



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF)
THE LIQUIDATION OF)
FMC INSURANCE COMPANY, INC.)
AND FEDERAL MOTOR CARRIERS) C.A. No. 6712-VCP
RISK RETENTION GROUP, INC.)

**RECEIVER’S VERIFIED PETITION FOR APPROVAL OF
THE FINAL REPORT OF THE RECEIVERSHIP;
AUTHORIZATION FOR DOCUMENT DESTRUCTION;
RELEASE AND DISCHARGE OF THE RECEIVER, DEPUTY
RECEIVERS, AND ASSISTANTS; DISSOLUTION OF FMC
INSURANCE COMPANY, INC. IN LIQUIDATION
AND FEDERAL MOTOR CARRIERS RISK RETENTION
GROUP, INC. IN LIQUIDATION PURSUANT TO
18 DEL. C. § 5911(b); AND CLOSURE OF THE ESTATES
AND DISMISSAL OF THE ABOVE-CAPTIONED MATTER**

The Honorable Karen Weldin Stewart, CIR-ML, Insurance Commissioner of the State of Delaware, in her capacity as the Receiver (“Receiver”) of FMC Insurance Company, Inc. in Liquidation (“FMC-CAPTIVE”) and Federal Motor Carriers Risk Retention Group, Inc. in Liquidation (“FMC-RRG”), through the undersigned attorney, hereby submits this “Receiver’s Verified Petition for Approval of the Final Report of the Receivership; Authorization for Document Destruction; Release and Discharge of the Receiver, Deputy Receivers, and Assistants; Dissolution of FMC Insurance Company, Inc. in Liquidation and Federal Motor Carriers Risk Retention Group, Inc. in Liquidation Pursuant to 18 Del. C. § 5911(b);

and Closure of the Estates and Dismissal of the Above-Captioned Matter” (the “Petition”). The Receiver hereby petitions this Honorable Court as follows pursuant to 18 DEL. C. §§ 5902, 5911, 5918, and 6918, and, with respect to FMC-RRG, 18 DEL. C. § 8011:

I. Relief Requested:

Through her Petition, the Receiver of FMC-CAPTIVE and FMC-RRG seeks the following relief:

- (1) Approval of the Final Report of the Receivership (the “Final Report”), submitted through this Petition;
- (2) Authorization to destroy the estate’s records to avoid waste of the estate’s assets;
- (3) Release and discharge of the Receiver, her Deputy Receivers Eugene T. Reed and Michael J. Johnson, and their predecessor, George J. Piccoli (the “Deputy Receivers”), and their assistants, employees, consultants, accountants, attorneys, and other authorized professionals and agents, including but not limited to employees of the Delaware Insurance Department who have assisted the Receiver concerning the receivership (the “Assistants”) upon completion of the steps set forth herein to close the estates;

(4) Dissolution of FMC-CAPTIVE and FMC-RRG pursuant to 18 *Del. C.* §5911(b);

(5) Closure of the FMC-CAPTIVE and FMC-RRG estates and dismissal of the above-captioned matter; and

(6) Such other relief relating to the termination of the Receiverships as may be just, equitable, necessary, and proper.

In support of this Petition, the Receiver states the following:

II. Background of the Receivership

A. FMC-CAPTIVE

FMC-CAPTIVE is a Delaware domiciled special purpose captive insurance company, organized and existing under and by virtue of the laws of the State of Delaware, including 8 *Del. C.* § 101, et. seq., and 18 *Del. C.* §6901, et. seq. FMC-CAPTIVE (Delaware Corporation No. 4349997) was incorporated in the State of Delaware on May 9, 2007. By Delaware Insurance Department Certificate of Authority Number 115CP, FMC-CAPTIVE was authorized to transact the business as an Agency Captive Insurance Company whereby it would participate in and reinsure a portion of the commercial automobile liability risk assumed by FMC-RRG from its

member trucking companies under the Plan of Operation filed with the Delaware Department of Insurance.

FMC-CAPTIVE is amenable to the insurance laws of the State of Delaware, is subject to supervision and examination thereunder, and is subject to rehabilitation or liquidation under the provisions of 18 *Del. C.* ch. 59, and ch. 69.

