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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9 STATE OF NEVADA, EX REL. COMMISSIONER
10 OF INSURANCE, in her official capacity as
11 statutory Receiver for delinquent domestic insurer,

Case No.: CV20-00496

12 Petitioner,

Dept. No.: 1

13 vs.

14 PHYSICIANS INDEMNITY RISK RETENTION
15 GROUP, INC., a Nevada Domiciled Association
16 Captive Insurance Company,

17 Respondent.

18 _____ /
19 **ORDER OF PERMANENT RECEIVERSHIP AND**
20 **ORDER GRANTING MOTION FOR LIQUIDATION**

21 This is a delinquency case initiated pursuant to NRS 696B against insurance company,
22 Physicians Indemnity Risk Retention Group, Inc., (“PIRRG” or the “Company”). On March 12, 2020,
23 the State of Nevada, Ex. Rel. Commissioner of Insurance, in her Official Capacity as the Statutory
24 Receiver for Delinquent Domestic Insurers, petitioned this Court pursuant to NRS 696B.250 to appoint
25 her as Receiver of PIRRG for the purpose of its rehabilitation, conservation or liquidation, and to grant
26 a permanent injunction and other relief authorized by Chapter 696B.

27 On March 19, 2020, this Court granted injunctive relief and appointed the Commissioner as
28 Temporary Receiver and issued an order, pursuant to Nevada Revised Statute (“NRS”) 696B.250(2),
further directing PIRRG to appear in court on March 31, 2020 and show cause why the Commissioner’s
petition should not be granted.

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1 After a series of court filings and delays, which are further detailed in the filings herein, on
2 February 2, 2021, a *Temporary Receiver’s Motion for Order of Liquidation and Other Permanent Relief*
3 (“Motion”) was filed by Petitioner and the issues fully briefed by the parties and considered by this
4 Court. A Show Cause Hearing was scheduled and ultimately went forward on December 6, 2021 and
5 was continued for a second day on January 14, 2022. During the Show Cause hearing, both parties
6 were provided an opportunity to submit documents and present and cross examine witnesses. This Court
7 considered the same along with the documents and evidence on file herein.

8 For the following reasons, the Commissioner’s Petition to Appoint Commissioner as Permanent
9 Receiver of PIRRG and her Motion for Liquidation are GRANTED.

10 **I. FINDINGS OF FACT**

11 **BACKGROUND**

12 PIRRG is an incorporated association formed as a captive insurance company organized under
13 the insurance laws of the State of Nevada and the Liability Risk Retention Act of 1986. In accordance
14 with Chapter 694C of the Nevada Revised Statutes (“NRS”) PIRRG operates as a risk retention group
15 as that term is defined by NRS 694C.141 and NRS 695E.110.

16 PIRRG is domiciled in the State of Nevada and received its initial Certificate of Authority on
17 July 28, 2006.¹ As a risk retention group, PIRRG wrote professional liability insurance to physicians
18 and their medical groups under claims-made indemnity policies.

19 As an Association Captive, PIRRG is required to file with the Nevada Division of Insurance
20 (“Division”) annual financial statements, per NRS 694C.400(1). Additionally, NRS 694C.250(1)(b)
21 requires that Association Captives maintain a minimum capital and surplus balance of \$500,000.

22 Risk Based Capital (“RBC”) is a minimum regulatory capital standard for insurers and is
23 designed as an early warning system for regulators to identify undercapitalized companies. A
24 company’s RBC is calculated by applying specific factors to various asset, premium and reserve
25 amounts reported by the company. A minimum RBC must be maintained for a company to be in
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28 ¹ PIRRG received an amended Certificate of Authority on February 8, 2018 thereby updating its statutory home office to Reno, Nevada.

1 compliance with Nevada statutory minimum RBC requirements. *See*, Nevada Administrative Code
2 (“NAC”) provisions 681B.445, 681B.530 and 681B.545 and NRS 694C.250.

3 **PIRRG’S FINANCIAL STATEMENTS AND FILINGS**

4 PIRRG’s 2018 audited financial statements and RBC reports raised solvency concerns with
5 the Division. On July 22, 2019, the Commissioner determined PIRRG was operating in a hazardous
6 financial condition and notified PIRRG of the regulatory impairment, and gave PIRRG the opportunity
7 to submit corrective action plans to try to salvage the Company’s operations. As a result of the financial
8 and regulatory impairments, three proposed Corrective Action Plans were submitted by PIRRG to the
9 Division between May and September of 2019.² However, all such Corrective Action Plans were
10 deemed insufficient to address and resolve the RBC and financial impairments to the satisfaction of the
11 Commissioner and her regulatory staff. Additionally, PIRRG failed to comply with a corrective action
12 order issued on November 19, 2019 that among other things required the infusion of \$800,000 of new
13 capital and surplus within 30 days.

