

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

CIVIL DIVISION  
DOCKET NO. 196-5-20 Wncv

COMMISSIONER OF THE	)
DEPARTMENT	)
OF FINANCIAL REGULATION,	)
PLAINTIFF,	)
	)
v.	)
	)
GLOBAL HAWK INSURANCE CO.	)
RISK RETENTION GROUP,	)
	)
DEFENDANT.	)

**AFFIDAVIT OF J. DAVID LESLIE, SPECIAL DEPUTY COMMISSIONER**

I, J. David Leslie, being sworn, hereby state as follows:

1. On May 20, 2020, the Court entered an Order (“Seizure Order”) directing the Commissioner of the Department of Financial Regulation (“Commissioner”) to take possession and control of the property, books, accounts, documents and other records of Global Hawk Insurance Company Risk Retention Group (“Global Hawk RRG” or the “Company”) and enjoining the officers, managers, agents, employees and other persons from disposing of Global Hawk RRG’s property without the prior written consent of the Commissioner or the Commissioner’s designee. The Commissioner appointed me as Special Deputy Commissioner for purposes of this proceeding. I submit this Affidavit in support of the Commissioner’s Petition for Order of Liquidation for Global Hawk Insurance Company Risk Retention Group (the “Petition”). The facts and information set forth in this affidavit are either within my own knowledge and gained through my involvement in this matter, in which case I confirm they are

true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. Respondent Global Hawk RRG was originally formed as a risk retention group in 2003 in the state of South Carolina. The Company re-domesticated to Vermont on February 20, 2009 and was authorized to do business as a risk retention group writing automobile liability insurance coverage for motor trucking carriers.

3. As of December 31, 2019, Global Hawk RRG reported assets of \$42.7 million (including \$37.6 million of cash and invested assets) and liabilities of \$34.9 million such that the Company presented surplus of \$7.7 million in its annual statement. At that time, Global Hawk was registered in ten jurisdictions (not including Vermont) and had in-force coverage in seven States.

4. On May 15, 2020, the Commissioner filed an *ex parte* Petition for Seizure Order pursuant to 8 V.S.A. § 7042(b), seeking, among other things, authorization to take possession and control of Global Hawk RRG. That petition was based in part on information presented to the Commissioner suggesting that Global Hawk RRG's liabilities plus the legally required capital reserve exceeded its assets such that the Company was insolvent. The Court granted the Commissioner's petition by entering the Seizure Order on May 20, 2020.

5. The Commissioner has caused Global Hawk RRG's officers, directors, captive manager, program manager, investment manager, bankers, reinsurers, and other agents to be notified of the Seizure Order's injunction against disposing of Global Hawk RRG property without the prior written consent of the Commissioner or his designee. The Commissioner has also informed insurance regulators that Global Hawk RRG is deeply insolvent, that the Court has entered the Seizure Order, and that he intends to seek liquidation.

6. Global Hawk RRG staff and agents have been directed to refer all requests for payments and distributions to me for review in my role as Special Deputy Commissioner. To avoid the creation of voidable preferences under 8 V.S.A. § 7067, I have approved (and will approve) payment only on expenses necessary to avoid prejudice, costs dictated by exigent circumstances, and obligations that would be assigned to priority class 1 in a liquidation proceeding.

7. I have reviewed statements from the banks holding Company funds and the financial institutions acting as custodians for Company assets. The statements produced by these institutions show cash and invested assets totaling \$609,489 as of December 31, 2019. (The Special Deputy Commissioner has been unable to reconcile this figure to the \$37.6 million reported as of December 31, 2019 in the Company's annual statement.) The statements produced by these institutions show cash and invested assets totaling \$1,139,287 as of April 30, 2020.

8. On May 22, 2020, I observed to management that continued operation presented grave risks to the public and requested that the Company promptly present any information or analysis suggesting that the Company was solvent and able to meet its obligations in the normal course of business. Management did not present such information or analysis. Accordingly, on May 29, 2022, I requested that notice be provided to the insurance producers that had placed coverage with the Company that the Seizure Order had been entered, that the Department was concerned that Global Hawk RRG was insolvent, and that that replacement coverage should be found with other carriers as soon as possible. Management began to provide this notice to producers on May 29, 2020.

9. The Commissioner has concluded that Global Hawk RRG is insolvent, that its further transaction of business would be hazardous, that a rehabilitation would be futile, and that liquidation is necessary.

