

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.)

**ASSENTED TO PETITION FOR ORDER OF LIQUIDATION FOR GLOBAL
HAWK INSURANCE COMPANY RISK RETENTION GROUP**

Now comes the State of Vermont Department of Financial Regulation (the “Department”), by its Commissioner Michael S. Pieciak (the “Commissioner”), pursuant to 8 V.S.A. § 7056 and petitions the Court for an Order of Liquidation for Global Hawk Insurance Company Risk Retention Group (“Global Hawk RRG” or the “Company”) in the form filed herewith and approval of the Plan of Liquidation attached hereto as Exhibit A. As grounds therefor, the Commissioner states as follows:

1. Jurisdiction and Authority. This Court has exclusive jurisdiction of this action pursuant to 8 V.S.A. § 7032(e).
2. Petitioner is the Commissioner of the Vermont Department of Financial Regulation. Pursuant to 8 V.S.A. § 7032(a) the Commissioner has sole authority to commence a delinquency proceeding under Chapter 145 of the Vermont Statutes.
3. Global Hawk RRG was originally formed as a risk retention group in 2003 in South Carolina. The Company re-domesticated to Vermont on February 20, 2009, and it was

authorized to do business as a risk retention group writing automobile liability insurance coverage for motor trucking carriers. See 8 V.S.A. §§ 6001 and 6002. The Company is therefore a “domestic insurer” within the meaning of 8 V.S.A. § 7056. See also 8 V.S.A. § 6018 and 7031(13)(H). Affidavit of J. David Leslie, Special Deputy Commissioner, filed herewith, at ¶ 2 (hereinafter, “Leslie Aff., ¶ ___”).

4. Background. 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. Leslie Aff., ¶ 3.

5. 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 an order (“Seizure Order”) on May 20, 2020, finding that the Company is insolvent, that its further transaction of business would be hazardous, and its condition is grounds for an order establishing a formal delinquency proceeding. The Seizure Order directed the Commissioner to take possession and control of Global Hawk RRG’s assets and enjoined the further transaction of business by Global Hawk RRG officers, managers, agents, employees and other persons without the prior written consent of the Commissioner or his designee. Leslie Aff., ¶ 4.

6. 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. . Leslie Aff, ¶ 5.

7. The Commissioner has appointed J. David Leslie, Esq., of Rackemann, Sawyer & Brewster PC to serve as Special Deputy Commissioner and his designee pursuant to the Seizure Order. Global Hawk RRG staff and agents have been directed to refer all requests for payments and distributions to the Special Deputy Commissioner for review. To avoid the creation of avoidable preferences under 8 V.S.A. § 7067, the Special Deputy Commissioner has approved (or 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. Leslie Aff., ¶¶ 1 and 6; see 8 V.S.A. § 7081.

8. The Special Deputy Commissioner has 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. Leslie Aff., ¶ 7.

9. On May 22, 2020, the Special Deputy Commissioner 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, the Special Deputy Commissioner

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. Leslie Aff., ¶ 8.

10. Liquidation is Necessary. The Commissioner may petition the Court for an order to liquidate a domestic insurer if “the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.” 8 V.S.A. § 7056. The Commissioner may also seek such an order if “one or more of the grounds for an order of rehabilitation... exist” including that “[t]he insurer is insolvent” or “[t]he board of directors... consents...”. 8 V.S.A. §§ 7051 and 7056. The Commissioner has concluded that Global Hawk RRG is insolvent, that its further transaction of business would be hazardous, and that liquidation is necessary. In addition, the Company’s founding member (a member entitled by Global Hawk RRG’s bylaws to exercise more than half of the membership votes) assents to entry of the liquidation order submitted herewith. See 8 V.S.A. § 7051(12). Leslie Aff., ¶ 9.

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.¹ This figure (more than 10 times the Company’s liquid assets the prior month) does not fully state Global

¹ 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.

