

retention group as an incorporated protected cell within Novaris LLC, a Vermont captive insurance company sponsored by Physician’s Insurance, a Mutual Company. 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 such that the Court has exclusive jurisdiction of this action pursuant to 8 V.S.A. § 7032(e). Leslie Termination Aff., ¶ 1.

2. DSNRRG was originally placed in rehabilitation by the Court’s Order for Rehabilitation of Doctors and Surgeons National Risk Retention Group IC, Inc., entered on October 7, 2016. The rehabilitation proceeding was then converted to a liquidation proceeding by the Court’s Order of Liquidation entered on August 10, 2017 (“Liquidation Order”). Leslie Termination Aff., ¶ 2.

3. The Liquidator established February 12, 2018, as the claim filing deadline. See Liquidation Order, ¶ 6.B. The Liquidator sent notice of the liquidation and the claim filing deadline to potential DSNRRG creditors and received 114 proofs of claim (“POCs”) before the deadline. Creditors then submitted an additional thirty-three late-filed claims for a total of 147 POCs submitted in this proceeding. All of those claims have been investigated and determined by the Liquidator pursuant to 8 V.S.A. § 7082(a).¹ The Liquidator then submitted these determinations to the Court in claims reports filed between January 13, 2019 (the Liquidator’s First Report of Claims) and September 12, 2024 (the Liquidator’s Eighth Report of Claims). The Court has entered orders approving all eight claims reports pursuant to 8 V.S.A. § 7082(b). All of DSNRRG’s obligations have therefore been assigned to priority classes under 8 V.S.A. § 7081 and with their value crystalized. Leslie Termination Aff., ¶ 3.

¹ Some POCs were subdivided – e.g. POC 43 was subdivided into POC 43D and POC 43I – to accommodate assignments or for other administrative purposes. The Liquidator has therefore issued 153 notices of determination.

4. The Liquidator has collected all estate assets including cash and invested assets held in Company accounts prior to rehabilitation as well as certain amounts due from the Company's reinsurer (e.g. contingent commission). Leslie Termination Aff., ¶ 4.

5. In August of 2019, the Liquidator moved the Court for an order authorizing a 100% distribution on allowed priority class 1 claims (administrative expenses) and a 20% distribution on allowed priority class 3 claims (policy-related claims). See 8 V.S.A. §§ 7081 (priority classifications) and 7083 (distributions). The Court granted the motion, the Liquidator solicited payment instructions from eligible claimants, and the Liquidator then made the distributions. In September 2022, the Liquidator moved the Court for an order increasing the distribution percentage on priority class 3 claims to 42.9% so as to distribute substantially all estate assets not necessary for administrative expenses or reserves on the single remaining open claim filed in this proceeding. The Court granted that motion and the Liquidator again requested payment instructions and made supplemental distributions. By his Motion for Final Distribution filed herewith, the Liquidator now requests authority from the Court to increase the distribution on priority class 3 claims from 42.9% to 47.75%. This distribution, if approved by the Court, would result in the remittance of all estate assets (other than those required for administrative expenses) to creditors with allowed priority class 3 claims. Leslie Termination Aff., ¶ 5.

Plan for Termination of Proceeding and Request for Waiver of Audit

6. Plan for Termination of Proceeding. All estate assets have been collected and they will (if the Motion for Final Distribution is granted) be distributed to DSNRRG's creditors. The proceeding is therefore approaching its conclusion and it is appropriate for the Liquidator to develop a plan for termination of the proceeding. See 8 V.S.A. § 7085 ("When all assets justifying the expense of collection and distribution have been collected and distributed under

this chapter, the liquidator shall apply to the court for discharge.”) Termination, final distribution, and discharge are an interconnected processes so the Termination Plan addresses them simultaneously and in a coordinated manner. In this motion, the Liquidator requests approval of the Termination Plan and an order directing that it be implemented. When that work is complete, the Liquidator would then file for discharge. *Leslie Termination Aff.*, ¶ 6.

