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Case No. 5691-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STATE OF DELAWARE ex rel. THE HONORABLE KAREN WELDIN STEWART, Insurance Commissioner of the State of Delaware,	)	
Petitioner,	)	
v.	)	C.A. No. _____
CARRIER SOLUTIONS RISK RETENTION GROUP, INC., a Delaware Domestic Insurance Risk Retention Group,	)	
Respondent.	)	

VERIFIED PETITION FOR ENTRY OF LIQUIDATION AND INJUNCTION ORDER AND FOR ESTABLISHMENT OF BAR DATE

Petitioner, the Honorable Karen Weldin Stewart, in her capacity as the Insurance Commissioner of the State of Delaware (the "Commissioner"), acting by and through the undersigned counsel, and pursuant to the provisions of 18 *Del. C.* ch. 59, ch. 69, and ch. 80, respectfully petitions this Honorable Court for the entry of a Liquidation and Injunction Order declaring Carrier Solutions Risk Retention Group, Inc., a Delaware domiciled insurance risk retention group ("CARRIER SOLUTIONS RRG") impaired, insolvent, in unsound condition, or in such condition as to render its further transaction of insurance presently or prospectively

hazardous to its policyholders; appointing the Commissioner as Receiver of CARRIER SOLUTIONS RRG; directing the Receiver to take possession of the property and assets of CARRIER SOLUTIONS RRG; directing the Receiver to liquidate the same pursuant to the provisions of 18 *Del. C.* ch. 59, ch. 69, and ch. 80, and the federal Liability Risk Retention Act of 1986 ("RRA 1986"), 15 *U.S.C.* § 3901, *et seq.*; and establishing a bar date of Friday, February 11, 2011, for all claims to be filed with the Receiver and for all claims seeking to participate in priority classes III through VI to be liquidated and absolute by that date.

Contemporaneously with the filing of this Petition, the Commissioner has submitted a proposed form of a Liquidation and Injunction Order with Bar Date. In support of this Petition, the Commissioner avers the following:

BASIS FOR JURISDICTION

The jurisdiction of this Court is provided by the provisions of 18 *Del. C.* ch. 59, ch. 69 and ch. 80, specifically but not limited to 18 *Del. C.* §§ 5901(1), 5902(a), 5903, 5905, 5917, 5928, 5929, 6918, 8002(4), 8007, and 8011. See, also, RRA 1986, 15 U.S.C. § 3902(a)(1)(H).

THE PETITIONER

The Petitioner, Karen Weldin Stewart, is the Insurance Commissioner of the State of Delaware.

THE RESPONDENT

Respondent, CARRIER SOLUTIONS RRG, is a Delaware corporation, incorporated on or about May 8, 2008, and licensed by the State of Delaware, Department of Insurance, as a domestic insurance risk retention group.

CARRIER SOLUTIONS RRG's principal place of business is located at 1007 Orange Street, Suite 1414, Nemours Building, Wilmington, Delaware 19801. CARRIER SOLUTIONS RRG's registered agent within the State of Delaware is Delaware Incorporators & Registration Service, LLC, and its registered address within the State of Delaware is located at 1007 Orange Street, Suite 1410, Nemours Building, Wilmington, Delaware 19801.

CARRIER SOLUTIONS RRG, licensed in Delaware as an insurance risk retention group, is currently licensed to transact the business of providing contractual liability insurance coverage for its member trucking companies that maintain self-funded employee benefit programs under the Plan of Operation filed with the Delaware Department of Insurance.

As of March 31, 2010, CARRIER SOLUTIONS RRG was licensed to transact insurance business in Delaware and is believed to have been registered in the following states in addition to Delaware: Maryland, Missouri, New Jersey, Ohio, Pennsylvania, Virginia, Washington and West Virginia. As of the filing of this Petition, CARRIER SOLUTIONS RRG's insurance license in the State of Delaware was still listed as active, although the policies insured by the company are all believed to have been expired.

CARRIER SOLUTIONS 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.

