

FIFTH REPORT OF CLAIMS

9. Prior Reports of Claims. As discussed above (see ¶ 4), the Liquidator has filed four reports of claims that have been approved by the Court. Cumulatively, these reports included recommendations regarding 116 finally determined POCs. The Court's approval of these reports crystalized the value and priority classification of those POCs which, cumulatively, included eight claims allowed in priority class 1 (a total value of \$30,490.39) and 69 claims allowed in priority class 3 (a total value of \$5,286,210.06). (The remaining thirty-nine claims fall in priority classes 4-10 or were denied/withdrawn.)

10. In November of 2020, the Liquidator learned that seven of the allowed priority class 1 claims had been filed in error. Specifically, the claims sought payment of outstanding invoices from defense counsel for work performed in rehabilitation. Defense counsel has discovered, however, that the invoices had been previously paid by the Company's former third-party administration. Counsel returned the interim distribution checks and has withdrawn the relevant claims. Priority class 1 liabilities are now limited to a single allowed claim with a total value of \$2,640.

11. Since the Fourth Report of Claims was filed on September 4, 2020, the Liquidator's determinations have become final with regard to five additional POCs. See 8 V.S.A. §§ 7078(a) ("Within 60 days from the mailing of the notice [of determination], the claimant may file objections with the liquidator" and "[i]f no such filing is made, the claimant

may not further object to the determination”) and 7082(a) (“[T]he liquidator shall present to the court a report... of the claims against the insurer with recommendations”). These five POCs are reported in the Liquidator’s Fifth Report of Claims, attached as Exhibit A hereto, together with the Liquidator’s recommendations. See 8 V.S.A. § 7082(a). The Fifth Report of Claims also reports withdrawal of the POCs discussed above in ¶ 8. By his Motion for Order Approving Liquidator’s Fifth Report of Claims (filed herewith), the Liquidator requests that the Court enter an order approving the Fifth Report of Claims. See 8 V.S.A. § 7082(b) (“The court may approve, disapprove, or modify the report on claims [filed] by the liquidator.”).

STATUS REPORT

12. DSNRRG Assets & Liabilities. A simplified DSNRRG balance sheet, as of February 28, 2021, is presented below in Table 1.

Table 1 -- Simplified DSNRRG Balance Sheet as of February 28, 2021

ASSETS	
Cash & cash equivalents	\$ 2,686,627
Interest receivable	15
Credit for interim distribution in liquidation ³	602,443
Credit for payments in rehabilitation ⁴	600,000
Total Assets	\$ 3,889,086
 LIABILITIES	
Priority class 1	
POCs allowed	\$ 2,640
Reserve for administrative expense	534,897
Total class 1 claims	\$ 537,537
Priority class 3	
POCs allowed/presented for allowance	\$ 6,639,905
Undetermined/unliquidated	2,250,000
Total class 3 claims	\$ 8,889,905
Total Class 1 & Class 3 liabilities	\$ 9,427,442

³ The total amount of allowed priority 1 and priority class 3 claims are set forth as estate liabilities. The estate will be entitled to credit for interim distributions made on those claims when the time comes to make a final distribution.

⁴ As discussed above in note 2, when making distribution on certain priority class 3 claims, the estate will be entitled to credit for payments made during the course of DSNRRG’s rehabilitation. The extent to which such credits can be applied in setoff depends upon the distributions made from the estate. The Liquidator had initially estimated that “the ultimate recovery on these claims will exceed \$275,000”, revised that estimate to \$450,000 in September of 2020, and now projects the figure may exceed \$600,000.

The asset figures presented in Table 1 reflect the balance of accounts controlled by the Liquidator (i.e. the marshalled assets of the estate) plus payments that DSNRRG made in rehabilitation or liquidation which may be applied in setoff. Liability figures are subject to greater uncertainty. Specifically, the Liquidator's reserve for administrative expense (priority class 1) is intended to be conservative and reflects the significant potential for variability should claim litigation prove necessary. See 8 V.S.A. § 7081 (establishing priority classes). The Liquidator's estimate of policy-related exposures (priority class 3) is similarly subject to variability given that actuarial analysis of DSNRRG's exposure is not possible.⁵ See *id.* The Liquidator therefore reports the liabilities that have been finally determined (allowed/presented POCs) as well as the "best estimate" of undetermined/unliquidated policyholder-level claims generated by Patrick McGrath of McGrath Associates Claims & Risk Services, Inc., the claim adjudicator engaged pursuant to the Plan of Liquidation.⁶ Because estate assets will be insufficient to pay priority class 3 claims in full, no distribution will be possible on claims falling in priority classes 4-10 and the Liquidator has deferred making a determination as to the amount of such claims. See 8 V.S.A. § 7081.

