

**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

**IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

Raymond G. Farmer, as Director of the South
Carolina Department of Insurance,

Civil Action No. 2020-CP-40-01276

Petitioner,

**ORDER COMMENCING
LIQUIDATION PROCEEDINGS &
GRANTING AN INJUNCTION &
AUTOMATIC STAY OF
PROCEEDINGS**

vs.

Transportation Insurance Services Risk
Retention Group, Inc.,

Respondent.

This matter comes before me pursuant to the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.* Petitioner, Raymond G. Farmer, as Director of the South Carolina Department of Insurance, by and through counsel, has petitioned the Court for an Order appointing him as Liquidator of Respondent, Transportation Insurance Services Risk Retention Group, Inc. The instant Petition was filed on March 3, 2020 and served on Respondent on March 7, 2020. Respondent has reasonable notice of the Petition pursuant to Section 38-27-60 of the Code of Laws of South Carolina 1976, as amended. The Court, having reviewed the filings of record and otherwise being fully informed in the premises, finds:

1. This Court has jurisdiction of the subject matter and is the proper venue for this proceeding pursuant to S.C. Code Ann. § 38-27-60(b), (c) & (f) & -360 (2015).

2. Petitioner is the duly appointed Director for the State of South Carolina Department of Insurance (Department) with such powers, duties and responsibilities as are prescribed under the insurance laws of this State to that agency's director for company licensing, delinquency and receivership matters, and is specifically authorized to file a petition for liquidation pursuant to S.C. Code Ann. § 38-27-360 (2015).

3. The Department has regulatory jurisdiction over the Respondent pursuant to, *inter alia*, Chapters 3, 87 and 90 of Title 38 of the South Carolina Code of Laws 1976, as amended.

4. As evidenced by the Affidavit of Service filed on March 13, 2020 and an Affidavit filed on April 10, 2020, more than thirty (30) days have elapsed since the service date of March 7, 2020 and Petitioner has not received an answer or other response to the Petition.

5. No answer or other responsive pleading has been filed with the Clerk of Court and no one has appeared in this matter on Respondent's behalf.

6. Respondent is a South Carolina stock risk retention group, organized and licensed pursuant to Chapters 87 and 90 of Title 38 of the South Carolina Code, and is owned by its insured members, which are or were subsidiaries of Celadon Group, Inc., which is in Chapter 11 proceedings in the United States Bankruptcy Court for the District of Delaware.

7. Respondent was issued a certificate of authority by the Department on June 30, 2015, and writes commercial transportation liability coverage for its owner-insureds.

8. Respondent is required by the Department to maintain minimum capital and surplus of \$500,000.00. *See also* S.C. Code Ann. § 38-90-40 (Supp. 2019).

9. On or about December 9, 2019, Respondent filed a Petition initiating Chapter 11 proceedings in the United States Bankruptcy Court for the District of Delaware.

10. Respondent's bankruptcy petition was filed in conjunction with the filing by Celadon Group, Inc. and its subsidiaries of similar petitions in the same bankruptcy court, apparently with no intention of emerging from reorganization, with the petitions grouped under *In re Celadon Group, Inc., et al.*, Case 19-12606-KBO.

11. Pursuant to 11 U.S.C. § 109(b) & (d), Respondent, as a domestic insurance company, is not a "debtor" as defined under the Bankruptcy Code and is prohibited from seeking

the protection of the Code; rather, the rehabilitation or liquidation of insurers is regulated and conducted in accordance with the laws of the several states pursuant to the McCarran–Ferguson Act, 15 U.S.C. §§ 1011-1015, under which Congress has reserved for the states the power to regulate insurance companies.

12. Impaired insurers domiciled in South Carolina may only be placed into receivership pursuant to the Insurers Rehabilitation and Liquidation Act, Chapter 27 of Title 38 of the Code of Laws of South Carolina 1976, as amended.

13. On January 24, 2020, the South Carolina Department of Insurance filed a Motion to Intervene and Suggestion of Lack of Jurisdiction over Subject Matter regarding the bankruptcy petition of Respondent, a copy of which is attached to this Order as Exhibit A.

14. By order dated March 2, 2020, the Bankruptcy Court dismissed the petition of Respondent without prejudice, effective *nunc pro tunc* to December 8, 2019, and closed the case. A copy of the Bankruptcy Court’s Order is attached as Exhibit B.

15. In its last annual (2018) and quarterly (September 30, 2019) financial statements filed with the Department, Respondent reported claims incurred but not reported (IBNR), i.e., the estimated amount owed to all valid claimants who have had a covered loss but have not yet reported it, as \$370,827 and approximately \$505,000, respectively.

16. Due the bankruptcy of Respondent’s parent and the apparent unwinding of its business, including the sale of one or more of Respondent’s owner-insureds, the insurer’s business plan is no longer feasible; and, the receivables from its parent and owner-insureds are no longer deemed collectible, which reduces Respondent’s capital and surplus to negative \$575,319 (\$575,319). This leaves Respondent with insufficient funds to pay claims of members of the public

who are injured and/or whose property has been damaged as a result of a collision with an insured vehicle.

