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9 *Attorneys for the Commissioner of Insurance*
10 *as Statutory Temporary Receiver*

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

13 STATE OF NEVADA, EX REL.
COMMISSIONER OF INSURANCE, IN
14 HER OFFICAL CAPACITY AS
STATUTORY RECEIVER FOR
15 DELINQUENT DOMESTIC INSURER,

16 Petitioner,

17 vs.

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

20 Respondent.

Case No. CV20-00496

Dept. No. 1

21 **TEMPORARY RECEIVER'S MOTION FOR ORDER OF LIQUIDATION AND**
22 **OTHER PERMANENT RELIEF**

23 COMES NOW, Barbara D. Richardson, Commissioner of Insurance (the
24 "Commissioner") for the State of Nevada in her capacity as Temporary Receiver of
25 Physicians Indemnity Risk Retention Group, Inc., ("PIRRG" or the "Company"), and files
26 this Motion for order of liquidation pursuant to NRS 696B.220 and for order making

27 ///

1 permanent the appointment of the Commissioner as statutory receiver.

2 DATED: February 2, 2021.

3
4 AARON D. FORD
5 Attorney General

6 By: /s/ Joanna N. Grigoriev
7 JOANNA N. GRIGORIEV (Bar. No. 5649)
8 Senior Deputy Attorney General
9 DAVID HALL (Bar No. 6333)
10 Insurance Counsel
11 *Attorneys for the Commissioner of Insurance*
12 *as Statutory Temporary Receiver*

13 **POINTS AND AUTHORITIES**

14 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

15 On March 19, 2020, the Second Judicial District Court (“SJDC”) issued an order
16 appointing the Commissioner as temporary receiver for PIRRG (“Temporary Receiver”) and
17 granting injunctive relief pursuant to NRS 696B.270 (Ex. 1, “Temporary Order”).

18 On April 2, 2020, in accordance with her powers under the Temporary Order , the
19 Temporary Receiver retained the services of Regulatory Services Group to act as the
20 Special Deputy Receiver (“SDR”) for PIRRG to oversee and manage the receivership.
21 (Temporary Order, Ex.1, 24-26). On January 12, 2021, the SDR filed a Status Report (See
22 “Status Report,” Ex. 2), detailing its actions as SDR, the financial condition of the company,
23 and other analysis.

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1 As set forth in the Status Report, the statutory grounds for liquidation have been
2 met. PIRRG has current assets of \$1.3 million and current liabilities of \$2.9 million.
3 PIRRG cannot meet its obligations as they mature or come due. It is unequivocal, that the
4 financial condition of PIRRG is dire and rapidly declining. Any further delay in the
5 commencement of permanent liquidation proceedings, as mandated by the law, exacerbates
6 the danger to members, other creditors and the public, and the condition will continue to
7 deteriorate absent the entry of a liquidation order. A final liquidation order will allow the
8 Receiver to protect and consolidate the remaining assets of PIRRG, eliminate extraneous
9 expenses, including the current cost of running the Company's office, and begin claims
10 process. In accordance with the powers of a receiver under the Nevada
11 Insurers Conservation, Rehabilitation and Liquidation Law, NRS §§ 696B.010 et seq.,
12 ("Nevada Liquidation Act"), she can then proceed to evaluate and pursue all rights of action
13 held by the Company, including potential settlement with any amounts in dispute and due
14 from the London Reinsurers, that would lead to an asset recovery for the receivership.

15 **FACTS**

16 **a. PIRRG's Financial Impairment Leading to the Temporary Order¹**

17 PIRRG is a Nevada-domiciled incorporated association operating as a risk retention
18 group. See NRS 694C.141. PIRRG wrote professional liability insurance to physicians and
19 their medical groups under claims-made indemnity policies.

20 PIRRG's December 31, 2018 audited financial statement and Risked Based Capital
21 ("RBC")² Report, filed on April 1, 2019 reported that its RBC had dropped to 185.6%.
22 Pursuant to NAC 681B.490, if a company's RBC falls below 200%, they are at the "Company
23 Action Level RBC." If an insurer falls below this RBC percentage, they are required to file

24 ¹ As reported in the January 12, 2021 Status Report.

25 ² Risked Based Capital ("RBC") is a calculation used by actuaries and regulators to assess the financial health
26 of a company. The formula establishes an objective level of surplus funds that are required based on the
27 amount and types of risk a company is exposed. The risk factors for the RBC formulas focus on three major
28 areas: 1. Asset Risk; 2. Underwriting Risk; and 3. Other Risk. The percentage reached expresses the surplus
of a company as compared to a minimum standard of solvency. The higher the RBC percentage, the better
the insurer has managed its risk. Companies that are not in financial trouble generally have an RBC in
excess of 300%. Healthy insurers are likely to have an RBC in excess of 500%.

1 a corrective action plan with the Division explaining what action they will take to correct
2 its low RBC. “Regulatory Action Level RBC” means that a company has fallen below 150%
3 RBC. When an insurer falls below this RBC percentage, the Division of Insurance
4 (“Division”) becomes more actively involved in monitoring the dealings of the company,
5 often requiring frequent reporting to the Division by the company.

