

STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

COMMISSIONER OF THE
DEPARTMENT OF FINANCIAL
REGULATION

PLAINTIFF,

v.

HOSPITALITY RISK
RETENTION GROUP, INC.,
RESPONDENT.

CIVIL DIVISION

DOCKET NO. 21-CV-0406

**LIQUIDATOR’S FOURTH STATUS REPORT, ANNUAL
ACCOUNTING, AND THIRD REPORT OF CLAIMS**

I, J. David Leslie, Special Deputy Liquidator, hereby submit this status report and report of claims concerning the liquidation of Hospitality Risk Retention Group, Inc. (“Hospitality” or the “Company”).

1. Background. On March 1, 2021, the Commissioner of the Department of Financial Regulation (“Commissioner”) filed a Petition for Order of Liquidation which was assented to by Hospitality’s Board of Directors. On April 8, 2021, the Court entered its Order of Liquidation (“Liquidation Order”) that, among other things, appointed the Commissioner as Liquidator (“Liquidator”), authorized him to appoint a special deputy liquidator, approved the Plan of Liquidation, and ordered that the Liquidator provide creditors and others with notice of the Liquidation Order and a claim filing deadline no less than 120 days after the date of the Liquidation Order. See Order of Liquidation ¶¶ 1, 5, 6, and 7. The Liquidator appointed me to serve as Special Deputy Liquidator on April 9, 2021.

2. I submitted the Liquidator's First Status Report to the Court on November 8, 2021. That status report noted, among other things, that the Liquidator had established October 8, 2021, as the claim filing deadline, provided notice of liquidation to potential creditors, and received 28 proofs of claim. I submitted the Liquidators' Second Status Report, Annual Accounting and First Report of Claims to the Court on April 19, 2022. That report presented an annual accounting of receipts/disbursements from estate accounts, the Liquidator's First Report of Claims, and a general status report. At the same time, the Liquidator filed a motion seeking authority to make a 10% interim distribution on allowed priority class 3 claims.¹ I submitted the Liquidator's Third Status Report and Second Report of Claims on February 15, 2023. That report described the status of the proceeding, Medicare/Medicaid reporting, and the status of distribution payments. Those documents, along with other key records relating to this proceeding, have been posted on the liquidation website (<https://dfr.vermont.gov/hospitality>).

ANNUAL ACCOUNTING & STATUS REPORT

3. The liquidation statutes require that the Liquidator submit annual accountings to the Court that reflect assets and liabilities of the insurer and all funds received or disbursed by the Liquidator during the current period. See 8 V.S.A. § 7057(e); Liquidation Order, ¶ 4. An accounting for the period March 31, 2022 to December 31, 2023 is attached hereto as Exhibit A.² A simplified balance sheet reflecting Hospitality's financial condition as of December 31, 2023 is presented in Table 1 on the following page.

¹ The Court entered its Order approving the First Report of Claims and authorizing the 10% interim distribution on May 19, 2022.

² The current report shifts annual reporting to a calendar year period. The Liquidator will maintain that schedule through the remainder of the proceeding.

Table 1 – Simplified Hospitality Balance Sheet as of December 31, 2023

ASSETS

Cash & Cash Equivalents	\$ 2,332,934
Invested Assets	892,071
Credit for Interim Distributions	<u>596,000</u>
Total Assets	\$ 3,821,005

LIABILITIES

Priority Class 1 – Administrative Expenses	\$ 355,897
Priority Class 3 – Claims under Policies	
Finally determined claims	\$ 11,554,391
Open claims (“Best Estimate”)	<u>4,500,000</u>
Class 3 Subtotal	\$ 16,054,391
Total Liabilities	<u>\$ 16,410,288</u>

4. Estate Assets. As of December 31, 2023, Hospitality had \$3.2 million of liquid assets including \$892,071 of invested assets and \$2.3 million of cash and cash equivalents. In addition to these liquid assets, when calculating a final distribution the Company will be entitled to credit for interim distributions made on allowed priority class 3 claims pursuant to the Court’s order of May 19, 2022. See, supra, ¶ 2. As of December 31, 2023, those distributions totaled \$596,000.

