

1 2540
2 MARK E. FERRARIO, Bar No. 1625
3 KARA B. HENDRICKS, Bar No. 7743
4 GREENBERG TRAUERIG, LLP
5 10845 Griffith Peak Drive, Suite 600
6 Las Vegas, Nevada 89135
7 Telephone: (702) 792-3773
8 Facsimile: (702) 792-9002
9 Email: ferrariom@gtlaw.com
10 hendricksk@gtlaw.com

11 *Attorney for Petitioner*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
13 **THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

14 STATE OF NEVADA, EX REL.
15 COMMISSIONER OF INSURANCE, IN HER
16 OFFICIAL CAPACITY AS STATUTORY
17 RECEIVER FOR DELINQUENT DOMESTIC
18 INSURER,

19 *Petitioner,*

20 vs.

21 PHYSICIANS INDEMNITY RISK
22 RETENTION GROUP, INC., a Nevada
23 Domiciled Association Captive Insurance
24 Company,

25 *Respondent.*

Case No. CV20-00496

Dept. No. 1

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO RESOLVE
APPEALS REGARDING PROOF OF
CLAIM NOS. 90676 AND 90905**

26 PLEASE TAKE NOTICE, that the *Order Granting Receiver's Motion to Resolve Appeals*
27 *Regarding Proof of Claim Nos. 90676 and 90905* was filed on March 8, 2024 in the above case. A true
28 and correct copy of the order is attached hereto as **Exhibit 1**.

The undersigned certifies that a copy of this request has been served on all counsel of record.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the law firm of Greenberg Traurig LLP and that on March 11,
3 2024, I filed the foregoing *Notice of Entry of Order Granting Receiver's Motion to Resolve Appeals*
4 *Regarding Proof of Claim Nos. 90676 and 90905* via this Court's electronic filing system. Parties that
5 are registered with this Court's EFS and will be served electronically.

6 Richard N. Maravel, M.D., P.A.
7 1036 Hagen Dr.
8 Trinity, FL 64655

9 Vernon E. ("Gene") Leverty, Esq.
832 Willow Street
Reno, Nevada 89502

10 /s/ Andrea Lee Rosehill
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

1 3060

2

3

4

5

6

**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE**

7

8

9

STATE OF NEVADA, EX REL.
COMMISSIONER OF INSURANCE, IN HER
OFFICIAL CAPACITY AS STATUTORY
RECEIVER FOR DELINQUENT DOMESTIC
INSURER,

Case No.: CV20-00496

10

11

12

Dept. No.: 1

13

Petitioner,

14

vs.

15

PHYSICIANS INDEMNITY RISK
RETENTION GROUP, INC., a Nevada
Domiciled Association Captive Insurance
Company,

16

17

18

Respondent.

19

20

**ORDER GRANTING RECEIVER'S MOTION TO RESOLVE
APPEALS REGARDING PROOF OF CLAIM NOS. 90676 AND 90905**

21

Presently before this Court is the Commissioner of Insurance's, in his official capacity as the
Permanent Receiver ("Receiver") of Physicians Indemnity Risk Retention Group, Inc., ("PIRRG" or
the "Company"), *Motion to Resolve Appeals Regarding Proof of Claim Nos. 90676 and 90905*
("Motion"). The Motion came before the Court for oral argument on February 21, 2024, at 2:00 p.m.
Jerrell L. Berrios and Mark E. Ferrario of Greenberg Traurig, LLP appeared on behalf of the Receiver.
Bill Ginn of Leverty & Associates, Chtd. ("Leverty") appeared on behalf of claimant Leverty in
relation to Proof of Claim No. 90905.

22

23

24

25

26

27

28

The Court, having considered the briefing by the Receiver, the record submitted with the

1 briefing, and oral arguments made at the February 21, 2024, hearing, and for good cause shown, finds
2 as follows:

3 **FINDINGS OF FACT**

4 **I. GENERAL BACKGROUND**

5 1. The Receiver filed its motion under NRS 696B.330(7), the statutory scheme regulating
6 the process for distributing an insolvent insurer's estate.

7 2. PIRRG was a risk retention group that provided professional liability insurance to
8 physicians and their medical groups under claims-made indemnity policies. On March 29, 2022, this
9 Court entered an Order of Permanent Receivership ("Permanent Receivership Order") and an Order
10 Granting Motion for Liquidation ("Liquidation Order") after finding that PIRRG was insolvent under
11 NRS 696B.110.