13. Filing of Proofs of Claim. The Liquidator established February 12, 2018 as the claim filing deadline. See Liquidation Order, ¶ 6.B. The Liquidator received 114 POCs before the February 12, 2018 deadline and has since received thirty-three late-filed claims for a total of 147 POCs received in this proceeding.⁷

⁵ One of the principal reasons for terminating the rehabilitation and placing DSNRRG in liquidation was the conclusion of the Rehabilitator's actuaries that "the claim development stability and sample size necessary for reliable actuarial analysis are not present." Petition for Order of Liquidation for [DSNRRG] filed June 19, 2017 at ¶ 12.C.

⁶ Mr. McGrath's "best estimate" figure is a midpoint estimate based on qualitative analysis and professional judgment. See Motion for Interim Distributions, ¶ 16. Because there are very few claims remaining with unresolved liability, this figure is subject to significant variability.

⁷ Some POCs have been subdivided – e.g. POC 43 into POC 43D and 43I – to accommodate assignments or for other administrative purposes. Ultimately, therefore, the Liquidator will issue more than 147 claim determinations.

14. In the Annual Accounting & Status Report filed on August 20, 2018 (“2018 Annual Report”), the Liquidator noted that the proceeding was no longer at an early stage and the acceptance of late-filed claims will become increasingly difficult as the liquidation process continues. Id., ¶ 4; see 8 V.S.A. § 7074(d) (“The Liquidator may consider any claim filed late” so long as doing so “does not prejudice the orderly administration of the estate.”). Two of the 147 POCs received to date were submitted after the 2018 Annual Report was filed. The Liquidator has included those POCs among the other claims being investigated and will periodically assess whether their consideration is prejudicing the orderly administration of the estate. This proceeding is now at an advanced stage and the time required to investigate a newly filed claim would substantially prejudice the orderly administration of the estate. Should any additional POCs be submitted, therefore, the Liquidator anticipates that they would be assigned to priority class 8 and a determination issued solely as to priority. See 8 V.S.A. § 7081 (Class 8 includes “[c]laims filed late”); Plan of Liquidation, ¶ 2.b (“If a 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.”)

15. Work of the Claims Adjudicator. On October 24, 2017, as contemplated by ¶ 2.c of the Plan of Liquidation, the Liquidator engaged Mr. McGrath to serve as claims adjudicator. The Liquidator has referred all POCs potentially presenting questions of medical malpractice to Mr. McGrath for investigation and valuation. Mr. McGrath has reviewed each claim and presented the Special Deputy Liquidator with an initial report providing background, analysis, and recommendations.

16. The Special Deputy Liquidator reviews Mr. McGrath’s reports and takes such further action as may be appropriate. These actions may include asking that claimants/policyholders produce supplemental information, monitoring the progress of

underlying medical malpractice litigation, authorizing Mr. McGrath to initiate settlement discussions, or issuing notices of determination where settlement either is agreed or proves impractical. Mr. McGrath updates his reports and analysis regularly as additional information is received. Mr. McGrath has also supported the Liquidator by producing estimates of undetermined/unliquidated policyholder-level claims which he updates on a periodic basis. See, *supra*, ¶ 10 (presenting a “best estimate” of claim exposures).

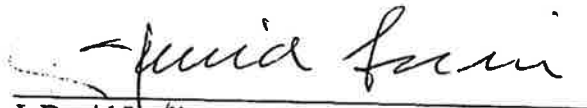
17. Claim Resolution Strategy. Until recent months, all claim determinations reflected negotiated compromises or turned on issues other than the substantive merits of an open medical malpractice claim. The Liquidator pursued this strategy because the alternative -- issuing claim determinations that assign an expected value to ongoing lawsuits and trigger the objection, re-determination, and hearing process -- presents a risk of duplicative litigation, increased administrative expenses, and potential delay. See 8 V.S.A. § 7078(a) (if the Liquidator “does not alter his... denial of the claim as the result of the objection... the matter may be heard by the court or by a court-appointed referee...”). Those concerns must be balanced, however, against the interests of creditors with allowed claims in receiving a final distribution as soon as possible.

18. There are now twenty-seven unresolved proofs of claim relating to fourteen incidents. Further, for seven of the remaining fourteen incidents, claimants have reported that liability is finally determined by settlement or judgment and the POCs remain open solely because the Liquidator is awaiting receipt of the supporting documentation. Where the DSNRRG delinquency proceeding (rehabilitation and liquidation) has been ongoing for more than four years, creditors with open claims have had an extended opportunity to pursue resolution of matters potentially implicating DSNRRG coverage while creditors with finally determined claims have waited an extended period to receive full distributions. The Liquidator

has therefore concluded that the balance of interests now weighs heavily in favor of finally determining all claims, making a final distribution, and closing the estate. The Liquidator has therefore begun informing claimants that the proceeding is entering its final stages and that all claims will be addressed on a timeframe designed to permit closure of the estate by the end of 2021.