GROUNDS FOR LIQUIDATION

Section 5906 of Title 18 of the *Delaware Code* sets forth the grounds for the Commissioner to seek to liquidate an insurer domiciled in Delaware. That Section provides:

> The Commissioner may apply to the court for an order appointing the Commissioner as receiver (if the Commissioner appointment as receiver shall not be then in effect) and directing the Commissioner to liquidate the business of a domestic insurer or

> of the United States branch of an alien insurer having trusteed assets in this State, regardless of whether or not there has been a prior order directing the Commissioner to rehabilitate such insurer, upon any of the grounds specified in § 5905 of this title or if such insurer:
>
> (1) Has ceased transacting business for a period of 1 year, or
>
> (2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs or to dissolve its corporate charter or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this title.

18 *Del. C.* § 5906. As set forth in Section 5906, the Commissioner may also apply to liquidate an insurer pursuant to the grounds set forth in Section 5905 of Title 18 of the *Delaware Code* if the insurer:

> (1) Is impaired or insolvent or is in unsound condition or in such condition or using such methods and practices in the conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders;
>
> * * *

> (4) Has failed to comply with an order of the Commissioner to make good an impairment of capital or surplus or both;
>
> * * *
>
> (9) Has consented to such an order through a majority of the directors, stockholders, members or subscribers…

Delinquency of captive insurance companies is also addressed in 18 *Del. C.* § 6918, which provides:

> To the extent not inconsistent with this chapter, the provisions of Chapter 59 of this title shall apply to captive insurance companies licensed under this chapter (including for this purpose individual protected cells of sponsored captive insurance companies as set forth in § 6938 of this title).

The above provisions would apply specifically to risk retention groups pursuant to 18 *Del. C.* 8011 (administrative and procedural authority [of the Commissioner] regarding risk retention groups and purchasing groups), which provides:

> The Commissioner is authorized to make use of any of the powers established under the Insurance Code of this State to enforce the laws of this State not specifically preempted by the Risk Retention Act of 1986 including the Commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. With regard to any investigation, administrative

> proceedings or litigation, the Commissioner can rely on the procedural laws of this State. The injunctive authority of the Commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

CARRIER SOLUTIONS RRG is currently in run-off. Based upon information supplied by CARRIER SOLUTIONS RRG, the company's insured policies are believed to have expired on or before May 31, 2010.

CARRIER SOLUTIONS RRG is required to maintain paid-in capital and free surplus of at least $1,000,000.00 and maintain such additional minimum capital and surplus as determined reasonable and necessary by the Delaware Insurance Commissioner based upon the type, volume, and nature of insurance business transacted pursuant to 18 *Del. C.* § 6905(a)(4). Based upon its unaudited financial statement for the period ended December 31, 2009, CARRIER SOLUTIONS RRG reported its surplus as regards policyholders as of December 31, 2009, as $353,661, which is significantly below the $1,000,000 surplus required. Based upon an unaudited financial statement as of May 31, 2010, CARRIER SOLUTIONS RRG reported its surplus as regards policyholders as of December 31, 2009, as <u>negative</u> $645,802, and as of May 31, 2010, as

negative $608,308. Photocopies of the relevant summary pages of the unaudited December 31, 2009, and May 31, 2010, financial statements are attached hereto as Exhibits 1 and 2, respectively. Based upon the Commissioner's preliminary review of CARRIER SOLUTIONS RRG's financial condition, the financial condition of CARRIER SOLUTIONS RRG has not improved since December 31, 2009. While the members of CARRIER SOLUTIONS RRG have considered compromising their claims against CARRIER SOLUTIONS RRG to improve the latter's financial condition, the members have not been able to reach a final compromise that would ensure the solvency of CARRIER SOLUTIONS RRG, and instead have decided to consent to liquidation of CARRIER SOLUTIONS RRG.

Although CARRIER SOLUTIONS RRG is not presently reinsuring any current policies, CARRIER SOLUTIONS RRG is still processing certain policyholder claims of the member employers.

CARRIER SOLUTIONS RRG is impaired, insolvent, in unsound condition, and in such condition as to render further transaction of insurance presently and prospectively hazardous to its policyholders. Based upon the Commissioner's investigation of CARRIER SOLUTIONS RRG's business and affairs, including CARRIER SOLUTIONS RRG's

impairment of capital and surplus, the Commissioner believes that a failure to institute receivership proceedings will be potentially injurious to the policyholders. Therefore, the Commissioner believes that the Court should enter a declaration of CARRIER SOLUTIONS RRG's impairment, insolvency, unsound condition, and condition rendering continued transaction of insurance as hazardous to the policyholders, and enter a Liquidation and Injunction Order in accordance with 18 *Del. C.* § 5911.