12 3. NRS 696B.330 provides a process for claimants to the estate to submit Proof of Claims
13 ("POC") "in the manner and form established by the receiver." On August 1, 2022, this Court entered
14 an Order establishing the claims filing procedure and setting a claim filing deadline for December 1,
15 2022 ("Claims Order").

16 4. The Claims Order also established an appeal procedure by which claimants could
17 submit an appeal to the Receiver's claim determination under NRS 696B.330(7)-(8).

18 5. Two claimants timely filed objections/appeals to the Receiver's decision.

19 6. Specifically, both claimants objected to their priority designation under NRS
20 696B.420. Nevada's insurance liquidation statutes establish an order in which an insolvent insurer's
21 assets should be distributed to various creditors that submitted POCs (*i.e.*, the "priority" that each
22 type, or class, of claim should receive for payment).

23 7. When an estate lacks the resources to pay lower priority classes, NRS 696B.330(4)
24 allows the Receiver to not "process any claims in a [lower priority] class until it appears that assets
25 will be available for distribution to that class" so that the Receiver may spare administrative expense
26 in reviewing and processing claims that will not share in the estate.

27 8. The estate lacks sufficient assets to pay claimants and creditors falling below NRS
28 696B.420(1)(b) ("Class B Claims"). The Receiver consequently issued 52 "No Assets" letters that

1 denied each claimant’s POC because the claim fell in a class lower than Class B.

2 9. POC Nos. 90676 and 90905 reflect two appeals that object to their priority designation
3 or generally object to the No Assets letter.

4 **II. Factual Background for POC 90676**

5 10. POC 90676 arises from a request to be reimbursed for unused premium.

6 11. The claimant, Dr. Richard Maravel, timely submitted a POC on October 18, 2022.

7 12. Dr. Maravel’s POC stated that he paid premiums for a year’s worth of insurance
8 coverage, but because he requested to terminate his policy in May 2020, he should be reimbursed for
9 unused premium.

10 13. The Receiver issued a No Assets letter on September 20, 2023.

11 14. The No Assets letter explained that the Receiver was denying the claim because the
12 claim fell below a Class B claim, and the estate lacked sufficient assets to distribute any money to
13 non-Class B claimants.

14 15. Dr. Maravel timely appealed the denial and again reiterated his request for “return of
15 monies spent on unused premium.”

16 16. Dr. Maravel did not file a response to the Motion or appear at the hearing.

17 **III. Factual Background for POC 90905**

18 17. POC 90905 arises from a request for payment of pre-receivership legal services
19 performed by Leverty.

20 18. Leverty timely submitted its POC on November 23, 2022.

21 19. Leverty sought \$46,584.48 of attorneys’ fees incurred in connection with a pre-
22 receivership lawsuit in which Leverty represented PIRRG against a reinsurer. As explained in
23 Leverty’s POC, the lawsuit against the reinsurer was stayed and “[a]s a result of the action of PIRRG’s
24 permanent receiver, who has taken over this lawsuit...[Leverty] is no longer involved in the
25 lawsuit[.]” Leverty thus asked that the claim be granted and provided Class A priority or Class G
26 priority.

27 20. On September 20, 2023, the Receiver issued a No Assets letter, indicating that
28 Leverty’s claim fell below Class B and that there were insufficient assets in the estate to approve the

1 claim.

2 21. Leverty timely appealed the denial. Leverty’s appeal repeats that it was seeking fees
3 and costs “incurred prior to the receivership” and that it desired payment of \$46,584.48, but provided
4 no further or new explanation about why it would be entitled to the same.

5 22. Leverty did not submit a response to the Motion but appeared at the hearing and made
6 oral argument through counsel. At oral argument, Leverty argued that it was entitled to Class A
7 priority under NRS 696B.420(1)(a)(1) because its pre-receivership lawsuit included costs for
8 “recovering the assets of the insurer.”

9 **CONCLUSIONS OF LAW**

10 **I. Legal Standard**

11 1. Nevada law subjects a liquidator’s decisions to judicial review. NRS 696B.330.

12 2. “The standard of review is generally an evaluation of whether the liquidator has abused
13 the discretion afforded by statute.” 9 *New Appleman on Insurance* § 101.03 (2022) (citing *Low v.*
14 *Golden Eagle Ins. Co.*, 104 Cal. App. 4th 306, 315–316 (2002) (explaining that the “seminal
15 formulation” of the standard for reviewing an insurance commissioner’s decisions has been the
16 “abuse of discretion” standard)). Nevada courts have also reviewed discretionary decisions by the
17 Division of Insurance for an abuse of discretion. *See, e.g., Sierra Life Ins. Co. v. Rottman*, 95 Nev.
18 654, 656, 601 P.2d 56, 57 (1979) (holding that the Division of Insurance’s decisions are reviewed for
19 an abuse of discretion). An agency abuses its discretion when it acts arbitrarily or capriciously in
20 reaching its determination, or if it has committed legal error. *Schepcoff v. State Indus. Ins. Sys.*, 109
21 Nev. 322, 325, 849 P.2d 271, 273 (1993).