17. Because Respondent is a risk retention group, its policies are not protected by guaranty association coverage, potentially leaving policyholders, third-party claimants and the public further exposed. *See* 15 U.S.C. § 3902(a)(2); S.C. Code Ann. § 38-87-50 (2015) (participation by risk retention groups in state insurance insolvency guaranty fund prohibited).

18. Respondent's filing for bankruptcy protection, while legally erroneous, is probative of both its troubled condition and its recognition that delinquency proceedings are appropriate.

19. S.C. Code Ann. § 38-27-360 sets forth the following grounds upon which an insurer may be placed into liquidation:

a. Any ground for an order of rehabilitation as specified in S.C. Code Ann. § 38-27-310 (2015), whether or not there has been a prior order directing the rehabilitation of the insurer;

b. The insurer is insolvent; or

c. The insurer is in such a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

20. Among the grounds for an order of rehabilitation pursuant to S. C. Code Ann. § 38-27-310 (2015) are:

a. The insurer is in a condition in which the further transaction of business would be hazardous, financially, to its policyholders, creditors, or the public.

b. Within the previous three years the insurer wilfully has violated its charter, articles of incorporation, or bylaws, an insurance law of this State, or an order of the director or his designee.

21. Respondent is in a condition in which the further transaction of business would be hazardous, financially or otherwise, to its policyholders, creditors, or the public; it has violated the insurance laws of this state; and, it is insolvent as defined in S.C. Code Ann. § 38-27-50(10) (2015), all of which constitute grounds for the commencement of liquidation as set forth in Section 38-27-360.

22. It is in the best interest of Respondent, its policyholders, its creditors and the public that the relief requested be granted.

IT IS THEREFORE ORDERED THAT:

1. PURSUANT TO S.C. Code Ann. § 38-27-370 (2015), Petitioner and his successors in office are appointed Liquidator of Respondent.

2. PURSUANT TO S.C. Code Ann. § 38-27-370(B) (2015), the rights and liabilities of the insurer and its creditors, policyholders, shareholders, members, and other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in S.C. Code Ann. §§ 38-27-380 and 38-27-560 (2015); and, any claim excepted under this provision and Section 38-27-370(B) shall be governed by Sections 38-27-380 and 38-27-560, as applicable.

3. PURSUANT TO S.C. Code Ann. § 38-27-400(a) (2015), Petitioner and his successors shall have all the powers and responsibilities set forth under that section to assist him or his designee as Liquidator, including but not limited to:

a. To appoint a special deputy to act for him and to determine the special deputy's reasonable compensation, who shall have all powers of the Liquidator granted by this section and who serves at the pleasure of the Liquidator.

b. To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he considers necessary to assist in the liquidation.

c. To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the Court's approval.

d. To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of Respondent. In the event that Respondent's property does not contain sufficient cash or liquid assets to defray the costs incurred, the Director may advance the costs so incurred out of any appropriation for the maintenance of the Department of Insurance. Any amounts so advanced for expenses of administration must be repaid to the Director for the use of the Department out of the first available monies of the insurer.

e. To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing and, in connection therewith, to require the production of any books, papers, records, or other documents which he considers relevant to the inquiry.

f. To collect all debts and monies due and claims belonging to Respondent, wherever located, and, for this purpose:

(i) To institute timely action in other jurisdictions in order to forestall garnishment and attachment proceedings against the debts.

(ii) To do other acts necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions he considers best.

(iii) To pursue any creditor's remedies available to enforce his claims.

- g. To conduct public and private sales of the property of Respondent.
- h. To use assets of the estate of Respondent to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under S.C. Code Ann. § 38-27-610 (2015).
- i. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of Respondent at its market value or upon terms and conditions that are fair and reasonable. He also has power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.
- j. To borrow money on the security of Respondent's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.
- k. To enter into contracts necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.
- l. To continue to prosecute and to institute in the name of Respondent or in his own name any and all suits and other legal proceedings, in this State or elsewhere, and to abandon the prosecution of claims he considers unprofitable to pursue further. If Respondent is dissolved under S.C. Code Ann. § 38-27-390 (2015), he has the power to apply to any court in this State or elsewhere for leave to substitute himself for Respondent as plaintiff.
- m. To prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of Respondent against any officer of Respondent or any other person.

n. To remove any or all records and property of Respondent to the offices of the Department or to any other place convenient for the purposes of efficient and orderly execution of the liquidation, *provided* that guaranty associations and foreign guaranty associations shall have such reasonable access to the records of Respondent as is necessary for them to carry out their statutory obligations.

o. To deposit in one or more banks in this State sums required for meeting current administration expenses and dividend distributions.

p. To invest all sums not currently needed, unless the Court orders otherwise.