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.² 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. The Commissioner therefore concludes that the Company is deeply insolvent. Leslie Aff., ¶ 9.a; see 8 V.S.A. §§ 7051 and 7056.

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 system³) and so deeply insolvent (assets 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

² 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.

³ 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 the absence of guaranty fund coverage, the Company's assets are the sole source of recovery for Global Hawk RRG's policyholders and creditors.

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. The Commissioner further believes that the current situation is untenable and that a liquidation proceeding must be initiated as quickly as possible. Leslie Aff. ¶ 9.b; see 8 V.S.A. § 7056.

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. Leslie Aff., ¶ 9.c; see 8 V.S.A. § 7051(12).

11. Proposed Plan of Liquidation. 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 (8 V.S.A. § 7063) and policyholders/creditors (including third-party claimants) will instead be required to submit their claims to the liquidator together with proof sufficient to allow a determination. See 8 V.S.A. §§ 7074 (filing of claims), 7075 (proofs of claim), and 7078 (claim determinations). 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 no less than 120 days from the entry of a liquidation order. See 8 V.S.A. §§ 7061(b) and 7074(a). As proofs of claim are received, the liquidator will review them and

make determinations as to priority.⁴ See 8 V.S.A. §§ 7074 (filing of claims with liquidator and establishment of deadline); 7075 (proof of claim); and 7081 (defining priority classes). 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. See 8 V.S.A. § 7081. 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. See *id.* (“Every claim in each class shall be paid in full... before the members of the next class receive any payment...”). All claimants will have the statutory rights to request reconsideration and to file objections with the Court. See 8 V.S.A. § 7078; *Leslie Aff.*, ¶ 10.

12. In a standard liquidation proceeding, all creditors with allowed claims would be paid at the close of the proceeding. See 8 V.S.A. § 7083. The liquidator will closely monitor Global Hawk RRG’s financial position and report to the Court whether an interim distribution scheme may be established for the benefit of priority class 3 creditors with claims that have been finally determined. *Leslie Aff.*, ¶ 11; see *id.*

13. Because Global Hawk RRG’s insolvency does not trigger guaranty fund obligations, there is no need to submit a proposal for the distribution of assets to guaranty associations pursuant to 8 V.S.A. § 7073.

14. Proposed Order of Liquidation. As discussed above, the Commissioner believes grounds exist for entry of an order of liquidation. The Commissioner therefore requests entry of such an order without a hearing and files herewith a proposed form of order appointing him as

⁴ A proposed Proof of Claim form and Notice of Liquidation are attached to the Plan of Liquidation. See Ex. A.

liquidator, vesting him with the authority provided for by statute, and directing implementation of the Plan of Liquidation.

WHEREFORE, the Commissioner requests that this Court enter an order, without hearing, in the form filed herewith:

- a. Finding, pursuant to 8 V.S.A. §§ 7051 and 7056, that Global Hawk RRG is insolvent;
- b. Finding, pursuant to 8 V.S.A. § 7056, that Global Hawk RRG is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public;
- c. Appointing the Commissioner of the Department of Financial Regulation and his successors in office as liquidator of Global Hawk RRG pursuant to 8 V.S.A. § 7057;
- d. Approving the Plan of Liquidation; and,
- e. Vesting the liquidator with the powers and authority contemplated by 8 V.S.A. ch. 145.

Dated in Montpelier, Vermont, this 5th day of June 2020.

COMMISSIONER OF THE VERMONT
DEPARTMENT OF FINANCIAL REGULATION

By: 

Jennifer Rood
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Assistant Attorney General
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EXHIBIT A – PLAN OF LIQUIDATION

Plan of Liquidation for Global Hawk Insurance Company Risk Retention Group

This Plan of Liquidation (the “Plan”) will govern the liquidation of Global Hawk Insurance Company Risk Retention Group, Inc. (“Global Hawk RRG” or the “Company”). The Superior Court, Washington County (the “Court”) entered the Order of Liquidation for Global Hawk RRG and approved this Plan on _____, 2020 in Commissioner of the Department of Financial Regulation v. Global Hawk Insurance Co. Risk Retention Group, Docket No. 196-5-20 Wncv. The Company was previously the subject of a seizure order entered on an *ex parte* basis in the same proceeding on May 20, 2020.

