

**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

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

Petitioner,

vs.

Oceanus Insurance Company, a Risk
Retention Group,

Respondent.

**IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2017-CP-40-05195

**CONSENT ORDER APPOINTING
SPECIAL REFEREE AND
APPROVING PROCEDURES
GOVERNING REFEREE'S
PARTICIPATION IN CLAIMS
ADMINISTRATION**

WHEREAS, the Special Deputy Liquidator of the Petitioner, by and through counsel, moves and by its consent agrees to the appointment E. Brown Parkinson, Jr., Esquire, P.O. Box 10387, Greenville, SC 29601, as Special Referee to review any and all appeals of determinations by the Special Deputy Liquidator for payments of liability claims against Oceanus Insurance Company, a Risk Retention Group (in Liquidation), the Respondent herein, in accordance with S.C. Code Ann. § 38-27-580 (2015) and the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.*, and also moves that the Court approve the Procedures Governing Special Referee's Participation in Claims Administration, attached hereto and incorporated by reference herein; and

WHEREAS said nominee, as indicated by his below-signed consent, has agreed to conduct all hearings in this receivership pursuant to and in accordance with Section 38-27-580 and this Order and to file his Findings of Fact and Recommendations with the Clerk of Court for Richland County, with a copy to be provided to the reviewing supervisory Judge and as otherwise provided herein;

IT IS THEREFORE ORDERED that E. Brown Parkinson, Jr., Esquire is appointed as Special Referee, vested with all powers as a judge to hear, determine and rule on all matters, both procedural and substantive, coming before him necessary to carry out his duties as Special Referee pursuant to Section 38-27-580 and this Order.

IT IS FURTHER ORDERED that the hearing provided in Section 38-27-580 shall be conducted by the procedures as outlined in paragraphs 4 and 5 of the attached Procedures Governing Special Referee's Participation in Claims Administration.

IT IS FURTHER ORDERED that the Special Referee's compensation and all proper and necessary expenses of the Referee be paid as Class 1 priority claims and as provided in the attached Procedures Governing Special Referee's Participation in Claims Administration, which are hereby approved and made a part of this Order.

AND IT IS SO ORDERED.

Jocelyn Newman
Chief Administrative Judge
Fifth Judicial Circuit

This ____ day of January, 2019

I SO MOVE AND CONSENT:

s/Geoffrey R. Bonham
Geoffrey R. Bonham
Associate General Counsel
S.C. Department of Insurance
P.O. Box 100105
Columbia, SC 29202
803-737-6219
gbonham@doi.sc.gov

January 30, 2019
Date

s/John C. Bruton, Jr.

John C. Bruton, Jr.
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
803-779-3080
jbruton@hsblawfirm.com

Attorneys for Petitioner

January 30, 2019

Date

I CONSENT to the above appointment as Special Referee this 30 day of January, 2019:

s/E. Brown Parkinson, Jr.

E. Brown Parkinson, Jr., Esq.
Devlin & Parkinson, Jr.
P.O. Box 10387
Greenville, SC 29603

**OCEANUS INSURANCE COMPANY, A RISK RETENTION GROUP IN
LIQUIDATION
PROCEDURES GOVERNING REFEREE'S PARTICIPATION IN CLAIM
ADMINISTRATION**

These procedures ("Procedures") shall govern the Special Referee's participation in the administration of claims against Oceanus Insurance Company, a Risk Retention Group (the Company), in accordance with Section 38-27-580 of the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, S.C. Code Ann. § 38-27-10 *et seq.* (the "Act").

1. Liquidator's Claim Determination; Reconsideration Upon Claim Denial.

The Liquidator shall review each claim and make a determination first of the priority class of each claim and second, if the claim is not a subordinate claim, the amount of each claim. If the Liquidator determines that estate assets are insufficient to provide for a distribution, in whole or in part, for claims below a certain priority class, the Liquidator is not required to make a determination as to the value of any claim if he determines that the claim in question has a priority equal to or lower to the first priority class for which no funds will be available for distribution, i.e., is a "subordinate claim." The Liquidator shall provide written notice of the determination to the Claimant directly affected by the Liquidator's claim determination (Claim Determination). The Claimant will have sixty (60) days from the date of mailing of the Claim Determination during which to file detailed written objections with the Liquidator. If the Claimant does not file detailed written objections with the Liquidator, the Claimant may not further object to the Claim Determination.

Upon receipt of the written objections, the Liquidator will consider the objections and may or may not revise the Claim Determination. Following the Liquidator's reconsideration, the Liquidator shall provide written notice to the Claimant whether or not the Liquidator revised the Claim Determination.

