


CLERK OF THE COURT

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8 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

9 **IN AND FOR THE COUNTY OF CLARK**

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

13 Plaintiff,

14 vs.

15 PROAIR Risk Retention Group, Inc.,

16 Defendant

Case No. A-14-705863

Dept. No. IV

17
18 **SEVENTH STATUS REPORT**

19 COME NOW, Barbara Richardson, Commissioner of Insurance (the "Commissioner")
20 for the State of Nevada in her capacity as Permanent Receiver of PROAIR Risk Retention
21 Group, Inc., ("PROAIR" or the "Company"), and Regulatory Services Group ("RSG"),
22 Receivership Manager of PROAIR, and file this Seventh Status Report in the above-captioned
23 receivership.

24 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

25 PROAIR was an association captive insurance company operating as a risk retention
26 group under the authority of Nevada Revised Statutes Chapter 694C and was incorporated
27 and organized under the Nevada Insurance laws and the Liability Risk Retention Act of 1986.
28 PROAIR is domiciled in the state of Nevada and received it's Certificate of Authority on July

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1 25, 2008. As an association risk retention group, the subscribers of PROAIR operated
2 through an Attorney-In-Fact, T. Edwards, LLC, a Nevada domestic limited liability company, to
3 enable the exchange of contracts of insurance among themselves. PROAIR's program
4 provided liability insurance to its subscribers – pilots and pilot groups specializing in the Air
5 Tractor industry.

6 PROAIR's June 30, 2014 financial statement, pursuant to NRS 680A.270, reported
7 total assets of \$511,233 and total liabilities of \$511,902 resulting in negative working capital
8 of -\$669. As such, PROAIR was unable to meet its requirements to maintain \$500,000 in
9 minimum capital and surplus in accordance with NRS 694C.250(1). As of December 15, 2014
10 the PROAIR bank account balance was \$7,087 and the Company had a \$500,000 Letter of
11 Credit held at Wells Fargo Bank. As a result of PROAIR's insolvency, with no apparent plan
12 or resources to recapitalize the Company, on July 10, 2014 at a special meeting of the Board
13 of Directors it was resolved by unanimous vote that in accordance with the bylaws and
14 subscribers agreement of the Company that the Company's captive manager was authorized
15 to petition the State of Nevada Division of Insurance to place the Company into voluntary
16 receivership pursuant to NRS 696B. Further, the formal consent to liquidation by PROAIR's
17 properly seated board of directors also serves as grounds for liquidation pursuant to NRS
18 696B.220(6).

19 On November 14, 2014, an Order Appointing the Nevada Insurance Commissioner as
20 Permanent Receiver of PROAIR. (the "Permanent Receivership Order") was entered by the
21 Eighth Judicial District Court of the State of Nevada for Clark County (the "Court").

22 On November 6, 2014, Commissioner Scott J. Kipper as Permanent Receiver of
23 PROAIR retained David E. Wilson and Regulatory Services Group ("RSG") as Receivership
24 Manager. The Receivership Manager was authorized to retain the services of Scott Pearce of
25 RSG as his Receivership Supervisor. As provided for by the Permanent Receivership and
26 Liquidation Order, the Receiver and Receivership manager are authorized to conduct the
27 business of PROAIR and to administer its affairs for the protection of all secured creditors,
28 insureds, policyholders, and general creditors.

1 The Permanent Receivership Order appointed the Commissioner as Permanent
2 Receiver pursuant to NRS 696B.220 for the purpose of liquidating the business of insolvent
3 PROAIR and granted other permanent relief

4 II. RECEIVERSHIP ADMINISTRATION

5 A. Notices of Receivership and Notification of Interested Parties

6 The Receivership Manager continues to provide information of the receivership
7 proceeding to known interested parties or claimants of the receivership. The Claims Bar Date
8 was 7/31/2015 and most current inquiries involve filed claims. The Receiver published legal
9 notice of the permanent receivership proceeding in the Wall Street Journal as PROAIR wrote
10 insurance in several different areas of the country. The national publication was completed as
11 part of the proof of claims ("POC") process. Additionally, the Regulatory Services Group
12 website is periodically updated with any material developments and information as well as
13 links to view and obtain copies of the permanent receivership order and any subsequent
14 pleadings filed in the PROAIR receivership.

15 B. The Claims Process

16 On February 3, 2015 the Receivership Manager mailed Proof of Claim ("POC") packets
17 to all known potential creditors of PROAIR with a Claims Bar Date of July 31, 2015. As of the
18 bar date seven (7) clear Class (b) policyholder claims (NRS 696B.420) were received;
19 however, one policyholder returned a notice indicating two additional potential unresolved
20 claims. Late filing approval notice was given to those two potential claimants who were
21 unknown and not originally sent timely notice, and they timely filed prior to the extended Bar
22 Date of November 16, 2015 A total liability of \$1,482,484.41 was claimed in the clear
23 policyholder class of returned claims.

24 PROAIR policies contained defense coverage and certain claims for unpaid defense
25 attorney fees will be upgraded to Class (b) claims. We continue to analyze the defense
26 attorney claims for the purpose of properly categorizing them.