1. Impact of Liquidation on Members. The Order of Liquidation significantly affects the members insured by Global Hawk RRG. Most policyholders of insolvent insurance companies are eligible for guaranty fund coverage, e.g. 8 V.S.A. § 3611-3626, but since Global Hawk RRG is a risk retention group, it cannot participate in the guaranty fund system. 8 V.S.A. §6054(a); 15 US Code § 3902(a). In the liquidation, management of claims by the risk retention group will cease and each member will be responsible for claims management and paying all defense costs. Global Hawk RRG members and other claimants will be required to file claims in the liquidation and await a distribution of Global Hawk RRG’s assets, possibly years from now. 8 V.S.A. §§ 7074 and 7075.

2. Plan of Liquidation. To reduce the effect of Global Hawk RRG’s liquidation on members and other claimants and to reduce the risks presented by the Company’s insolvency, the Liquidator shall conduct the liquidation proceedings as follows:

- a. The Liquidator shall notify all members with in-force coverage that all Global Hawk RRG policies will be cancelled on the earlier of: i) fourteen days from the date on which the notice is mailed; or ii) the date on which the member procures alternative coverage.
- b. The Liquidator shall pay the costs and expenses of administering the Global Hawk RRG proceeding in the normal course. See 8 V.S.A. § 7081(1).

- c. The Liquidator will furnish notice of the Liquidation Order as provided in 8 V.S.A. § 7061. The notice will include a copy of the Proof of Claim (in the form attached hereto) and will specify a claim filing deadline not less than 120 days from the date of the Liquidation Order.
 - d. The Liquidator will receive completed proofs of claim, conduct such investigation as he deems necessary, and make a determination as to priority classification pursuant to 8 V.S.A. § 7081. If the claim falls within priority classes 4 through 10, the Liquidator may decline to make a determination as to the amount of such claim and instead issue a determination solely as to priority.
 - e. If the claim falls within priority class 3 the Liquidator shall conduct such further investigation as he deems necessary and determine the claim pursuant to 8 V.S.A. § 7078. Claimants dissatisfied with the Liquidator's determination shall file objections Liquidator. The Liquidator shall then issue a redetermination. If the Liquidator does not alter his initial determination, the claimant may request judicial review by submitting a further objection. The Liquidator shall then request a hearing and issue notice pursuant to 8 V.S.A. § 7078(b).
 - f. The Liquidator shall monitor Global Hawk RRG's financial condition and, as circumstances warrant, petition the Court to establish a distribution percentage for making interim payments on finally determined claims in priority class 3.
 - g. Payment to creditors with claims in lower priority classes will be deferred. 8 V.S.A. § 7081 ("Every claim in each class shall be paid in full ... before the members of the next class receive any payment.") If it appears that Global Hawk RRG may have sufficient assets to pay such creditors, the Liquidator will determine claims in the relevant priority classes as to amount and petition the Court to authorize a distribution.
3. Vermont law. In all other respects, the Liquidation of Global Hawk RRG will comply with the Order of Liquidation and 8 V.S.A. ch. 145. The Court retains jurisdiction of all matters arising under this Plan.

PROOF OF CLAIM

GLOBAL HAWK INSURANCE COMPANY RETENTION GROUP ("GLOBAL HAWK RRG")

The deadline for filing a Proof of Claim is [at least 120 days from the date of the Liquidation Order]

**IF YOU DO NOT FILE A PROOF OF CLAIM BY THE DEADLINE, YOU
MAY NOT RECEIVE ANY PAYMENTS FROM GLOBAL HAWK RRG.**

ADDITIONAL INSTRUCTIONS ARE ON THE REVERSE SIDE OF THIS FORM. PLEASE PRINT OR TYPE.