By action of at least a majority of its Board of Directors, CARRIER SOLUTIONS RRG has consented to the entry of a Liquidation and Injunction Order concerning CARRIER SOLUTIONS RRG. Copies of the corporate documents evidencing the consent of the Board of Directors of CARRIER SOLUTIONS RRG are appended hereto as Exhibit 3. Therefore, the Commissioner does not believe that a hearing on the financial status of CARRIER SOLUTIONS RRG is necessary, but the Commissioner's representatives are available should the Court require a hearing or other action with respect to this Petition.

ORDER SOUGHT

For the reasons set forth herein, the Commissioner, as such and on behalf of her successors in office, seeks to be appointed as the Receiver of CARRIER SOLUTIONS RRG pursuant to the provisions of 18 *Del. C.* §§ 5905, 5906, 6918, and 8011.

The Commissioner further seeks a provision in the Liquidation and Injunction Order directing her to immediately take exclusive possession and control of and be vested with all right, title and interest in, of and to the property of CARRIER SOLUTIONS RRG, as defined in the proposed form of Liquidation and Injunction Order submitted with this Petition, authorizing the Receiver to liquidate CARRIER SOLUTIONS RRG's pursuant to the provisions of Chapters 59, 69 and 80 of Title 18 of the *Delaware Code*, and further authorizing the Receiver to take such actions as the nature of this cause and interests of the policyholders, creditors and members of CARRIER SOLUTIONS RRG, and the public may require.

The Commissioner further seeks a provision in the Liquidation and Injunction Order authorizing her to deal with the assets, business and affairs of CARRIER SOLUTIONS RRG, including, without limitation, the right to sue, defend, and

continue to prosecute suits or actions already commenced by or for CARRIER SOLUTIONS RRG, or for the benefit of CARRIER SOLUTIONS RRG's policyholders, cedants, creditors and members in the courts and tribunals, agencies or arbitration panels for this State and other states or jurisdictions in her name as the Insurance Commissioner of the State of Delaware, or in the name of CARRIER SOLUTIONS RRG.

The Commissioner further seeks to have the order vest her with right, title and interest in and to all funds recoverable under treaties and agreements of reinsurance heretofore entered into by CARRIER SOLUTIONS RRG as the ceding insurer or as the assuming insurer, and order that all reinsurance companies involved with CARRIER SOLUTIONS RRG be enjoined and restrained from making any settlements with any claimant or policyholder of CARRIER SOLUTIONS RRG other than with the express written consent of the Commissioner as Receiver, except as permitted by cut-through agreements or endorsements which were issued to the policyholder, which were property executed before the date of this Petition, which comply in all respects with 18 *Del. C.* § 914, as amended by 72 *Del. Laws* c. 405, and which were approved by the Delaware Insurance Department if such approval was required. The Liquidation and Injunction Order sought would

provide that the amounts recoverable are not diminished by reason of the impairment or insolvency of CARRIER SOLUTIONS RRG, and would enjoin the termination, cancellation, failure to renew or modification of coverage under any reinsurance policy or contract with CARRIER SOLUTIONS RRG. However, the form of Order sought would allow the Receiver to terminate or rescind any reinsurance policy or contract that is contrary to the best interests of the estate.

The Commissioner further seeks the entry of injunctive relief, to protect CARRIER SOLUTIONS RRG's policyholders and other creditors, pursuant to 18 *Del. C.* § 5904, as well as 18 *Del. C.* 6918 and 8011.

Section 5904 of Title 18 provides that:

> (a) Upon application by the Commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.
>
> (b) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the Commissioner or the proceeding or waste of the assets of the insurer or the commencement or prosecution of any

> actions or the obtaining of preferences, judgments, attachments or other liens or the making of any levy against the insurer or against its assets or any part thereof.
>
> (c) Notwithstanding any other provision of law, no bond shall be required of the Commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