6 On July 22, 2019 the Commissioner determined PIRRG was operating in a
7 hazardous financial condition and notified PIRRG thereof. Between May and September of
8 2019, PIRRG submitted three proposed Corrective Action Plans, all of which were reviewed
9 and deemed by the Division insufficient to address and resolve the RBC and financial
10 impairment of the risk. On November 19, 2019, the Commissioner issued a Notice of
11 Rejection of Third Corrective Action Plan and Confidential Order Imposing Corrective
12 Action (“Corrective Order”). The Corrective Order required an infusion of \$800,000 of new
13 capital and surplus within 30 days of the date of the Corrective Order or December 19,
14 2019. It further required that PIRRG’s December 31, 2019 RBC ratio be in excess of 300%.

15 PIRRG did not fulfill either of these requirements of the Corrective Order within
16 the required timeframe. On January 31, 2020, PIRRG’s captive manager reported a
17 negative surplus as of December 31, 2019. On March 2, 2020, PIRRG failed to submit to
18 the Commissioner a required report of its financial condition pursuant to NRS 694C.400.
19 PIRRG itself confirmed its insolvency in its unsigned financial report filed on March 6, 2020.

20 **b. Deterioration of PIRRG’s Financial Condition Since March of 2020**

21 After being appointed and retained pursuant to the Temporary Order, the SDR, with
22 the assistance of PIRRG’s staff in Florida, immediately transferred all open, in-force
23 policies to a new financially healthy carrier and sought stays in all litigated or disputed
24 matters. By the end of July 2020, virtually all policies had been transferred and most
25 pending cases were idle. Although all, but approximately 10 PIRRG policies remain,
26 PIRRG has continued to incur basic operating expenses necessary to maintain its home
27 office and communication with policyholders and insureds, while awaiting a final order
28 from this Court. Absent a final order of the court, the Temporary Receiver cannot make

1 final determinations and use the necessary discretion afforded her by the delinquency
2 statutes. With each week that passes without a liquidation order herein, the PIRRG estate
3 incurs the expenses of operating its office in Florida.

4 When the proceedings before this Court commenced, PIRRG was in a precarious
5 financial position, but matters have further deteriorated, and continue to deteriorate at a
6 rate of \$52,000 a month. As each month passes, PIRRG becomes less likely to be able to
7 satisfy its creditors and members, as well as potential claimants.

8
9 **II. LEGAL ANALYSIS**

10 **A. THE ENTRY OF A PERMANENT ORDER OF LIQUIDATION IS**
11 **VITAL FOR THE PROTECTION OF THE POLICYHOLDERS,**
12 **CREDITORS AND THE PUBLIC**

13 The Commissioner of Insurance is charged with enforcement of the provisions of title
14 57 of the NRS (the “Insurance Code”). NRS 679B.120 (3). Among the core purposes of the
15 Insurance Code and, consequently, one of the Commissioner’s fundamental duties, is the
16 protection of “policyholders and all having an interest under insurance policies.” NRS
17 679A.140(1)(a).³ The Nevada Legislature provided the Commissioner with a broad range
18 of available tools, including those designed to ensure oversight over insurers and their
19 financial condition. *See* NRS 679B.120 (4)-(6).⁴ *See also* 679B.230, 679B.159. The solvency

20 ³ NRS 679A.140 (1) provides also that

The purposes of this Code are to:

(a) Protect policyholders and all having an interest under insurance policies;

(b) Implement the public interest in the business of insurance;

(c) Provide adequate standards of solidity of insurers, and of integrity and competence in
conduct of their affairs in the home offices and in the field;

...

23 ⁴ The Commissioner shall:

...

24 4. Have the powers and authority expressly conferred upon him or her by or reasonably
25 implied from the provisions of this Code;

26 5. Conduct such examinations and investigations of insurance matters, in addition to
27 examinations and investigations expressly authorized, as he or she may deem proper upon
28 reasonable and probable cause to determine whether any person has violated any provision
of this Code or to secure information useful in the lawful enforcement or administration of
any such provision; and

6. Have such additional powers and duties as may be provided by other laws of this
State.

1 of an insurer is a matter of public interest, as recognized by the United States Supreme
2 Court in *German Alliance Ins. v. Lewis*, 233 US 389, 412-413, 34 S.Ct. 612, 619 (1914):

3 The effect of insurance—indeed, it has been said to be its fundamental
4 object—is to distribute the loss over as wide an area as possible. In other
5 words, the loss is spread over the country, the disaster to an individual is
6 shared by many, the disaster to a community shared by other communities;
great catastrophes are thereby lessened, and, it may be, repaired . . . Their
[insurers'] ***efficiency, therefore, and solvency, are of great concern.***

7 *Id.* (emphasis added).

8 The Nevada Legislature enacted the Nevada Liquidation Act, a version of the
9 Uniform Insurers Liquidation Act (“UILA”). The comprehensive statutory scheme of UILA,
10 and the state schemes such as the Nevada Liquidation Act, are designed to protect the
11 public as well as the policyholders and other creditors. When an insurer is in a precarious
12 financial condition, the Commissioner may pursue conservation, rehabilitation or
13 liquidation as a recourse. *See* NRS 696B.060. As statutory receiver, the Commissioner can
14 protect the assets for policyholders and other claimants, sue to recover assets, or sue for
15 damages to the insolvent company.