- a. *Global Hawk RRG is insolvent.* As of April 30, 2020, banks and financial institutions acting as custodians for the Company's assets reported cash and invested assets totaling \$1,139,287. As of April 30, 2020, the Company's case reserves (i.e. defense and indemnity reserves on known claims) totaled \$11.9 million on 224 open claims.<sup>1</sup> This figure (more than 10 times the Company's liquid assets the prior month) does not fully state Global Hawk RRG's actual policy obligations because it excludes consideration of losses that have been incurred but not yet reported ("IBNR") or its obligations for unearned premium upon termination of the in-force business.<sup>2</sup> While some portion of those claim liabilities may be reduced by reinsurance recoverable, the difference between the case reserves alone and known assets is so great that insolvency is apparent.
- b. *Hazardous condition.* As of April 30, 2020, the Company was providing commercial auto insurance to 1,008 vehicles (928 garaged in California, 29 in Nevada, 26 in Washington, and a total of 15 in Arizona, Illinois, and Kansas). The Company is a risk retention group (and therefore barred by federal statute from participating in the guaranty fund system<sup>3</sup>) and so deeply insolvent (assets

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<sup>1</sup> The April 30, 2020, report shows reserves of \$9.8M on claims arising under policies issued in California, \$1.7 million on claims arising under policies issued in Texas, and a total of \$338,000 on claims arising under policies issued in Arizona, Illinois, Kansas, Nevada, Oregon, and Washington.

<sup>2</sup> For comparative purposes, the Company's 2019 Annual Statement projected ultimate loss and loss adjustment expenses (i.e. case reserves plus IBNR) totaling \$23.75 million.

<sup>3</sup> The federal statutes governing risk retention groups prohibit them from participating in the state-run guaranty fund system. See 15 US Code § 3902(a). Vermont statutes conform to this federal mandate. See 8 V.S.A. §6054(a). In

less than 5% of case reserves) that these vehicles are effectively uninsured. Further, because Global Hawk RRG appears to have focused on insuring small trucking operations (more than half of its members insured a single vehicle with the Company), it is reasonable to assume that the members may lack the financial scale to absorb and pay uninsured losses. The Commissioner has sought to alert producers and members to this fact so that they may promptly procure alternative commercial auto insurance coverage. The powers available under a Seizure Order issued pursuant to 8 V.S.A. § 7042(b) are insufficient, because the Commissioner needs to be able to act proactively to, among other things, transfer assets and assert the Company's rights. (One of the Company's banks, in Arizona, has refused to acknowledge and act pursuant to the Seizure Order, questioning the jurisdiction of this court.) The Commissioner therefore believes that further transaction of business by Global Hawk RRG poses an extreme hazard to policyholders, creditors, and the public generally.

- c. *Assent.* Counsel for Jasbir S. Thandi, the owner of the Company's founding member (a member entitled by Global Hawk RRG's bylaws to exercise more than half of the membership votes), has advised that the founding member assents to entry of the liquidation order submitted herewith and waives a hearing on the petition. Mr. Thandi is also President, Treasurer, and Director of Global Hawk RRG.

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the absence of guaranty fund coverage, the Company's assets are the sole source of recovery for Global Hawk RRG's policyholders and creditors.

10. In accordance with the applicable statutes, the Commissioner proposes that, in the liquidation of the insolvent Global Hawk RRG, each member will be responsible for defending his or her claims and paying all claims and defense costs. Actions against Global Hawk RRG will be barred and policyholders/creditors (including third-party claimants) would instead be required to submit their claims to the liquidator together with proof sufficient to allow a determination. The liquidator will issue notice to all members and insurance producers placing coverage with Global Hawk RRG that all in-force policies will be cancelled on fourteen (14) days notice. See 8 V.S.A. § 7058(a)(1) (in-force policies remain in effect for the lesser of, among other things, 30 days following entry of the liquidation order or such other date as approved by the Court). The liquidator will set a claim filing deadline not less than 120 days from the entry of a liquidation order. As proofs of claim are received, the liquidator will review them and make determinations as to priority.<sup>4</sup> The liquidator will pay administrative expenses (priority class 1 claims) in the ordinary course of business and will determine policyholder-level claims (priority class 3) as to priority and amount. Estate assets are unlikely to permit full payment of class 3 claims so, if the liquidator concludes that a claim falls in priority classes 4 through 10, the liquidator will typically issue a determination as to priority classification only. All claimants will have the statutory rights to request reconsideration and to file objections with the Court.

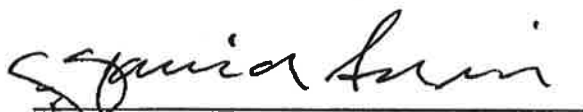
11. In a standard liquidation proceeding, all creditors with allowed claims would be paid at the close of the proceeding. The liquidator will closely monitor Global Hawk RRG's financial position and report to the Court whether an interim distribution scheme may be

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<sup>4</sup> A proposed Proof of Claim form and Notice of Liquidation are attached as Exhibit A to the Plan of Liquidation filed with the Petition.

established for the benefit of priority class 3 creditors with claims that have been finally determined.

Dated this 5th day of June 2020.



J. David Leslie  
Special Deputy Commissioner

Subscribed and sworn before me this 5<sup>th</sup> day of June 2020



Notary Public  
My commission expires:

