

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 Court granted the accompanying motion and entered its Order Approving Liquidator’s First Report of Claims on February 1, 2019. On August 29, 2019, I submitted the Liquidator’s Status Report, Annual Accounting, and Second Report of Claims (“Second Report of Claims”) which provided a similar status update and recommended the approval of an additional thirty finally determined claims. See 8 V.S.A. §§ 7082(a) and 7082(b). Acting on the accompanying motion, the Court entered its Order Approving Liquidator’s Second Report of Claims on September 5, 2019.

3. 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 Distribution”) 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. (As with other status reports, pleadings, and key liquidation documents, the Liquidator arranged for the documents discussed in ¶¶ 2 and 3 to be posted on the Company’s website – www.dsnrrg.com.)

4. DSNRRG Assets & Liabilities. A simplified DSNRRG balance sheet, as of January 31, 2020, is presented below in Table 1.

Table 1 -- Simplified DSNRRG Balance Sheet as of January 31, 2020

ASSETS	
Cash & cash equivalents	\$ 466,860
Short-term investments	2,933,355
Interest receivable	806
Credit for payments in rehabilitation ¹	275,000
Total Assets	\$ 3,676,021
LIABILITIES	
Priority class 1	
POCs allowed/presented for allowance	\$ 30,490
Reserve for administrative expense ²	629,150
Total class 1 claims	\$ 659,640
Priority class 3	
POCs allowed/presented for allowance	\$ 2,629,407
Undetermined/unliquidated	5,450,000
Total class 3 claims	\$ 8,079,407
Total Class 1 & Class 3 liabilities	\$ 8,739,047

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 which may be applied in setoff. See, *infra*, note 1. 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.³ See *id.* The Liquidator therefore relies on the “best estimate” of undetermined/unliquidated policyholder-

¹ As discussed in the Motion for Interim Distribution (see ¶¶ 9 and 20), 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 estimates that ultimate recovery will exceed \$275,000.

² The Liquidator established a \$750,000 reserve for the payment of administrative expenses as of July 31, 2019. The figure presented in Table 1 reflects that reserve after draw down for expenses paid since July 31, 2019.

³ One of the principal reasons for terminating the rehabilitation and placing DSNRRG in liquidation was the conclusion of the Company’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.

level claims generated by Patrick McGrath of McGrath Associates Claims & Risk Services, Inc., the claim adjudicator engaged pursuant to the Plan of Liquidation.⁴ 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.

THIRD REPORT OF CLAIMS

5. Prior Reports of Claims. The First Report of Claims, filed on January 31, 2019, included the Liquidator's recommendations regarding fifty-two finally determined POCs. The Court approved the First Report of Claims on February 1, 2019. The Second Report of Claims, filed on August 29, 2019, included the Liquidator's recommendations regarding thirty finally determined POCs. The Court approved the Second Report of Claims on September 5, 2019.

6. Since the Second Report of Claims was filed, the Liquidator's determinations have become final with regard to twenty-two 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 twenty-two POCs are reported in the Liquidator's Third Report of Claims, attached as Exhibit A, together with the Liquidator's recommendations. See 8 V.S.A. § 7082(a). By his Motion for Order Approving Liquidator's Third Report of Claims (filed herewith), the Liquidator requests that the Court enter an order approving the Third 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.").

⁴ Mr. McGrath's "best estimate" figure is a midpoint estimate based on qualitative analysis and professional judgment. Given that there are only twenty-six incidents with open claims, this figure is subject to significant variability as the Liquidator receives new information and as individual claims are resolved.

STATUS REPORT

7. 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.⁵

8. 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. Should any additional POCs be submitted, the Liquidator will evaluate whether substantive investigation is appropriate or if the claim should 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.”)

9. Responding to Loss History Requests. When individuals and businesses seek to purchase medical malpractice coverage from a new insurer, the insurer typically asks that the prospective insured submit a detailed loss history report from the incumbent carrier. When all

⁵ Please note that 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.

DSNRRG coverage was cancelled effective November 12, 2016, the Company received many such requests and the Commissioner as rehabilitator arranged for responsive information to be produced. DSNRRG has no remaining employees but, to avoid placing undue burdens on DSNRRG's former members, the Liquidator has arranged for consultants to continue providing loss history information upon request. It has been more than three years, however, since the last DSNRRG policy was in effect, insureds have had ample opportunity to transition coverage, and requests for loss run information have become infrequent (three in the last six months). The Liquidator has therefore determined that the costs of engaging a consultant for this purpose are no longer justified. The Liquidator has retained the consultant for an additional month to provide members with a final opportunity to request loss history reports. After March 31, 2020, however, DSNRRG will be unable to satisfy such requests.