Pursuant to 18 *Del. C.* § 5904, as well as 18 *Del. C.* §§ 6918 and 8011, the Commissioner seeks to have the Court order that CARRIER SOLUTIONS RRG, its officers, directors, members, stockholders, agents, servants and employees and all other persons or entities, including but not limited to all banks, brokerage houses, reinsurers and cedants, having notice of these proceedings or of the Liquidation and Injunction Order be prohibited from transacting any business of CARRIER SOLUTIONS RRG or selling, transferring, destroying, wasting, encumbering or disposing of any property, assets, books or records of CARRIER SOLUTIONS RRG in their possession, custody or control, whether such assets, property, books or records are or may be the property of CARRIER SOLUTIONS RRG, without the prior written permission of the Receiver or until further Order of this Court. This prohibition would include, but not be limited to, property,

books or records pertaining to any business transaction between CARRIER SOLUTIONS RRG and any of said parties. The order would provide that no actions concerning, involving, or relating to such assets, property or records may be taken by any of the aforesaid persons or entities enumerated herein, without the express written consent of the Receiver, or until further Order of this Court.

The Order sought would require all persons or entities holding assets, property, books or records of CARRIER SOLUTIONS RRG to provide the Receiver with an accounting of such assets, property, books or records in their possession, custody or control, regardless of whether such parties dispute the Receiver's right to such assets or property, and to turn over such assets, property, books and records within ten (10) days of notice of the entry of the Liquidation and Injunction Order.

The Commissioner seeks to have the Court order that all officers, directors, members, stockholders, agents and employees of CARRIER SOLUTIONS RRG, and all other persons and companies having notice of these proceedings or of this Order, be prohibited from instituting or further prosecuting any action at law or in equity or in other proceedings against CARRIER SOLUTIONS RRG, or the Commissioner as

Receiver, the Deputy Receiver(s), or the Designees in connection with their duties as such, or from obtaining preferences, judgments, attachments or other like liens or encumbrances, or foreclosing upon or making of any levy against CARRIER SOLUTIONS RRG or the property or assets of CARRIER SOLUTIONS RRG during these receivership proceedings or while such property or assets are in the possession and control of the Commissioner as Receiver, or in any way interfering with the Commissioner as Receiver in her possession and control of the property, books, records and all other assets of CARRIER SOLUTIONS RRG.

The Liquidation and Injunction Order sought would also impose a stay of 180 days, pursuant to 18 *Del. C.* § 5904, of all proceedings in which CARRIER SOLUTIONS RRG is obligated to defend itself or any other party in any court in this State or in any other state or jurisdiction, to prevent interference with the Receiver's duties, and to permit the Receiver to prepare a proper defense of all pending causes of action, if appropriate.

The Receiver also believes that it is necessary to have the Court order a deadline for the submission of claims against the estate and, due to the small size of this estate, to require that all claims in Classes III

through Class VI (which are the claims which qualify for the classes established in 18 *Del. C.* § 5918(e)(3) through (e)(6)), be liquidated and absolute by the bar date or be relegated to a lower priority class.

Bar dates are authorized in insurer liquidations in Delaware pursuant to 18 *Del. C.* §§ 5917 and 5929. The provisions of 18 *Del. C.* § 5929(b) require that a bar date in a liquidation proceeding shall not be less than six months after the entry of the order of insolvency.

Based upon the unaudited financial statements of CARRIER SOLUTIONS RRG, it does not appear likely that assets will be available to pay all of the known policy claims in full. After conferring with all of the members but one, with that one member being subject to bankruptcy proceedings, the Receiver has determined that the February 11, 2011, bar date should not only be the date by which all claims should be filed with the Receiver, but that the February 11, 2011, bar date should be the date by which all claims should be liquidated and absolute in order to share in assets, if any, available for distribution to the Class III through Class VI priority class claimants.

Contingent claims which are not liquidated and absolute by the bar date, as well as other claims not submitted by the bar date, would still qualify as priority Class VII claims pursuant to 18 *Del. C.* § 5918(e)(7). However, those claims would not be entitled to share in any distributions of the estate's assets unless and until all higher priority claims were paid in full.

The policies have all expired. The Petition and the members desire to have the company liquidated in an expeditious fashion. The members are already working to determine the outstanding claims. Therefore, the members and the company's Board of Directors have concurred in the Receiver's proposal for the Bar Date.

If the Court grants the Receiver's Petition, all claimants shall be required to file their claims with the Receiver on or before Friday, February 11, 2011, or be barred forever from recovering on their claims against CARRIER SOLUTIONS RRG or its estate.