2. Referral of Denied Claims to Special Referee. If, upon reconsideration, the Liquidator does not revise the Claim Determination to the Claimant's satisfaction, the Liquidator shall provide written notice to the Claimant of its decision and the Claimant shall

have fifteen (15) days from the date of mailing of the Liquidator's notice to file with the Liquidator a request for review by the Special Referee appointed by the Court. If the Claimant does not timely request a review by the Special Referee, the Claimant may not further object to the Liquidator's Claim Determination. Upon receipt of a request from the Claimant for a review by the Special Referee, the Liquidator shall refer the matter to the Special Referee by written notice. This referral shall include the Liquidator's determination of claim priority, the Liquidator's approved amount, the amount claimed, the POC number, the insured and the Claimant. The Liquidator shall provide copies of the claim referral to the Claimant and any other affected parties. Thereafter, the cost of the Special Referee shall be borne by the Company, except that the referral shall also instruct the Claimant to deliver to the Liquidator a non-refundable deposit of \$2,000 for each Proof of Claim. This deposit must be received within twenty-one (21) days from the date of mailing of notice of the of the Liquidator's referral to the Special Referee. Failure of Claimant to remit this non-refundable deposit within twenty-one (21) days from the date of mailing of the Liquidator's referral of the claim to the Special Referee will result in the Special Referee dismissing said referral and allowing the claim in the amount of the Liquidator's Claim Determination.

3. **Setting the Matter for Hearing; Exchange of Documentation.** Upon notice by the Liquidator to the Special Referee of the receipt of the Claimant's deposit, the Special Referee shall set the matter for hearing and so notify the Liquidator's legal counsel in writing. The Liquidator's legal counsel shall then provide written notice of the hearing to the Claimant and any other parties directly affected not less than ten (10) nor more than thirty (30) days before the date of the hearing.

The Liquidator's legal counsel shall also make available to the Claimant a copy of the Liquidator's claim file or such portions thereof as are requested by the Claimant. If a copy of the claim file is requested by the Claimant, the Claimant shall pay the Liquidator's reasonable costs (or those of its legal counsel) for copying and mailing the claim file within ten (10) days from the date of mailing of the claim file. The claim file shall include Company's original claim file (with a

redaction of all attorney-client privileged communications as well as confidential personal information of Claimant not germane to the claim), the Claimant's proof of claim with any accompanying or clarifying material, a statement of the amount of the claim and coverage, the Liquidator's Claim Determination, Claimant's objections to the Claim Determination, the Liquidator's revised Claim Determination, if any, and the Liquidator's referral of the claim to the Special Referee. The Liquidator shall forward the claim file to his legal counsel, who shall make the same available to the Special Referee and the Claimant as provided herein. The Liquidator's legal counsel shall provide a copy of these Procedures to the Claimant and to all other parties directly affected, if any.

4. **The Hearing.** The "hearing" referred to in the Act shall consist of the submission of any and all written material that either party wishes to furnish to the Special Referee and shall commence on the date (the "Commencement Date") set by the Special Referee. Unless determined appropriate by the Special Referee, in his sole discretion, no meeting or other session at which the parties or their legal counsel are present in person (or by telecommunications equipment) shall be held. If meetings or sessions are held, the Special Referee shall determine in his sole discretion the procedures to be followed. Unless otherwise determined by the Special Referee in his sole discretion, any meetings or other proceedings before the Special Referee will be conducted in Greenville, South Carolina at the office of the Special Referee.

The Claimant shall have thirty (30) days following the Commencement Date to provide any additional written material in support of the Claimant's position to the Special Referee with a copy to the Liquidator's attorney. The Liquidator shall have twenty-one (21) days thereafter to further supplement the record with written material by submitting the same to the Special Referee with a copy to the Claimant or Claimant's designate. Such written material shall include any arguments and legal authorities supporting the parties' positions.

5. **Special Referee's Determination.** Following submission of all written information to the Special Referee, the matter will be deemed submitted to the Special Referee for determination. The Special Referee shall close the record and make a determination of the

claim, *de novo*, on the record. The Special Referee may, in his discretion, receive as evidence any written material concerning the claim in controversy which he deems to be relevant and which provides competent material evidence relating to the claim in dispute. The Special Referee will make written findings of fact and a determination of the claim and shall file the original with the Clerk of Court of Richland County, South Carolina, P.O. Box 2766, Columbia, SC 29202 or, in lieu of filing by mail, if the Richland County Clerk of Court's office will allow it, the filing of the findings and recommendations of the Special Referee may be accomplished by e-filing into the case docket number associated with the liquidation of Oceanus Insurance Company while providing a copy to the Chief Administrative Judge Fifth Judicial Circuit as the Special Referee's recommendation. He shall also provide copies to the Claimant, the Liquidator and any other affected party at the time of filing.