q. To file any necessary documents for recording in the office of any recorder of deeds or record office in this State or elsewhere where property of Respondent is located.

r. To assert all defenses available to Respondent as against third persons, including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of any defense by Respondent after a petition in liquidation has been filed does not bind the Liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the Liquidator shall give precedence to that obligation and may defend only in the absence of a defense by the guaranty associations.

s. To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with S.C. Code Ann. §§ 38-27-450 through 38-27-470 (2015).

t. To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and to act as the receiver or trustee whenever the appointment

is offered.

u. To enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

v. To exercise all powers now held or hereafter conferred upon receivers by the laws of this State not inconsistent with applicable law.

w. To audit the books and records of agents of Respondent insofar as those records relate to the business activities of the insurer.

x. Notwithstanding the powers of the Liquidator as enumerated above and granted pursuant to Section 38-27-400, the Liquidator is not obligated to defend claims or to continue to defend claims after the entry of a liquidation order.

4. PURSUANT TO S.C. Code Ann. § 38-27-400(b) (2015), the enumeration in this Order of the powers and authority of the Liquidator may not be construed as a limitation upon him; nor shall it exclude in any manner his right to do other acts not herein specifically enumerated, or otherwise provided for, that may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

5. PURSUANT TO S.C. Code Ann. §§ 38-27-410, -540 & -550 (2015), the Liquidator shall provide Notice of this Order, prescribe the form of a Proof of Claim to be used by all claimants and shall set the date for submission of claims, or Bar Date, after which no claim will be allowed except as provided in Section 38-27-540.

6. PURSUANT TO S.C. Code Ann. § 38-27-370(E) (2015), the Liquidator shall submit periodic accountings to the Court, with the first such accounting to be filed no less than

180 days after the date of this Order and with subsequent accountings to be made on a semiannual basis for each calendar year.

7. Continuation and cancellation of coverage shall be governed by S.C. Code Ann. § 38-27-380(b) (2015).

8. Upon filing by the Liquidator with the office of the Secretary of State a certified true copy of the Liquidation Order, Respondent is dissolved in accordance with S.C. Code Ann. § 38-27-390 (2015).

9. Respondent is hereby officially declared insolvent as defined by S.C. Code Ann. § 38-27-50(11) (Supp. 2019).

10. Petitioner's designation of Michael J. FitzGibbons as a consultant to the Liquidator and as Special Deputy Liquidator, in this matter, with such reasonable compensation as determined by the Liquidator pursuant to S.C. Code Ann. § 38-27-400(a)(1) (2015) is hereby expressly approved, and said Special Deputy Liquidator shall have all powers of the Liquidator granted by S.C. Code 38-27-400 (2015) and this Order and shall serve at the pleasure of the Liquidator.

NOTICE OF INJUNCTION AND AUTOMATIC STAY

Notice is hereby given that pursuant to S.C. Code Ann. §§ 38-7-70 & -430 (2015), the Court grants an injunction and automatic stay applicable to all persons and proceedings, other than the Liquidator, which shall be permanent and survive the entry of the Order and which prohibits:

- 1) The transaction of further business;
- 2) The transfer of property;
- 3) Interference with the Liquidator or with a proceeding under Chapter 27 of Title 38 of the Code;
- 4) Waste of the insurer's assets;

- 5) Dissipation and transfer of bank accounts;
- 6) The institution or further prosecution of any actions or proceedings;
- 7) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;
- 8) The levying of execution against the insurer, its assets, or its policyholders;
- 9) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- 10) The withholding from the receiver or books, accounts, documents, or other records relating to the business of the insurer; or
- 11) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under Chapter 27 of Title 38 of the South Carolina Code.

This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time may be necessary and appropriate.

AND IT IS SO ORDERED.

Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

April __, 2020

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

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge
for 2020

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CELADON GROUP, INC.,

Debtor,

Chapter 11

Case No. 19-12606 (KBO)

In re:

TRANSPORTATION INSURANCE SERVICES
RISK RETENTION GROUP, INC.,

Debtor.

Chapter 11

Case No. 19-12606 (KBO)

**MOTION TO INTERVENE OF SOUTH CAROLINA DEPARTMENT
OF INSURANCE PURSUANT TO RULE 2018, FED. R. BANKR. P. AND SUGGESTION
OF LACK OF JURISDICTION OVER SUBJECT MATTER REGARDING
PURPORTED DEBTOR TRANSPORTATION INSURANCE SERVICES
RISK RETENTION GROUP, INC.**

The South Carolina Department of Insurance (Department) hereby moves the Court for leave to intervene in the above captioned matter for the purpose of informing and suggesting to the Court that it is without jurisdiction of the subject matter of this action as it pertains to Transportation Insurance Services Risk Retention Group, Inc., for the reason that this entity is not a debtor eligible for protection under the United States Bankruptcy Code. *See* 11 U.S.C. § 109(b) & (d). This suggestion of lack of jurisdiction is based on the records and files herein and the following undisputed facts and law:

1. Transportation Insurance Services Risk Retention Group, Inc. is a captive insurance company licensed and domiciled in South Carolina pursuant to Chapters 87 and 90 of Title 38 of the Code of Laws of South Carolina 1976, as amended and the Liability Risk Retention Act, 15 U.S.C. §§ 1901 *et seq.*

2. It was incorporated in the State of South Carolina on June 5, 2015, and its last known address is 146 Fairchild Street, Charleston, South Carolina 29492.