The Liquidation and Injunction Order sought by the Commissioner would also expressly authorize her to reject any executory contract to which CARRIER SOLUTIONS RRG is a party.

The Order sought by the Commissioner would further provide that all persons would be enjoined and restrained from asserting any claim against the Commissioner as Receiver of CARRIER SOLUTIONS RRG or its property or assets, except insofar as such claims are brought in the liquidation proceedings of CARRIER SOLUTIONS RRG.

The Liquidation and Injunction Order sought would provide for filing or recording of the Order in Delaware and other jurisdictions, as determined appropriate by the Receiver.

The Commissioner further seeks a provision in the Order which provides for the appointment of a Deputy Receiver, and the appointment of other assistants ("Designees"), who would be deemed to have agreed to submit disputes concerning their rights, obligations and compensation to this Court. By virtue of the requested Order, the Receiver would also be authorized to pay from the assets of CARRIER SOLUTIONS RRG those administrative expenses which she has already incurred but not paid during the course of the efforts to examine CARRIER SOLUTIONS RRG and file this Petition, including, but not limited to, attorneys' fees, accounting fees, consulting fees, and expenses of the Delaware Department of Insurance,

as administrative expenses of the CARRIER SOLUTIONS RRG estate under 18 *Del. C.* § 5913(f).

The Commissioner further seeks a provision in the Liquidation and Injunction Order which provides for indemnification of the Receiver, the Deputy Receiver and the Designees (collectively the "Indemnitees") for their acts or omissions undertaken in good faith and without willful misconduct, gross negligence or criminal intent during the liquidation proceeding.

The Commissioner anticipates that the receivership estate would file semiannual reports with the Court. The proposed form of Liquidation and Injunction Order also includes certain provisions pertaining to the filing of claims against the receivership estate and the caption of this matter.

The Commissioner respectfully requests that this Honorable Court grant the relief sought herein in an expedited fashion due to the hazardous financial condition of CARRIER SOLUTIONS RRG.

WHEREFORE, the Honorable Karen Weldin Stewart, in her capacity as the Insurance Commissioner of the State of Delaware, submits that CARRIER SOLUTIONS RRG is impaired, insolvent, in unsound condition, and in such condition as to render its further transaction of insurance presently and prospectively hazardous to its policyholders, and that sufficient cause exists for the liquidation of CARRIER SOLUTIONS RRG and the establishment of the February 11, 2011, bar date pursuant to 18 *Del. C.* ch. 59, 69 and 80. Therefore, the Petitioner hereby petitions this Honorable Court for the entry of a Liquidation and Injunction Order substantially in the form filed contemporaneously herewith, and for such other relief as the Court deems just.

Respectfully submitted,

THE HONORABLE JOSEPH R.
BIDEN III, ATTORNEY GENERAL
OF THE STATE OF DELAWARE

By: _____

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Dated: August 3, 2010

Attorney for Petitioner,
The Honorable Karen Weldin
Stewart, in her capacity as
Insurance Commissioner of the
State of Delaware

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STATE OF DELAWARE ex rel. THE HONORABLE KAREN WELDIN STEWART, Insurance Commissioner of the State of Delaware,	)	
Petitioner,	)	
v.	)	C.A. No. _____
CARRIER SOLUTIONS RISK RETENTION GROUP, INC., a Delaware Domestic Insurance Risk Retention Group,	)	
Respondent.	)	

STATE OF DELAWARE :
: ss
COUNTY OF NEW CASTLE :

VERIFICATION OF THE HONORABLE KAREN WELDIN STEWART, IN HER CAPACITY AS THE INSURANCE COMMISSIONER OF THE STATE OF DELAWARE

I, Karen Weldin Stewart, Insurance Commissioner of the State of Delaware, having read the attached *Verified Petition for Entry of Liquidation and Injunction Order and for Establishment of Bar Date* 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.

The Honorable Karen Weldin Stewart, in her capacity as the Insurance Commissioner of the State of Delaware

SWORN TO AND SUBSCRIBED before me this 3rd day of August, 2010.

Diane J. Bartels, Esquire
Delaware Attorney No. 2530
Notarized pursuant to
29 *Delaware Code* §4323(a)(3)