

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Raymond G. Farmer, as Director of the SC )  
Department of Insurance )

Plaintiff(s) )

vs. )

Oceanus Insurance Company, a RRG )

Defendant(s) )

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP -40 - 05195

(Please Print)

Submitted By: Geoffrey R. Bonham  
Address: SC Department of Insurance  
P.O. Box 100105  
Columbia SC 29202-3105

SC Bar #: 13058  
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Other:  
E-mail: gbonham@dois.sc.gov

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- |   |   |   |  |
|---|---|---|--|
| <p><b>Contracts</b></p> <input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199)  | <p><b>Torts - Professional Malpractice</b></p> <input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)   | <p><b>Torts - Personal Injury</b></p> <input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399) | <p><b>Real Property</b></p> <input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)  |
| <p><b>Inmate Petitions</b></p> <input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Sexual Predator (510)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)  | <p><b>Judgments/Settlements</b></p> <input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Other (799) | <p><b>Administrative Law/Relief</b></p> <input type="checkbox"/> Reinstat Driver's License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture (840)<br><input type="checkbox"/> Other (899)   | <p><b>Appeals</b></p> <input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Administrative Law Judge (980)<br><input type="checkbox"/> Public Service Commission (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <p><b>Special/Complex /Other</b></p> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Medical (620) <input type="checkbox"/> Out-of State Depositions (650)<br><input checked="" type="checkbox"/> Other (699) |   |   |  |
- Insurance Company  
Receivership by  
Consent

Submitting Party Signature: \_\_\_\_\_

Date: August 29, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**  
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

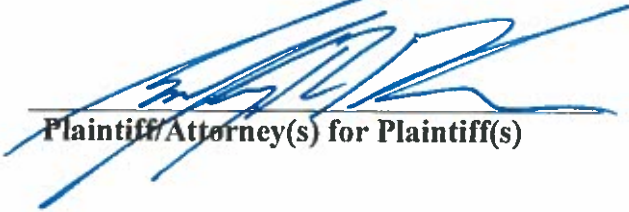
STATE OF SOUTH CAROLINA )  
RICHLAND COUNTY )  
RAYMOND G. FARMER )  
Plaintiff )  
vs. )  
OCEANUS INS. CO., A RRG )  
Defendant. )

IN THE CIRCUIT COURT FOR THE  
FIFTH JUDICIAL CIRCUIT  
CERTIFICATE OF EXEMPTION  
FROM ADR  
DOCKET NO. 2017-CP-40-\_\_\_\_\_

I certify that this action is exempt from ADR because:

- this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- this action is appellate in nature;
- this is a post-conviction relief matter;
- this is a contempt of court proceeding;
- this is forfeiture proceeding brought by the State;
- this is a case involving a mortgage foreclosure; or
- the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

RICHLAND COUNTY  
FILED  
2017 AUG 29 AM 11:30  
JEANNE E. W. MORRIS  
C.C.P. & G.S.

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Plaintiff/Attorney(s) for Plaintiff(s)**

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Defendant/Attorney(s) for Defendant(s)**

Date: 8/29/2017

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

Oceanus Insurance Company, a Risk  
Retention Group,

Respondent.

Civil Action No. 2017-CP-40-\_\_\_\_\_

SUMMONS

JEANETTE W. MORRIS  
C.C.P. & G.S.

2017 AUG 29 AM 11:30

RICHLAND COUNTY  
FILED

**TO THE RESPONDENT ABOVE-NAMED:**

**YOU ARE HEREBY SUMMONED** and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Pleading to said Petition upon the subscriber at his office at 1201 Main Street, Suite 1000, Post Office Box 100105, Columbia, South Carolina, 29202-3105, within thirty (30) days after the service hereof exclusive of the day of such service, and if you fail to answer, appear, defend or otherwise move within the time aforesaid, the Petitioner will apply to the Court for the relief demanded in the Petition and judgment by default will be rendered against you for the relief demanded.

By: 

Geoffrey R. Bonham  
Associate General Counsel

South Carolina Department of Insurance  
Post Office Box 100105  
Columbia, South Carolina 29202-3105  
(803) 737-6132  
[gbonham@doi.sc.gov](mailto:gbonham@doi.sc.gov)

August 27, 2017  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

Oceanus Insurance Company, a Risk  
Retention Group,

Respondent.