14 On February 26, 2020 representatives of PIRRG met with employees of the Division and
15 requested authorization to conduct a self-runoff of PIRRG. During the February meeting, PIRRG’s
16 management acknowledged the need to liquidate the Company and acknowledged that PIRRG was not
17 viable in the current marketplace. Under no statutory obligation to accept the proposal, the Division
18 rejected PIRRG’s proposal for self-runoff.

19 Even in a hazardous financial condition, pursuant to NRS 694C.400, PIRRG was required to
20 file a year-end 2019 annual financial statement with the Division by March 2, 2020, along with its 2019
21 RBC Report. PIRRG failed to timely submit to the Division the reporting required. On March 6, 2020,
22 the Division received the 2019 Annual Financial Statement (“2019 Financial Statement”) and the 2019
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24 ² In addition to submitting Corrective Action Plans to the Division, PIRRG initiated proceedings against a number of
25 parties that the officers and directors of PIRRG believed were responsible for the Company’s financial problems. On
26 August 8, 2019, PIRRG filed a suit against its former captive manager (Aon Insurance Managers Inc.), and reinsurance
27 broker (AON Risk Service Inc.). PIRRG alleged the entities failed to do their due diligence in regard to reinsurance and
28 provided illusory reinsurance policies that did not provide any risk transfer and then improperly calculated the amounts in
filings submitted to the Division (“AON Litigation”). This Case was filed in the Second Judicial District Court, State of
Nevada for Washoe County as Case No. CV-19-01563 and is stayed. PIRRG also initiated arbitration proceedings against a
number of its reinsurers relating to commutation issues and the Company challenged whether there was risk transfer in the
various reinsurance treaties between the parties that were obtained through the London Markets (“Reinsurance Arbitrations”).

1 RBC Report from PIRRG.³ Although PIRRG management reviewed the 2019 Financial Statement and
2 the 2019 RBC Report prior to the documents being submitted to the Division, both jurat pages were
3 unsigned. PIRRG’s 2019 Financial Statement and the 2019 RBC Report were otherwise prepared in
4 accordance with acceptable accounting standards.

5 The Company’s surplus in the 2019 Financial Statement was a negative (\$98,164) and the
6 Company’s year-end 2019 RBC percentage was a negative (15.84%), placing PIRRG in a Mandatory
7 Control Level status and requiring the Division to place the Company under regulatory control within
8 90 days of the event. On March 12, 2020, as required, the Commissioner petitioned this Court pursuant
9 to NRS 696B.250 for her appointment as Receiver of PIRRG for the purpose of its rehabilitation,
10 conservation or liquidation, and to grant permanent injunction and other relief authorized by NRS
11 Chapter 696B and other applicable law.

12 **SHOW CAUSE HEARING**

13 The issue at the Show Cause Hearing was whether PIRRG was insolvent as defined in NRS
14 696B.110 and whether PIRRG should be placed in permanent receivership and liquidated. PIRRG
15 objected to the permanent receivership and liquidation. Both parties were provided an opportunity to
16 present evidence and bring witnesses to testify on their behalf.

17 During the two days of the hearing, testimony was provided by Kelsey Barlow, Aaron Smith,
18 Kyle Hales, Joe Holloway, Steve Adler and Kriston Kent.

19 The testimony of Kelsey Barlow and Aaron Smith along with the Company’s 2019 Financial
20 Statement established that PIRRG was insolvent at year end 2019 and continues to be insolvent. Indeed,
21 the Company’s liabilities exceeded its assets in the 2019 Financial Statement and in its September 30,
22 2021 Financial Statements. Both witnesses also testified that reports submitted to the Division were
23 completed consistent with recognized accounting standards that govern risk retention groups in the State
24 of Nevada.⁴ Specifically, risk retention groups report on a modified GAAP basis and a reconciliation is
25 done based on statutory accounting standards recognized in NAC 679B.033. An insurer cannot simply

26 ³ The documents were provided to the Division by Strategic Risk Solutions (West) Inc. (“SRS”) which was retained by
27 PIRRG to act as its captive manager with duties which including submitting financial reports to the Division on PIRRG’s
28 behalf.

⁴ PIRRG’s Financial Statements were prepared by SRS beginning in 2017. The Receiver retained SRS to continue to prepare
the Company’s financial statements during the temporary receivership.

1 disregard approved accounting standards.