16 Obtaining temporary control of the company and immediate injunctive relief, as
17 provided in NRS 696B.530 and NRS 696B.270, is the first step pending the ultimate
18 determination of whether conservatorship, rehabilitation, or liquidation is necessary to
19 address the hazardous condition. The temporary receiver, among other measures, can
20 employ experts and examine the records of the company to determine its true financial
21 condition and the legality of its conduct. On March 19, 2020, the Commissioner was
22 appointed Temporary Receiver by the SJDC. (*See* Temporary Order, 2:1-5). On April 2,
23 2020, pursuant to said Temporary Order, the Temporary Receiver appointed Regulatory
24 Services Group to act as the SDR for PIRRG. (Temporary Order, 3:24-27; 4:1-2).

25 However, the receivership statutes applicable to insurers, do not contemplate the
26 prolonged existence of a temporary status. It is evident from NRS 696B.250(2), which
27 provides that:
28

1 Upon the filing of the petition the court shall issue an order directing the
2 insurer to appear in court on the day fixed in the order and show cause why
3 the petition should not be granted. Unless good cause is shown for a shorter
4 period, ***the order shall require the insurer so to show cause not less
than 15 days nor more than 30 days from the date of the order.***

5 *Id.* (emphasis added). The Status Report attached hereto as Ex. 2, filed by the SDR on
6 January 12, 2021, unequivocally establishes that PIRRG must be immediately placed in
7 liquidation proceedings and any further delay presents danger to the members, other
8 creditors and the public. It also guarantees the company's rapid financial collapse.

9 Entry of an order of liquidation will allow the Receiver to protect the remaining
10 assets of PIRRG. It will legally fix all rights and obligations of PIRRG and allow the
11 Receiver to immediately start to categorize the obligations according to legal
12 priority. Simultaneously, the Receiver will actively pursue final collection of remaining
13 balances due under the reinsurance program as well as vet the merits of the pending
14 arbitrations and the AON case. PIRRG does not enjoy the safety of guaranty association
15 coverage in the event of insolvency. As such, it is imperative that the Receiver balance the
16 efforts and costs of asset recovery and the resolution of the arbitrations and the AON
17 litigation with the cost and time required to achieve a given outcome. The final order of
18 liquidation also provides the necessary legal protections specifically intended to avoid
19 wasteful delay tactics.

20 Grounds for Liquidation Under NRS 696B.220 Have Been Met

21 1. NRS 696B.220 (2)

22 Pursuant to NRS 696B.220 (2), insolvency constitutes grounds for liquidation. It has
23 become unequivocal that PIRRG is insolvent, as defined in NRS 696B.110 (1). It provides
24 that insolvency exists “[w]hen the insurer ***fails to meet its obligations as they mature.***”
25 (emphasis added). As of September 30, 2020 PIRRG's liabilities exceed its assets by
26 \$980,806. (See Ex. 2:1-2). PIRRG's current assets are \$1.3 million and their current
27 liabilities are \$2.9 million. The company cannot meet its obligations. Its financial condition
28 has deteriorated, placing the members and all having an interest under insurance policies

1 at a great risk, thus, requiring statutorily-mandated liquidation. NRS 696B.220 (2)
2 unequivocally supports the entry of an order of liquidation appointing the Commissioner
3 as permanent receiver, as provided in NRS 696B.220 (2), based on PIRRG’s insolvency, and
4 permanent injunctive relief.

5 Pursuant to the provisions of chapter 696B and the general concepts of UILA, upon
6 the commencement of delinquency proceedings, the Commissioner, as receiver, “steps into
7 the shoes” of the insurer. She is statutorily vested with title to all of the assets and
8 becomes the successor to the insolvent company and its pre-receivership rights. *See* NRS
9 696B.290 (2). As statutory receiver, the Commissioner can therefore sue to recover assets,
10 or sue for damages to the insolvent company thus protecting the assets for policyholders
11 and other creditors. At the same time, the Commissioner is also fulfilling her duties to
12 protect the public welfare.

13 As referred to herein above, an order of liquidation will allow the SDR to protect the
14 remaining but dwindling assets of the PIRRG estate, to eliminate non-necessary
15 expenditures and to begin the claims process.

16 **2. NRS 696B.220(1)**

17 NRS 696B.220(1)⁵ provides an alternative and additional basis for liquidation. It
18 provides for an order of liquidation when an “insurer has ***failed to cure an impairment***
19 ***of surplus, or capital, or assets within the time allowed therefor by any lawful order of***
20 ***the Commissioner.***” (emphasis added). PIRRG failed to comply with the Corrective Order
21 of the Commissioner of November 19, 2019, which required, among other provisions, for
22 the infusion of \$800,000 of new capital and surplus within 30 days of the date of the
23 Corrective Order, or December 19, 2019. The order further required that PIRRG’s

24 ⁵ NRS 696B.220(1) provides:

25 The Commissioner may apply to the court for an order appointing the Commissioner as
26 receiver (if his or her appointment as receiver is not then in effect) and directing the
27 Commissioner to liquidate the business of a domestic insurer or of the United States branch
28 of an alien insurer having trusteed assets in this state, whether or not there has been a prior
order directing the Commissioner to conserve or rehabilitate the insurer, upon any one or
more of the following grounds: [t]hat the

...