5. Estate Liabilities. The liquidation statutes require that payments on claims be made in accordance with the statutory priorities and that all claims in a class be paid in full (or adequate reserves established for such payment) before claims in subsequent classes receive any distribution. 8 V.S.A. § 7081. Accordingly, in Table 1 the Liquidator presents the Company’s estimated liabilities in terms of priority classification rather than the annual statement format that would be presented by an insurer operating as a going concern.

a. *Priority Class 1 (Administrative Expenses).* For purposes of evaluating potential estate distributions and recommending the establishment of an interim distribution, the Liquidator established an administrative expense reserve of \$500,000 as of March

31, 2022. See Liquidator’s Second Status Report, ¶ 14. The \$355,897 reported in Table 1 reflects that original reserve less \$144,104 in administrative expense disbursements made since the reserve was established.³ The Liquidator continues to believe that this reserve is appropriate and conservative and any funds not needed for the payment of administrative expense will be released at the close of the proceeding and become available to pay claims falling in priority class 3.

b. *Priority Class 3 (Claims under Policies)*. The \$16.05 million figure presented in Table 1 reflects the best available information regarding policy-related exposure and is drawn from two sources. First, as of December 31, 2023 the Liquidator had issued notices of determination approving claims in the total amount of \$11,554,391.⁴ Second, the Liquidator has reviewed the remaining claims filed in this proceeding and provided a “best estimate” as to the value (if any) in which each might be allowed. This total – \$4.5 million – is added to the value of the previously determined claims to produce the total estimate of \$16.1 million. The Liquidator has also developed a “pessimistic” scenario estimate -- \$10.9 million – which reflects the adverse end of the expected range of values for each claim and implies total priority class 3 liabilities of \$22.5 million.

Estate assets are unlikely to permit full payment of class 3 claims such that it is unlikely any distribution could be made on claims falling in priority classes 4-10. See 8 V.S.A. § 7081

³ Administrative expenses totaled \$106,426 for calendar year 2021 (April to December) and \$93,682 for calendar year 2022 and \$62,229 for calendar year 2023. Figures for 2021 included significant non-recurring expenses (e.g. initial pleadings, notice to creditors, etc...) such that experience for 2022 and 2023 should be more representative of future costs.

⁴ The Liquidator also determined certain claims subsequent to December 31, 2024 which have since become “final” (i.e. the objection period has run or been waived). As a result, if the Third Report of Claims – attached as Exhibit B – is approved, the total value of allowed priority class 3 claims will be \$12,862,999.84 rather than the \$11.6 million figure shown as of yearend.

(“Every 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.”) The Liquidator has therefore deferred making a determination as to the amount, if any, of claims falling in priority classes 4-10 and has made no estimate as to the total potential value of such claims.

6. Receipt of Proofs of Claim. As of the claim filing deadline -- October 8, 2021 -- the Liquidator had received and acknowledged a total of 25 completed proofs of claim (“POCs”). (Incomplete proofs of claim were returned to their senders with instructions for resubmission.) The Liquidator received an additional 12 completed POCs between the claim filing deadline and December 31, 2022. See 8 V.S.A. § 7074(d) (Liquidator may consider any “claim filed late” if doing so “does not prejudice the orderly administration of the estate”). No claims were filed in calendar year 2023 and, while creditors remain free to file claims, there is a substantial likelihood that treating them now as timely-filed would prejudice the orderly administration of the estate.

7. A POC may present a single claim (e.g. recovery for a loss resulting from a single motor vehicle accident) or multiple claims (e.g. the POC form encloses a schedule listing multiple motor vehicle accidents). Accordingly, the Liquidator has assigned separate control numbers to each claim presented in a POC. For example, POC no. 7 has been subdivided into seven subclaims assigned POC nos. 7a through 7g. Counted in this manner, the Liquidator has received a total of 68 claims. This figure is lower than the 69 claims noted in the Liquidator’s Third Status Report due to the consolidation of two claims.

