

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA**  
**Civil Division**

DISTRICT OF COLUMBIA,  
a Municipal Corporation,

Petitioner,

v.

OCEAN RISK RETENTION GROUP,  
INC.

Respondent.

Civil Action No.: 13-6110 2

Judge: Wright

Calendar No.: 15

Next Event: Hearing

September 24, 2013 at 10:00 a.m.

**LIQUIDATOR'S FIRST STATUS REPORT AND  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE  
MOTION FOR (1) ORDER APPROVING APPOINTMENT OF SPECIAL DEPUTY  
AND (2) ORDER STAYING AND ENJOINING ALL LITIGATION AGAINST  
OCEAN RISK RETENTION GROUP, INC. AND ITS POLICYHOLDERS**

The District at the request of and on behalf of the Liquidator, through its attorneys, file this First Status Report and this Memorandum of Points and Authorities in support of the motion for (1) an order approving the appointment of and compensation for Robert H. Myers, Jr. as Special Deputy Liquidator and (2) an order staying and enjoining all litigation against Ocean and against its policyholders where Ocean may have a duty to defend or indemnify such policyholders with respect to such litigation (the "Policyholders") and state following:

**I. BACKGROUND AND PROCEDURAL HISTORY**

1. Ocean is a captive insurer, organized and licensed under the District's laws that offered liability insurance to taxi owner-operators and to taxi fleet owners in New Jersey and Pennsylvania.

2. The District, at the request of and on behalf of DISB's Commissioner, filed an Emergency Consent Petition for an Expedited Order of Liquidation of Ocean Risk Retention

Group, Inc., Pursuant to D.C. Official Code §§ 31-1303, 31-1315, 31-1316 and 31-3931.01 *et seq.* on or before September 10, 2013 (the “Emergency Consent Petition”).

3. After consideration of the Emergency Consent Petition and the entire record, the Court issued the Liquidation Order and appointed DISB’s Commissioner as Ocean’s Liquidator.

## **II. APPOINTMENT OF SPECIAL DEPUTY LIQUIDATOR**

4. Pursuant to the Liquidation Order and D.C. Official Code § 31-1319(a)(1) (2001), on September 10, 2013, the Liquidator appointed Robert H. Myers, Jr. to be the Special Deputy Liquidator for the purpose of liquidating Ocean and for any related actions. The appointment order is attached as Exhibit 1.

5. Mr. Myers is a highly skilled attorney with a practice focusing on insurance regulation and an emphasis on captive insurance. A biography of Mr. Myers from his firm’s website, <http://www.mmmlaw.com/our-people/employee-directory/attorneys/robert-h.-myers-jr>, is attached as Exhibit 2. Mr. Myers currently is acting as a Special Deputy Liquidator in another matter before this Court involving liquidation of a captive insurer, *DC Department of Insurance, Securities and Banking v. Scaffold Industry Insurance Risk Retention*, No. 2012 CA 002567 2.

## **III. CLAIMS AND OUTSTANDING ISSUES**

6. The Liquidator and the Special Deputy Liquidator are in the process of giving notice to all known persons or entities who have or might have a claim against the liquidation estate. Among other things, the Liquidator has informed New Jersey and Pennsylvania regulators of Ocean’s pending liquidation proceedings here. The Special Deputy Liquidator has begun sending notices to policyholders and known creditors, informing them of the liquidation proceedings and providing proof of claim forms. The policyholder notice, creditor notice, and proof of claim form are available on DISB’s website at <http://disb.dc.gov/node/668752>, and are attached as Exhibits 3, 4 and 5, respectively.

7. Based on the information currently available to the Special Deputy Liquidator, Ocean now has over 600 claims from persons or entities seeking compensation from Ocean and/or its Policyholders. The Special Deputy Liquidator anticipates that additional claims will be filed against Ocean and its Policyholders.

#### **IV. MOTION FOR APPROVAL ORDER**

8. D.C. Official Code § 31-1319(a)(1) mandates that the Liquidator shall have the power to appoint one or more special deputies and to determine his reasonable compensation. This provision does not require court approval of the appointment or compensation. In contrast, D.C. Official Code § 31-1319(a)(4) provides that the liquidator shall “fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants *with the approval of the court.*” (emphasis added).