1 December 31, 2019 RBC ratio be in excess of 300%. PIRRG did not fulfill either of these
2 requirements of the Corrective Order within the required timeframe. (See Ex. 2:20-25).
3 PIRRG's failure constitutes grounds for liquidation under NRS 696B.220 (1).

4 Pursuant to NRS 696B.220 (1), therefore, the issue of the reported "reinsurance
5 asset" raised previously by Leverty & Associates, has no legal relevance and the
6 statutorily-mandated liquidation proceeding cannot be held hostage based thereon and on
7 attempts to prove this speculative asset. The alleged recovery of approximately
8 \$3,416,000, from the reinsurance partners in the London Markets for the period ending
9 September 30, 2020, is also subject to formal dispute, and has not been verified by the SDR.
10 (See Ex. 2:9-20).⁶ More importantly, as set forth earlier, such recoveries, are precisely the
11 type of "asset marshalling" function with which the Nevada Liquidation Act charges the
12 Commissioner in her statutory capacity as the receiver.

13 NRS 696B.290 (2) provides that: "As a domiciliary receiver, the Commissioner
14 ***shall be vested by operation of law with*** the title to all of the property,
15 ***contracts and rights of action,***"

16 . . .
(emphasis added).

17 As indicated by the SDR in the Status Report, "[b]ased on the impaired financial
18 condition of PIRRG and the uncertainty associated with the reinsurance program the
19 Special Deputy Receiver will seek to assess and validate the likely recoveries under the
20 reinsurance program including pending arbitrations with the London Market reinsurers. .
21 . ." (See Ex. 2, 8:12-20). The SDR further committed in its Status Report to the following:
22 "[t]he Special Deputy Receiver will continue to remain focused on the resolution of the key
23 reinsurance disputes and collections, seek to evaluate the strength and requirements
24 associated with certain litigation reportedly being asserted by Leverty & Associates against
25 AON related to the placement of certain reinsurance treaties." (Ex. 2, 8:22-25).

26 ⁶ The Division has completed most of the production of the volumes of documents requested by Leverty &
27 Associates. None of the documents that have been produced or the few remaining to be produced will alter or
28 impact the indisputable fact that the statutory grounds for liquidation under NRS 696B.220(1) and (2) have
been met. PIRRG is insolvent and it has failed to cure a critical impairment to surplus & capital within the
time allotted by the Commissioner.

1 Thus, two alternative statutory grounds for liquidation have been met and any
2 further delays are legally unjustifiable and would knowingly bring harm to the creditors,
3 claimants, and policyholders of PIRRG. As already mentioned, PIRRG's burn rate is
4 \$52,000 a month. As time passes without a final liquidation order in place, this sum will
5 be deducted from the amount available to pay PIRRG's policyholders, creditors and
6 insureds. Due to the fact that PIRRG is now operating in a dangerous and rapidly
7 deteriorating financial condition, and two of the statutory grounds for liquidation having
8 been met, an order making permanent the Commissioner's appointment as statutory
9 receiver and directing her to liquidate the business of PIRRG, as provided in NRS
10 696B.220, is urgently required for the protection of policyholders, other creditors and the
11 public. In accordance with NRS 696B.250(2) which mandates that a show cause hearing be
12 set within 15 to 30 days, requiring PIRRG to "appear in court . . . and show cause" why
13 this motion for permanent relief should not be granted, a hearing to show cause should be
14 rescheduled.

15 CONCLUSION

16 For the reasons set forth above, Temporary Receiver respectfully requests that her
17 Motion to Liquidate and Other Permanent Relief be granted and a hearing to show cause
18 be rescheduled.

19 DATED: February 2, 2021.

20
21 AARON D. FORD
22 Attorney General

23 By: /s/ Joanna N. Grigoriev
24 JOANNA N. GRIGORIEV (Bar. No. 5649)
25 Senior Deputy Attorney General
26 DAVID HALL (Bar No. 6333)
27 Insurance Counsel
28 *Attorneys for the Commissioner of Insurance
as Statutory Temporary Receiver*

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INDEX TO EXHIBITS

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EXHIBIT 1

EXHIBIT 1 (TEMPORARY ORDER)

1 CODE 2745
2 AARON D. FORD
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8 *Attorney for Division of Insurance*

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

11 STATE OF NEVADA, EX REL.
12 COMMISSIONER OF INSURANCE, IN
HER OFFICAL CAPACITY AS
13 STATUTORY RECIEVER FOR
DELIQUENT DOMESTIC INSURER,

14 Plaintiff(s),

15 vs.