8. Because the insurer receivership statutes permit third parties to file claims directly against the estate and because multiple entities may have a financial interest in a claim, a single incident may give rise to numerous related claims that may seek overlapping recovery (e.g. a tort

claimant asserting the insured’s liability, another insurer asserting rights of subrogation/contribution, a policyholder seeking indemnity and post-liquidation defense expenses, and defense counsel seeking payment of pre-liquidation defense expenses.) This means that raw POC and claim counts are not a reliable metric for evaluating estate exposure or the amount of work remaining to crystallize Hospitality’s obligations and close the proceeding. The Liquidator has therefore attempted to group POCs by type and, among policy-related claims, by incident. This facilitates estimation as to the number of motor vehicle accidents requiring investigation and the number of disputes to be resolved. Figures are expected to evolve as the Liquidator gathers further information but, at present, there appear to be 32 separate incidents for which POCs have been submitted.

9. The Liquidator also classifies claims by type to better understand the priority class in which claims are likely to fall and the nature of the work that may be required to investigate and determine them. These classifications are subject to revision as further information is received but, at present, the distribution of claims by type appears to be as follows:

Claim Type	Claim Count
Defense/Indemnity under Policy	48
Return Premium	2
Pre-Liquidation Loss Adjustment Expenses	9
“Other”	9
Total	68

10. Investigation and Determination of Claims. As noted above, there appear to be 32 separate incidents for which POCs have been submitted. With regard to those incidents: nine have been entirely resolved and all associated POCs finally determined; six have been resolved with regard to indemnity and all that remains is to determine the insureds’ claims for reimbursement of defense expenses; and five appear unlikely to breach the self-insured retention

under the Hospitality policy. That leaves twelve incidents with additional potential indemnity exposure. Six of the twelve “open” incidents appear to present minor exposure leaving six incidents that account for nearly all of the remaining estate liabilities (i.e. the Liquidator’s \$4.5 million “best estimate” of open policy-related claims as of yearend). Those claims are few in number and all involve high policy limits (ranging from \$3.5 million to \$5 million) such that an adverse result on any single claim could have a material effect on the Company’s overall liabilities.

11. Liquidator’s Third Report of Claims. The Liquidator is charged with reviewing all claims filed in the liquidation, making such investigation as he deems necessary, and issuing a determination as to whether the claim should be denied or approved. For approved claims, the determination will also identify an amount and priority classification. “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.” 8 V.S.A. § 7078(a). After the 60-day period has run (or been waived) the claim is deemed to be “finally determined” and the Liquidator will report it to the Court with his recommendations. See 8 V.S.A. § 7082(a). The Court may then approve, disapprove, or modify the Liquidator’s report. 8 V.S.A. § 7082(b). Since the Liquidator’s last report of claims, an additional 10 claims have become “finally determined”. The Liquidator’s recommendation as to the amount and priority class in which such claims should be allowed is attached hereto as Exhibit B and the Liquidator requests that the Court issue an order approving his determinations. See id.

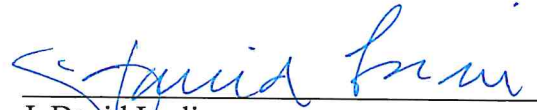
12. Interim Distribution and Medicare/Medicaid Reporting. On April 19, 2022, the Liquidator filed a motion seeking authority to make a 10% interim distribution on allowed priority class 3 claims. The Court entered its Order approving that motion on May 19, 2022.

The Court's order also approved the First Report of Claims such that the Liquidator was permitted to distribute funds to estate creditors in respect of various liability claims. The Liquidator notes, however, that Hospitality was a writer of liability insurance policies that may qualify as "primary plans" under the Medicare Secondary Payer ("MSP") statute. See 42 U.S.C.A. § 1395y(b). This means that the Company has certain reporting responsibilities and, if it is discovered that the Medicare or Medicaid trust funds made conditional payments, Hospitality may have a duty to reimburse the United States. See *id.* It is therefore necessary to verify the absence of Medicare/Medicaid claims before making distributions and the Liquidator has engaged a vendor – Gallagher Bassets Services, Inc. – to assist in that process. See Liquidator's Third Status Report, ¶ 13. The Liquidator will continue such work as additional claims are allowed and become eligible for distribution.