10. Amendment to Administrative Services Agreement. To maintain continuity and to leverage institutional knowledge gained during DSNRRG's active operations, the Commissioner (as rehabilitator and then as Liquidator) requested that the Company's administrative services provider -- Alterna, LLC ("Alterna") -- continue to provide similar services during rehabilitation and liquidation for a flat fee of \$12,500/quarter. The level of administrative support required has diminished, however, as the liquidation has continued. Accordingly, the Liquidator and Alterna agreed to a modified fee structure (effective October 1, 2019) in which Alterna will continue to provide the same administrative services but will now bill the estate for work performed on an hourly basis subject to an annual minimum charge of \$10,000. Similar arrangements have been successful in other Vermont risk retention group liquidations and the Liquidator anticipates significant administrative expense savings through the remainder of this proceeding.

11. 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.

12. 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, ¶ 4 (presenting a "best estimate" as of January 31, 2020).

13. Interim Distribution. On September 5, 2019, the Court authorized the Liquidator to make a 100% distribution on allowed priority class 1 claims and a 20% interim distribution on allowed priority class 3 claims. See Order Authorizing Distribution on Allowed Priority Class 1 Claims and an Interim Distribution on Allowed Class 3 Claims ("Interim Distribution Order"). With regard to distribution on priority class 1 claims, the Liquidator has made the authorized distribution by issuing checks on the eight relevant claims in the total amount of \$30,490.39. With regard to interim distribution on priority class 3 claims, the Liquidator's authorization to make payment is "[c]ontingent upon having first received a federal priority act release from the

United States”.⁶ *Id.*, ¶ iv. To secure such a release, the Liquidator assembled the materials and information specified in the *Information for Obtaining a Release* document developed by the United States Department of Justice and submitted the formal request for waiver on October 18, 2019. The Liquidator has not yet received a response to that request.

14. Claim Resolution Strategy. As discussed in prior status reports, the claims determined to date all reflect negotiated compromises or turn on issues other than the substantive merits of an open medical malpractice claim. The Liquidator has pursued this strategy because the alternative is to issue claim determinations that assign an expected value to ongoing lawsuits and trigger the objection, re-determination, and hearing process. 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...”). Litigation regarding the merits of outstanding tort claims would duplicate proceedings elsewhere in the country (or shift them entirely to Vermont) and require significant time and administrative expense. For this reason, the Liquidator has preferred to await developments in the underlying proceedings and pursue negotiated resolutions.

15. The Liquidator continues to believe that the current claim resolution strategy -- awaiting developments in the underlying litigation and negotiating resolutions where possible -- remains the most appropriate option. There are a number of instances, however, in which a creditor has filed a POC that requires further investigation, the Liquidator has submitted a

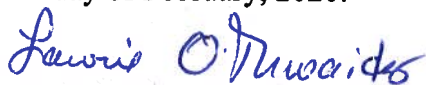
⁶ As discussed in the Liquidator’s Motion for an Order Authorizing Distributions on Allowed Priority Class 1 Claims and an Interim Distribution on Allowed Class 3 Claims (filed August 29, 2019), the federal priority act renders the liquidator of an insolvent insurer personally liable to the extent of 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).

request for supplemental information, and the creditor has not responded. See 8 V.S.A. §§ 7075(c) (“At any time, the liquidator may request the claimant to present information or evidence supplementary to that required [in the initial POC form]”); 7082(a) (“The liquidator shall review all claims duly filed... and shall make such further investigation as he or she shall deem necessary.”) In those cases, the Liquidator has submitted follow-up requests and advised that, in the continuing absence of a response, it will eventually become necessary to determine the claim based on the information that the claimant has presented. It has now been more than two years since the claim filing deadline and the Liquidator believes the proceeding has reached a point where non-responsiveness will begin to impede the orderly administration of the estate. Accordingly, the Liquidator will begin issuing notices of determination to non-responsive claimant in the spring of 2020. Such determinations will trigger the objection, re-determination, and hearing process applicable to all claims. See 8 V.S.A. § 7078(a).

