

STATE OF SOUTH CAROLINA
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Michael J. FitzGibbons, as Special Deputy
Liquidator for Transportation Liability
Insurance Company, A RRG on Behalf of
the South Carolina Department of Insurance

Petitioner,

vs.

Transportation Liability Insurance
Company, A RRG.

Respondent.

Civil Action Number 09-CP-40-1908

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

RICHLAND COUNTY
FILED
MAY 14 AM 9:36
CLERK OF COURT
W. McBRIDE
S.C.P. & C.S.


Whereas, the Special Deputy Liquidator by and through counsel, moved and by its consent has agreed to appoint Gerald M. Finkel, Esquire, of the Charleston County Bar as special referee to review any and all appeals of determinations by the Special Deputy Liquidator for payment of commercial auto claims of Transportation Liability Insurance Company, RRG, the Respondent herein, in accordance with §38-27-580 of the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, South Carolina Code of Laws, §38-1-10 *et seq.* and to approve the document setting forth the Procedures Governing the Referee's Participation in Claims Administration, attached hereto and made a part hereof. The said nominee has agreed to conduct the hearings in accordance with §38-27-580 and this Order and shall thereafter file its Findings of Fact and Recommendations with this Court.

This Referee is 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 §38-27-580 and this Order.

IT IS FURTHER ORDERED that the appointed Referee's compensation and all other proper and necessary expenses of the Referee be paid as directed in the Procedure Governing Referees Participation in Claims Administration which is hereby approved and made a part of this Order.

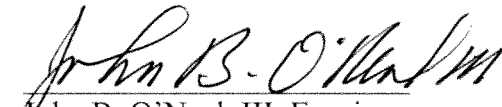
IT IS SO ORDERED:

Columbia, South Carolina
May ____, 2010



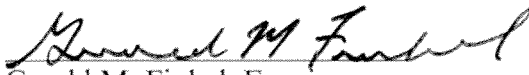
Hon. James R. Barber III
Chief Administrative Judge
Fifth Judicial Circuit

I So Move and Consent:



John B. O'Neal, III, Esquire
Co-Counsel for the Petitioner
1902 Brenda Drive
North Augusta, SC 29841
(803) 609-3557

I consent to the appointment as Special Referee this 28th day of April 2010.



Gerald M. Finkel, Esquire

**TRANSPORTATION LIABILITY INSURANCE COMPANY, A RISK RETENTION
GROUP, IN LIQUIDATION
PROCEDURES GOVERNING REFEREE'S PARTICIPATION IN CLAIMS
ADMINISTRATION**

These procedures ("Procedures") shall govern the Referee's participation in the administration of claims against Transportation Liability Insurance Company, A Risk Retention Group (the Company), in accordance with §38-27-580 of the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, SOUTH CAROLINA CODE OF LAWS §38-1-10 *et seq.* (the "Act").

1. **Liquidator's Claim Determination; Reconsideration Upon Claim Denial.** The Liquidator shall review each claim and make a determination of the amount and priority of each claim. If the Liquidator denies a claim in whole or in part, the Liquidator shall provide written notice of the determination to the Claimant directly affected by the claim determination. The Claimant will have sixty (60) days from the date of mailing of the Liquidator's notice 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 Liquidator's determination. Upon receipt of the written objections, the Liquidator will consider the objections and may or may not revise the claim determination. Following reconsideration of the claim, the Liquidator shall provide written notice to the Claimant of the claim determination whether or not the Liquidator revises the claim determination.

2. **Referral of Denied Claims to Referee.** If, upon reconsideration, the Liquidator does not allow the claim in full as originally filed, or 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 21 days from the date of mailing of the Liquidator's notice to file a request for review by the Special Referee appointed by the Court to hear such requests. If the claimant does not request a review by the Special Referee, the Claimant may not further object to the Liquidator's determination. Upon receipt of a request from the claimant for a review by the Special Referee, the Liquidator shall refer the matter to the Referee by written notice to the Referee. The claim referral shall include the Liquidator's determination of claim priority. The Liquidator shall provide copies of the claim referral to the Claimant and any

other parties directly affected by the determination.