2 Respondent had the burden pursuant to NRS 696B.250(2) to show why a permanent receivership
3 order should not be entered. Respondent did not present any fact or expert witness that testified that
4 PIRRG was solvent pursuant to NRS 696B.110.⁵ Respondent's witnesses testified that if a new actuarial
5 report had been completed after these proceedings were initiated there may have been adjustments in
6 the Company's stated IBNR (Incurred But Not Reported) number. No witness testified as to the amount
7 of any purported adjustment nor did any witness testify that an adjustment would be significant enough
8 to make PIRRG solvent.

9 **TEMPORARY RECEIVERSHIP & CURRENT FINANCIAL CONDITION OF PIRRG**

10 PIRRG's financial state has worsened since the filing of this action, as the Company has no
11 existing mechanism to make money.⁶ The Temporary Receiver continues to work through the remaining
12 PIRRG staff in Florida to address all invoices and ensure proper controls over weekly payables. To
13 maintain the core elements of the risk retention group a small population of vendors and services has
14 been retained awaiting further orders of the Court.

15 The most recent financial filings for PIRRG at the time of the Show Cause Hearing were
16 prepared as of September 30, 2021, again in accordance with acceptable accounting standards. The
17 filings show that as of September 30, 2021 PIRRG's liabilities exceeded its assets by \$3,052,334.
18 PIRRG had reported assets of \$7,501,357 and liabilities of \$10,553,691.⁷

19 Based on the PIRRG's current financial condition, its assets continue to be less than the sum of
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21 ⁵ Respondent alleged they were solvent if this Court were to consider various assets such as its AON litigation claim and the
22 Reinsurance Arbitrations. As these "assets" are speculative (i.e. no assurance these claims will be successful in the near
future) the Court cannot consider these "assets" in its analysis. Further, NRS 696B.110 would not permit this Court to
undertake such an analysis.

23 ⁶ After the appointment of a Temporary Receiver on March 19, 2020, the majority of PIRRG policies were transferred to
24 another insurance company, ISMIE. Additionally, the Temporary Receiver placed a moratorium on various policy
administration and claim expenses and took control of PIRRG's bank and treasury accounts. The Temporary Receiver
25 continues to provide updated financial data to the reinsurers and remains in periodic contact with counsel for the reinsurers. However,
the reinsurers have been unwilling to discuss a resolution of the Reinsurance Arbitrations without a permanent receivership order in
place.

26 ⁷ The September 30, 2021 Financial Statements include as an asset the \$3,457,245 allegedly due from the risk
27 retention group's reinsurance partners in the London Markets on paid loss and loss adjustment expense ("LAE") and
\$2,822,045 recoverable on claim reserves. These amounts are disputed in the Reinsurance Arbitrations. In other words, the
28 Financial Statements give the Company the benefit of the doubt as if the disputed funds will be fully recovered from the
reinsurers. However, even with the inclusion of these disputed amounts, PIRRG is still insolvent.

1 its liabilities and its paid-in capital stock account and the company is insolvent pursuant to NRS
2 696B.110(2).

3 If any of the foregoing findings of fact is more appropriately construed as a conclusion of law,
4 it may be so construed.

5 II. CONCLUSIONS OF LAW

6 This Court finds that the Findings of Fact, as well as the evidence, argument and statements
7 presented, and the filings herein support the following Conclusions of Law:

8 The Commissioner of Insurance is charged with enforcement of the provisions of title 57 of the
9 NRS (the “Insurance Code”). NRS 679B.120(3). Among the core purposes of the Insurance Code and,
10 consequently, one of the Commissioner’s fundamental duties is the protection of “policyholders and all
11 having an interest under insurance policies.” NRS 679A.140(1)(a). As part of this duty, the
12 Commissioner must monitor the financial solvency of insurers. *See* NRS 679B.120 (4)-(6). *See also*
13 NRS 679B.230, 679B.159.

14 The solvency of an insurer is a matter of public interest, as recognized by the United States
15 Supreme Court. *See, German Alliance Ins. v. Lewis*, 233 US 389, 412-413, 34 S.Ct. 612, 619 (1914).
16 The Nevada Legislature enacted the Nevada Liquidation Act, a version of the Uniform Insurers
17 Liquidation Act (“UILA”), designed to protect the public as well as the policyholders and other creditors
18 in the event an insurer becomes insolvent. The insolvency of an insurance company must be determined
19 in accord with the provisions of the insurance code. *See, In re American Investors Assurance Company*,
20 521 P.2d 560, 562 (Utah 1974).