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1 Final policyholder liability will be determined after completion of the Receivership
2 Manager's evaluation of all properly submitted claims through the Proof of Claim process.
3 (See Exhibit "A" for listing of all filed claims as required by NRS 696B.330 (6)).

4 Contingent upon what occurs in the Countryside Aviation matter, it appears that cash
5 assets will be available to pay 100% of all claims through Class (g) claims. Therefore the
6 Receiver Manager is evaluating lower classes of claims and has approved several Class (g)
7 claims recently.

8 **C. Completion of Proof of Claim Process**

9 The Receivership Manager has made contact with all creditor claimants with timely
10 submitted claims. The Receivership Manager has continued to attempt to reach an agreed
11 resolution of each claim after developing all the necessary information for evaluating their
12 claims. These are liability claims, generally devoid of significant coverage issues, but certainly
13 subject to ranges of alleged damages. The Receiver Manager believes it prudent and efficient
14 to achieve agreed resolutions rather than engaging in a contentious process to resolve these
15 matters. If the Receivership Manager is unable to satisfactorily resolve the remaining POCs,
16 the Receivership Manager will comply with the claims review process articulated in NRS
17 696B.330(7).

18 There remain four claims with issues that have the potential to reach the court:

- 19 1. Fields and Van Dalen claim was rejected and the 60 day appeal window (NRS
20 696B.330(7)) runs 7/23/2016.
- 21 2. Countryside Aviation filed a policyholder claim for the Fields and Van Dalen
22 potential claims. As of this date no specific claim has been filed. Under NRS
23 496B450(1). Countryside was provided a notice that if the claim was not
24 liquidated before 7/23/16, the claim would be formally rejected.
- 25 3. The Scofield law firm presented a claim for attorney fees. Initially their fees were
26 simply policyholder defense fees and attached to the policy. However, their role
27 morphed into bringing an action against PROAIR and those fees would not
28 attach to the policy.

1 4. The Morris law firm performed multiple functions for PROAIR, some of which
2 attach to a policy and some which do not. We are trying to sort out which of their
3 fees attach to policies.

4 **D. Reinsurance**

5 Of the known policy-related POCs received, none are likely to have incurred losses that
6 would exceed PROAIR's retention threshold under the applicable reinsurance treaty. Under
7 the 2013 treaty, approved claims are recoverable from London reinsurers in the amount of
8 \$650,000 in excess of the \$350,000 retention per each loss. In addition, PROAIR owes
9 reinsurers the 4Q13 premium deposit (reflected in the Class (g) section of Exhibit "A").

10 **E. Records and Assets Control**

11 The Receivership Manager has control of PROAIR's known books and records, both
12 tangible and electronic. The majority of PROAIR's records are maintained in electronic form,
13 and were held by its captive manager Risk Services, LLC or by the Company's Attorney-In-
14 Fact, Trevor Edwards of T. Edwards, LLC. Although many of PROAIR's records were being
15 held by different parties in various states, the process of collecting all of PROAIR's documents
16 and information was completed. The Receivership Manager has compiled what appears to be
17 a comprehensive collection of the risk retention group's known books and records.

18 In addition to records control, the Receivership Manager has control over PROAIR's
19 bank account at Wells Fargo Bank. The Receivership Manager has not located and is not
20 aware of any other material assets beyond the current Wells Fargo Bank account balance
21 belonging to PROAIR with the potential exception of the reinsurance program that may serve
22 to pay a portion of any approved policy related claims. The Receivership Manager will seek
23 recovery of the reinsurance upon determination of the policy related claims where such claims
24 exceed the treaty retention level. Actual reinsurance collections will be determined as policy
25 claims are determined through the POC process and any resulting cessions are prepared and
26 submitted through the broker to the reinsurers.

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1 **F. Financial Analysis**

2 As of May 31, 2016 PROAIR's Wells Fargo Bank account had a balance of \$369,440.
3 The Receivership Manager also holds a \$50,000 retainer. Through May 31, 2016 the
4 Receivership Manager has incurred \$101,755 in administration expenses, including incurred
5 but unpaid expenses. Considering the current cash assets less \$16,222.30 in incurred but
6 unpaid administrative expenses PROAIR has as of May 31, 2016 total current cash assets of
7 approximately \$403,217 (including retainer). At May 31, 2016 PROAIR estimates that sum,
8 noting the claims contingencies in Section C above, should be sufficient to cover both policy
9 related claims and enterprise/vendor expense liabilities.

10 The Receivership Manager had a receipt and disbursement review performed by a third
11 party vendor for all amounts received and paid by the receivership estate from the date of the
12 liquidation to December 31, 2015. The review was performed to determine whether the
13 receipts and disbursements of the receivership estate were properly supported and accounted
14 for. The review identified one finding related to the timing of payment of certain invoices.
15 While acting in the capacity of Receivership Manager, RSG must submit incurred expenses
16 for both regulatory and judicial approval prior to payment. The delay in paying the incurred
17 but unpaid invoices is due to the time necessary to gain the necessary court approvals. The
18 report concluded that all invoices and expenses were properly supported and accounted for.
19 The finding related to the timing of payment is not deemed to be material.