The cost of the Referee shall be borne by the company and the Claimant and paid by the Liquidator. The Claimant shall deliver a non refundable deposit in the amount of \$500.00 to the Liquidator to share in the costs of the Referee. This deposit must be received within 10 days from the date of mailing of notice of the of the Liquidator's referral of the claim to the Referee. Failure of the Claimant to deliver the requisite deposit to the Liquidator within the 10 days will place said claim review on hold until the Referee receives notice from the Liquidator that it has received said deposit. Failure to remit non refundable deposit within 60 days from the date of mailing of the Liquidator's referral of the claim to the Referee will result in the Referee dismissing said referral and allowing claim in the amount as recommended by the Liquidator, if any.

3. Setting the Matter for Hearing; Exchange of Documentation. The Referee shall set the matter for hearing and so notify the Liquidator's legal counsel in writing. The Liquidator's legal counsel shall 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 make available to the Claimant a copy of the Liquidator's claim file or such portions thereof as are requested by the Claimant. In addition to the non refundable deposit set forth above at paragraph 3, the Claimant shall pay the Liquidator's reasonable costs (or those of its legal counsel) for copying and mailing the claim file within 10 days from the date of mailing of the claim file and the invoice for the costs for copying and mailing the same. The claim file shall include the insurer's original claim file, if any, the Claimant's proof of claim with any accompanying or clarifying material, a statement of the amount of the claim and whether there is coverage, any legal analysis regarding coverage, any other information relied on by the Liquidator in making the claim determination, the Liquidator's initial claim determination, any information relating to Claimant's objections to the claim determination, the Liquidator's claim redetermination, and the Liquidator's referral of the claim to the Referee. The Liquidator shall forward the claim file to his legal counsel, who shall make the same available to 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 by the determination, if any.

4. **The Hearing**. The hearing referred to in the Act shall commence (the "Commencement Date") on the date set by the Referee as stated in paragraph 3 above. Unless otherwise determined by the Referee in his sole discretion, all hearings and any other proceedings before the Referee will be conducted in Charleston, South Carolina at the office of the 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 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 Referee with a copy to the Claimant or, if appropriate, the Claimant's attorney. Such written material shall include any arguments and legal authorities supporting the parties' positions.

5. **Referee's Determination**. Following submission of all written information to the Referee, the matter will be deemed submitted to the Referee for determination. The Referee shall close the record and make a determination of the claim, *de novo*, on the record. The 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. Unless determined appropriate by the 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 Referee shall determine in his sole discretion the procedures to be followed. The Referee will make written findings of fact and a determination of the claim, to be filed with the Liquidation Court as the Referee's recommendation, and with copies to be provided to the Claimant, the Liquidator and any other affected party.

6. **Court Approval of Referee's Determination; Objections**. The Liquidator and the Claimant shall have twenty-one (21) days following the date of mailing of the

Referee's determination to object to the Referee's determination. Any objections shall become part of the record to be submitted to the Liquidation Court along with the Referee's findings of fact and determination. The Liquidation Court shall accept and approve the 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 Referee's determination so that it complies with these standards and South Carolina Law. A copy of the Liquidation Court's order accepting or modifying the Referee's findings of fact and determination shall be provided to the 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 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 to the extent allowed by South Carolina Law. Such privilege will be extended to appearances before the Liquidation Court as determined by the Liquidation Court to the extent allowed by South Carolina Law.

8. **Compromises.** At any time a claim referral is pending before the Referee, the Liquidator and Claimant, together with any other parties directly affected, may compromise the claim and withdraw the claim from consideration by the 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 Court of Common Pleas, Fifth Judicial Circuit, County of Richmond, State of South Carolina, presiding over Civil Action No. 09-CP-40-1908*, "Liquidator" shall mean Michael J. FitzGibbons, Special Deputy Liquidator of Transportation Liability Insurance Company, a Risk Retention Group, or his successors in that position, at 8300 N. Hayden, Suite A100, Scottsdale, Arizona, 85258, "Company" shall mean Transportation Liability Insurance Company, a Risk Retention

Group, "Claimant" shall mean the person or entity asserting a claim against the Liquidator, "Referee" shall mean Gerald M. Finkel, the referee appointed by the Liquidation Court pursuant to §38-27-580 (B) of the Act, at 3955 Faber Place Drive, North Charleston, South Carolina 29405 and the Liquidator's legal counsel shall mean John B. O'Neal III at 1902 Brenda Drive, North Augusta, South Carolina 29841. 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. 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 Referee for good cause shown.