B. FMC-RRG

FMC-RRG is a Delaware domiciled risk retention group, organized and existing under and by virtue of the laws of the State of Delaware, including 8 *Del. C.* § 101, et. seq. 18 *Del. C.* § 6901, et. seq., and 18 *Del. C.* § 8001, et. seq. FMC-RRG (Delaware Corporation No. 4349683) was incorporated in the State of Delaware on May 9, 2007. By Delaware Insurance Department Certificate of Authority Number 114CP, FMC-RRG was authorized to transact the business of insuring the commercial automobile liability risk of FMC-RRG's member trucking companies under the Plan of Operation filed with the Delaware Department of Insurance.

The Delaware Insurance Code, at 18 *Del. C.* §8002(11) defines a “risk retention group” as follows:

(11) “Risk retention group” means any corporation or other limited liability association:

a. Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

b. Which is organized for the primary purpose of conducting the activity described under sub-subdivision a of this subdivision;

c. Which:

1. Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

* * *

d. Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

e. Which:

1. Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

2. Has as its sole owner an organization which has as:

(I) Its members only persons who comprise the membership of the risk retention group; and

(II) Its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

f. Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations;

g. Whose activities do not include the provision of insurance other than:

1. Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

2. Reinsurance with respect to the liability of any other risk retention group (or any members of such other group) which is engaged in businesses or activities so that such group or member meets the requirement described in sub-subdivision f of this subdivision from membership in the risk retention group which provides such reinsurance; and

h. The name of which includes the phrase “risk retention group”

FMC-RRG is amenable to the insurance laws of the State of Delaware, is subject to supervision and examination thereunder, and is subject to rehabilitation or liquidation under the provisions of 18 *Del. C.* ch. 59, ch. 69, and ch. 80.

C. CBIP Management

Prior to the receivership of FMC-RRG, CBIP Management, Inc., located in Red Bank, New Jersey (“CBIP”) was the program manager for FMC-RRG. According to the program manager agreement, CBIP’s services included, but were not limited to, underwriting, marketing, policy issuance, loss control, reinsurance placement, premium collection, and premium audits. Additionally, CBIP controlled most of the Purchase Groups which produced the business.

D. The Liquidation Proceedings

Prior to receivership of both companies, the Captive Manager of both companies resigned. Both companies were required to have a captive manager as a condition of doing business. In addition to that violation, both companies were determined by the Delaware Department of Insurance (“DDOI”) to have numerous other violations of the regulatory requirements governing captives and risk retention groups.

The Commissioner determined that FMC-CAPTIVE had failed to file the required annual audited financial statements for the years ended December 31, 2009, and December 31, 2010, and had failed to pay the required tax for the year ended December 31, 2010. Further, FMC-CAPTIVE failed to pay its Premium Taxes for 2010. The sole purpose for which FMC-CAPTIVE was licensed was to participate in and reinsure a portion of the risk assumed by FMC-RRG. The reinsurance agreement between FMC-CAPTIVE and FMC-RRG was purportedly terminated as of July 1, 2010. Therefore, there was no further reason for FMC-CAPTIVE to exist. FMC-CAPTIVE also failed to report material changes in its operations in violation of 18 *Del. C.* § 6921 in failing to report the termination of its reinsurance agreement with FMC-RRG within ten (10) days as required.

FMC-RRG, on the other hand, had submitted its 2010 unaudited annual financial statement. However, the Captive Manager had subsequently advised the DDOI that a forensic review of FMC-RRG's accounting records had uncovered that the accounting of premiums, losses, and expenses had not been handled accurately in the financial statements that were filed with the Delaware DOI for 2010. FMC-RRG agreed to

correct the inaccuracies and file, by May 20, 2011, an amended and restated 2010 Annual Statement that accurately depicted reserve and surplus. However, an amended and restated accurate audited 2010 Annual Statement was never filed. Further, FMC-RRG appeared to have a significant reserve deficiency. Also, FMC-RRG violated an agreement with the DDOI not to renew its policies effective May 31, 2011, by renewing the business, which increased its liabilities and placed a greater strain on its already weak financial condition. FMC-RRG was also subject to regulatory action in numerous other states. FMC-RRG had failed or been unable to pay certain claims, defense costs, settlements, and judgments.

As a result, upon the Commissioner's Petition, this captive insurance company liquidation proceeding was commenced by the Court's entry of the August 17, 2011, Stipulated Liquidation and Injunction Order with Bar Date (the "Liquidation Order"). Pursuant to the Liquidation Order, this Court set September 28, 2012, as the Bar Date for the submission of claims.

ASSETS

The assets of FMC-Captive were \$2,670 as of September 30, 2015. The assets of FMC-RRG were \$1,147 as of September 30, 2015.