Civil Action No. 2017-CP-40-\_\_\_\_\_

**PETITION FOR ORDER  
COMMENCING LIQUIDATION  
PROCEEDINGS**

2017 AUG 29 AM 11:29  
FILED  
RICHLAND COUNTY  
COURT  
CLERK  
ANNETTE W. MCBRIDE  
C.C.P. & G.S.

Petitioner, Raymond G. Farmer, as Director of the South Carolina Department of Insurance, by and through counsel, hereby petitions the Court for an Order pursuant to the South Carolina Insurers Rehabilitation and Liquidation Act S.C. Code Ann. §§ 38-27-10 *et seq.*, for an order appointing him as Liquidator of Respondent, Oceanus Insurance Company, a Risk Retention Group. Respondent is being served with a copy of this Petition pursuant to S.C. Code Ann. § 38-27-60 (2015). In support of this Petition, Petitioner would respectfully show the Court as follows.

1. This Court has jurisdiction of the subject matter and is the proper venue for this proceeding pursuant to S.C. Code Ann. § 38-27-60(b), (c) & (f) & -360 (2015).

2. Petitioner is the duly appointed Director for the State of South Carolina Department of Insurance with such powers, duties and responsibilities as are prescribed under the insurance laws of this State to that agency's director for company licensing, delinquency and receivership matters, and is specifically authorized to file a petition for liquidation pursuant to S.C. Code Ann. § 38-27-360 (2015).

3. The Department has regulatory jurisdiction over the Respondent pursuant to, *inter alia*, Chapters 3 , 87 and 90 of Title 38 of the South Carolina Code of Laws 1976, as amended.

4. Respondent is a South Carolina Industrial Insured Captive (stock) Corporation formed as a risk retention group, organized and licensed pursuant to Chapters 87 and 90 of Title 38 of the South Carolina Code, and is owned and capitalized by its insured physician and physician group members.

5. Respondent was licensed on September 24, 2004 and commenced writing business with Department authorization on February 18, 2005.

6. Under Respondent's approved business plan, member-insureds are physician's groups and individual practitioners throughout the United States.

7. Respondent issues non-assessable medical malpractice professional insurance policies with primary coverage up to \$1,000,000 per occurrence with \$3,000,000 in the aggregate. Excess limits are provided above the primary coverage and are fully reinsured. For the 2014-2015 and 2015-2016 policy years, Respondent retains \$450,000 on the primary policy and cedes the remainder to reinsurers. Retention decreases to \$350,000 in 2016-2017. Respondent currently has no reinsurance for policy years prior to 2014-2015.

8. Respondent is required by the Department to maintain minimum capital and surplus of \$10,000,000 on a modified GAAP basis.

9. On or about March 1, 2015, Respondent filed its 2014 Annual Statement and annual supplemental filings, which revealed a Company Action Level Event pursuant to S.C. Code Ann. § 38-9-330(A)(1) (2015), in that the Risk Based Capital (RBC) percentage was greater than 150%, or

the Regulatory Action Level, but less than the Company Action Level of 200%. See S.C. Code Ann. §§ 38-9-310(18)(a) & 330 (A)(1) (2015).

10. Pursuant to S. C. Code Ann. § 38-9-330(B) (2015), Respondent was required to prepare and submit to the Department an RBC Plan that, *inter alia*, identified the conditions contributing to the Company Action Level Event and the insurer's proposals for corrective action. The Department accepted the RBC Plan without any changes and continued to monitor the Company's financial condition on a quarterly basis through the end of the 2015 reporting year.

11. On May 12, 2015, Respondent filed its first quarter 2015 financial statement. The insurer's estimated RBC percentage was still less than 200%; however, the combined ratio had improved to 89.9%.

12. An August 25, 2015, review of the second quarter 2015 financial statement showed that the quarterly estimate of the RBC was higher than 200%; however, the combined ratio increased to 110%.

13. On September 16, 2015, Respondent submitted its Actuarial Report as of June 30, 2015, which reported that the Company's June 30, 2015 reserves were booked at just above the low end of the actuary's range.

14. Based on Respondent's third quarter 2015 financial statement, filed on or about November 16, 2015, estimated RBC at September 30, 2015 was below 200%, with a combined ratio of 115.2%.

15. According to the 2015 Annual Statement filed on or about March 15, 2016, Respondent's capital and surplus as of December 31, 2015 was \$9,735,848 (on a modified GAAP basis), below its stipulated minimum capital and surplus of \$10,000,000.



16. The 2015 Annual Statement also revealed that, due to adverse loss development for policy years 2010-2014, Respondent's RBC percentage was 121.5%, resulting in an RBC Regulatory Action Level Event pursuant to S.C. Code Ann. §§ 38-9-310(18)(b) (2015) and 38-9-340(A) (2015).

17. On April 6, 2016, the Department directed Respondent to prepare and submit an RBC Plan, to be received by the Department no later than April 29, 2016, or within forty-five (45) days of the Regulatory Action Level Event, in accordance with S.C. Code Ann. § 38-9-340(D) (2015).