13. The Liquidator is charged with making recommendations to the Court as to whether a distribution can be paid "in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims." 8 V.S.A. § 7083. The Liquidator will continue to monitor Hospitality's financial condition to evaluate whether an increase to the current 10% interim distribution percentage may be possible. At this time, however, the Liquidator does not believe that an increase would be reasonable or prudent. If the Court approves the Third Report of Claims, a further interim distribution of \$293,800 will be made to priority class 3 creditors.


14. Next Steps. Over the coming months, the Liquidator will continue to seek to resolve the remaining Class 3 claims. The sooner those claims are resolved, the sooner a final distribution percentage can be determined and the proceeding brought to a close.

Dated this 8th day of February 2024,



J. David Leslie
Special Deputy Liquidator

Subscribed and sworn before me
this 8th day of February 2024



Notary Public

My commission expires:



EXHIBIT A

Liquidation of Hospitality Risk Retention Group

RECEIPTS AND DISBURSEMENTS

April 1, 2022 to December 31, 2023

Date	Payee/Payor	Description	Amount
04/11/22	Verrill Dana, LLP	Professional Services	\$ (9,523.00)
04/11/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
04/29/22	Peoples United Bank	Interest Received	148.64
05/17/22	Verrill Dana, LLP	Professional Services	(9,864.50)
05/17/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
05/17/22	Johnson Lambert LLP	Tax Preparation Services	(1,400.00)
05/31/22	Peoples United Bank	Interest Received	164.03
06/07/22	Verrill Dana, LLP	Professional Services	(2,047.50)
06/23/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
06/30/22	Peoples United Bank	Interest Received	153.78
07/29/22	Verrill Dana, LLP	Professional Services	(5,327.50)
07/29/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
07/31/22	Peoples United Bank	Interest Received	148.65
08/23/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
08/23/22	Verrill Dana, LLP	Professional Services	(13,235.00)
08/31/22	Peoples United Bank	Interest Received	169.18
09/16/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
09/16/22	Johnson Lambert LLP	Tax Preparation Services	(2,800.00)
09/21/22	Verrill Dana, LLP	Professional Services	(2,292.00)
09/30/22	M&T Bank	Interest Received	143.54
10/13/22	Verrill Dana, LLP	Professional Services	(2,622.00)
10/17/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
10/18/22	Gallagher Bassett Services, Inc.	Professional Services	(15,000.00)
10/19/22	MAC Pizza	Interim Distribution	(566,000.10)
10/31/22	M&T Bank	Interest Received	1,350.29
11/14/22	Verrill Dana, LLP	Professional Services	(4,233.00)
11/14/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
11/30/22	M&T Bank	Interest Received	3,920.12
12/12/22	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
12/12/22	Verrill Dana, LLP	Professional Services	(4,530.50)
12/31/22	M&T Bank	Interest Received	<u>4,579.58</u>
		2022 Cash Flow	\$ (637,097.29)
01/17/23	Risk Services-Vermont, Inc.	Captive Management Fees	\$ (1,000.00)
01/17/23	Verrill Dana, LLP	Professional Services	(4,228.50)
01/31/23	M&T Bank	Interest Received	5,416.73
02/28/23	M&T Bank	Interest Received	2,644.29
03/03/23	Verrill Dana, LLP	Professional Services	(14,587.00)
03/09/23	Verrill Dana, LLP	Professional Services	(4,441.00)
03/14/23	Risk Services-Vermont, Inc.	Captive Management Fees	(2,000.00)