16 PHYSICIANS INDEMNITY RISK
17 RETENTION)
GROUP, INC., a Nevada Domiciled
18 Association Captive – RRG Insurance
Company,

19 Defendant(s).

Case No. CV20-000496

Dept. No. 7

20 **ORDER APPOINTING INSURANCE COMMISSIONER, BARBARA D.**
21 **RICHARDSON, AS TEMPORARY RECEIVER PENDING FURTHER ORDERS OF**
22 **THE COURT; ORDER GRANTING TEMPORARY INJUNCTIVE RELIEF**
23 **PURSUANT TO NRS696B.270; AND, ORDER TO SHOW CAUSE**

24 WHEREAS a Petition for Appointment of Commissioner Barbara D. Richardson
25 (“Commissioner”) as Receiver of Physician’s Indemnity Risk Retention Group, Inc.
26 (“PIRRG”), and Other Permanent Relief and Request for Temporary Injunction, pursuant
27 to NRS 696B.270(1) (“Petition”) was filed in the above entitled Court on March 13, 2020
28 initiating these proceedings, and;

///

1 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that, pursuant to NRS
2 696B.210, NRS 696B.220, NRS 696B.290 and NRS 696B.530, the Commissioner is
3 appointed as Temporary Receiver ("Receiver"), pending further orders by the Court, to
4 enter the business and immediately oversee the operation and conservation/rehabilitation
5 of the business.

6 IT IS HERBY FURTHER ORDERED that, pursuant to NRS 696B.270(1), pending
7 the show cause hearing and further orders by the Court, that Insurers, all officers,
8 directors, stockholders, members, subscribers, agents, employees, and all other persons,
9 except the Receiver or any person or persons designated by the Receiver are immediately
10 enjoined from transacting any further business on behalf of the Insurers or wasting or
11 disposing of any assets or property of Insurers.

12 IT IS HEREBY FURTHER ORDERED that, pursuant to NRS 696B.270, pending
13 further orders by the Court, the Insurer, the officers, directors, stockholders, members,
14 subscribers, agents, employees, and all other persons are immediately enjoined from
15 transacting any further business on behalf of the Insurer unless other directed by the
16 Receiver or from wasting or disposing of any assets or property of the Insurer. All property
17 and records of PIRRG, which includes all hard copy and electronic records, will be
18 immediately provided and turned over to the Receiver.

19 IT IS HEREBY FURTHER ORDERED that, pursuant to NRS 696B.340, pending
20 further orders by the Court, all persons are immediately enjoined from the commencement
21 or prosecution of any actions by or on behalf of the Insurer, or against the Insurer, and the
22 receivership court will have exclusive jurisdiction over any actions involving the Receiver
23 or Insurer. Further, all persons shall be restrained from obtaining any preferences,
24 judgments, attachments, or other liens as to any property of the Insurer or making any
25 levy against the Insurer or against their assets or any part thereof.

26 IT IS HEREBY FURTHER ORDERED that, pursuant to NRS 696B.270, pending
27 further orders by the Court, all persons other than the Receiver or as directed by the
28 Receiver are enjoined from the withdrawal of any funds from the Insurer's accounts or the

1 removal of other property from the Insurer. The Receiver is authorized to take control and
2 transact business regarding all bank, investment, custody, trust, property, and other asset
3 accounts of PIRRG, and to place her name and other signatories on such accounts or
4 property in replacement of any or all officers, directors, stockholders, members,
5 subscribers, agents, employees, and all other persons that may be listed on such accounts
6 or property. The Receiver is authorized to collect and receive all assets and property on
7 behalf of PIRRG and to transact all business for PIRRG concerning such assets and
8 property.

9 IT IS HEREBY FURTHER ORDERED that, the Commissioner as Temporary
10 Receiver is authorized to impose such partial or full lien or moratoria on any disbursements
11 for such time and under such terms as she deems necessary and appropriate for the
12 protection of members and creditors, provided that such lien or moratoria shall apply in
13 the same manner to all similarly situated persons and provided that under no
14 circumstances shall the Receiver or her representatives be liable to any person for a good
15 faith decision to impose, or refrain from imposing, such lien or moratorium.

16 IT IS HEREBY FURTHER ORDERED that, the insurance policies and insurance
17 contracts of PIRRG will remain in effect pending further orders of this Court. The Receiver
18 is authorized, in her discretion, to continue the insurance defense of insurance policy claims
19 until further orders of this Court, with the Receiver to determine in her discretion those
20 defense costs that are both reasonable and appropriate to be incurred and paid after the
21 date of this order. All reinsurers, consultants, third parties, and anyone acting on behalf of
22 PIRRG will cease making any claim payments or defense costs of PIRRG, unless specifically
23 authorized by the Receiver as provided in this order.

24 IT IS HEREBY FURTHER ORDERED that, the Commissioner as Temporary
25 Receiver is authorized to appoint, without prior notice to or prior approval by the Court,
26 such Special Deputy Receiver, legal counsel, and consultants as she deems necessary for
27 the conduct of the Insurer's receivership, such Special Deputy Receiver thereby being
28

1 vested with all the rights, duties, and authority of the Temporary Receiver, subject to the
2 supervision of the Commissioner as Temporary Receiver and of the Court.

3 IT IS HEREBY FURTHER ORDERED that, the Commissioner as Temporary
4 Receiver is authorized to issue such Directives as she deems appropriate to memorialize
5 and provide notice of the exercise of her authority under the Court's Orders and applicable
6 law.

