

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,

Petitioner,

vs.

First Keystone Risk Retention Group,
Inc.,

Respondent.

C.A. No. 2014-CP-40-5987

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

PM 12:38

This matter comes before me pursuant to the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.* Petitioner seeks an order appointing him as Liquidator of First Keystone Risk Retention Group, Inc., (Respondent). The Court, having reviewed the file 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) & -310 (2002).
2. Petitioner is the duly appointed Director for the State of South Carolina Department of Insurance 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 § 38-27-360 (2002).
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. Respondent is a South Carolina industrial insured captive (stock) insurance company formed as a Risk Retention Group and organized and licensed under the provisions of S.C. Code Ann. §§ 38-90-10 *et seq.* It is not publicly traded.

5. The Department granted to Respondent a license to transact business on September 24, 2003, subject to the stipulations set forth in a letter also September 24, 2003.

6. According to the licensing stipulation letter, Respondent's license is conditional on the company maintaining capital and surplus in excess of \$2.4 million.

7. Respondent's corporate headquarters are located at 4421 Aramingo Avenue, Philadelphia, Pennsylvania 19124-4101.

8. Respondent is registered to write commercial transportation liability insurance in Pennsylvania, Maryland, New Jersey, Delaware, Virginia, North Carolina, Georgia and Massachusetts.

9. In or about the autumn of 2011, Respondent retained the services of Towers Watson to perform certain actuarial services, including determination of annual losses and loss adjustment expenses (LAE).

10. On or about September 24, 2014, as a result of its review of Respondent's loss data as of June 30, 2014, Towers Watson made a substantial upward adjustment to Respondent's reserves, increasing ultimate losses and LAE cost reserves by more than \$2 million.

11. A Summary of Respondent's loss and LAE reserves as of June 30, 2014 prepared by Towers Watson indicates a "central," or midpoint, of \$8,977,284.

12. Application of this midpoint to the Company's reported capital and surplus at June 30, 2014 results in a restatement of Respondent's capital and surplus of only \$195,645, or well under the stipulated minimum of \$2.4 million.

13. Moreover, with Respondent in such a hazardous financial condition as to require that it immediately cease and desist from writing any new business, Respondent's Net Deferred Tax Asset is now unrecoverable and Deferred Acquisition costs must be expensed, resulting in adjustments bringing Respondent's total capital and surplus to (\$3,046,237), *i.e.*, *negative* \$3,046,237, as illustrated in the summary below:

Capital and Surplus as Reported in \$		2,421,980
<i>Adjustments in \$:</i>		
<i>Reported Loss and LAE Reserves</i>	6,750,949	
<i>Towers Watson Midpoint Estimate of Reserves</i>	8,977,284	
<i>Change in Reserves (\$):</i>	2,226,335	(2,226,335)
Adjusted Capital and Surplus in \$		195,645
<i>Write Off of Other Assets (\$):</i>		
<i>Net Deferred Tax Asset</i>	2,314,305	
<i>Deferred Acquisition Costs</i>	927,577	
<i>Total Other Asset Write-Offs (\$):</i>	3,241,882	(3,241,882)
Total Adjusted Capital and Surplus in \$		(3,046,237)

14. S.C. Code Ann. § 38-27-360 (2012) sets forth the grounds upon which an insurer may be placed into liquidation, including but not limited to when the insurer is in a condition in which the further transaction of business would be hazardous, financially or otherwise, to its policyholders, creditors, or the public and/or when the insurer is insolvent. Pursuant to this section of the Code, the Director may apply by petition to the Circuit Court for an Order authorizing him to liquidate Respondent.

15. Respondent, its board of directors and officers, deny any and all inferences of wrongdoing, including but not limited to mismanagement, breaches of fiduciary duty, negligence, misrepresentation, unjust enrichment, fraud, and any other duty owed by the Respondent and/or its board of directors and officers.

16. Respondent, having been served with a copy of the Petition pursuant to S.C. Code Ann. § 38-27-60 (2012) and other applicable law, does not contest that grounds exist for liquidation under Chapter 27 of Title 38, as set forth above, and waives hearing; and, so as to avoid any prejudice to the interests of policyholders, creditors and the public, it does not wish to contest the Petition nor does it object to the immediate entry of an Order of the Court granting the relief sought by Petitioner therein, provided that, in waiving its right to a hearing and not objecting to the immediate entry of this Order, neither Respondent nor its officers and directors shall be deemed to have waived any other rights or defenses to any actions or causes of action, whether they be brought by the Petitioner herein or any third party, arising in any way from the allegations of the Petition or the findings and consequences of this Order.

IT IS THEREFORE ORDERED THAT:

1. PURSUANT TO S.C. Code Ann. § 38-27-370 (2002), Petitioner and his successors in

office are appointed Liquidator of Respondent.