LIABILITIES

After entry of the Stipulated Liquidation and Injunction Order with Bar Date, the Receiver sent notice of the entry of the Order and the proof of claim process to over 2,800 recipients on behalf of both FMC-RRG and FMC-Captive. Approximately 984 claims were filed solely against FMC-RRG on or before the Claims Bar Date. An additional 91 claims were filed solely against FMC-Captive. Another 461 claims were filed against both FMC-RRG and FMC-Captive, for a combined total number of proofs of claim of 1,536 in the two estates.

INVESTIGATION INTO THE CAUSES OF THE INSOLVENCIES

Since the inception of the receivership, to the extent possible, the Receiver has been assessing the causes of the insolvency of both companies and whether there are any responsible third parties against whom potential recoveries would be viable. Due to the limited assets available to the Receiver and the inability of FMC-Captive and FMC-RRG to maintain proper business records, the Receiver has still been unable to identify recoveries from third parties under viable causes of action. Investigation revealed that the chances of recovery from third parties of amounts sufficient to increase the distributable assets were remote.

During the receivership, the Receiver's investigation identified further significant problems with the companies' potential assets.

FMC-Captive's sole function was as a quota share reinsurer of FMC-RRG. It did not have third party reinsurance from which to recover reinsured claim or claim adjusting expenses. Once the reinsurance agreement was terminated, it ceased having any significant income.

The Receiver determined that the causes of the FMC-RRG insolvency included that the company projections of the volume of business it would produce were woefully overstated; this caused the reinsurance to be extremely expensive as the fixed cost portion of the reinsurance was based on greater revenue production. Without the increased revenue the fixed cost of the reinsurance was a greater percentage of each premium dollar received. In addition, the agent commissions were too high for the nature of the business written by the company, the management fee was too high for a newly formed insurer, the business written had significantly higher risk potential than a newly formed insurer could bear, the reinsurance program did not provide for sufficient risk transfer, one reinsurance treaty was commuted prematurely before losses could fully develop, and the losses experienced by the company escalated too rapidly for the company to

respond by adjusting its premium or increase its volume of business, the company lacked the policy, agent, and accounting systems needed to maintain the business it did produce resulting in ineffective financial reporting, erroneous record keeping, and finally, it failed to maintain the proper data to run a successful insurance company including failure to recover significant loss deductibles and loss funds from insureds which were a significant portion of the business plan to control costs and failure to collect the proper capital contributions from insureds that was to provide for proper capitalization. The Receiver determined that collection of the projected loss deductibles was not practicable. FMC-RRG was an unrated insurer that wrote policies on risks from a population of prospective insureds that were substandard at best and far from the preferred risks it presented in its business plan.

While these problems led to the insolvency and the third parties responsible for these transactions and decisions clearly exercised bad business judgment, the Receiver's ultimate determination was that a third party action based on these issues was not viable. Therefore, as noted above, the Receiver was not able to identify any third party causes of action based upon the failure of the company.

FMC-RRG had reinsurance on certain of their insurance business, including from FMC Insurance Company, Inc. in Liquidation (“FMC-Captive”) and other third party reinsurers. The Receiver filed a proof of claim in the administratively consolidated FMC-Captive estate to recover balances due from FMC-Captive to FMC-RRG. The FMC-Captive estate currently has insufficient assets to make a distribution to its creditors or to cover its own administrative expenses. The Receiver has also attempted to collect reinsurance recoverables due to FMC-RRG from the third party reinsurers and to assess whether any of the reinsurance treaties or contracts should be commuted or cancelled ab initio and the reinsurance premium recovered. The reinsurers denied any liability to the FMC-RRG estate. The Receiver has determined that even if the FMC-RRG estate were to collect on that reinsurance, it would not even cover the outstanding administrative expenses of the estate. It would still not result in any distribution to the policyholders, certificate holders, or other creditors. The Receiver has also determined that the cost of continuing such an effort would have to be borne by the professionals who already have not been paid for all of their efforts and who have not been willing to bear such further costs based on the difficulties inherent in such collections.

Due to the unavailability of additional assets, both estates have insufficient assets to make any distributions to any of their creditors. Therefore, the Receiver suspended her efforts to evaluate the validity, amount, and priority class of the claims.

Guaranty association coverage is not available for captive insurance companies.

