

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Michael Wise, as Director of the South
Carolina Department of Insurance,

Petitioner,

vs.

Transportation Insurance Services Risk
Retention Group, Inc,

Respondent.

C.A. No. 2020-CP-40-01276

**ORDER APPROVING LIQUIDATOR’S
SECOND AND FINAL CLAIMS REPORT &
RECOMMENDATION, GRANTING
APPLICATION TO PAY FINAL
DISTRIBUTIONS, & AUTHORIZATION
FOR FINAL DISTRIBUTION OF ASSETS IN
DISPOSITION OF ALL CLAIMS,
DESTRUCTION OF RECORDS, AND
CLOSING OF LIQUIDATION ESTATE**

This matter comes before the Court pursuant to the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.* (2015). Petitioner instituted this action in his official capacity as the Director of the South Carolina Department of Insurance, and now seeks an Order approving the closing accounting for the liquidation estate of Respondent Transportation Insurance Services Risk Retention Group, Incorporated (“TIS”). Petitioner’s proposed closing accounting includes the payment of administrative expenses and the proposed distribution of the remaining assets to claimants in Class 2 pursuant to S.C. Code Ann. § 38-27-610 (2015). The Application further requests the Court issue an Order to terminate the receivership pursuant to S.C. Code Ann. § 38-27-650(a) (2015) and in so doing discharge the Liquidator, Special Deputy Liquidator, and the court-appointed Special Referee; approve the finalization of administrative costs; and grant the Petitioner authority to distribute the liquidation assets. Petitioner now seeks to close the estate of TIS, which includes the Petitioner’s recommendation for disposition of certain records in the termination of these proceedings pursuant

to S.C. Code Ann. §§ 38-27-650 and -670 (2015).

Based upon the pleadings, filings orders and other submissions in the file, including the Application and recommendation, I find the following:

1. TIS was placed in liquidation by Order of the supervising court (Liquidation Order) on April 13, 2020. On that same date, the supervising court approved the appointment of the Director of the South Carolina Department of Insurance, acting in his capacity as Liquidator for TIS, and Michael FitzGibbons of FitzGibbons & Company as Special Deputy Liquidator pursuant to S.C. Code Ann. § 38-27-400, with all the powers of the Liquidator granted by and set forth in that Code section.

2. Consistent with the Liquidation Order, the deadline for filing claims was set for October 31, 2020. Pursuant to S.C. Code Ann. § 38-27-580(a) (2015), all claims received have been adjudicated with each claimant given notice by first class mail of the action taken and the window of time to object to the Special Deputy Liquidator's determination of the respective claims.

3. The Liquidator identified, collected, and liquidated, all assets of TIS where the Liquidator determined the expense of collection was justified which and established a claims procedure meeting the requirements of the Act, specifically S.C. Code Ann. § 38-27-550 (2015), with all filed claims being adjudicated and classified thereunder.

4. The Liquidator received thirty-nine (39) timely-filed Proofs of Claims (“POCs”) on or before the bar date. One (1) timely-filed POC was subsequently withdrawn by the claimant, leaving thirty-eight (38) remaining timely-filed POCs. The Liquidator received an additional eleven (11) POCs filed after the submission deadline. The Liquidator’s First Claims Report, which included claim recommendations on fifteen (15) Class 2 claims and seventeen (17) claims subordinate to Class 2 were submitted to the Court for approval pursuant to S.C. Code Ann. § 38-

27-620 (2015) and approved on March 23, 2023. The remaining seventeen (17) POCs have now been completely adjudicated and are subject to this Application.

5. All matters requiring the participation of the Special Referee Michael M. Beal have been resolved.

6. Exhibit A to the Petition is a Schedule listing the names and addresses of sixteen (16) claimants that each hold a Class 2 claim as defined by S.C. Code Ann. § 38-27-610(2) (2015), the POC number assigned by the Liquidator, and the valuation of the claim proposed by the Liquidator.

7. Exhibit B is a Schedule listing the name and address of one (1) claimant holding a claim subordinate to Class 2, the POC number assigned by the Liquidator, and the Class Code as defined by S.C. Code Ann. § 38-27-610(2) (2015). This claim was adjudicated as to priority class only, as distributions to Class 2 are less than 100 percent.

8. Exhibit C is the Affidavit of Michael J. FitzGibbons, Special Deputy Liquidator.

9. The Liquidator has paid the administrative costs and expenses of TIS (Class 1 claims) in the ordinary course of its operations. The Liquidator has arranged for the final distribution of all assets, subject to the Court's approval herein and the finalization of administrative costs to close the liquidation estate with finality.

10. The priority of distribution of claims from an insolvent insurer's estate is set forth in S.C. Code Ann. § 38-27-610 (2015). This Code section requires that every claim in each class must be paid in full before members of the next class receive payment.