18. After receipt of the RBC Plan, the Department determined that it did not comply with South Carolina statutory requirements, gave Respondent until May 17, 2016 to conform the RBC Plan to the requirements of S.C. Code §§ 38-9-340, 38-9-310(19), and 38-9-330(B) (2015) and directed Respondent to submit additional information, including a loss run as of April 30, 2016.

19. On or about May 17, 2016, Respondent submitted a partially-completed revised RBC Plan and also submitted the loss run as of April 30, 2016. It also proposed certain cost saving measures, such as replacing its current fixed-rate reinsurance program with a swing-rated program and eliminating approximately \$1.5 million a year in managing general underwriter (MGU) fees.

20. A review of the loss run at April 30, 2016 submitted by Respondent revealed a significant concern with loss reserves, in that the average claims settlement has been materially greater than the average amount reserved for known claims. This concern led the Department to ask for a more complete analysis of the adequacy of claims reserving.

21. On or about May 25, 2016, Respondent filed an amended 2015 Annual Statement indicating that capital and surplus as of December 31, 2015 was \$10,290,555, or above the required minimum.

22. On or about June 1, 2016, the Department received Respondent's Audited Financial Statement for 2015. The audit resulted in a significant upward adjustment of capital and surplus of over \$500,000 that raised Respondent's capital and surplus to above the minimum of \$10,000,000 as of year-end 2015.

23. Meanwhile, on May 27, 2016, the Department received Respondent's first quarter 2016 financial statement. Although the statement was due May 15, 2016, the Department permitted an extension so that Respondent could incorporate the results of its 2015 audit. According to Respondent's quarterly statement, its capital and surplus remained above the minimum, at \$10,353,983 as of March 31, 2016.

24. On August 15, 2016, Respondent timely filed with the Department its second quarter 2016 financial statement, which indicated that Respondent's capital and surplus, at \$9,321,102 as of June 30, 2016, had again dropped below the required minimum.

25. Respondent's capital and surplus is not only back below the prescribed minimum of \$10,000,000, it represents a decrease of over 50% from \$20,862,137 at year-end 2013.

26. On August 22, 2016, Respondent's actuary submitted an Actuarial Report on Loss and Loss Adjustment Expense Reserves as of June 30, 2016. Based on this report, the Department determined that Respondent was carrying very high reserves for incurred but not reported (IBNR) losses compared to industry data.

27. Respondent's adverse loss development as of mid-year 2016 was approximately \$687,000, negatively affecting Respondent's income and capital and surplus, and continuing a trend of adverse loss development.

28. On or about August 26, 2016, Respondent received and shared with the Department a report of reserve analysis, conducted by Sedgwick Claims Management, Inc. (“Sedgwick”) at the direction of the Department, to “assess the accuracy of indemnity and expense reserves on [Respondent’s] current book of claims.”

29. Sedgwick audited a total of 50 files: 40 files involving open lawsuits (“suit files”) and ten open claim files. Applying Respondent’s own reserving methodology to the 40 suit files, Sedgwick found that ten were under reserved and that none were over reserved. Of the ten claims files Sedgwick audited, it found that one was under reserved.

30. When Sedgwick applied its own more conservative methodology for reserving, it found that, of the 40 suit files, “30 files were under reserved [and] none of the files were over reserved.” Applying that methodology to the ten claim files, Sedgwick determined that “[eight] of the files were under reserved [and] none of the files were over reserved.”

31. Based on the actuary’s report, the claims analysis, and the financial reports, the Department concluded that Respondent had not set aside adequate reserves for known claims.

32. On September 27, 2016, the Director of the South Carolina Department of Insurance issued an order placing Respondent into confidential supervision pursuant to Chapter 26 of Title 38 of the Code of Laws of South Carolina 1976, as amended.

33. According to Respondent’s third quarter 2016 statement, its capital and surplus as of September 30, 2016 increased above the minimum, at \$10,829,326, after Respondent booked a receivable for overcharged fees by its MGU. The Company estimated the overcharged fees to be approximately \$2,503,068.

34. On March 1, 2017, Respondent timely filed with the Department its 2016 annual financial statement, which indicated that Respondent's capital and surplus, at \$8,223,915 as of December 31, 2016, had again dropped below the required minimum. The Company's RBC ratio was 133.2%, triggering another Regulatory Action Level Event.

35. Effective March 28, 2017, Respondent entered into a settlement agreement with Healthcare Risk Services, LLC ("HCRS") and simultaneously terminated its MGU agreement with HCRS. Under the terms of the settlement agreement, all amounts owed by Respondent to HCRS and all amounts due from HCRS to Respondent were settled.

36. Effective March 24, 2017, Respondent entered into a MGU agreement with HDH Group, a wholly owned subsidiary of Hub International U.S. Holdings Inc.

37. According to Respondent's first quarter 2017 statement filed on or about May 15, 2017, its capital and surplus as of March 31, 2017 was \$6,898,961.

