



CLERK OF THE COURT

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13 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

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

15 STATE OF NEVADA, EX REL.) Case No. A-14-7-705863
16 COMMISSIONER OF INSURANCE, IN HER)
17 OFFICIAL CAPACITY AS STATUTORY) Dept. No. IV
18 RECEIVER FOR DELINQUENT DOMESTIC)
19 INSURER,)
20 Plaintiff,)
21 vs.)
22 PROAIR Risk Retention Group, Inc.,)
23)
24 Defendant)

25 **EIGHTH STATUS REPORT**

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

29 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

30 PROAIR was an association captive insurance company operating as a risk retention group
31 under the authority of Nevada Revised Statutes Chapter 694C and was incorporated and organized
32 under the Nevada Insurance laws and the Liability Risk Retention Act of 1986. PROAIR is domiciled

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

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

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

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

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1 The Permanent Receivership Order appointed the Commissioner as Permanent Receiver
2 pursuant to NRS 696B.220 for the purpose of liquidating the business of insolvent PROAIR and
3 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 proceeding to
7 known interested parties or claimants of the receivership. The Claims Bar Date was 7/31/2015 and most
8 current inquiries involve filed claims. The Receiver published legal notice of the permanent
9 receivership proceeding in the Wall Street Journal as PROAIR wrote insurance in several different
10 areas of the country. The national publication was completed as part of the proof of claims ("POC")
11 process. Additionally, the Regulatory Services Group website is periodically updated with any material
12 developments and information as well as links to view and obtain copies of the permanent receivership
13 order and any subsequent pleadings filed in the PROAIR receivership.

14 B. The Claims Process

15 On February 3, 2015 the Receivership Manager mailed Proof of Claim ("POC") packets to all
16 known potential creditors of PROAIR with a Claims Bar Date of July 31, 2015. As of the bar date
17 seven (7) clear Class (b) policyholder claims (NRS 696B.420) were received; however, one
18 policyholder returned a notice indicating two additional potential unresolved claims. Late filing
19 approval notice was given to those two potential claimants who were unknown and not originally sent
20 timely notice, and they timely filed prior to the extended Bar Date of November 16, 2015. A total
21 liability of \$1,492,484.41 was claimed in the clear policyholder class of returned claims.

22 PROAIR policies contained defense coverage and certain claims for unpaid defense attorney
23 fees will be upgraded to Class (b) claims. All attorney fee claims have now been analyzed and properly
24 categorized.

25 Final policyholder liability will be determined after completion of the Receivership Manager's
26 evaluation of all properly submitted claims through the Proof of Claim process. (See Exhibit "A" for
27 listing of all filed claims as required by NRS 696B.330 (6). Two claims remain open, one for resolution
28

1 on the existing record, while the other (Countryside Aviation) currently has no liquidated damages to
2 allow the Receiver Manager to consider their claim.

3 Contingent upon what occurs in the Countryside Aviation matter, it appears that cash assets will
4 be available to pay 100% of all claims through Class (g). Therefore the Receiver Manager has
5 evaluated and approved claims through the Class (g) priority.

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

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

15 There remain two open claims with issues that have the potential to reach the court:

- 16 1. Countryside Aviation filed a policyholder claim for the Fields and Van Dalen potential
17 claims. As of this date no specific claim has been filed. Under NRS 496B.450 (1),
18 Countryside was provided a notice that if the claim was not liquidated before 7/23/16,
19 the claim would be formally rejected. In the interest of fairness, the Liquidator will wait
20 until a final closing and distribution order is ready to be filed with the Court to ascertain
21 whether Countryside's claim can be considered for the final distribution process.
- 22 2. The Scofield law firm presented a claim for attorney fees. Initially their fees were
23 simply policyholder defense fees and attached to the policy. However, their role
24 morphed into bringing an action against PROAIR and those fees would not attach to the
25 policy.