7 IT IS HEREBY FURTHER ORDERED that, pursuant to NRS 696B.250, Respondent
8 PIRRG is ORDERED to appear and show cause why the Commissioner should not be
9 appointed as Permanent Receiver. **A telephonic hearing is set for March 31, 2020 at**
10 **1:00 p.m.** Parties to this matter must contact Court Call five (5) days prior to the hearing
11 to arrange to appear by telephone.

12 DATED this 19 day of March 2020.

13
14 

15 _____
16 DISTRICT JUDGE

17
18 Respectfully submitted:

19 AARON D. FORD
20 Attorney General

21 By: /s/ Richard Paili Yien
22 RICHARD PAILI YIEN
23 Deputy Attorney General
24 Attorney for the Division of Insurance
25
26
27
28

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 3-19-2020

JACQUELINE BRYANT, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By *JM Wolfe* Deputy

4 Pages

EXHIBIT 2

EXHIBIT 2 (STATUS REPORT)

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2 State of Nevada
Department of Business and Industry
3 Division of Insurance
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4 Carson City, NV 89706
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6 *Attorneys for State of Nevada*
Division of Insurance

7 IN THE SECOND JUDICIAL DISTRICT COURT OF
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17
18 **STATUS REPORT**

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

24 **I. INTRODUCTION AND HISTORICAL BACKGROUND**

25 PIRRG is an incorporated association formed as a captive insurance company
26 organized under the insurance laws of the State of Nevada and the Liability Risk
27 Retention Act of 1986. In accordance with Chapter 694C of the Nevada revised statues
28

1 (NRS) PIRRG operates as a risk retention group as that term is defined by NRS
2 694C.141. PIRRG is domiciled in the State of Nevada and received its initial Certificate of
3 Authority on July 28, 2006. PIRRG received an amended Certificate of Authority on
4 February 8, 2018 thereby updating its statutory home office to Reno, Nevada. As a risk
5 retention group, PIRRG wrote professional liability insurance to physicians and their
6 medical groups under claims-made indemnity policies.

7 PIRRG's December 31, 2018 audited financial statement and RBC Report, both
8 filed on April 1, 2019 in accordance with NRS 680A.270 and NRS681B.550, reported the
9 risk retention group's RBC had dropped to 185.6% thereby casting genuine doubt upon
10 the independent auditor's assessment that PIRRG would be able to continue operating as
11 a going concern. On July 22, 2019 the Commissioner determined PIRRG was operating in
12 a hazardous financial condition and notified PIRRG of the regulatory impairment.
13 After the submission of three proposed Corrective Action Plans submitted by PIRRG
14 between May and September of 2019, all of which were reviewed by the Nevada Division
15 of Insurance and thereafter deemed insufficient to address and resolve the RBC and
16 financial impairment of the risk retention group to the satisfaction of the Commissioner
17 and her regulatory staff. On November 19, 2019, the Commissioner issued a Notice of
18 Rejection of Third Corrective Action Plan and Confidential Order Imposing Corrective
19 Action ("Corrective Order").

20 The Corrective Order required PIRRG to fulfill certain requirements that
21 adequately address the RBC issue. Specifically the Corrective Order included, but was
22 not limited to, the infusion of \$800,000 of new capital and surplus within 30 days of the
23 date of the Corrective Order or December 19, 2019. A further requirement was that
24 PIRRG's December 31, 2019 RBC ratio be in excess of 300%. PIRRG did not fulfill either
25 of these requirements of the Corrective Order within the required timeframe.

26 On January 31, 2020 PIRRG's captive manager reported a negative surplus for the
27 risk retention group as of December 31, 2019. On March 2, 2020, PIRRG failed to submit
28 to the Commissioner a required report of its financial condition pursuant to NRS

1 694C.400. On March 6, 2020 PIRRG submitted an unsigned financial report indicating it
2 was insolvent pursuant to NRS696B.110.

3 The foregoing facts associated with PIRRG’s financial impairment constituted
4 sufficient grounds for a formal delinquency proceeding pursuant to NRS 696B.210 and
5 NRS 696B.220.

6 On March 12, 2020, the Commissioner petitioned this Court pursuant to NRS
7 696B.250 to seek her appointment as Receiver of PIRRG for the purpose of its
8 rehabilitation, conservation or liquidation, and to grant permanent injunction and other
9 relief authorized by Chapter 696B of the NRS and other applicable law in order to protect
10 PIRRG’s policyholders, creditors and the public from the dangers and risks inherent to
11 the delinquency of this entity.

12 On March 19, 2020 this Court granted injunctive relief and appointed the
13 Commissioner as Temporary Receiver and issued an order, pursuant to NRS 696B.250(2)
14 and further directing PIRRG to appear in court on March 31, 2020 and show cause why
15 the Commissioner's petition should not be granted. On March 26, 2020 PIRRG filed a
16 peremptory challenge and the case was reassigned to Department 1, thereafter on April
17 7, 2020, after consulting with both parties, this court rescheduled the hearing to Show
18 Cause from March 31, 2020 to May 27, 2020.