3. The Department issued a Certificate of Authority (COA) to Transportation Insurance Services Risk Retention Group, Inc. on June 30, 2015. A copy of that COA is attached as Exhibit A.

4. Transportation Insurance Services Risk Retention Group, Inc.'s National Association of Insurance Commissioners (NAIC) Company Code Number is 15767.

5. On or about December 9, 2019, Transportation Insurance Services Risk Retention Group, Inc. filed a Petition initiating Chapter 11 proceedings in this Court without the prior knowledge or consent of the Department.

6. When the Department learned of the filing of the Petition, the Department's Chief Financial Analyst attempted to speak by telephone with counsel of record for the purported debtor, who did return his calls; however, they never actually spoke. Instead their calls resulted in the exchange of voice messages, i.e., "telephone tag."

7. On January 13, 2020, the Department wrote to counsel for the purported debtor, sending the letter by electronic mail and U.S. Mail, but has received no response. A copy of that letter is attached hereto as Exhibit B.

8. The Department has also contacted the captive manager for Transportation Insurance Services Risk Retention Group, Inc. The Department is informed and believes that the captive manager has received no information or instructions from the parent corporation of the RRG. In addition, the board of directors of the RRG appears to have resigned.

9. Because of Celadon Group's bankruptcy and the financial arrangements between the Transportation Insurance Services Risk Retention Group, Inc. and other companies within the

group, the RRG may not have sufficient funds to pay claims of members of the public who are injured and/or whose property has been damaged as a result of a collision with an insured vehicle.

10. In its last annual (2018) and quarterly (September 30, 2019) financial statements filed with the Department, Transportation Insurance Services Risk Retention Group, Inc. reported claims incurred but not reported (IBNR), i.e., the estimated amount owed to all valid claimants who have had a covered loss but have not yet reported it, as \$370,827 and approximately \$505,000, respectively. A copy of the relevant pages of the financial statements is attached as Exhibit C.

11. Because Transportation Insurance Services Risk Retention Group, Inc. is a risk retention group, its policies are not protected by guaranty association coverage, potentially leaving the public further exposed. *See* 15 U.S.C. § 3902(a)(2); S.C. Code Ann. § 38-87-50 (2015) (participation by risk retention groups in state insurance insolvency guaranty fund prohibited).

12. The most recent policy issued by Transportation Insurance Services Risk Retention Group, Inc. lists the following companies as named insureds: A&S Services Group, Inc., A&S Kinard Logistics, Inc., Buckler Transport, Inc., Buckler Distribution, Inc., Distribution, Inc. dba FTL, Inc., and Taylor Express, Inc., all with an address of 9503 E. 33rd Street, Indianapolis, Indiana 46235, i.e., the address of Celadon Group. Recent news reports indicate that some of these entities may have been sold to third parties, potentially resulting in a change in the owner-insureds of Transportation Insurance Services Risk Retention Group, Inc.

13. At this time, the Department has been unable to determine what measures, if any, have been taken to protect the policyholders of Transportation Insurance Services Risk Retention Group, Inc., claimants against those policies, and the public.

14. Pursuant to 11 U.S.C. § 109(b) & (d), domestic insurance companies may not be debtors entitled to protection under Chapter 11 of the Bankruptcy Code. Instead, their

rehabilitation or liquidation is regulated and conducted in accordance with the laws of the several states. *See* McCarran–Ferguson Act, 15 U.S.C. §§ 1011-1015 (exempting the business of insurance from most federal regulation in favor of regulation by individual states). *See also Matter of Liquidation of Indemnity Ins. Corp.*, RRG, 2014 WL 185017 *1 (Del. Ch. Jan. 16, 2014) (“A state-court delinquency proceeding is analogous to a federal bankruptcy court proceeding, but it proceeds in state court because Congress has reserved for the states the power to regulate insurance companies. *See* 15 U.S.C. §§ 1011–15 (McCarran–Ferguson Act); *Checker Motors Corp. v. Exec. Life Ins. Co.*, 1992 WL 29806, at *2 (Del. Ch. Feb. 13, 1992) (‘Because distressed insurance companies are prohibited from seeking the protection of the Federal Bankruptcy Code, the rehabilitation or liquidation of such insurers is left to regulation by the states.’), *aff’d*, 615 A.2d 530 (Del. 1992) (TABLE). Many states, including Delaware, ‘have adopted the [Uniform Insurers Liquidation Act (‘UILA’)] to establish a uniform method for processing claims against, and distributing assets of, distressed insurance companies.’ *Checker Motors*, 1992 WL 29806, at *2. The Delaware Uniform Insurers Liquidation Act appears in Chapter 59 of the Delaware Insurance Code, which is titled ‘Rehabilitation and Liquidation.’ *See* 18 Del. C. §§ 5901–5933; 5941–5944.”).