2. PURSUANT TO S.C. Code Ann. § 38-27-370(B) (2002), 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 this Order of liquidation, except as provided in S.C. Code Ann. §§ 38-27-380 and 38-27-560 (2002); 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. § 38-27-380(a) & (b) (2002):

a. All policies in effect on the date of the entry of this Order continue in force only for the lesser of:

(1) A period of thirty days from the date of entry of the liquidation order;

(2) The expiration of the policy coverage;

(3) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or

(4) The Liquidator has effected a transfer of the policy obligation pursuant to item (8) of subsection (a) of Section 38-27-400.

b Pursuant to S.C. Code Ann. §§ 38-27-350, 370(a), 370 & -380(b) (2002), this Order of liquidation terminates coverages at the time specified in subparagraph a. above and S.C. Code Ann. § 38-27-380(a) (2002) for purposes of any other statute.

c. Nothing in this Order or the Petition seeking this Order shall be construed to invalidate a termination of a policy by the Liquidator, in accordance with the terms of the contract and applicable law, completed prior to the date of the entry of this Order.

4. PURSUANT TO S.C. Code Ann. § 38-27-400(a) (2002), 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 the insurer. In the event that the property of the insurer 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 insurance department. Any amounts so advanced for expenses of administration must be repaid to the Director for the use of the insurance 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 she considers relevant to the inquiry.

f. To collect all debts and monies due and claims belonging to the insurer, 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 she 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 the insurer.

h. To use assets of the estate of an insurer under a liquidation order 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 (2002).

i. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer 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 the insurer'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 the insurer 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 she considers unprofitable to pursue further. If the insurer is dissolved under Section 38-27-390, he has the power to apply to any court in this State or elsewhere for leave to substitute himself for the insurer as plaintiff.

m. To prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer or any other person.

n. To remove any or all records and property of the insurer to the offices of the Department or to any other place convenient for the purposes of efficient and orderly execution of the liquidation.,

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 the insurer is located.

r. To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of any

defense by the insurer after a petition in liquidation has been filed does not bind the liquidator.

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 (2002).

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 Respondent of an insurer where Respondent is 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 the insurer 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.

5. PURSUANT TO S.C. Code Ann. § 38-27-400(b) (2002), 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.

6. PURSUANT TO S.C. Code Ann. § 38-27-410, -540 & -550 (2002), 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 date no claim will be allowed except as provided in Section 38-27-540.

7. 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 (2002).

8. Respondent is hereby officially declared insolvent as defined by S.C. Code Ann. § 38-27-50(10) (2002)

9. Petitioner's designation of Michael J. FitzGibbons of FitzGibbons and Company, Inc., 8300 N. Hayden Rd., Suite A100, Scottsdale, Arizona 85258, 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 Section 38-27-400(a)(1) is hereby expressly approved, and said Special Deputy Liquidator shall have all powers of the Liquidator granted by Section 38-27-400 and shall serve at the pleasure of the Liquidator.

10. Neither Respondent nor its directors or officers shall be deemed to have waived any rights or defenses to any actions or causes of action, whether they be brought by the Petitioner herein or any third party, arising in any way from the allegations of the Petition or the findings and consequences of this Order, and neither shall Respondent, its officers or directors be deemed to have acknowledged any wrongdoing, including but not limited to mismanagement, breaches of fiduciary

duty, negligence, misrepresentation, unjust enrichment, fraud, or any other duty owed by the Respondent or them.

NOTICE OF AUTOMATIC STAY

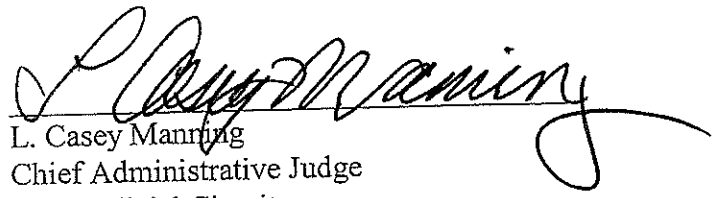
Notice is hereby given that pursuant to S.C. Code Ann. § 38-27-70 (2002), the Court grants an automatic stay applicable to all persons and proceedings, other than the Liquidator, which shall be permanent and survive the entry of the Order and which prohibits:

- (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 South Carolina Code;
- (4) Waste of Respondent'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 Respondent, its assets, or its policyholders;
- (8) The levying of execution against Respondent, 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 Respondent;
- (10) The withholding from the Liquidator of books, accounts, documents, or other records relating to the business of Respondent; or

(11) Any other threatened or contemplated action that might lessen the value of Respondent'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.

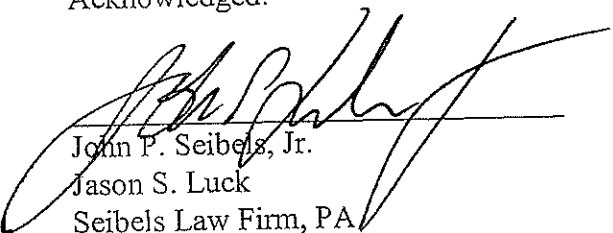
This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time may be necessary and appropriate.

AND IT IS SO ORDERED.


L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

This 21 day of October, 2014
Columbia, South Carolina

Acknowledged:


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