19 On April 2, 2020 the Nevada Insurance Commissioner in her court-appointed
20 capacity as Temporary Receiver of PIRRG retained the services of Regulatory Services
21 Group to act as the Special Deputy Receiver for PIRRG. Regulatory Services Group
22 (“RSG” or “Special Deputy”) acting as the Special Deputy Receiver is vested with all the
23 rights, duties and authority of the Temporary Receiver, subject to the supervision of the
24 Nevada Insurance Commissioner as Temporary Receiver and of the Court.

25 II. RECEIVERSHIP ADMINISTRATION

26 A. Notices of Receivership and Notification of Interested Parties

27 The Special Deputy Receiver prepared and mailed notices of the receivership order
28 and formal appointments to all known PIRRG principals, PIRRG’s captive manager as

1 well as their counsel (including various defense counsel) as well as any interested parties
2 of the receivership. The notice contained contact information for questions and where to
3 find copies of the receivership orders. Additionally, the Regulatory Services Group
4 website has been updated with the notice and links to view and obtain copies of the
5 permanent receivership order.

6 The Special Deputy Receiver also provided a certified copy of the temporary
7 receivership order on the Company's depository and treasury banking partners Well
8 Fargo Bank and Merrill Lynch respectively. The Special Deputy Receiver has signed the
9 proper signatory documents prepared by Wells Fargo Bank and Merrill Lynch to take
10 control of all of PIRRG's know bank and investment accounts.

11 Counsel for the Special Deputy Receiver served notice of the receivership and
12 copies of the temporary receivership order to PIRRG's agent of service as well as counsel
13 for the risk retention group.

14 The Special Deputy Receiver has received access to various records and documents
15 associated with PIRRG that are in the possession and custody of the risk retention
16 group's captive manager Strategic Risk Solutions ("SRS") as well as the home office in
17 Wesley Chapel, Florida. The Special Deputy Receiver also understands a number of
18 claim and legal files are in the custody of the risk retention group's CEO Steve Adler and
19 or the entity Melsar Risk Management Services, Inc. ("Melsar"). Due to ongoing civil
20 restrictions and the continuance of the pending show cause hearing, the Special Deputy
21 Receiver has not taken physical possession and or relocated/consolidated PIRRG's books
22 and records, but has confidence all records are securely stored with the various parties
23 described above.

24 **B. PIRRG Policies**

25 As of September 30, 2020 all but approximately 10 PIRRG policies had been transferred
26 to new insurers. The majority of PIRRG members had their policies transferred via
27 formal agreement to ISMIE, a well-capitalized Illinois professional liability carrier that
28

1 insures a significant share of the professional liability market in Illinois. ISMIE is a
2 admitted carrier in Florida.

3 The Special Deputy Receiver retained and worked through the local PIRRG staff to
4 ensure all policies being accepted by ISMIE, on terms and conditions consistent with
5 their existing PIRRG coverage, were transferred as soon as possible. By the 3rd quarter of
6 2020 all policies scheduled to be transferred to ISMIE had been transferred. The few
7 remaining policies will be administered in the interim and ultimately cancelled, to the
8 extent they have not already lapsed on term, upon the placement of PIRRG into
9 permanent receivership. To help preserve the limited assets of PIRRG the Special Deputy
10 Receiver has placed a moratorium on various policy administration and claim expenses
11 and will address those obligations in conjunction with the placement of the impaired risk
12 retention group into permanent receivership.

13 **C. Policyholder Related Claims**

14 As of September 30, 2020 PIRRG reported \$2,354,543 in estimated policy liability
15 with 30 cases under some form of litigation or pre-litigation status. Notice of the PIRRG
16 temporary receivership injunction has been provided to all active defense counsel for
17 PIRRG. The Special Deputy Receiver has sought to gain a stay in all active proceedings
18 against PIRRG insureds pending further orders from this court. PIRRG's open claims
19 are not covered by any insurance guaranty statutes but the reciprocal has a reinsurance
20 program in place that may serve to pay a portion of any claims exposure or other claim-
21 related obligations. The Special Deputy Receiver has reviewed and actively monitors the
22 open claims and legal cases through inherited defense counsel as well as PIRRG's CEO
23 Steve Adler. Ultimately, the Special Deputy Receiver will conduct a proof of claim
24 process in accordance with Nevada's distribution priority statutes thereby seeking to
25 determine and pay approved claims on an equitable basis subject to the limitations on
26 available PIRRG assets.

1 **D. Records and Assets Control**

2 The Special Deputy Receiver has located and taken legal control of most of
3 PIRRG's books and records, both tangible and electronic. The majority of PIRRG's
4 records are maintained in electronic format at the risk retention group's home office in
5 Wesley Chapel, Florida and also with PIRRG's captive manager Strategic Risk Solutions
6 at their offices in Arizona. It is the understanding of the Special Deputy Receiver that
7 most all claim and claim related hardcopy files as well as electronic files are in the
8 custody and possession of Steve Adler PIRRG's CEO and or at the offices of Melsar Risk
9 Management Services ("Melsar"). In addition to the legal files held by Mr. Adler and
10 Melsar there are various case files in the respective offices of defense counsel
11 representing PIRRG insureds. It is also the understanding of the Special Deputy
12 Receiver that various legal files associated with the pending reinsurance arbitrations and
13 the alleged case against AON are all in the custody of Leverty and Associates in Reno,
14 Nevada. The Special Deputy has yet to receive any of these files or information from the
15 law firm despite repeated formal requests. As a result of records being held by parties
16 in various locations and states, coupled with current civil restrictions and court
17 continuances, both associated with the ongoing COVID pandemic, the process of
18 collecting all of PIRRG's documents and information will require additional time to
19 complete upon further ruling from this court, specifically in obtaining the claims and
20 claims handling records.