15. Risk retention groups are not excepted from the proscriptions of 11 U.S.C. § 109 (b) & (d) and are properly placed into receivership by state insurance regulators. *E.g.*, *Matter of Liquidation of Indemnity Ins. Corp.*, RRG, 2014 WL 1154057 *1 (Del Ch. March 21, 2014) (“This case is a delinquency proceeding involving Indemnity Insurance Corporation, RRG.”). *See also, e.g., Companies in Receivership*, Delaware Department of Insurance, Bureau of Rehabilitation & Liquidation, <https://insurance.delaware.gov/divisions/rehab_bureau/> (visited January 24, 2020) (listing several risk retention groups in liquidation); *Receivership Companies*, S.C. Department of

Insurance, <<https://www.doi.sc.gov/127/Receivership-Companies>> (visited January 24, 2020) (listing at least one risk retention group in receivership).

16. Financially impaired insurers domiciled in South Carolina are placed into receivership pursuant to the Insurers Rehabilitation and Liquidation Act, Chapter 27 of Title 38 of the Code of Laws of South Carolina 1976, as amended. *See* S.C. Code Ann. §§ 38-27-10 *et seq.*; *see also* S.C. Code Ann. § 38-87-30(A) (Supp. 2018) (risk retention group must comply with all of the laws, regulations, and requirements applicable to liability insurers chartered and licensed in South Carolina unless otherwise specifically provided); S.C. Code Ann. § 38-90-180(A) (Supp. 2018) (“Except as otherwise provided in this section, the terms and conditions set forth in Chapters 26 and 27 of this title pertaining to insurance reorganizations, receiverships, and injunctions apply in full to captive insurance companies formed or licensed under this chapter.”).

17. As in other states, South Carolina law affords greater protection to policyholders (and third-party claims against policies) than it does to general creditors. *See* S.C. Code Ann. § 38-27-610 (2015) (prioritizing distribution of assets to claims on policies and administrative expenses over claims of other creditors). This furthers South Carolina’s congressionally-recognized interest in protecting policyholders, which lies at the core of its power to regulate the business of insurance. *See U.S. Dept. of Treasury v. Fabe*, 508 U.S. 491, 505-509 (1993) (state law giving preference to policyholders’ claims and to administrative expenses, the latter of which “is reasonably necessary to further the goal of protecting policyholders,” is exempted from federal preemption by the McCarran-Ferguson Act because it “is ‘aimed at protecting or regulating’ the performance of an insurance contract.”).

18. As a South Carolina domestic insurance company, Transportation Insurance Services Risk Retention Group, Inc. may not be a debtor under Chapter 11, *see* 11 U.S.C. § 109

(b) & (d), and any delinquency proceedings must be brought in the Court of Common Pleas of South Carolina in accordance with the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.*, where South Carolina law ensures adequate protection of policyholders and third-party claimants on policies.

CONCLUSION

For the foregoing reasons, the South Carolina Department of Insurance respectfully seeks an order of the Court granting it leave to intervene for the purpose of suggesting that the Court lacks jurisdiction over the subject matter as to purported debtor Transportation Insurance Services Risk Retention Group, Inc., and that Transportation Insurance Services Risk Retention Group, Inc. must be dismissed from this action, as it may be rehabilitated or liquidated only in accordance with the laws of South Carolina, its state of domicile.

Dated: January 24, 2020

Respectfully submitted,

South Carolina Department of Insurance

/s/ Geoffrey R. Bonham
Geoffrey R. Bonham (DSC 5279)
SC Department of Insurance
1201 Gervais Street, Suite 1000
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Counsel for the South Carolina
Department of Insurance



South Carolina Department of Insurance

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

Certificate of Authority

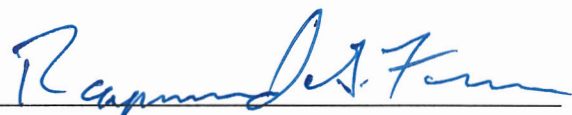
Company Code: 204787 **License Effective Date:** 06/30/2015
Company Type: Risk Retention Group Captive - Stock
State of Domicile: SC

TRANSPORTATION INSURANCE SERVICES RISK RETENTION GROUP, INC.

The Director of Insurance of this State does hereby certify that the above named Insurance company has complied with the requirements of the insurance laws of this State, and is hereby authorized subject to the provisions thereof and of the charter powers of said company.

This Certificate shall remain in effect for an indefinite term unless said authority is amended or revoked in accordance with law or surrendered upon voluntary withdrawal from this State.