20 As reported above, after determining the ultimate claim and creditor obligations of the
21 risk retention group and any associated recovery of reinsurance assets for claims that may
22 pierce the retention level of the applicable treaty, the Receivership Manager will seek court
23 approval to distribute PROAIR's remaining assets in accordance with NRS 696B.420.

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1 III. CONCLUSION

2 In compliance with NRS 696B.290(7), the Receivership Manager submits the
3 aforementioned report and respectfully requests that this Court approve this status report and
4 the actions of the Receiver and Receivership Manager.

5 DATED this 29th day of June, 2016.

6 Respectfully submitted:

7
8 Barbara Richardson, Commissioner of Insurance
9 of the State of Nevada, in her Official Capacity as
10 Statutory Receiver of Delinquent Domestic Insurers

11 By: /s/ Scott Pearce
12 Scott Pearce
13 Regulatory Services Group
14 Receivership Supervisor

15 Respectfully submitted by:

16 ADAM PAUL LAXALT
17 Attorney General

18 By: /s/ Joanna N. Grigoriev
19 Joanna N. Grigoriev
20 Senior Deputy Attorney General
21 *Attorneys for the Commissioner of Insurance as Receiver*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney
3 General and that on the 29th day of June, 2016 I served the foregoing SEVENTH STATUS
4 REPORT addressed as follows:

5
6 Constance Akridge, Esq.
7 Holland & Hart, LLP
8 9555 Hillwood Drive, 2nd Floor
9 Las Vegas, NV 89134

10 /s/ Danielle Wright
11 An employee of the Office of the Attorney General

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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT A

EXHIBIT A

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PROAIR FILED POC STATUS

POC No.	Claimant Name	Claimed Amount	Approval Amount	Priority	Status
400052	Gallatin Grown, LLC	\$ 107,231.18	\$40,000.00	b	Resolved
400098	Benny White Flying Service	\$ 101,706.83	\$0.00	b	PAIR Claim-Not PROAIR
400107	Countryside Aviation, LLC *	\$0.00	\$0.00	b	Unliquidated; 7/23/16 Date
400117	Headwaters Flying Service	\$ 35,000.00	\$35,000.00	b	Approved
400132	O'Brien Flying Service	\$ 212,573.70	\$76,522.17	b	Not formally approved
400141	Rusty's Flying Service	\$ 35,972.70	\$35,972.70	b	Resolved
400146	STEIER AG AVIATION, INC.	\$ -	\$0.00	b	PAIR Claim-Not PROAIR
400167	Fields & Van Dalen	\$ 1,000,000.00	\$0.00	b	Rejected; 7/23/16 Final Appeal Date
400045	Stockwell, Sievert, Viccellio, Clements, & Shaddock, LLP	\$ 4,120.50	\$4,125.00	g	Approved
	TOTAL	\$ 1,492,484.41	\$191,619.87	b	
400073	Nevada Division of Insurance	\$ 826.21	\$826.21	e	Exam Fees; Approved
400017	Illinois State Treasurer	\$ -	\$0.00	e	Zero \$ claim presented
			\$826.21		
400155	Risk Services, LLC	\$ 11,965.14	\$11,965.14	g	Management Fees/Apr
400160	LLOYD'S UNDERWRITER SYND NO. 2010MMX	\$ 26,137.50	\$7,710.00	g	Reinsurance-Premium /Apr
400161	ATRIUM AVIATION CONSORTIUM, NO. 9563	\$ 8,712.50	\$2,570.00	g	Reinsurance-Premium /Apr
400162	XL RE EUROPE LIMITED	\$ 26,137.50	\$7,710.00	g	Reinsurance-Premium /Apr
400163	HANNOVER RUCKVERSICHERUNG AKTIEN	\$ 6,648.75	\$7,710.00	g	Reinsurance-Premium /Apr
400166	SCOFIELD GERARD POHORELSKY GALLAUGHER & LANDRY **	\$ 64,329.00		g	Attorney Fees-Class b ?
400044	MORRIS, MANNING & MARTIN, LLP-ROBERT H. MYERS JR **	\$ 29,533.17		g	Attorney Fees-Class b ?
400165	Crowley Fleck	\$ 10,000.00	\$0.00	g	Rejected claim
400164	Fred Begy	\$0.00	\$0.00	g	No formal claim submitted
			\$37,665.14		
400116	Hartley Flying Service, Inc.	\$ 4,713.25	\$0.00	k	Equity Claim
400100	Blackstone Aerial Spraying	\$ 2,100.00	\$0.00	k	PAIR claim-not PROAIR
400153	Trevor Edwards & Jim Hirsch	\$ 725,000.00	\$0.00	k	Equity Claim
		\$ 2,408,587.43			

*Countryside filed based on potential direct claim (Direct Action State). We had to send claim form with new bar date to potential claimant, but no direct claim against policyholder has been filed. Policyholder has been sent letter advising that claim must be liquidated by 7/23/16 or else to be rejected.

** Some portion of this claim will be approved as Class (b)