7. The Termination Plan includes the following elements:

a. *Final Distribution on Allowed Priority Class 3 Claims.* The liquidation statutes provide 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. Here, priority class 3 (policy-related claims) will be the residual class so, to determine the final distribution that can be made on claims falling in priority class 3, it is necessary to first establish a reserve for claims falling in priority class 1 (administrative expense).² This, in turn, requires identifying the work remaining to close the proceeding and the establishment of a firm budget for completing that work. The Liquidator has therefore developed the Termination Plan and solicited estimates from service providers as to the cost of implementing it. Through this process, the Liquidator projects that if the Termination Plan is approved, the remaining work of administering the DSNRRG estate can be completed for approximately \$45,000. With \$45,000 reserved for that purpose, the Liquidator calculates a 47.75% distribution will be possible on claims falling in priority class 3 and has therefore filed the Motion for Final Distribution seeking approval for a distribution at that level. If the Motion for Final Distribution is granted, the

²Priority 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).

Liquidator will be able to disburse approximately \$878,000 in cash to creditors with allowed priority class 3 claims. Leslie Termination Aff., ¶ 7a.

b. *Reporting to National Practitioner Data Bank (“NPDB”).* The National Practitioner Data Bank was established by Title IV of the Health Care Quality Improvement Act of 1986 for the purpose (among other things) of gathering information on medical malpractice payments, preventing practitioners from moving state to state without disclosure of previous malpractice payments, and to assist with deterring fraud and abuse within the healthcare delivery system. See 42 U.S.C.A. §§ 11101-11152 (Public Law 99-660). “Each entity, including an insurance company, which makes a payment under an insurance policy... for the benefit of a health care practitioner in settlement of or in satisfaction... of a claim or judgment... must report information... to the NPDB and to appropriate state licensing board(s)...”. 40 C.F.R. 60.7(a). DSNRRG is subject to these requirements. The Liquidator has deferred reporting, however, because the amount of DSNRRG’s payment (a key reporting fact) will be determined only upon approval by the Court of a final distribution percentage. The Liquidator has therefore engaged the claims adjudicator for the DSNRRG estate, McGrath Associates Claims & Risk Service, Inc. (“McGrath Associates”), to make the necessary reporting and this process will begin promptly upon the Court’s approval of a final distribution percentage.³ Leslie Termination Aff., ¶ 7b.

c. *Submission of Federal Income Tax Returns.* Though DSNRRG has no taxable income, it is nevertheless required to file federal income tax returns. The Liquidator has engaged Johnson Lambert, LLP, to provide these services for the DSNRRG estate in 2024 and, if necessary, 2025. Leslie Termination Aff., ¶ 7c.

³ The Plan of Liquidation (¶ 2.c) -- approved by the Court in the Liquidation Order -- provides that the Liquidator may engage a claims adjudicator to assist with reviewing and valuing priority class 3 claims. McGrath Associates has served in that role since 2017 this experience will facilitate the efficient reporting of claims-related data to the NPDB and relevant State boards.

d. *Remittance of Unclaimed Funds to State Treasurer.* The unclaimed property statutes in most jurisdictions establish rules as to when property is presumed abandoned such that it is subject to reporting and escheatment. See, e.g, 27 V.S.A. § 1461(4) (“a debt of a business association” is deemed abandoned “three years after the obligation to pay arises”); subsection 7 (“an amount owed by a life insurance company on a life... policy” is deemed abandoned “three years after the obligation to pay arose...”); and, subsection 8 (“property distributable by a business association in the course of dissolution” is deemed abandoned “one year after the property becomes distributable.”) The insolvency laws, however, do not require that the estate of an insolvent insurer be held open for these dormancy periods to run and, instead, provide that:

“All unclaimed funds subject to distribution remaining in the liquidator’s hands when he or she is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the State Treasurer...”

8 V.S.A. § 7084(a). The State Treasurer is then directed by statute to hold the funds for seven years and, if they remain unclaimed, escheat them for deposit in the General Fund. See *id.* The Liquidator will therefore make at least two attempts in writing to secure payment instructions from all creditors with allowed priority class 3 claims who are entitled to receive distributions. If the Liquidator receives no response within 30 days of the second communication, he will deposit the associated funds with the State Treasurer pursuant to 8 V.S.A. § 7084(a). Leslie Termination Aff., ¶ 7d.

e. *Dissolution of Corporate Existence.* DSNRRG is no longer operating as a risk retention group (or in any other capacity). The Liquidator therefore requests that the Court order the dissolution of DSNRRG’s corporate existence. See 8 V.S.A. § 7059 (“The court shall order dissolution of the corporation upon petition by the Commissioner upon or after the granting of a

liquidation order.”) The Liquidator will file Articles of Dissolution pursuant to 11A V.S.A. § 14.03. Leslie Termination Aff., ¶ 7e.