21 In Nevada, an insolvency exists pursuant to NRS 696B.110: “1) When the insurer fails to meet
22 its obligations as they mature; 2) When a stock insurer’s assets are less than the sum of its liabilities
23 and its paid-in capital stock account; 3) When a mutual insurer’s assets are less than the sum of its
24 liabilities and the minimum basic surplus required to be maintained by the insurer under this Code for
25 authority to transact the kinds of insurance transacted; or 4) As otherwise expressly provided in this
26 Code [NRS 696B].” The Commissioner has grounds to petition for an order to rehabilitate a domestic
27 insurer “[i]f the insurer is in unsound condition, or is using, or has been subject to such methods and
28 practices in the conduct of its business as to render its further transaction of insurance presently or

1 prospectively hazardous to its policyholders, or creditors, or the public” NRS 696B.210(2). The
2 Commissioner may apply for liquidation of a company if the insurer fails to cure an impairment of
3 surplus, or capital, or assets within certain time allowed, or if the insurer is insolvent. NRS 696B.220.1–
4 2.

5 In this case, the Company’s 2019 financial statements showed PIRRG had negative surplus
6 (liabilities totaled more than assets). PIRRG was in an unsound condition. After review, the
7 Commissioner determined that allowing PIRRG to continue operating posed a hazard to its
8 policyholders and creditors. Thus, the Commissioner appropriately commenced proceedings pursuant
9 to NRS 696B.250 and made a prima facie showing of PIRRG’s insolvency. Pursuant to NRS
10 696B.250(2), the burden was on Respondent in the show cause hearing to show why a permanent
11 receivership order should not be entered. However, the arguments and evidence made by Respondent
12 were unavailing and Respondent failed to meet this burden.

13 The purpose of the delinquency proceeding is not to assign blame. See NRS Chapter 696B,
14 including but not limited to NRS 696B.060, .110, .270, and .290. See also *Vullo v. Park Ins. Co.*, 2020
15 NY Slip Op 51075(U), ¶ 2, 68 Misc. 3d 1226(A), 130 N.Y.S.3d 647 (Sup. Ct. 2020) (noting that a
16 finding of insolvency must be based on a financial statement or report on examination, showing that an
17 insurer is unable to pay its outstanding lawful obligations as shown by an excess of required reserves
18 and other liabilities over admitted assets).

19 Further, PIRRG failed to cure the impairment of surplus, or capital, or assets within the time
20 allowed by the Commissioner, and is insolvent, both of which justify the entry of an order of liquidation
21 and the appointment of a Permanent Receiver.

22 Based on the foregoing, and good cause appearing,

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

24 (1) PIRRG is insolvent pursuant to NRS 696B.110 (2).

25 (2) The Commissioner as Temporary Receiver is appointed Permanent Receiver pursuant to
26 NRS 696B.220.

27 (3) The motion for an order of liquidation is GRANTED.

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1 (4) All rights of parties regarding PIRRG are fixed as of the date of this order, except to the
2 extent that the rights of claimants with contingent or unliquidated claims are protected by NRS
3 696B.400 and NRS 696B.450.

4 (5) Notwithstanding the foregoing, PIRRG's claims against others are not fixed as of the
5 date of this Order.

6 (6) This Order is designated as a Final Order pursuant to NRS 696B.190(5).

7 (7) A permanent injunction will be issued by separate order.

8 **IT IS SO ORDERED.**

9 DATED this 29th day of March, 2022

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13 KATHLEEN M. DRAKULICH
14 DISTRICT COURT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV20-00496

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE
4 OF NEVADA, COUNTY OF WASHOE; that on the 29th day of March, 2022, I electronically filed the
5 **ORDER OF PERMANENT RECEIVERSHIP AND ORDER GRANTING MOTION FOR**
6 **LIQUIDATION** with the Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**
10 **of electronic filing to the following:**

11 KARA HENDRICKS, ESQ. for STATE OF NEVADA

12 VERNON LEVERTY, ESQ. for PHYSICIANS INDEMNITY RISK
13 RETENTION GROUP INC

14 RICHARD YIEN, ESQ. for COMMISSIONER OF INSURANCE, BARBARA D.
15 RICHARDSON, STATE OF NEVADA

16 JESS RINEHART, ESQ. for PHYSICIANS INDEMNITY RISK RETENTION GROUP INC

17 PATRICK LEVERTY, ESQ. for PHYSICIANS INDEMNITY RISK
18 RETENTION GROUP INC

19 WILLIAM GINN, ESQ. for PHYSICIANS INDEMNITY RISK RETENTION GROUP INC

20 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
21 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

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23 
24 Department 1 Judicial Assistant