Date	Payee/Payor	Description	Amount
03/17/23	Johnson Lambert LLP	Tax Preparation Services	\$ (1,540.00)
03/31/23	M&T Bank	Interest Received	2,102.43
04/12/23	Verrill Dana, LLP	Professional Services	(3,562.00)
04/18/23	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
04/30/23	M&T Bank	Interest Received	2,074.80
05/17/23	Verrill Dana, LLP	Professional Services	(2,546.00)
05/18/23	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
05/31/23	M&T Bank	Interest Received	2,242.48
06/15/23	Verrill Dana, LLP	Professional Services	(2,211.00)
06/20/23	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
06/27/23	Johnson Lambert LLP	Tax Preparation Services	(1,540.00)
06/30/23	M&T Bank	Interest Received	2,272.12
07/17/23	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
07/31/23	M&T Bank	Interest Received	2,352.57
08/15/23	Risk Services-Vermont, Inc.	Captive Management Fees	(1,000.00)
08/15/23	Verrill Dana, LLP	Professional Services	(2,847.00)
08/31/23	M&T Bank	Interest Received	2,357.37
09/19/23	Risk Services-Vermont, Inc.	Captive Management Fees	(625.00)
09/20/23	Verrill Dana, LLP	Professional Services	(6,526.00)
09/30/23	M&T Bank	Interest Received	2,285.91
10/23/23	Risk Services-Vermont, Inc.	Captive Management Fees	(625.00)
10/23/23	Verrill Dana, LLP	Professional Services	(437.00)
10/23/23	Johnson Lambert LLP	Tax Preparation Services	(1,540.00)
10/31/23	M&T Bank	Interest Received	2,366.85
11/03/23	McGrath Associates	Professional Services	(1,562.50)
11/14/23	High Powered Pizza, LLC	Interim Distribution	(25,000.00)
11/14/23	Flawless Pizza, LLC	Interim Distribution	(5,000.00)
11/27/23	Risk Services-Vermont, Inc.	Captive Management Fees	(625.00)
11/28/23	Verrill Dana, LLP	Professional Services	(2,102.50)
11/30/23	M&T Bank	Interest Received	2,253.64
12/18/23	Risk Services-Vermont, Inc.	Captive Management Fees	(625.00)
12/18/23	Verrill Dana, LLP	Professional Services	(2,058.00)
12/31/23	M&T Bank	Interest Received	<u>2,315.06</u>
		2023 Cash Flow	\$ (61,544.25)

EXHIBIT B

Liquidation of Hospitality Risk Retention Group Inc.

LIQUIDATOR'S THIRD REPORT OF CLAIMS

February 8, 2024

Claims Recommended for Allowance in Priority Class 1

<u>POC No.</u>	<u>Claimant Name</u>	<u>Claimant Address</u>	<u>Priority</u>	<u>Amount Allowed</u>
		None		

Claims Recommended for Allowance in Priority Class 3

16	Mand Made Pizza		3	\$ 308,609.13
24	Purple Pizza Eaters, Inc. d/b/a	200 W. Forsyth St., Suite 400, Jacksonville, FL 32202	3	1,578,776.78
25a	Cowabunga, Inc.	3585 Trotter Drive, Alpharetta, GA 30004	3	11,749.00
25d(Def)	Cowabunga, Inc.	3585 Trotter Drive, Alpharetta, GA 30004	3	38,863.93
36	Sherrie Milford	2675 Thornbury Way, Atlanta, GA 30349	3	1,000,000.00

Recommended for Allowance in Third Report of Claims \$ 2,937,998.84

Allowed in First and Second Reports of Claims 9,925,001.00

Total \$ 12,862,999.84

Claims Recommended for Allowance in Priority Classes 4-10

		None		
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Claims Denied or Withdrawn

3	JMP Pizza, Inc. dba Domino's	P.O. Box 333, Fairburn, GA 30213	n/a	n/a
9	Kathy Kaial Vircik	4222 Trumpworth Court, Valrico, FL 33596	n/a	n/a
25g	Cowabunga, Inc.	3585 Trotter Drive, Alpharetta, GA 30004	n/a	n/a
25i	Cowabunga, Inc.	3585 Trotter Drive, Alpharetta, GA 30004	n/a	n/a
27	Michael Thompson	5300 Memorial Dr., Suite 270, Houston, TX 77007	n/a	n/a