There are also insufficient assets to pay both estates' outstanding administrative expenses. The remaining cash will be exhausted by the costs of dissolution and record destruction. There are insufficient assets to even notify the over 1,500 claimants of the closure. The Receiver is proposing that the closing petition be posted on the DDOJ website. Those claimants who call the receivership bureau will also be advised of the closure.

Therefore, the Receiver submits that it is necessary and proper for these receiverships to be closed; the Receiver, her Deputy Receivers, and their Assistants to be released and discharged; the records to be destroyed; and the two companies to be dissolved.

WHEREFORE, the undersigned attorney on behalf of the Honorable Karen Weldin Stewart, CIR-ML, Insurance Commissioner of the State of Delaware, in her capacity as the Receiver of FMC Insurance Company, Inc. in Liquidation and Federal Motor Carriers Risk Retention Group, Inc. in Liquidation respectfully requests that this Honorable Court grant the Receiver's Petition, issue an Order substantially in the form of Order submitted with the Petition granting the relief sought in the Petition, and grant such further relief as the Court deems just.

Respectfully submitted,

/s/ Diane J. Bartels

By:

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Commissioner of the State
of Delaware, in her
capacity as the Receiver
of FMC Insurance Company, Inc.
in Liquidation and Federal Motor
Carriers Risk Retention Group,
Inc. in Liquidation

Dated: October 5, 2015



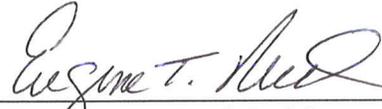
IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF)
THE LIQUIDATION OF)
FMC INSURANCE COMPANY, INC.)
AND FEDERAL MOTOR CARRIERS) C.A. No. 6712-VCP
RISK RETENTION GROUP, INC.)

**VERIFICATION OF EUGENE T. REED,
IN HIS CAPACITY AS DEPUTY RECEIVER
OF FMC INSURANCE COMPANY, INC. IN
LIQUIDATION AND FEDERAL MOTOR CARRIERS
RISK RETENTION GROUP, INC. IN LIQUIDATION**

I, Eugene T. Reed, in my capacity as a Deputy Receiver of FMC Insurance Company, Inc. in Liquidation and Federal Motor Carriers Risk Retention Group, Inc. in Liquidation, having read the attached "*Receiver's Verified Petition for Approval of the Final Report of the Receivership; Authorization for Document Destruction; Release and Discharge of the Receiver, Deputy Receivers, and Assistants; Dissolution of FMC Insurance Company, Inc. in Liquidation and Federal Motor Carriers Risk Retention Group, Inc. in Liquidation Pursuant to 18 Del. C. §5911(b); and Closure of the Estates and Dismissal of the Above-Captioned Matter*" in the

above-captioned matter, do hereby verify that the factual statements set forth therein are true and correct to the best of my knowledge, information, and belief.



Eugene T. Reed, in his
Capacity as Deputy Receiver of
FMC Insurance Company, Inc.
in Liquidation and Federal Motor
Carriers Risk Retention Group, Inc.
in Liquidation

SWORN TO AND SUBSCRIBED before me this 5th day of October, 2015.


Notary Public

My commission expires October 23 2016





IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF)
THE LIQUIDATION OF FMC INSURANCE) C.A. No. 6712-VCP
COMPANY, INC. AND FEDERAL MOTOR)
CARRIERS RISK RETENTION GROUP, INC.)

CERTIFICATE OF SERVICE

I, Diane J. Bartels, Esquire, hereby certify that on October 5, 2015, a true and correct copy of the *Receiver's Verified Petition for Approval of the Final Report of the Receivership; Authorization for Document Destruction; Release and Discharge of the Receiver, Deputy Receiver, and Assistants; Dissolution of FMC Insurance Company, Inc. in Liquidation and Federal Motor Carriers Risk Retention Group, Inc. in Liquidation Pursuant to 18 Del. C. § 5911(b); and Closure of the Estates and Dismissal of the Above-Captioned Matter*, the Verification thereto, and the proposed form of Order thereto were served on each of the following counsel and/or parties in the following manner:

Electronic Service through
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/s/ Diane J. Bartels

By: _____

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Attorney for The Honorable
Karen Weldin Stewart, CIR-ML,
Insurance Commissioner of the
State of Delaware, in her
Capacity as the Receiver of
FMC Insurance Company, Inc.
in Liquidation and Federal
Motor Carriers Risk Retention
Group, Inc. in Liquidation

Dated: October 5, 2015