In testimony whereof, I hereto subscribe my name and affix the seal of my office at Columbia, South Carolina this 30th day of June, 2015.



Director of Insurance



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ELECTRONICALLY FILED - 2020 Apr 13 11:43 AM - RICHLAND - COMMON PLEAS - CASE#2020CP4001276

EXHIBIT B



**South Carolina
Department of Insurance**

HENRY McMASTER
Governor

RAYMOND G. FARMER
Director of Insurance

Office of General Counsel
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6219
Facsimile: (803) 737-6229

January 13, 2020

Stuart M. Brown, Esq. (stuart.brown@us.dlapiper.com)
Matthew S. Sarna, Esq. (matthew.sarna@us.dlapiper.com)
DLA Piper LLP (US)
1201 North Market Street, Suite 2100
Wilmington, Delaware 19801

Re: Transportation Insurance Services Risk Retention Group, Inc., a South Carolina
Domiciled Captive Insurance Company
Case No. 19-12606-KBO (Bankr. Del. filed Dec. 8, 2019)

Gentlemen:

I am writing to you as the attorneys for the Debtor, Celadon Group, Inc. in the above-referenced bankruptcy proceeding. As you know, one of the subsidiaries of Celadon Group that has been listed in the bankruptcy filings is Transportation Insurance Services Risk Retention Group, Inc. (TIS RRG), a captive insurance company licensed and domiciled in South Carolina.

Although it appears that a number of Celadon Group's subsidiaries have been listed in the bankruptcy petition, we were nonetheless surprised that TIS RRG was included as a Debtor in light of the provisions of 11 U.S. Code § 109 (b) & (d). As you know, under these statutory provisions of the Bankruptcy Code, a domestic insurance company may not be a debtor under Chapter 11. Rather, financially impaired insurers domiciled in this State are to be placed into receivership pursuant to Chapter 27 of Title 38 of the Code of Laws of South Carolina 1976, as amended. *See also* S.C. Code Ann. § 38-90-180(A) ("Except as otherwise provided in this section, the terms and conditions set forth in Chapters 26 and 27 of this title pertaining to insurance reorganizations, receiverships, and injunctions apply in full to captive insurance companies formed or licensed under this chapter."). *See generally* McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015 (exempting the business of insurance from most federal regulation in favor of regulation by individual states).

In addition, because of Celadon Group's bankruptcy and the financial arrangements between the RRG and other companies with the group, a reasonable person might conclude that TIS RRG may not have sufficient funds to pay claims of members of the public who are injured and/or whose property has been damaged as a result of a collision with an insured vehicle. Because TIS RRG is a risk retention group, its policies are not protected by guaranty association

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Stuart M. Brown, Esq.
Matthew S. Sarna, Esq.
January 13, 2020
Page 2

coverage, potentially leaving the public further exposed. *See* 15 U.S.C. § 3902(a)(2); S.C. Code Ann. § 38-87-50 (participation by risk retention groups in state insurance insolvency guaranty fund prohibited).

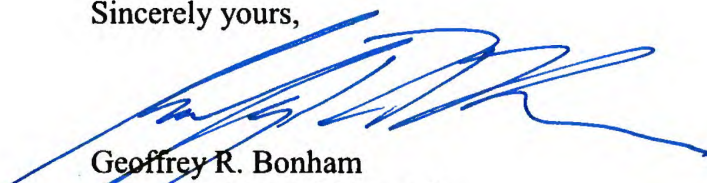
Finally, the most recent policy issued by TIS RRG lists the following companies as named insureds: A&S Services Group, Inc., A&S Kinard Logistics, Inc., Buckler Transport, Inc., Buckler Distribution, Inc., Distribution, Inc. dba FTL, Inc., and Taylor Express, Inc., all with an address of 9503 E 33rd Street Indianapolis, IN 46235, i.e., the address of Celadon Group. I believe that at the time of issuance, all of these companies were subsidiaries of Celadon Group; however, recent news reports indicate that some may have been sold to third parties, resulting in a potential change in the owner-insureds.

For the foregoing reasons, it is essential that you contact the Department promptly regarding the status of TIS RRG as it pertains to the bankruptcy proceedings. It would be most helpful if you could provide an explanation, preferably in writing, as to (1) why TIS RRG was included in the petition for bankruptcy even though it is not a “debtor” as defined in the Bankruptcy Code, and (2) what, if any, measures have been taken to safeguard policyholders and the public, especially third parties who may have incurred injuries and property damages as a result of a collision or other covered event involving an insured vehicle. We would also appreciate any information you might be able to provide that would assist us in determining whether the apparent sale of certain owner-insureds by Celadon Group has affected their coverage by and ownership of TIS RRG.

Thank you very much for your attention and cooperation. If you have any questions of me, please do not hesitate to let me know. Please direct all communications directly to me at the above mailing address or at (T) 803-737-6219, (F) 803-737-6229 or gbonham@doi.sc.gov.