21 In addition to records control, the Special Deputy Receiver has taken control of
22 PIRRG's bank and treasury accounts. The Special Deputy Receiver has provided formal
23 notice of the PIRRG Receivership Order to Wells Fargo Bank the risk retention group's
24 depository bank vendor as well as Merrill Lynch who held PIRRG's investments. All
25 known bank accounts and treasury accounts are now in the control of the Special Deputy
26 Receiver.

27 ///

28 ///

1 **E. Financial Analysis**

2 As of September 30, 2020 PIRRG's liabilities exceed its assets by \$980,806. In
3 addition, PIRRG has current assets of \$1.3 million and current liabilities of \$2.9 million.
4 Based on the PIRRG's current financial condition, it is insolvent within the meaning of
5 NRS696.110(1). Specifically, PIRRG's current assets are comprised of \$214,988 in cash or
6 cash equivalents in their Wells Fargo claims and operating account at September 30,
7 2020. In addition to cash at Wells Fargo, PIRRG held \$1,174,662 in treasury investments
8 for total cash and invested assets of \$1,389,650 as of September 30, 2020. Additionally,
9 for the period ending September 30, 2020 PIRRG reported a reinsurance asset of
10 approximately \$3,416,000 due from the risk retention group's reinsurance partners in the
11 London Markets. This estimated recovery has not been verified by the Special Deputy
12 Receiver and is subject to formal dispute. Based on the impaired financial condition of
13 PIRRG and the uncertainty associated with the reinsurance program the Special Deputy
14 Receiver will seek to assess and validate the likely recoveries under the reinsurance
15 program including pending arbitrations with the London Market reinsurers. The
16 temporary receiver has updated the billings to the London Market through June 30, 2020
17 and has inquired about the billing and expected timeframe of a recovery. The Special
18 Deputy Receiver has made initial contact with counsel representing the London Market
19 reinsurers and, subject to further orders of this court, will seek to resolve the pending
20 billing dispute as well as evaluate the terms of the idle arbitration proceedings.

21 **F. Ongoing Priorities**

22 The Special Deputy Receiver will continue to remain focused on the resolution of
23 the key reinsurance disputes and collections, seek to evaluate the strength and
24 requirements associated with certain litigation reportedly being asserted by Leverty and
25 Associates against AON related to the placement of certain reinsurance treaties.

26 The Special Deputy Receiver, in coordination with SRS and the PIRRG home office
27 staff, continues to process the weekly payroll and essential vendor expenses. All non-
28 essential expenses have been suspended subject to further order of this court. As

1 mentioned above, PIRRG insureds do not enjoy the “safety net” coverage benefits of an
2 insurance guaranty association as such the Special Deputy Receiver must balance
3 ongoing expenses and potential recoveries against the prospect of PIRRG’s current
4 impaired financial condition. This balancing effort is proving to be a significant challenge
5 due to continuing delays associated with the pending show cause hearing to consider a
6 permanent receivership and liquidation.

7 **CONCLUSION**

8 In compliance with NRS 696B.290(7), the Special Deputy Receiver submits the
9 aforementioned report and respectfully requests that this Court approve this status
10 report and the actions of the Receiver and Receivership Manager.

11 DATED: January 12, 2021

12
13 Barbara D. Richardson, Commissioner of
14 Insurance of the State of Nevada, in her Official
15 Capacity as Statutory Receiver of Delinquent
16 Domestic Insurers

17 By: /s/ Scott Pearce
18 Scott Pearce
19 Regulatory Services Group
20 Receivership Supervisor

21 Respectfully submitted by:

22 By: /s/ David Hall
23 DAVID HALL(Bar No. 6333)
24 *Attorney for the Commissioner of Insurance as Receiver*

EXHIBIT 3

EXHIBIT 3 (PROPOSED ORDER)

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

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

15 Petitioner,

16 vs.

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

20 Respondent.

Case No. CV20-00496

Dept. No. 1

21 **PROPOSED ORDER GRANTING TEMPORARY RECEIVER'S MOTION FOR**
22 **LIQUIDATION AND OTHER PERMANENT RELIEF**

23 WHEREAS a Motion for Order of Liquidation and Other Permanent Relief was filed
24 by Barbara D. Richardson Commissioner of Insurance, in Her Official Capacity as
25 Temporary Statutory Receiver ("Temporary Receiver") for Physician's Indemnity Risk
26 Retention Group, Inc. ("PIRRG"), the Court having reviewed papers and pleadings on file,
27 and;