26 **D. Reinsurance**

27 Of the known policy-related POCs received, none had incurred losses that exceeded PROAIR's
28 retention threshold under the applicable reinsurance treaty. Under the 2013 treaty, approved claims

1 were recoverable from London reinsurers in the amount of \$650,000 in excess of the \$350,000
2 retention per each loss. PROAIR owed reinsurers the 4Q13 premium deposit of \$25,700.00 which
3 was approved on June 16th (reflected in the Class (g) section of Exhibit "A").

4 **E. Records and Assets Control**

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

12 In addition to records control, the Receivership Manager has control over PROAIR's bank
13 account at Wells Fargo Bank. The Receivership Manager has not located and is not aware of any other
14 material assets beyond the current Wells Fargo Bank account balance belonging to PROAIR with the
15 potential exception of the reinsurance program that may serve to pay a portion of any approved policy
16 related claims.

17 **F. Financial Analysis**

18 As of August 31, 2016 PROAIR's Wells Fargo Bank account had a balance of \$358,453. The
19 Receivership Manager also holds a \$50,000 retainer. Through August 31, 2016 the Receivership
20 Manager has incurred \$111,449 in administration expenses, including incurred but unpaid expenses.
21 Considering the current cash assets less \$15,886 in incurred but unpaid administrative expenses
22 PROAIR has as of August 31, 2016 total current cash assets of approximately \$392,567 (including
23 retainer). At August 31, 2016 PROAIR estimates that sum, noting the claims contingencies in Section
24 C above, should be sufficient to cover both policy related claims and enterprise/vendor expense
25 liabilities.

26 The Receivership Manager had a receipt and disbursement review performed by a third party
27 vendor for all amounts received and paid by the receivership estate from the date of the liquidation to
28 December 31, 2015. The review was performed to determine whether the receipts and disbursements

1 of the receivership estate were properly supported and accounted for. The review identified one finding
2 related to the timing of payment of certain invoices. While acting in the capacity of Receivership
3 Manager RSG must submit incurred expenses for both regulatory and judicial approval prior to
4 payment. The delay in paying the incurred but unpaid invoices is due to the time necessary to gain the
5 necessary court approvals. The report concluded that all invoices and expenses were properly
6 supported and accounted for. The finding related to the timing of payment is not deemed to be material.

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

11 III. CONCLUSION

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

15 DATED this 28th day of September, 2016.

16 Respectfully submitted:

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18 Barbara Richardson, Commissioner of Insurance
19 of the State of Nevada, in her Official Capacity as
20 Statutory Receiver of Delinquent Domestic Insurers

21 By: /s/ Scott Pearce
22 Scott Pearce
23 Regulatory Services Group
24 Receivership Supervisor

25 Respectfully submitted by:

26 ADAM PAUL LAXALT
27 Attorney General

28 By: /s/ Joanna N. Grigoriev
Joanna N. Grigoriev
Senior Deputy Attorney General
Attorneys for the Commissioner of Insurance as Receiver

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General
3 and that on the 28th day of September, 2016 I served the foregoing EIGHTH STATUS REPORT
4 addressed as follows:

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

9 /s/ Marilyn Millam
10 An employee of the Office of the Attorney General
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EXHIBIT A

EXHIBIT A

EXHIBIT A

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
400044	MORRIS, MANNING & MARTIN, LLP-ROBERT H. MYERS JR **	\$ -	\$5,311.50	g	Approved
400045	Stockwell, Sievert, Viccellio, Clements, & Shaddock, LLP	\$ -	\$4,125.00	g	Approved
TOTAL		\$ 1,492,484.41	\$196,931.37		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	XI 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	\$6,856.50	g	Attorney Fees-Class g portion
400165	Crowley Fleck	\$ 10,000.00	\$0.00	g	Rejected claim
400164	Fred Begy	\$ 0.00	\$0.00	g	No formal claim submitted
			\$44,521.64		
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)