f. *Destruction of Estate Records.* Upon completion of the foregoing steps, the tasks necessary to conclude the wind-down of DSNRRG’s operations will be accomplished and DSNRRG’s records will no longer be useful to the Liquidator. Therefore, in accordance with 8 V.S.A. § 7087, the Liquidator requests authority to destroy the remaining records of DSNRRG after first providing the United States with notice of the planned destruction and, if it so requests, reasonable opportunity to inspect and copy such records.⁴ Leslie Termination Aff., ¶ 7f.

g. *Transfer of Remaining Funds.* If there are any residual funds remaining in the DSNRRG accounts when the work of closing the proceeding is complete, they Court may order their transfer “as may be deemed appropriate.” 8 V.S.A. § 7085 (“The Court may grant the discharge and make any other orders, including orders to transfer any remaining funds that are uneconomic to distribute, as may be deemed appropriate.”) The Liquidator proposes, in the Termination Plan, that any residual funds be transferred to the State Treasurer for deposit in the General Fund. See *id.* The Liquidator would then close DSNRRG’s accounts. Leslie Termination Aff., ¶ 7g.

⁴ The United States has interpreted the federal priority act -- 31 U.S.C. § 3713 -- in such a way as to threaten the liquidators of insolvent insurance companies with personal liability under certain circumstances, including the discovery of claims long after a liquidation proceeding is complete. See 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 at pp. 7-9. To mitigate the associated risk, the Court’s order regarding the first interim distribution made payment by the Liquidator contingent upon securing a suitable release agreement from the United States. The Release Agreement ultimately entered into by and between the United States and the Liquidator therefore includes certain releases for the Liquidator and provides (¶ 3) that “the United States or its duly authorized representative shall have the right, prior to destruction of [DSNRRG’s] records in accordance with the orders of [this] Court... to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the [DSNRRG] estate and of the Special Deputy Liquidator, as shall be reasonably necessary...”.

h. *Motion for Discharge and Termination.* Upon completion of the steps specified in ¶¶ 7.a through 7.f, the Liquidator will file a motion requesting to be discharged and termination in accordance with 8 V.S.A. § 7085.

8. Request for Waiver of Audit. Under Vermont law, an audit of the books and records of an insurance company in receivership is at the discretion of this Court. See 8 V.S.A. § 7088. The Liquidator recommends that such an external audit of DSNRRG's books and records not be required. The Liquidator's recommendation reflects the fact that the only disbursements of DSNRRG assets were for priority class 1 and 3 distributions pursuant to the Court's orders, legal expenses for the administration of this proceeding, and fees of the program manager, third-party claims administrator, claims adjudicator, actuarial consultants in rehabilitation, accountants for tax preparation, banks for account services, a vendor providing former insureds with credentialing services, and an IT consultant for maintenance of electronic records and the liquidation website. All of these expenditures have been publicly reported in the status reports of the Rehabilitator and Liquidator and are reported cumulatively in Exhibit A to the Leslie Termination Affidavit. Further, as a matter of sound practice in the administration of a receivership, detailed legal bills of the Special Deputy Liquidator were submitted to the legal staff of the Vermont Department of Financial Regulation (the "Department") for review and approval, and payment was made at the express direction of the Department. In view of the size of DSNRRG, the routine nature of the disbursements, oversight by the Department, and routine public reporting of receipts and disbursements, the Liquidator proposes that the cost of an external audit (which is not provided for in the budget that underlies the Termination Plan and the Motion for Final Distribution) exceeds its minimal benefits and will materially delay the completion of this proceeding. Leslie Termination Aff., ¶ 8.

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

- (a) Granting this Motion for Approval of Plan of Termination;
- (b) Authorizing the Liquidator to implement the Plan of Termination;
- (c) Directing the deposit of any unclaimed funds with the State Treasurer pursuant to 8 V.S.A. § 7084(a);
- (d) Directing the transfer of any remaining funds to the State Treasurer for deposit in the General Fund pursuant to 8 V.S.A. § 7085(a);
- (e) Dissolving DSNRRG pursuant to 8 V.S.A. § 7059 and directing the Liquidator to file Articles of Dissolution under 11A V.S.A. § 14.03;
- (f) Directing the destruction of DSNRRG's records, after advance notice to the United States, and the closure of its accounts;
- (g) Waiving an audit of the books and records of DSNRRG pursuant to 8 V.S.A. § 7088; and,
- (h) Granting such other 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.