38. No later than August 21, 2017, the Department received a draft financial statement for the second quarter 2017, with draft actuarial exhibits, which indicated that the Company had experienced severe adverse loss development based on a June 30, 2017 study by the Respondent's independent actuary. In response to this development, the Department issued a directive that the Respondent no longer write any new or renewal business. As a result, the Respondent wrote off the deferred tax asset and deferred policy acquisition costs which resulted in a significant reduction to its capital and surplus. As of August 29, 2017, the draft financials for the second quarter statement reflect capital and surplus of (\$5,952,795) on a modified GAAP basis.

39. Respondent has failed to consistently maintain the required minimum capital and surplus as to policyholders and has been unwilling or unable to timely infuse capital to remedy the

deficiency and to address the underlying cause for the loss of its capital and surplus. Although Respondent has previously proposed cost-cutting measures and has made an initial attempt to recover overpayments to one vendor, it has failed to adequately address its ongoing adverse loss development and the concomitant drain on capital. In addition to its inability to maintain capital and surplus at required levels, Respondent has not established adequate and reliable case reserves, has sustained an RBC event in each of the last three calendar years, and has experienced dramatic losses of capital and steep drops in RBC, culminating in capital and surplus millions of dollars below the stipulated minimum and an estimated RBC ratio that is a well below the Mandatory Control Level of .70 prescribed by S.C. Code Ann. § 38-9-310(d) & -360 (2015).

40. Pursuant to S. C. Code Ann. § 38-27-360 (2015), grounds for liquidation include:

- a. Any ground for an order of rehabilitation as specified in S. C. Code Ann. § 38-27-310, whether or not there has been a prior order directing the rehabilitation of the insurer, including the board of directors or the holders of a majority of the shares entitled to vote request or consent to liquidation.
- b. The insurer is insolvent; or
- c. The insurer is in such a condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

41. Respondent is in a condition in which the further transaction of business would be hazardous, financially or otherwise, to its policyholders, creditors, or the public, and is insolvent as defined in S.C. Code Ann. § 38-27-50(10) (2015), both of which constitute grounds for the commencement of liquidation, as set forth in Section 38-27-360.

**WHEREFORE**, your Petitioner prays this Honorable Court for an Order:

1. Appointing Petitioner and his successors in office and/or his designee Liquidator of Respondent, with all powers as provided by S.C. Code Ann. § 38-27-400 (2015);

2. Directing the Liquidator to take possession and control of all of the property, books, accounts, documents, business affairs and other records of Respondent and of the premises occupied by it for transaction of its business;

3. Declaring Respondent to be insolvent;

4. Implementing a stay pursuant to S.C. Code Ann. §§ 38-27-70 & -430 (2015) preventing anyone other than Petitioner or his designee, or such other persons as may obtain his specific consent, from engaging in any of the activities described in that Code Section, including, but not limited to, disposition of any property of Respondent or transaction of any of its business, waste of its assets or dissipation of any bank accounts, obtaining of any preferences, interference with the Liquidator or with a proceeding under Chapter 27 of Title 38 of the Code, or instituting, maintaining or presenting any action at law or equity, either in this State or elsewhere;

5. Retaining jurisdiction over this matter for the purpose of granting such other and further relief as from time to time may be necessary and appropriate;

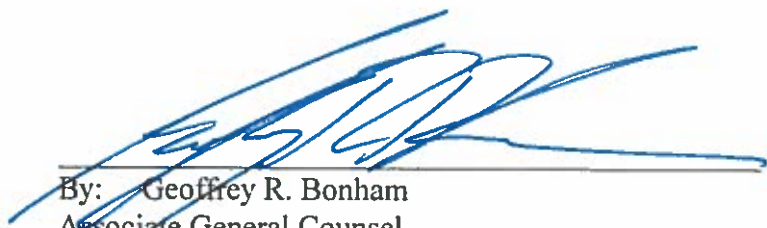
6. Dissolving Respondent upon filing by Petitioner with the office of the Secretary of State a certified true copy of the Liquidation Order

7. Approving Petitioner's designation of Michael J. FitzGibbons of FitzGibbons and Company, Inc., 9821 N. 95th Street, Suite 105, Scottsdale, Arizona 85258, as a consultant to the Liquidator and as Special Deputy Liquidator in this matter; and

8. Granting such other relief as may be necessary to preserve the assets of Respondent and effectuate the purpose of the liquidation.

Respectfully submitted,

**Raymond G. Farmer, Petitioner**



By: Geoffrey R. Bonham  
Associate General Counsel  
S.C. Department of Insurance

P.O. Box 100105  
Columbia, SC 29202-3105  
803-737-6200

Attorney for Petitioner  
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Columbia, South Carolina  
August 29, 2017