22 3. Nevada’s insurance receivership laws are modeled after the National Association of
23 Insurance Commissioners’ (“NAIC”) model statutes. *See* NRS 696B.280(3) (explaining that
24 Nevada’s insurance laws must be interpreted to carry out the general purpose of states that enact the
25 Uniform Insurers Liquidation Act and Insurer Receivership Model Act (“Model Acts”)).
26 Interpretations from states that have enacted versions of the Model Acts are therefore persuasive
27 authority. *See generally id.*

28 4. The Model Acts and Nevada law create a priority of the distribution of payments

1 because an insolvent insurer has limited assets to pay creditors. 9 *New Appleman on Insurance* §
2 96.03 (2022); *see also* NRS 696B.420(1). The priority statutes “afford a higher level of priority to the
3 claims of policyholders and insureds over those of most other creditors.” *Id.* at § 96.01.¹

4 5. A liquidator’s duties are thus “not co-extensive with the duties owed by an insolvent
5 insurer” under the policies; instead, a liquidator is statutorily required to pay only claims that the
6 Legislature determined aligned with its goal of protecting the insured public. *Am. Nat. Ins. Co. v.*
7 *Low*, 84 Cal. App. 4th 914, 920, 101 Cal. Rptr. 2d 288, 292 (2000); *see also* NRS 696B.330(4)
8 (requiring that classes with higher priority are processed and paid first). This policy is realized when
9 “those who have purchased insurance, paid premiums over the years, and counted on its existence to
10 prevent financial calamity, are not left high and dry when their insurer goes under.” *Id.* at 927.
11 Additionally, the priority statutes are “designed to protect from potentially catastrophic loss persons
12 who have a right to rely on the existence of an insurance policy...Persons in such categories are
13 relatively helpless with regard to the insolvency of an insurer. They are not likely to be in a position
14 to evaluate the financial stability of the insurance company and they have no control over the time at
15 which their claims arise.” *Metry, Metry, Sanom & Ashare v. Mich. Prop. & Cas. Guar. Assn.*, 403
16 Mich. 117, 121, 267 N.W.2d 695, 697 (1978).

17 6. When non-policyholder claims are allowed higher priority, the result dilutes the
18 amount available for Class B claimants, which may “result in no claims being covered” because of
19 the limited assets available. *Low*, 84 Cal. App. 4th at 927.

20 **II. POC 90676 (Dr. Maravel)**

21 7. The Court affirms the Receiver’s denial of Dr. Maravel’s POC because his request for
22 a refund of unused premium is expressly a Class C claim under NRS 696B.420(1)(c), and the Receiver
23 therefore did not abuse its discretion in issuing the No Assets letter pursuant to NRS 696B.330(4).
24 *See* NRS 696B.420(1)(c) (designating as Class C “[u]nearned premiums and small loss claims,
25 including claims under nonassessable policies for unearned premiums or other premium refunds.”).

26 ///

27 _____
28 ¹ Treatises define “other creditors” as “attorneys and other professionals, vendors, insurance agents,
shareholders, and officers and directors who have provided services to the insolvent insurer prior to
liquidation.” 9 *New Appleman on Insurance* § 96.03 (2022).

1 **III. POC 90905 (Leverty)**

2 8. The Court affirms the Receiver’s denial of Leverty’s POC because pre-receivership
3 legal services do not fall within the ambit of administrative costs.

4 9. In general, courts treat firms retained for pre-receivership services under a lower
5 priority than policyholders. *See, e.g., Metry, Metry, Sanom*, 403 Mich. at 119, 267 N.W.2d at 696;
6 *Sifers v. Gen. Marine Catering Co.*, 892 F.2d 386, 399-400 (5th Cir.1990); *Greenfield v. Pa. Ins.*
7 *Guar. Ass’n*, 256 Pa.Super. 136, 389 A.2d 638, 639-40 (1978). These claims arise not from the
8 insurance policies, “but rather out of their contracts for legal services entered into with the insurance
9 companies.” *Id.* Thus, “[a]ttorneys hired by insolvent insurers prior to insolvency are general
10 creditors...and they are not entitled to any special preference...There is no reason why attorneys
11 should receive favored status over claims made by other general creditors of an insolvent insurer.”
12 *Greenfield*, 256 Pa. Super. at 139-40.