With kindest regards, I am

Sincerely yours,



Geoffrey R. Bonham
Associate General Counsel

c: Michael Shull, Chief Financial Analyst

Geoffrey Bonham

From: Geoffrey Bonham
Sent: Monday, January 13, 2020 9:08 AM
To: stuart.brown@dlapiper.com; matthew.sarna@dlapiper.com
Cc: Michael Shull
Subject: Transportation Ins. Services Risk Retention Group, Inc., a SC Domiciled Captive Ins. Co., Case No. 19-12606-KBO (Bankr. Del. filed Dec. 8, 2019)
Attachments: Letter to Counsel for Celadon Group from GR Bonham dated 01132020 re TIS RRG.pdf

Gentlemen:

Attached please find a PDF copy of a letter from me regarding the above-referenced South Carolina licensee. I would be most appreciative if after you have an opportunity to review the attached you would contact me.

Thank you very much for your attention and consideration.

Geoff

Geoffrey R. Bonham
Associate General Counsel

S.C. Department of Insurance
P.O. Box 100105
Columbia, SC 29202-3105

Capitol Center
1201 Main St., Suite 1000
Columbia, SC 29201

T: 803-737-6219
F: 803-737-6229

gbonham@doi.sc.gov

UNDERWRITING AND INVESTMENT EXHIBIT
PART 2A - UNPAID LOSSES AND LOSS ADJUSTMENT EXPENSES

Line of Business		Reported Losses				Incurred But Not Reported			8	9
		1	2	3	4	5	6	7	Net Losses Unpaid (Cols. 4 + 5 + 6 - 7)	Net Unpaid Loss Adjustment Expenses
		Direct	Reinsurance Assumed	Deduct Reinsurance Recoverable	Net Losses Excluding Incurred but not Reported (Cols. 1 + 2 - 3)	Direct	Reinsurance Assumed	Reinsurance Ceded		
1.	Fire.....				0				0	
2.	Allied lines.....				0				0	
3.	Farmowners multiple peril.....				0				0	
4.	Homeowners multiple peril.....				0				0	
5.	Commercial multiple peril.....				0				0	
6.	Mortgage guaranty.....				0				0	
8.	Ocean marine.....				0				0	
9.	Inland marine.....				0				0	
10.	Financial guaranty.....				0				0	
11.1	Medical professional liability - occurrence.....				0				0	
11.2	Medical professional liability - claims-made.....				0				0	
12.	Earthquake.....				0				0	
13.	Group accident and health.....				0				(a) 0	
14.	Credit accident and health (group and individual).....				0				0	
15.	Other accident and health.....				0				(a) 0	
16.	Workers' compensation.....				0				0	
17.1	Other liability - occurrence.....				0				0	
17.2	Other liability - claims-made.....				0				0	
17.3	Excess workers' compensation.....				0				0	
18.1	Products liability - occurrence.....				0				0	
18.2	Products liability - claims-made.....				0				0	
19.1, 19.2	Private passenger auto liability.....				0				0	
19.3, 19.4	Commercial auto liability.....	1,000,000			1,000,000	370,827			1,370,827	
21.	Auto physical damage.....				0				0	
22.	Aircraft (all perils).....				0				0	
23.	Fidelity.....				0				0	
24.	Surety.....				0				0	
26.	Burglary and theft.....				0				0	
27.	Boiler and machinery.....				0				0	
28.	Credit.....				0				0	
29.	International.....				0				0	
30.	Warranty.....				0				0	
31.	Reinsurance - nonproportional assumed property.....	XXX			0	XXX			0	
32.	Reinsurance - nonproportional assumed liability.....	XXX			0	XXX			0	
33.	Reinsurance - nonproportional assumed financial lines.....	XXX			0	XXX			0	
34.	Aggregate write-ins for other lines of business.....	0	0	0	0	0	0	0	0	0
35.	TOTALS.....	1,000,000	0	0	1,000,000	370,827	0	0	1,370,827	0
DETAILS OF WRITE-INS										
3401.	.....				0				0	
3402.	.....				0				0	
3403.	.....				0				0	
3498.	Summary of remaining write-ins for Line 34 from overflow page.....	0	0	0	0	0	0	0	0	0
3499.	Totals (Lines 3401 through 3403 plus 3498) (Line 34 above).....	0	0	0	0	0	0	0	0	0

(a) Including \$.....0 for present value of life indemnity claims.