16. Next Steps. Over the coming months the Liquidator, assisted by Mr. McGrath, will continue to investigate the remaining forty-three proofs of claim submitted (regarding twenty-six incidents), analyze the supplemental materials received, and pursue resolution of claims. The Liquidator will also engage with the United States Department of Justice regarding any questions or concerns it may have regarding the requested federal priority act release and will complete the interim distribution on allowed priority class 3 claims as soon as possible. The Liquidator proposes making his next status report in August of 2020.

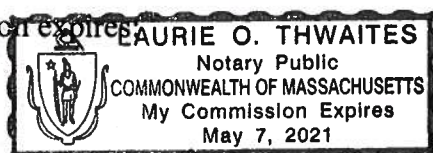
Dated this 27th day of February, 2020.

Subscribed and sworn before me
this 27th day of February, 2020.



Notary Public

My commission expires





J. David Leslie

Special Deputy Liquidator

EXHIBIT A

Liquidator's Third Report of Claims
February 27, 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>
4	Bank Direct Capital Finance	150 Northfield Drive #190, Lake Forest, IL 60045	3	\$ 16,948.00	\$ 5,931.80
10	Dr. Gerald Ross & Kristen Ward, CNM	Coastal ObGyn Specialists, LLC 501 New Lake Whitney Place, Suite 106 Port St. Lucie, FL 34986	3	5,008.51	n/a
21	Yezhak Ben Shimon	c/o Jorge E. Silva, Esq, 236 Valencia Ave., Coral Gables, FL 33134	3	200,000.00	n/a
32	Michelle & Ali Kamdar	4323 Foster Gardens Lane, Katy, TX 77449	3	250,000.00	n/a
43D	Steven E. Pillow, M.D.	18450 U.S. Highway 441, Mount Dora, FL 32757	3	19,812.65	n/a
43I	Estate of Mikaela Ackerman	c/o Morgan & Morgan, PA, 20 N. Orange Street, Suit 1600, Orlando, FL 32801	3	250,000.00	n/a
63	Estate of James Halm	14132 Yorktown Drive, Orland Park, IL 60462	3	275,000.00	n/a
92	IPFS Corp.	1055 Broadway, 11 th Floor, Kansas City, MO 64105	3	2,845.00	995.75
93	IPFS Corp.	1055 Broadway, 11 th Floor, Kansas City, MO 64105	3	8,757.00	3,064.95
94	IPFS Corp.	1055 Broadway, 11th Floor, Kansas City, MO 64105	3	22,112.00	7,739.20
120	Manuel DelCharco, Jr., M.D.	2801 SE 1st Avenue, Suite 101, Ocala, FL 34471	3	123,196.33	n/a
131	Scott J. Rusco, D.O.	6360 159 th Street, Suites D&E, Oak Forest, IL 60452	3	5,000.00	n/a
134	Florida Pediatric Critical Care, PA	17105 Gulf Pine Circle, Wellington, FL 33414	3	50,000.00	n/a

Recommended for Allowance (Third Report of Claims) \$ 1,228,679.49 \$ 17,731.70
Previously Allowed (First and Second Reports of Claims) 1,400,727.43 394,978.86
Total: Priority Class 3 \$ 2,629,406.92 \$ 412,710.56

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>
8	Estate of Mikaela Ackerman	c/o Morgan & Morgan, PA, 20 N. Orange Street, Suite 1600, Orlando, FL 32801	n/a	n/a	n/a
46	Robert E. Meehan, Jr., M.D.	23550 Park St., Suite 100, Dearborn, MI 48124	n/a	n/a	n/a
85	Karen M. Bratus	810 Harmon Street, Birmingham, MI 48009	n/a	n/a	n/a
116	Aaron Lochak	201 Exeter Way, Hillside, NJ 07205	n/a	n/a	n/a
117	Barry H. Habib, D.M.D.	B&E Prosthodontics, P.C., 103 North Wood Lane, Woodmere, NY 11598	n/a	n/a	n/a
118	Florida Hospital Waterman, Inc.	c/o Estes, Ingram, Foel & Gibbs, PA, P.O. Box 4974, Orlando, FL 32802	n/a	n/a	n/a
122	Victoria Hill-Gilbert & Lee Ann Hill-Gilbert	212 Carlton Road, Syracuse, NY 13027	n/a	n/a	n/a
123	Leslie Talbot	c/o Cochran, Kroll & Associates, P.C., 1510 Farmington Rd., Livonia, MI 48154	n/a	n/a	n/a
138	Tsu M. Chu, MD	50 Rockledge Dr., Livingston, NY 07239	n/a	n/a	n/a