9. Mr. Myers and his firm have been retained as Special Deputy, not legal counsel, and therefore court approval is not necessary under the plain meaning of D.C. Official Code § 31-1319(a)(1). However, the Special Deputy Liquidator is an attorney and his firm’s engagement letter refers to the “legal services” they will perform in relation to Ocean’s insolvency. *See* Letter from Robert H. Myers, Jr. to Commissioner William P. White, dated September 10, 2013, and attached as *in camera* Exhibit 6. Therefore, to avoid any possible confusion or uncertainty about whether the court’s approval is required here, the Liquidator seeks an order confirming the court’s approval of the Special Deputy’s appointment and compensation.

#### **V. MOTION FOR STAY ORDER**

10. Ocean is insolvent and has limited assets, as set forth in detail in the Emergency Consent Petition. The purpose of Ocean’s liquidation is, in part, to ensure that the Court may oversee the equitable, consistent, and efficient evaluation and resolution of claims that have been or could be brought against Ocean directly or through suits against Ocean’s Policyholders. The

Liquidator is in the process of identifying all claims against Ocean or an insured policyholder of Ocean.

11. While the claims process is ongoing, litigation remains pending against Ocean or its Policyholders in various states. Through the continued prosecution of pending suits, claimants may seek to obtain a determination of Ocean or its Policyholders' liability to them, seek recovery of Ocean's assets and/or seek to obtain some other advantage in the resolution of their claim against the liquidation estate. Furthermore, the continued prosecution of such suits may well give priority to certain claimants over other claimants, because a claimant's ability to pursue suits against Ocean and/or its Policyholders will necessarily depend upon their financial condition. Also, resolution of claims in other courts may result in inconsistent adjudication of identical or similar claims. Accordingly, allowing claimants to pursue their claims against Ocean or its Policyholders effectively defeats the purpose of the liquidation process, namely that all claims will be fairly, consistently and equitably resolved in the liquidation proceeding pending before this Court.

12. The Court has expressly retained jurisdiction over claims against Ocean and its Policyholders. The Liquidation Order for Ocean states, in part, that for the purpose of granting such "further relief as this cause and the interests of the policyholders, creditors and the public may require, the Court shall retain jurisdiction in this matter . . . ."

13. The D.C. Code requires an automatic stay of all suits against an insurer or its Policyholders upon issuance of such an order appointing a Liquidator. Specifically, Section 31-1322(a) of the D.C. Official Code provides:

Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in the District, ***no action at law or equity or in arbitration shall be brought against the insurer or liquidator***, whether in the District or elsewhere, ***nor shall any existing actions be maintained*** or further presented after issuance of the order.

(Emphasis added)

14. Further, the D.C. Code empowers the liquidation court to stay other suits to ensure they do not interfere with the liquidation proceedings. In this regard, Section 31-1304(a) of the D.C. Official Code provides:

Any receiver<sup>1</sup> appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, ***restraining orders, preliminary and permanent injunctions***, and other orders deemed necessary and proper to prevent: . . .

(3) Interference with the receiver or with a proceeding under this chapter;

(4) Waste of the insurer's assets; . . .

(6) The institution or further prosecution of any actions or proceedings;

(7) The obtaining of preferences, ***judgments***, attachments, garnishments, or liens ***against the insurer, its assets or its policyholders***; . . .

(11) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(Emphasis added).

15. Accordingly, to ensure that the pendency of other suits against Ocean and/or its Policyholders does not adversely impact the fair, equitable and efficient resolution of claims against the liquidation estate, pursuant to D.C. Official Code § 31-1304(a) the Liquidator moves the Court for an order staying and enjoining all pending suits against Ocean effective until further order of this Court and staying and enjoining all pending suits against Policyholders to whom Ocean may be liable under policies of insurance or indemnity for one (1) year from entry of an Order granting this Motion.

## VI. RELIEF REQUESTED

Wherefore, the Liquidator moves the Court for the entry of (1) an order approving the appointment of, and compensation for, Robert H. Myers, Jr. and (2) an order staying and enjoining

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<sup>1</sup> Here, the receiver is the court-appointed liquidator. *See* D.C. Official Code § 31-1301 (defining receiver as “receiver, liquidator, rehabilitator, or conservator as the context requires.”).

all suits against Ocean Risk Retention Group, Inc. and its Policyholders and enjoining all persons and entities from proceeding against Ocean or any Policyholder in new or pending litigation. The stay and injunction should be effective until further order of this Court as to litigation against Ocean and for one (1) year with respect to litigation against Policyholders to which Ocean is not a party.

Respectfully Submitted,

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