ELECTRONICALLY FILED - 2020 Apr 10 4:08 PM - RICHLAND - COMMON PLEAS - CASE #2020CP4001276
FILED - 2020 Apr 13 11:43 AM - RICHLAND - COMMON PLEAS - CASE #2020CP4001276

PART 3 (000 omitted)

LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES SCHEDULE

	1	2	3	4	5	6	7	8	9	10	11	12	13
Years in Which Losses Occurred	Prior Year-End Known Case Loss and LAE Reserves	Prior Year-End IBNR Loss and LAE Reserves	Total Prior Year-End Loss and LAE Reserves (Cols. 1 + 2)	2019 Loss and LAE Payments on Claims Reported as of Prior Year-End	2019 Loss and LAE Payments on Claims Unreported as of Prior Year-End	Total 2019 Loss and LAE Payments (Cols. 4 + 5)	Q.S. Date Known Case Loss and LAE Reserves on Claims Reported and Open as of Prior Year-End	Q.S. Date Known Case Loss and LAE Reserves on Claims Reported or Reopened Subsequent to Prior Year-End	Q.S. Date IBNR Loss and LAE Reserves	Total Q.S. Loss and LAE Reserves (Cols. 7 + 8 + 9)	Prior Year-End Known Case Loss and LAE Reserves Developed (Savings)/Deficiency (Cols. 4 + 7 minus Col. 1)	Prior Year-End IBNR Loss and LAE Reserves Developed (Savings)/Deficiency (Cols. 5 + 8 + 9 minus Col. 2)	Prior Year-End Total Loss and LAE Reserves Developed (Savings)/Deficiency (Cols. 11 + 12 minus Col. 13)
1. 2016 + Prior.....	.....500	.....122	.....622			.....0	.....500		.....122	.....622	.....0	.....0	
2. 2017.....		.....108	.....108			.....0			.....107	.....107	.....0	.....(1)	
3. Subtotals 2017 + Prior.....	.....500	.....230	.....730	.....0	.....0	.....0	.....500	.....0	.....229	.....729	.....0	.....(1)	
4. 2018.....	.....500	.....141	.....641			.....0			.....178	.....178	.....(500)	.....37	.....(463)
5. Subtotals 2018 + Prior.....	.....1,000	.....371	.....1,371	.....0	.....0	.....0	.....500	.....0	.....407	.....907	.....(500)	.....36	.....(463)
6. 2019.....	.....XXX	.....XXX	.....XXX	.....XXX		.....0	.....XXX		.....98	.....98	.....XXX	.....XXX	.....XXX
7. Totals.....	.....1,000	.....371	.....1,371	.....0	.....0	.....0	.....500	.....0	.....505	.....1,005	.....(500)	.....36	.....(464)
8. Prior Year-End's Surplus As Regards Policyholders	.....508										Col. 11, Line 7 As % of Col. 1, Line 7	Col. 12, Line 7 As % of Col. 2, Line 7	Col. 13, Line 7 As % of Col. 13, Line 7
											1. ....(50.0)%	2. ....9.7 %	3. ....(33.8 %)
											Col. 13, Line 8		
											4.(9.7 %)		

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
CELADON GROUP, INC., <i>et al.</i> , ¹	:	Case No. 19-12606 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Related D.I.: 348 & 630

**ORDER DISMISSING THE CHAPTER 11 CASE OF DEBTOR TRANSPORTATION
INSURANCE SERVICES RISK RETENTION GROUP, INC.
NUNC PRO TUNC TO THE PETITION DATE**

This matter coming before the Court upon the *Certification of Counsel Regarding Order Dismissing the Chapter 11 Case of Debtor Transportation Insurance Services Risk Retention Group, Inc. Nunc Pro Tunc to the Petition Date* (the “Certification of Counsel”), seeking entry of an order (i) dismissing the chapter 11 case of Transportation Insurance Services Risk Retention Group, Inc. (“TISRRG”); and (ii) granting related relief; and upon the record of these chapter 11 cases; and this Court having found that (i) this Court has jurisdiction to consider the Certification of Counsel and the relief requested therein under 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); Transportation Insurance Services Risk Retention Group, Inc. (7197); Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235.

venue in this district is proper under 28 U.S.C. §§1408 and 1409, and (v) no further or other notice is required under the circumstances; and this Court having reviewed the Certification of Counsel and having heard the statements in support of the relief requested at a hearing before this Court (the "Hearing"); and this Court having found and determined that the relief sought is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The chapter 11 case of TISRRG, Case No. 19-12630, is hereby DISMISSED, without prejudice, effective *nunc pro tunc* to December 8, 2019, and such case is hereby closed.

2. The following jointly administered case caption shall be substituted in place of the existing jointly administered case caption:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 11
	:	
CELADON GROUP, INC., <i>et al.</i> , ¹	:	Case No. 19-12606 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); and Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235.

3. Notwithstanding the *nunc pro tunc* relief granted by this Order, the Debtors shall pay to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") any and all due and owing U.S. Trustee fees related to the chapter 11 case of TISRRG and satisfy any obligations related thereto for the period commencing December 8, ²⁰¹⁹~~2020~~ through the date hereof.

4. Notwithstanding the dismissal of the chapter 11 case of TISRRG, the Court shall retain jurisdiction with respect to all matters, claims, rights, or disputes arising from or related to the implementation of this Order. (150)

5. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be effective immediately and enforceable upon its entry.

6. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted in this Order.