11. The available sum of TIS's recoverable assets as set forth in the Application is insufficient to pay the aggregate sum of approved Class 2 claims. Petitioner therefore seeks to disburse a pro-rated sum in satisfaction of the approved Class 2 (claims under policies). The

Liquidator estimates the total funds distributed to approved Class 2 claimants will be approximately 10.1 percent of the total amount of Class 2 approved by the Liquidator. There are no assets available to pay any claims subordinate to Class 2. *See* S.C. Code Ann. § 38-27-610 (2015) (“Every claim in each class must be paid in full or adequate funds retained for the payment before the members of the next class receive any payment.”)

12. The financial statement and exhibits attached to the Application of the Liquidator reflect that the distribution of the Class 1 administrative expenses is \$103,048.

13. The Class 2 approved claims total amounts to \$539,992. Individual distributions as set forth in Exhibit C to the Application are subject to final adjustment pursuant to S.C. Code Ann. § 38-27-610(2) (2015) for recoveries from other sources that have not yet been reported. *See also* S.C. Code Ann. § 38-27-550(a)(3) & (c) (2015) (proof of claim must include payments made on claim and receiver may require additional information).

14. These amounts, as set forth on Exhibit A to the Application, reflect that there are insufficient remaining assets contained in the liquidation estate of TIS to pay the whole of the approved Class 2 claims. Therefore, Liquidator seeks approval to issue a pro rata share of approximately ten and one-tenth percent (10.1%) of the total value of each Class 2 claim.

15. Upon payment of the pro rata distribution to Class 2 claimants, all funds will be exhausted and there will not be any remaining funds to pay claims with a priority subordinate to Class 2.

In light of the above findings and conclusions, **IT IS THEREFORE ORDERED THAT**

16. The pro forma closing accounting and administrative expenses are approved and that all the claim determinations by the Special Deputy Liquidator, Special Referee and the supervising court are hereby confirmed.

17. The proposed distribution of the remaining assets by the Liquidator & Special Deputy Liquidator, as set forth in the Application and exhibits attached thereto is proper and is hereby approved.

18. The Liquidator or his appointee is hereby authorized to distribute the remaining assets as set forth in the Special Deputy Liquidator's Application and attached exhibits.

19. Special Referee Michael Beal is hereby discharged from his duties as court-appointed referee and he and his agents, successors and employees are forever terminated from any liability whatsoever arising out of or in connection with this proceeding.

20. Following Final Distribution of Assets and filing of the final tax return, the Liquidator shall maintain the insurer's financial record books for the five-year period spanning 2019 to 2024, along with a list of all claims paid under this Liquidation with the South Carolina Department of Insurance for one year from the date of the closing of the estate.

21. In the event there are any remaining unclaimed funds after a reasonable attempt is made by the Petitioner to distribute all of the funds of the Liquidation Estate as authorized by this Order, the Petitioner is authorized and directed to transfer such remaining funds to the Treasurer of the State of South Carolina pursuant to S.C. Code Ann. § 38-27-640 (2015) to be disposed of pursuant to S.C. Code Ann. § 27-19-220.

22. The Court recognizes that some of the costs set forth in Exhibit B are estimates and subject to change. The Liquidator shall file with this Court a Final Accounting which sets for the actual final administrative costs and actual final distribution to Class 2 claimants, together with all cash receipts and disbursements from the inception of the receivership.

23. Subject to the terms and conditions set forth in paragraph 25 below and the receipt of the Final Accounting as set forth in Paragraph 22 above, the Liquidator, Special Deputy

Liquidator and their attorneys, accountants, assistants, representatives, contractors and agents are discharged from their responsibilities pursuant to these proceedings and all liability whatsoever on their part arising out of or in connection with this proceeding is forever terminated.

24. All persons shall continue to be enjoined from commencing or prosecuting, without leave of this Court, any action or proceeding against the discharged persons in connection with or arising out of their service to the Court in the liquidation proceedings, and the Court shall retain jurisdiction for the purpose of enforcing this injunction.

25. These proceedings and the Liquidation Estate shall be closed as of the date of the filing of the final closing accounting and that date shall become the date of the discharge of the Liquidator, Special Deputy Liquidator, Special Referee, and their respective attorneys, accountants, assistants, representatives, contractors, and agents.

AND IT IS SO ORDERED.

Honorable Daniel Coble
Chief Administrative Judge
Fifth Judicial Circuit

October ____, 2024
Columbia, South Carolina



Richland Common Pleas

Case Caption: Raymond G Farmer , plaintiff, et al vs Transportation Insurance Services Risk Retention Group Inc

Case Number: 2020CP4001276

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774