1. **Description of Claim(s).** Provide a detailed description of the basis for your claim(s) against Global Hawk RRG. Include reference to any claim or docket numbers, amounts spent in defending claims, and amounts paid. To preserve your right to submit claims asserted after you sign this proof of claim and before the claim filing deadline, state "all rights under policies":

If your claim arises from an insurance policy, provide the following information for each claim:

Policyholder name: _____
Policy number(s): _____
Claim number(s): _____
Date of loss: _____

(If you have multiple claims, policyholders, and/or policies to be included in this Proof of Claim, you may attached additional pages as required.)

2. **Amount of the claim.** If the amount of the claim will increase, state the known amount and then add that the amount is "subject to increase." If you do not know the amount, state "unknown": \$ _____.
3. **Type of security.** If your claim is secured, state the type and amount of such security. If none, state "none": _____.
4. **Offsets/Reductions.** Payments made by Global Hawk RRG that reduce the claim. If none, state "none": \$ ____.
5. **Priority.** Right of priority to payment or other specific right asserted by the claimant. _____.
6. Attach copies of any documents that provide support for the claim. If your claim is currently being administered through Global Hawk RRG, no additional documentation is required at the time you submit this proof of claim.

Under penalties of law, I state that the facts set forth in this Proof of Claim are true to the best of my knowledge, that the sum claimed is justly owed, and that there is no known setoff, counterclaim or defense to the claim.

Your Name and Address:

Name and Address of your Attorney:

Signature: _____
Date: _____

MAIL THIS FORM TO:
[Special Deputy Liquidator address]

The Special Deputy Liquidator of Global Hawk RRG acknowledges receipt of this Proof of Claim.

Date Received: _____

Proof of Claim No.: _____

NOTICE OF LIQUIDATION

By Order of the Superior Court for Washington County, Vermont, dated _____, 2020 (the "Liquidation Order"), the Commissioner of the Department of Financial Regulation for the State of Vermont, was appointed Liquidator of Global Hawk Insurance Company Risk Retention Group ("Global Hawk RRG"). This notice will serve as notice of the Liquidation Order as required by 8 V.S.A. § 7061.

IF YOU BELIEVE THAT YOU ARE PRESENTLY OWED MONIES BY GLOBAL HAWK RRG, OR MAY BE OWED MONIES AT ANY TIME IN THE FUTURE, YOU MUST FILE A PROOF OF CLAIM ON OR BEFORE [_____] OR YOUR CLAIM AGAINST GLOBAL HAWK RRG MAY BE BARRED.

INSTRUCTIONS FOR COMPLETION OF PROOF OF CLAIM FORM

If you believe that you have a claim now, or may have a claim in the future, against Global Hawk RRG for any reason, you must file a Proof of Claim form in order to preserve your claim. If a claim has been filed against you, include details of the claim. Such details should include a brief narrative description of the claim, any claim or docket numbers, and identification of any costs incurred or payments you have made to date. If you wish to preserve your rights as to any claim that might be filed in the future, describe the claim as "unreported claim."

- You must print your name and address in the space provided and sign and date the Proof of Claim form. If you have an attorney, include his or her contact information.
- Your signed original Proof of Claim must be postmarked on or before [_____] and mailed to the following address:

J. David Leslie, Esq., Special Deputy Liquidator
Rackemann Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110

- Priority rights are governed by statute (8 V.S.A. § 7081). If you do not assert a right of priority or do not know the priority class that applies to your claim(s), write "none".
- You may be requested to submit supporting documentation to facilitate the Liquidator's determination of your claim(s).
- If you need more information or have any questions, you may mail your inquiry to the above address or contact Stuart Leslie (sleslie@rackemann.com or 617/951-1130).
- If you file a Proof of Claim and your address changes, you are required to notify the Liquidator of such change.

After you file your Proof of Claim, the Liquidator will acknowledge receipt. If you do not receive an acknowledgement within three weeks, please call 617/951-1130.