13 10. Additionally, pre-receivership legal services “do not fall within the ambit of
14 administration costs[.]” *In re Liquidation of Home Ins. Co.*, 158 N.H. 396, 398-99, 965 A.2d 1143,
15 1145 (2009) (citing 1 L. R. Russ & T. F. Segalla, *Couch on Insurance* 3d § 6:12, at 6-29 (2005) and
16 26 E. M. Holmes, *Appleman on Insurance* 2d § 165.4, at 118 (2005)). This is because pre-receivership
17 claims become fixed upon the entry of a liquidation order, and other provisions contemplate
18 administrative expenses as those “authorized activities undertaken in furtherance of liquidation.” *Id.*;
19 *see also* NRS 696B.420(1)(a)(1)-(2) (compensating administration costs and expenses related to
20 services rendered in liquidation); NRS 696B.400 (liabilities of an insurer become fixed as of the date
21 on which the order directing the liquidation is entered).

22 11. Leverty was not authorized by this Court to render legal services in furtherance of
23 liquidation, and its pre-receivership legal services were thus not performed as an administration cost
24 or expense. Leverty performed services as a general vendor pursuant to a non-policy agreement
25 between it and PIRRG. Like other general creditors and vendors, no provision gives them priority,
26 and they are thus appropriately classified under the catch-all provision of subsection (g). *See generally*

1 NRS 696B.420(1)(a)-(l).²

2 12. Additionally, there is no evidence in the record to suggest that Leverty recovered assets
3 on behalf of the receivership estate, but even if there were, any costs incurred was not authorized by
4 this Court as an administrative expense.

5 13. The Receiver therefore did not abuse its discretion in issuing a No Assets letter to
6 Leverty pursuant to NRS 696B.330(4).

7 14. This Order is a final appealable order pursuant to NRS 696B.190(5).

8 **ORDER**

9 Based on the findings of fact and conclusions of law and for good cause appearing,

10 IT IS HEREBY ORDERED that the Receiver's determination regarding POC 90676 is
11 affirmed in accordance with the above.

12 IT IS HEREBY FURTHER ORDERED that the Receiver's determination regarding POC
13 90905 is affirmed in accordance with the above.

14 IT IS SO ORDERED.

15 DATED this 8th day of March, 2024.

16 

17 _____
18 KATHLEEN M. DRAKULICH
19 DISTRICT JUDGE

20
21
22
23
24
25

26 ² This designation is also consistent with the policy underlying the priority provisions, as the provisions are “designed to
27 protect from potentially catastrophic loss persons who have a right to rely on the existence of an insurance policy,” but
28 counsel “have an ongoing relationship with the [insurer] and can presumably judge its financial position [and] are in a
position to protect themselves from the serious consequences of an insurance company’s insolvency by negotiating
appropriate provisions in their contracts regarding the frequency of billing and payment.” *Metry*, 403 Mich. at 121, 267
N.W.2d at 697.

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV20-00496

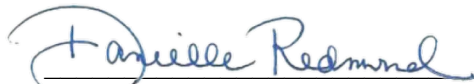
3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 8th day of March, 2024, I electronically
5 filed the **ORDER GRANTING RECEIVER’S MOTION TO RESOLVE APPEALS**
6 **REGARDING PROOF OF CLAIM NOS. 90676 AND 90905** with the Clerk of the Court by using
7 the ECF system.

8 I further certify that I transmitted a true and correct copy of the foregoing document by the
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**
11 **of electronic filing to the following:**

- 12 MARK FERRARIO, ESQ for STATE OF NEVADA
- 13 VERNON LEVERTY, ESQ. for PHYSICIANS INDEMNITY RISK
14 RETENTION GROUP INC
- 15 PATRICK LEVERTY, ESQ. for PHYSICIANS INDEMNITY RISK
16 RETENTION GROUP INC
- 17 WILLIAM GINN, ESQ. for PHYSICIANS INDEMNITY RISK
18 RETENTION GROUP INC
- 19 JESS RINEHART, ESQ. for PHYSICIANS INDEMNITY RISK
20 RETENTION GROUP INC
- 21 KARA HENDRICKS, ESQ. for STATE OF NEVADA

22 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
23 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**
24 **[NONE]**

25 
26 _____
27 Department 1 Judicial Assistant
28