19. Over the next several months, the Liquidator will issue notices of determination regarding all open claims with the objective of having all POCs finally determined (or identified as requiring a disputed claim proceeding under 8 V.S.A. § 7078) by August of 2021 when the next status report will be filed.

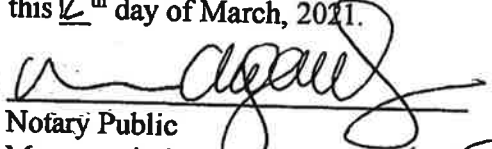
20. Next Steps. Over the coming months the Liquidator, assisted by Mr. McGrath, will investigate and issue notices of determination on all open POCs and will submit a final report of claims. The Liquidator will also continue the process of making disbursements on allowed priority class 3 claims pursuant to the 20% interim distribution previously ordered by the Court. The Liquidator proposes making his next status report in August of 2021.



J. David Leslie
Special Deputy Liquidator

Dated this 12th day of March, 2021.

Subscribed and sworn before me
this 12th day of March, 2021.



Notary Public

My commission expires: 10-24-25

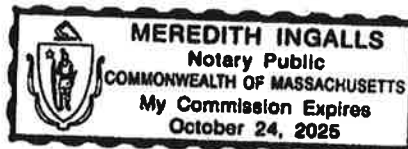


EXHIBIT A

Liquidator's Fifth Report of Claims
March __, 2020

Claims Recommended for Allowance in Priority Class 3

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority Class</u>	<u>Amount Allowed</u>	<u>Prior Payments</u>
29	Estate of Deborah Bryant	90 Paladino Ave. #4-F, New York, NY 10035	3	\$ 750,000.00	--
64	Allen B. Zelman, M.D.	1649 East 28 th Street, Brooklyn, NY 11229	3	25,218.98	--
101A	Christina Shamas, M.D.	6700 Crosswinds Drive, N., Suite 200-A, St. Petersburg, FL 33710	3	143,735.05	--
101B	Christina Shamas, M.D.	6700 Crosswinds Drive, N., Suite 200-A, St. Petersburg, FL 33710	3	334,740.47	--
133	David Glass, M.D.	333 Rector Place, Apt. 706, New York, NY 10280	3	100,000.00	--

Recommended for Allowance (Fifth Report of Claims) \$1,353,694.50

Previously Allowed (First through Fourth Reports of Claims) 5,286,210.06 \$ 912,710.56

Total: Priority Class 3 \$6,639,904.56 \$ 912,710.56

Claims Denied or Withdrawn

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority Class</u>	<u>Amount Allowed</u>	<u>Prior Payments</u>
108	Harris Beach, PLLC	99 Garnsey Road, Pittsford, NY 14534	n/a	n/a	n/a
109	Harris Beach, PLLC	99 Garnsey Road, Pittsford, NY 14534	n/a	n/a	n/a
110	Harris Beach, PLLC	99 Garnsey Road, Pittsford, NY 14534	n/a	n/a	n/a
111	Harris Beach, PLLC	99 Garnsey Road, Pittsford, NY 14534	n/a	n/a	n/a
112	Harris Beach, PLLC	99 Garnsey Road, Pittsford, NY 14534	n/a	n/a	n/a
113	Harris Beach, PLLC	99 Garnsey Road, Pittsford, NY 14534	n/a	n/a	n/a
114	Harris Beach, PLLC	99 Garnsey Road, Pittsford, NY 14534	n/a	n/a	n/a

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CIVIL DIVISION
DOCKET NO. 559-916 Wncv

[PROPOSED]
ORDER APPROVING LIQUIDATOR'S FIFTH REPORT OF CLAIMS

This matter having come before the Court by motion of the Commissioner of the Vermont Department of Financial Regulation in his capacity as Liquidator ("Liquidator") of Doctors and Surgeons National Risk Retention Group IC, Inc. ("DSNRRG"), for an order approving his Fifth Report of Claims, attached as Exhibit A to the simultaneously filed Liquidator's Status Report and Fifth Report of Claims, pursuant to 8 V.S.A. § 7082, it is ORDERED that the Liquidator's Fifth Report of Claims is hereby APPROVED, and the claims presented therein at Exhibit A are ALLOWED against the DSNRRG estate in the recommended amounts and priority classes.

Dated in Montpelier, Vermont, _____, 2021.

Superior Court Judge