6. **Court Approval of Special Referee's Determination; Objections.** The Liquidator and the Claimant shall have twenty-one (21) days following the date of mailing of the Special Referee's determination to object to the Special Referee's determination. Any objections shall become part of the record to be submitted to the Liquidation Court along with the Special Referee's findings of fact and determination. The Liquidation Court shall accept and approve the Special Referee's determination if it is supported by competent, material and substantive evidence appearing in the record and if it was made in accordance with these Procedures and South Carolina Law. The Liquidation Court may modify the Special Referee's determination so that it complies with these standards and South Carolina Law. The Liquidation Court's order accepting or modifying the Special Referee's findings of fact and determination shall be entered and a copy provided to the Special Referee, the Liquidator, the Claimant, and any other affected parties. For purposes of appeal, the Liquidation Court's order shall be a final order.

7. **Legal Counsel.** In matters before the Special Referee, legal counsel licensed to practice law and in good standing with the bar of any United States jurisdiction may represent a Claimant or any other parties directly affected by the liquidation through the submission of written

materials or telephonic communication or live appearance before the Special Referee, if determined necessary by the Special Referee, without the necessity of a pro hac vice admission pursuant to Rule 404(j) of the S.C. Appellate Court Rules. However, any appearance before the Liquidation Court shall require a pro hac vice admission pursuant to Rule 404 of the S.C. Appellate Court Rules governing the practice of law.

8. **Compromises.** At any time a claim referral is pending before the Special Referee, the Liquidator and Claimant, together with any other parties directly affected, may compromise the claim and withdraw the claim from consideration by the Special Referee, whereupon the agreed disposition of the claim will become final and binding as an approved claim in the liquidation proceedings.

9. **General.** As used in these Procedures, "Liquidation Court" shall mean the Chief Administrative Judge of the Court of Common Pleas, Fifth Judicial Circuit, County of Richland, State of South Carolina, and/or his or her successors in that position, and/or the Circuit Judge appointed by the Chief Administrative Judge to preside over Case No. 2017-CP-40-05195; "Liquidator" shall mean Michael J. FitzGibbons, Special Deputy Liquidator of Oceanus Insurance Company, a Risk Retention Group, at 9821 N. 95th Street, Suite 105, Scottsdale, Arizona, 85258, or his successors in that position; "Company" shall mean Oceanus Insurance Company, a Risk Retention Group (in Liquidation); "Claimant" shall mean the person or entity asserting a claim against the Liquidator; "Special Referee" shall mean E. Brown Parkinson, Jr., Esq., the Special Referee appointed by the Liquidation Court pursuant to S.C. Code Ann. § 38-27-580(B) (2002), at P.O. Box 10387, Greenville, South Carolina 29603; and the Liquidator's legal counsel shall mean Geoffrey R. Bonham, Associate General Counsel, P.O. Box 100105, Columbia, SC 29201-3105 and John C. Bruton, Jr., Esq., Haynsworth Sinkler Boyd, P.A., P.O. Box 11889, Columbia, SC 29211. All notices and other communications provided for herein shall be in writing and shall be sent by first class mail postage prepaid. If any party is represented by legal counsel, such legal counsel shall be entitled to receive copies of any notices provided for herein, and the parties shall have the right to appear by counsel. In lieu of notices

and communications sent by U.S. Mail, electronic communication may be used upon agreement between the Special Referee and the other affected parties to the liquidation on a case-by-case basis, including Claimants and their counsel and the Special Deputy Liquidator and his counsel. Unless otherwise specifically indicated, all time periods provided for herein shall be calculated in accordance with the South Carolina Rules of Civil Procedure and shall be subject to extension by the Special Referee for good cause shown.

* * * * *

DEVLIN & PARKINSON, P.A.
P.O. Box 10387
Greenville, SC 29603

Professional Rates:

E. Brown Parkinson, Jr.: \$275.00

Paralegal Rate: \$110.00



Richland Common Pleas

Case Caption: Raymond G Farmer , plaintiff, et al vs Oceanus Insurance Company

Case Number: 2017CP4005195

Type: Order/Consent Order

So Ordered

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit