

FILED
09-23-2024
CIRCUIT COURT
DANE COUNTY, WI
2023CV001310

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 15

DANE COUNTY

In the Matter of the Liquidation of:Wisconsin Reinsurance Corporation and 1st
Auto & Casualty Insurance Company

Case No.: 2023CV1310

Case Code: 30701

OBJECTION TO LIQUIDATOR'S DENIAL OF CLAIM

Jason A. Fogg (“**Fogg**”), by his counsel, Richman & Richman LLC, by Michael P. Richman, hereby objects, for the reasons set forth below, pursuant to Wis. Stat. § 645.65, to the July 24, 2024 Determination (“**Commissioner’s Determination**”) of the Liquidator Nathan Houdek, Commissioner (the “**Commissioner**” or “**Liquidator**”) of the Office of the Commissioner of Insurance (“**OIC**”) denying Fogg’s timely-filed Proof of Claim [Liquidation Claim No. 0327] (the “**Fogg Claim**”) in the above-captioned liquidation. This Objection is further supported by the Declaration of Jason Fogg (“**Fogg Dec.**”) attached hereto as Exhibit A. The Commissioner’s Determination is attached to the Fogg Dec. as Exhibit 5.

FACTS

1. Fogg served as the President and Chief Executive Officer (“**CEO**”) of the Wisconsin Reinsurance Corporation and 1st Auto and Casualty Insurance Company (“**WRC**”) under an Executive Employment Agreement, dated May 6, 2022, between WRC and Fogg (the “**Agreement**,” attached as Exhibit 1 to the Fogg Declaration).

2. WRC entered into a rehabilitation proceeding pursuant to that certain June 21, 2023, Order for Rehabilitation (“**Rehabilitation Order**”) [Doc 12]. Wisc. Stat. § 645.33(2) ordinarily provides that upon entry of a rehabilitation order, the authority of the officers and managers is suspended. But it also provides that the rehabilitator may redelegate such powers to the officers and managers. Thus, Paragraph 7 of the Rehabilitation Order provided, in pertinent part, as follows: “In connection with managing the affairs of WRC and 1st Auto in accordance with the Plan, the Rehabilitator and Special Deputy Commissioner are hereby authorized to work with representatives of WRC and 1st Auto and to redelegate the authority and right to operate WRC and 1st Auto, in whole or in part, during the pendency of these rehabilitation proceedings to WRC’s or 1st Auto’s officers, directors, managers, and employees.”

3. Prior to and in anticipation of the Rehabilitation Order and the Rehabilitation Plan, the Commissioner, by Special Deputy Rehabilitator Justin Schrader (the “**Deputy Rehabilitator**”), sought and received agreement from Fogg to continue to act as President and CEO of WRC in rehabilitation. Fogg thereafter acted under such delegated authority and continued to serve as CEO under his

Agreement during the approximately 6-month period (July – December 2023) that WRC remained in rehabilitation under Wis. Stat. § 645.32, with the approval of the Deputy Rehabilitator. Fogg Declaration ¶¶ 5 - 9.

4. Fogg's continued employment during the rehabilitation proceedings under his employment Agreement was confirmed by the Deputy Rehabilitator in a Notice of Termination, dated December 28, 2023 ("**Termination Letter**"). A true and correct copy of the Termination Letter is attached to the Fogg Dec. as Exhibit 2. In the Termination Letter, the Deputy Rehabilitator informed Fogg that upon entry of the Order Terminating Rehabilitation and Order for Liquidation With Finding of Insolvency [Doc 22] ("**Liquidation Order**" entered January 2, 2024), his employment would be terminated "for cause in accordance with Section 5.C of your Executive Employment Agreement with WRC, dated May 6, 2022 . . . and Wisconsin law applicable to insurance company liquidations."

5. Further confirming the continued and binding nature of the Agreement during the rehabilitation proceeding, the Termination Letter also informed Fogg that upon entry of the Liquidation Order, "the liquidator will disavow the employment agreement . . . [and] the contractual obligations of WRC for unperformed services under the employment agreement are terminated."

6. Fogg's Claim seeks the allowance and payment of his Agreement's severance benefits, which were earned compensation under his Agreement before it was terminated, payable in the event he was to be terminated without cause. On June 27, 2024, Fogg submitted his claim to the Liquidator by certified mail. A true and

correct copy of the certified mail and receipt is attached to the Fogg Declaration as Exhibit 3. On July 2, 2024, Assistant Liquidation Manager Janice Sylvertooth sent Fogg a letter confirming that the Fogg Claim had been received on July 1, 2024. A true and correct copy of this letter is attached to the Fogg Declaration as Exhibit 4.

7. Consistent with the December 2023 Termination Letter, the Commissioner's Determination asserted that Fogg is entitled to nothing, on the grounds that (a) the blanket Liquidation Order constituted a "for cause" termination under section 5(C)(f) of the Agreement, and (b) Fogg's Claim for severance benefits is for compensation earned after rehabilitation or liquidation, which may be disallowed under Wisc. Stat. § 645.63(6).

8. Section 5(C)(f) of the Agreement is one of 8 "for cause" grounds in the Agreement. It provides, in pertinent part, that "the suspension or prohibition . . . *from the Executive* participating in the conduct of WRC's affairs by action of any regulatory agency having supervisory responsibility over WRC" (emphasis supplied) is grounds for a termination for cause. We show below that the Liquidation Order terminating the employment of all of WRC management was not a "for cause" termination of Fogg within the meaning of Fogg's Agreement, that the severance benefits of Fogg's Agreement are protected under Wisc. Stat. § 645.33(2) which provides that the Deputy Rehabilitator's (here delegated) power to hire and discharge employees is "subject to any contract rights they may have," and that Fogg's severance benefits were earned compensation under the Agreement as of the time his employment was

terminated, and are not subject to the disallowance provisions of Wisc. Stat. § 645.63(6).

I. FOGG WAS TERMINATED WITHOUT CAUSE

9. The Agreement provided (§ 5(B)) that Fogg's employment could be terminated at will without cause. In that event, Fogg would be entitled to a variety of severance benefits, including the payment of 12 months' severance and insurance benefits. The Commissioner could have terminated Fogg without cause at any time during the rehabilitation proceedings and for no reason at all.

10. The Agreement provided 8 bases of a "for cause" termination, including section 5(C)(f) quoted above. Section 5(C) of the Agreement, entitled "Termination by the Company for Cause," describes circumstances that in each case expressly or impliedly link termination with some misfeasance specifically by Fogg (defined in the Agreement as the "Executive"). Fogg has never been accused of misfeasance and no findings of misfeasance have ever been made.

11. After being requested by OCI to continue to work faithfully for the benefit of WRC and OCI during rehabilitation, and having done so, the Deputy Rehabilitator cruelly and cynically decided to treat the blanket statutory termination of employment that is by statute required on entry of a liquidation order as a form of "cause" termination specifically as to Fogg. This meant that even though OCI never took action specifically against Fogg, as was the basic premise of section 5(C)(f) of his Agreement, and even though no misfeasance by Fogg was ever alleged, no severance or other benefits could be paid to him. Fogg would lose the many important benefits

of the Agreement, on which he relied in first accepting the CEO position, on which he relied in continuing to perform as CEO during Rehabilitation, and to which he would be entitled on any termination that was not “for cause.”

12. This harsh result was plainly inconsistent with and in contradiction to the purpose of section 5(C) which was to punish Executive misfeasance. It is clear beyond doubt that every one of the 8 “cause” definitions in section 5(C) is designed to punish specific misfeasance by the Executive (by denying benefits on termination). It is equally clear that in those sections, like section 5(C)(f), which required action by a regulatory agency, allegations of misfeasance were required to be made, providing Fogg with a basic due process right to notice and a hearing to defend them, and culminating in specific findings of misfeasance. *See, e.g., Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 1493, 84 L.Ed.2d 494, 504 (1985). The Commissioner’s determination was not only cruel, cynical, and wrong, but an abuse of discretion in relation to Fogg, who served faithfully and flawlessly in reliance on the OCI and the Agreement benefits for the duration of the rehabilitation, and in characterizing the statutorily-required suspension of all of WRC’s management as a termination of Fogg for cause, denied him his basic constitutional rights to due process.

13. Black-letter principles of contract interpretation dictate that section 5(C)(f) should be construed in the context of the linkage of every other “cause” part of Section 5(C) to specific Executive misfeasance. “[S]pecific phrases and words must be considered in relation to the nature and the object of the transaction and read in light

of other provisions of the contract and of the circumstances surrounding its execution.” *Carey v. Rathman*, 55 Wis. 2d 732, 737, 200 N.W. 2d 591, 594 (1972). *See also Langer v. Stegerwald Lumber Co.*, 259 Wis. 189, 192, 47 N.W. 2d 734, 735 (1951) (“[T]he purpose of construction should be to ascertain the intention of the parties to the contract as expressed by all of the language rather than to put a trick interpretation or twist upon one word”) and *Marshall & Ilsley Bank v. Greene*, 227 Wis. 155, 163, 278 N.W. 425, 428 (1938). Here, all the enumerated causes in section 5(C) involve specific Executive misfeasance (fraud, felony involving moral turpitude, intentional misconduct, willful breach of fiduciary duty, intentional breach of the Agreement). Even the common meaning of the word “cause” dictates that Fogg must have breached some duty to warrant his termination for cause.

14. The same is true of section 5(C)(f). The agency action that is called for in that provision, in order to constitute “cause,” is “the suspension or prohibition . . . from the Executive participating in the conduct of WRC’s affairs” (emphasis supplied). This provision does not refer to a generalized order suspending management, as is mandated by law upon the commencement of an insurance liquidation in Wisconsin. (In fact, it is arguable that the regulatory agency, OCI, suspended Fogg; it merely asked for an order invoking the statutory requirement of such suspension.) It is plainly meant, as is every other part of section 5(C), to apply to a specific order of misfeasance by an agency with respect to Fogg, as the Executive. This required notice of specific misfeasance to Fogg, and a hearing and opportunity to defend, as well as the rendering by OCI of specific findings of misfeasance.

15. To the extent that section 5(C)(f) of his Agreement is ambiguous, Fogg understood when it was negotiated that section 5(C)(f) was meant to address only a situation in which the OCI, or another regulatory agency with supervisory authority over WRC, would take action specifically against Fogg on the basis of his misfeasance. Fogg Dec. ¶3.

16. The Commissioner's attempt to turn a statutory termination of *all* management into a "for cause" termination as to Fogg, unfairly and improperly denies Fogg the substantial benefits of the Agreement for which he bargained, and on which he relied, including refraining from seeking other employment, and continuing to perform valuable services for WRC during rehabilitation at OCI's request, and pursuant to the Deputy Rehabilitator's delegation of management authority. Fogg Dec. ¶11. Fogg's continued involvement during this time helped to prevent a mass exodus of management and employees, and therefore was highly beneficial to the maintenance and maximization of value for the benefit of all interested parties. *Id.* at ¶10. Under Fogg's leadership, WRC fully cooperated with OCI in rehabilitation, with the goal to address WRC's financial issues and allow it to continue to operate after the rehabilitation by converting to a mutual company.

17. At no time was Fogg ever accused, by the Commissioner or anyone else, of any departure from the standards of performance expected of a CEO. No allegations were ever made, nor findings entered, of any misfeasance in his performance of duties as CEO. He did not engage in any conduct that could constitute "cause" for his employment termination under the Agreement.

II. WISC. STAT. § 645.63(6) IS INAPPLICABLE TO FOGG'S CLAIM

18. As set forth above, Fogg continued to act as President and CEO during the rehabilitation proceeding at the request of OCI, pursuant to the Deputy Rehabilitator's delegation of authority in the Rehabilitation Order, and in accordance with his employment Agreement. This was confirmed by the Deputy Rehabilitator in the Termination Letter.

19. In addition, the Rehabilitation Order, the authority for which was used to delegate to Fogg the authority to continue his employment as President and CEO, was issued under Wisc. Stat. § 645.33(2), which provides the following: “[t]he rehabilitator shall have full power to direct and manage, to hire and discharge employees *subject to any contract rights they may have*” (emphasis supplied).

20. The Commissioner's argument that Wis. Stat. § 645.63(6) requires a denial of the Fogg Claim because it “is not related to services rendered before the effective date of the Liquidation Order” is also not true and should be rejected. Severance benefits are considered wages under Wisconsin law. Wis. Stat. § 109.01(3) defines “wages” as “remuneration payable to an employee for personal services” and includes “severance pay or dismissal pay.” Courts in Wisconsin have regularly held that severance payments are considered part of compensation for past services. *See Compton v. Shopko Stores, Inc.*, 93 Wis. 2d 613, 623, 287 N.W.2d 720, 725 (1980) (“Severance pay is accumulated compensation for past services.”); *Shapiro v. Wis. TV Network Assocs.*, 147 Wis. 2d 877, 433 N.W.2d 674 (Ct. App. 1988) (“In Wisconsin, severance pay is regarded as accrued compensation for past services rendered by the

employee to the employer.”); *Zakowski v. CWA Transp., Inc.*, 2004 WI App 186, ¶6, 276 Wis. 2d 572, 687 N.W.2d 549; *Botany Mills, Inc. v. Textile Workers Union*, 50 N.J. Super. 18, 30, 141 A.2d 107, 113 (1958); *Mace v. Conde Nast Publications, Inc.*, 155 Conn. 680, 683, 237 A.2d 360, 361 (1967); *Owens v. Press Publishing Co.*, 20 N.J. 537, 546, 120 A.2d 442, 446 (1956).

CONCLUSION

For the reasons stated, Fogg respectfully requests that the Court order the payment of the severance benefits of his Agreement, and such other and further relief as is just and proper.

Dated: September 23, 2024.

RICHMAN & RICHMAN LLC
Attorneys for Jason Fogg

By:

/s/ Michael P. Richman

Michael P. Richman
122 West Washington Avenue,
Suite 850
Madison, WI 53703
Tel: (608) 630-8990
Fax: (608) 630-8991
mrichman@RandR.law

EXHIBIT A

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 15

DANE COUNTY

In the Matter of the Liquidation of:Wisconsin Reinsurance Corporation and 1st
Auto & Casualty Insurance Company

Case No.: 2023CV1310

Case Code: 30701

**DECLARATION OF JASON A. FOGG IN SUPPORT OF
OBJECTION TO LIQUIDATOR'S DETERMINATION**

I, Jason A. Fogg, hereby declare as follows:

1. I was appointed as the President and Chief Executive Officer of Wisconsin Reinsurance Corporation ("WRC") on December 31, 2021, and served in such capacity until it entered liquidation on January 2, 2024.
2. A true and correct copy of my Executive Employment Agreement with WRC, dated May 6, 2022 (the "**Agreement**") is attached hereto as **Exhibit 1**.
3. My understanding of the terms of the Agreement, at the time of its execution on May 6, 2022, was that section 5 of the Agreement, the "for cause" termination provision, was meant to address situations in which I personally engaged in, and was found to be responsible for, some form of misfeasance.

4. My understanding of section 5(C)(f) of the Agreement, consistent with my understanding of the overall purpose of section 5, was that it was meant to provide cause for termination in the event that the Officer of the Commissioner of Insurance (“OCI”), or another regulatory agency with supervisory authority over WRC, took specific action against me (the “Executive” as defined therein), which I could defend, and which nonetheless resulted in a finding of misfeasance.

5. In communications with OCI prior to the filing on May 23, 2023 of the Notice of Verified Petition and Verified Petition for Order for Rehabilitation [Doc 3] (“**Rehabilitation Petition**”), OCI made it clear to me that they intended that I and the rest of WRC senior management continue to handle WRC’s day-to-day operations in order to effectuate the rehabilitation plan.

6. During my discussions with OCI prior to the filing of the Rehabilitation Petition, I considered seeking other employment. However, in reliance on OCI’s request that I continue my employment as President and CEO of WRC, and in the belief that this employment would continue to be under the terms of my employment Agreement, I declined to seek other employment and continued to provide services under the Agreement.

7. During this time, I provided OCI with a copy of my employment Agreement. OCI requested that I continue to provide services as President and CEO of WRC through the rehabilitation. I did in fact continue to provide such services, and under OCI’s supervision I continued throughout the rehabilitation proceeding to compensated in accordance with the Agreement.

8. The expressed goal of the rehabilitation process was not only to address WRC's financial issues and allow it to continue to operate, but to convert WRC into a mutual insurance company, over which it was intended by OCI that I would continue to manage as the President and CEO.

9. My continued involvement with WRC during its rehabilitation helped to prevent a mass exodus of management and employees, and otherwise was critical to preserving the going concern value of WRC.

10. On December 28, 2023, WRC (by its Special Deputy Rehabilitator Justin Schrader) sent me a Notice of Termination terminating my employment as President and Chief Executive Officer ("**Termination Letter**"), to be effective as of the date of the expected Order Terminating Rehabilitation and Order for Liquidation With Finding of Insolvency [Doc 22], which was January 2, 2024. A true and correct copy of the Termination Letter is attached hereto as **Exhibit 2**.

11. The Termination Letter asserted that this termination would be "for cause in accordance with Section 5.C of your Executive Employment Agreement with WRC, dated May 6, 2022." While I disagreed that such termination could be characterized "for cause," the Termination Letter confirmed that my Agreement had remained in effect and was still in effect throughout the rehabilitation proceeding and until the entry of the Liquidation Order.

12. The Termination Letter also declared that upon entry of the Liquidation Order, "the liquidator will disavow the employment agreement immediately," pursuant to Wis. Stat. § 645.11(a), and declared that in such event, "the contractual

obligations of WRC for unperformed services under the employment agreement are terminated.” While I understood that I would not be paid for services rendered after such termination, my severance benefits were part of my earned compensation prior to termination of the Agreement.

13. On June 27, 2024, I submitted my proof of claim to the Liquidator by certified mail. A true and correct copy of the certified mail and receipt is attached hereto as **Exhibit 3**.

14. On July 2, 2024, Assistant Liquidation Manager Janice Sylvertooth sent me a letter confirming that the proof of Claim had been received on July 1, 2024. A true and correct copy of this letter is attached hereto as **Exhibit 4**.

15. On July 24, 2024, Liquidation Manager James E. Gerber sent me a letter informing me that the Liquidator had decided to recommend that the court deny Fogg’s claim (“**Determination Letter**”). A true and correct copy of the Determination Letter is attached hereto as **Exhibit 5**.

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct.

Signed on the 23rd day of September, 2024, at Sun Prairie, WI.

Jason A. Fogg

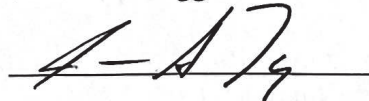
A handwritten signature in black ink, appearing to read 'J-A Fogg', written over a horizontal line.

EXHIBIT 1

EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement ("Agreement") is entered into as of the date of the last signature affixed hereto (the "Effective Date"), by and between Wisconsin Reinsurance Corporation, a Wisconsin corporation ("WRC" or "the Company"), and Jason A. Fogg ("the Executive").

AGREEMENT

In consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, WRC and the Executive hereby agree as follows:

1. **Position and Terms of Employment.** The Company will continue to employ the Executive in the position of President & Chief Executive Officer of WRC and, in that position, the Executive will report to the Board of Directors of WRC. The terms and conditions of the Executive's employment shall, to the extent not addressed or described in this Agreement, be governed by WRC's corporate Policies and Procedures Manual and existing practices. In the event of a conflict between this Agreement and the Policies and Procedures Manual or existing practices, the terms of this Agreement shall govern.
2. **Term of Agreement.** Unless the Executive's employment is otherwise terminated under Section 5 of this Agreement, the term of the Executive's employment under this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years ending on the fifth anniversary of the Effective Date (the "Initial Employment Term"). Thereafter, the Executive's employment under this Agreement shall be automatically renewed for one-year terms (each, a "Renewal Employment Term"), unless terminated by either party hereto upon ninety (90) days' written notice given prior to the expiration of the Initial Employment Term or any Renewal Employment Term. "Term" means each of the Initial Employment Term and any Renewal Employment Term. If either party provides timely notice of termination of the Agreement, but the Executive continues to provide services to the Company as an employee following the expiration of the then current Term, such post-expiration employment shall be deemed to be performed on an "at-will" basis and either party may thereafter terminate such employment with or without notice, for any or no reason, and without any obligations as set forth in this Agreement. A notice of termination under this Section 2 is not a termination without Cause under Section 5.B.
3. **Compensation and Benefits.**
 - A. **Base Salary.** The Executive shall be paid a base annual salary of \$485,000.00 ("Base Salary"), subject to applicable federal, state, and local withholding, such Base Salary to be paid to the Executive in the same manner and on the same payroll schedule in which all WRC employees receive payment. The Executive's Base Salary will increase annually on the anniversary date of the Effective Date by no less than 3.5% for each year after the first year of the Executive's employment, and any annual base

salary increase above 3.5% shall be in the sole discretion of WRC's Board of Directors. The Base Salary shall be suspended and not paid to the Executive during a leave that exceeds 30 days in length, but only to the degree permitted by law and consistent with the Company's benefit plans and paid leave time policies.

- B. Bonus or Incentive Compensation. The Executive may be eligible for bonus or incentive compensation solely at the discretion of the Board of Directors.
- C. Benefits. The Executive shall be eligible to participate in all employee benefit plans, 401(k) plans, policies, programs, or perquisites in which other WRC executives or officers participate. The Executive will not lose or forfeit any earned benefits accrued during his employment with WRC in a different capacity. The terms and conditions of the Executive's participation in WRC's employee benefit plans, 401(k) plans, policies, programs, or perquisites shall be governed by the terms of each such plan, policy, or program, including any subsequent, modifications to, additions to or eliminations of such plans, policies or programs.
- D. Automobile Allowance. The Company shall provide the Executive, in lieu of a corporate vehicle, a monthly vehicle allowance, in addition to Base Salary and any other compensation or benefits, of \$900 per month. The Executive is responsible for maintaining insurance on any vehicle, as required by applicable law, as well as all required regular maintenance expenses. The Executive will be responsible for all taxes associated with such vehicle allowance payments and shall not be eligible for mileage reimbursement for business travel.

4. Duties and Performance. The Executive acknowledges and agrees that he is being offered a position of employment by the Company with the understanding that the Executive possesses a unique set of skills, abilities, and experiences which will benefit the Company, and he agrees that his continued employment with the Company, whether during the term of this Agreement or thereafter, is contingent upon his successful performance of his duties in his position as noted above, or in such other position to which he may be assigned.

A. General Duties.

- i. The Executive shall render to the very best of his ability services to and on behalf of the Company and shall undertake diligently all appropriate and lawful duties assigned to him by the Board of Directors.
- ii. The Executive shall devote his full time, energy and skill to the performance of the services in which the Company is engaged, at such time and place as the Company may direct. Nothing in this Agreement shall serve to prohibit the Executive from serving as a director or advisor to any charitable or non-profit entities or organizations for which the Executive does not receive compensation or other remuneration. The Executive may also serve as a compensated director or advisor to non-affiliated, for profit entities not in competition with WRC, but should the Executive wish to engage in such service, he must give prior notice to

the Chairperson of the Board of Directors and any such board service is subject to prior approval by the Board of Directors.

- iii. Executive shall faithfully and industriously assume and perform with skill, care, diligence and attention all responsibilities and duties connected with his employment on behalf of the Company.
 - iv. The Executive shall have overall authority and responsibility, whether directly or through authority delegated by the Executive to other Company employees, to hire, discharge, and determine the compensation and duties of employment of all personnel of the Company (other than members of the Board of Directors in their capacity as such).
 - v. The Executive shall receive notice of and attend meetings of the Board of Directors and report to the Board and its duly authorized committees as they shall require on all phases of operation of the Company, including all services rendered in connection with the operation of the Company, employment of personnel and acquisition and disposition of assets.
 - vi. The Executive shall be responsible for supervising and implementing the Company's policies and operating programs and procedures and shall direct the management and conduct of the operations of the Company in the ordinary course of its business pursuant to applicable policies, procedures, regulations and laws.
5. **Termination of Employment.** The Executive's employment with the Company may be terminated prior to the expiration of the Term of this Agreement in accordance with any of the following provisions:
- A. **Resignation by Employee.** The Executive may terminate his employment by resignation at any time during the Term of this Agreement by giving a minimum of twelve (12) weeks' notice in writing to the Chairperson of the Board of Directors of WRC. If the Executive gives more than 12 weeks' notice of his resignation of employment, the Board of Directors may, in its discretion, accept the Executive's resignation effective 12 weeks following the date of the Executive's notice of resignation, or such later date as is decided by the Board. In addition, the Board may relieve Executive of his titles and duties at any point during the notice period, but will pay Executive all regular Base Salary and benefits for 12 weeks from the date the Executive gives such notice or until the effective date of Executive's resignation, as determined by the Board, whichever is later. No action by the Board following the Executive's notice of resignation shall be considered a termination without Cause under Section 5.B. During the notice period, the Executive must fulfill all his duties and responsibilities set forth above and use his best efforts to train and support his replacement, if any. Failure to comply with these requirements may result in termination for Cause as set forth in Section 5.C., but otherwise the Executive's Base Salary and benefits will remain unchanged during the notification period, as stated above. Upon the effective date of resignation by the Executive, WRC will have no

further obligation to pay the Executive any Base Salary or benefits, except as required under applicable plans and any amounts previously earned, but not yet paid, which must be paid in accordance with WRC's regular payroll policies and schedule. If the Executive resigns his employment prior to the expiration of the Term of this Agreement to accept a position with another for-profit entity, the Executive must return to WRC, within ten (10) days after the last day of the Executive's employment, any bonus or incentive compensation received (net of any payroll withholdings or taxes taken at time of issuance) in the preceding twelve (12) month period and agrees that any such amounts may be deducted from any final pay or other remuneration owed to the Executive.

- B. Termination by the Company Without Cause. WRC may terminate the Executive's employment at any time during the Term of this Agreement by giving twelve (12) weeks' notice in writing to the Executive. During the notice period, and unless otherwise directed by the Board of Directors, the Executive must fulfill all of the Executive's duties and responsibilities set forth above and use the Executive's best efforts to train and support the Executive's replacement, if any. Failure of the Executive to comply with this requirement may result in Termination for Cause as set forth in Section 5.C. During the notice period, the Board of Directors may, in its discretion, relieve the Executive of his duties, but will pay the Executive all regular Base Salary and benefits for the duration of the notice period. If the Executive is terminated without Cause prior to the expiration of the Initial Employment Term, WRC shall pay the Executive, subject to all applicable payroll withholding(s), severance pay for a period of twelve (12) months at the Executive's then-applicable Base Salary, starting after the end of the twelve (12) week notice period. In addition, and to the extent the Executive and his dependents elect coverage under the Company's health insurance plan pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Company shall pay the COBRA premium payments of the Executive and his dependents for up to twelve (12) months. The Company's obligation to pay COBRA premium payments under this section shall terminate upon the first day of the month that the Executive becomes eligible for health insurance coverage through new employment, and the Executive must notify the Company of any such eligibility for new coverage within 5 business days of such eligibility. The Executive shall not be eligible for severance pay and COBRA premium benefits as set forth in this Section 5.B. until Executive has signed and not revoked a separation agreement and general release, the content of which is approved by WRC. Any severance payments made under this Section 5.B. will be paid no later than the last day of the second taxable year following the taxable year of the Executive's separation from service, so that the severance pay qualifies for treatment as a separation pay plan under Treasury Regulation Section 1.409A-1(b)(9)(iii) up to the maximum amount allowed under Treasury Regulation Section 1.409A-1(b)(9)(iii)(A). To the extent that any amount exceeds that maximum amount or otherwise is subject to Internal Revenue Code Section 409A ("409A"), the Company and the Executive intend that payment of such amounts comply with 409A and the regulations under it so as not to subject the Executive to the payment of any tax, interest, or tax penalty that may be imposed under 409A.

- C. Termination by the Company For Cause. The Company may, at any time, terminate the Executive's employment for Cause. Cause means: (a) a finding by an impartial investigator of intentional fraud, misappropriation, embezzlement or acts of similar intentional dishonesty by the Executive; (b) conviction of the Executive of a felony involving moral turpitude; (c) illegal use of drugs in the workplace or in the course of employment by the Executive; (d) intentional misconduct by the Executive that is materially injurious to the Company, monetarily or otherwise; (e) willful breach of the Executive's duty of loyalty, including the diversion or usurpation of corporate opportunities properly belonging to the Company; (f) the suspension or prohibition (whether temporary or permanent) from the Executive participating in the conduct of WRC's affairs by action of any regulatory agency having supervisory responsibility over WRC, or any successor to any such entity; (g) the Executive's failure to correct a material deficiency in the performance of his duties (including the failure to follow reasonable instructions from the Board of Directors) within 60 days after a written notice from the Board or such other reasonable period of time specified by the Board if such deficiency cannot be cured within 60 days; and (h) intentional breach by the Executive of any of the material terms of this Agreement. If the Executive is terminated for Cause, WRC will have no further obligation to pay the Executive any Base Salary or benefits, except as required under applicable plans and any amounts previously earned, but not yet paid, which must be paid in accordance with WRC's regular payroll policies and schedule.
- D. Termination By Death or Disability. The Executive's employment and rights to compensation under this Agreement shall terminate if the Executive is unable to perform the duties of his position due to death or disability lasting more than 181 consecutive days, and the Executive's heirs, beneficiaries, successors, or assigns shall not be entitled to any of the compensation to which the Executive is entitled under this Agreement, except: (a) to the extent specifically provided in this Agreement; (b) to the extent required by law; or (c) to the extent that such benefit plans or policies under which the Executive is covered provide a benefit to the Executive's heirs, beneficiaries, successors, or assigns (for example, but not limited to, life insurance or disability insurance). Notwithstanding any other provision in this Agreement, WRC shall comply with the requirement of the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq. and the Wisconsin Fair Employment Act.
6. Expenses. The Company shall pay or reimburse the Executive for any expenses reasonably incurred by him in furtherance of his duties hereunder, including expenses for business related entertainment, air travel, car rentals, meals and hotel accommodations, upon submission by him of vouchers or receipts maintained and provided to the Company in compliance with such rules and policies relating thereto as the Company may from time to time adopt.

7. Restrictions; Confidentiality.

- A. General. The Executive agrees that WRC's contacts and relationships with its employees and customers are established and maintained at great expense. The Executive further agrees that, by virtue of the Executive's employment with the Company, the Executive has had and will continue to have unique and extensive exposure to and personal contact with the Company's employees and customers, and that the Executive has established unique relationships with those employees and customers that would enable the Executive to compete unfairly with the Company.
- B. Restrictions. As an inducement to the Company to provide the payments and benefits described in this Agreement as well as other rights identified in this Agreement, and in order to protect the Company from unfair competition, the Executive agrees that during the Executive's employment with WRC and for a period of one (1) year after termination of the Executive's employment, regardless of whether the termination is voluntary or involuntary or with or without Cause, he will not, whether as a sole proprietor, executive, agent, partner, co-venturer, shareholder (other than the ownership of less than ten percent (10%) of the shares of a corporation whose shares are traded in a recognized stock exchange or traded in the over-the-counter market), officer, director, consultant, or in any other capacity, directly or indirectly:
- (i) work with or be employed by any entity listed on Exhibit A in any executive or managerial role, or any other role in which the customer relationships or confidential information or trade secrets to which the Executive had access due to the Executive's employment with the Company would be of value to competitors of Company;
 - (ii) contact or solicit any of the Company's Restricted Customers for the purpose of providing products, services or business substantially similar to the products, services or business provided by the Company. For purposes of this provision, the term "Restricted Customers" shall mean any client of the Company with whom the Executive had contact on behalf of the Company or about whom the Executive acquired confidential information or trade secrets on behalf of the Company, during the one (1) year preceding termination of the Executive's employment; or
 - (iii) solicit or attempt to solicit any individual who, at the time of the Executive's termination of employment with the Company, was employed in an executive or managerial capacity with the Company or whom the Executive supervised or managed, to work for an entity that competes with the Company.
- C. Confidentiality. The Executive acknowledges that, as an officer, he has had and will continue to have access to valuable proprietary information of the Company. Such information includes, but is not limited to, information relating to the Company's employees, products, business strategies, pricing, customers, technology, programs, costs, compensation, marketing plans, development plans, computer programs,

computer software and systems or other proprietary or confidential information or trade secrets of every kind and character (collectively, "Confidential Information"). As a further inducement to the Company to provide the payments and benefits described in this Agreement, the Executive agrees to retain the confidentiality of all such information and not duplicate, transfer, disclose or use any Confidential Information for the following duration: (1) with respect to trade secret information, for as long as such information remains a trade secret; (2) with respect to all other Confidential Information, for a period of two (2) years following the termination of the Executive's employment with the Company in any location that could cause competitive harm to the Company.

- D. Reasonableness and Consideration. The Executive agrees that the above restrictions, are reasonable and necessary to protect the Company's business and to prevent damage or loss to the Company as a result of any action taken by the Executive. The Executive acknowledges that he will be able, without any hardship whatsoever, to pursue his career and earn sufficient compensation without breaching any of the restrictions contained in this Section 7. The Executive acknowledges that he has received adequate consideration for his agreement to this Section 7.
- E. Severability; Survival. Each provision of this Section 7 is severable and separately enforceable. If any court shall determine that a provision of this Section 7 is unenforceable, such unenforceability shall not impact any other provisions, which shall remain enforceable to the fullest extent allowed by applicable law. The provisions of this Section 7 shall survive termination of the Employment Agreement and any amendment thereto, and the termination of the Executive's employment with the Company.
- F. Reformation. If a court shall determine that the duration or any aspect of any restriction contained in this Section 7 is unenforceable, it is the intent of the parties that the restrictions shall not thereby be void, but shall be deemed amended to the degree required to render them valid and enforceable.
- G. Specific Performance and Damages. The parties acknowledge and agree that breach by the Executive of the restrictions contained in this Section 7 would cause irreparable damage to the Company and that monetary damages alone would not provide the Company with an adequate remedy for such breach. Therefore, if any controversy arises concerning the rights or obligations under this Section 7, such rights or obligations shall be specifically enforced by an injunction or order issued by a court of competent jurisdiction. Such remedy, however, shall be cumulative and nonexclusive and shall be in addition to any other remedy to which the Company may be entitled. In addition, the severance pay and benefits offered in Section 5.B. are conditioned on the Executive's compliance with the terms of this Section 7. Therefore, in the event of the Company obtaining written proof of or a ruling by a court of competent jurisdiction of a breach by the Executive of any provision of this Section 7, WRC may immediately cease the payment of severance pay and benefits

under this Agreement and may recoup such severance payments as have been made to the Executive to date.

8. General Provisions.

- A. Notices. All notices and other communications required or permitted by this Agreement to be delivered by WRC or the Executive to the other party shall be delivered in writing, either personally, by e-mail or by registered, certified or express mail, return receipt requested, postage prepaid, to the address for such party specified below or to such other address as the party may from time to time advise the other party, and shall be deemed given and received as of actual personal delivery, on the first business day after the date of delivery shown on any such e-mail or upon the date or actual receipt shown on any return receipt if registered, certified or express mail is used, as the case may be.

Wisconsin Reinsurance Corporation:

Wisconsin Reinsurance Corporation
P.O. Box 7988
Madison, WI 53707-7988
Attention: Chairperson of the Board

Executive:

Jason A. Fogg
1244 N. Thompson Road
Sun Prairie, WI 53590

- B. Amendments. This Agreement may not be amended except by a writing agreed to and executed by all of the parties hereto. This Agreement constitutes the entire agreement of WRC and the Executive relating to the subject matter hereof and supersedes all prior oral and written understandings and agreements relating to such subject matter.
- C. Successors and Assigns. The rights and obligations of the parties hereunder are not assignable to another person or entity without prior written consent; provided, however, that WRC, without obtaining the Executive's consent, may assign its rights and obligations hereunder to a wholly-owned subsidiary and provided further that any post-employment restrictions shall be assignable by WRC to any entity which purchases all or substantially all of the Company's assets.
- D. Severability; Provisions Subject to Applicable Law. All provisions of this Agreement shall be applicable only to the extent that they do not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal or unenforceable under any applicable law. Each provision of this Agreement is severable and separately enforceable. If any court shall determine that a provision of this Agreement is unenforceable, such unenforceability shall not impact any other provisions, which shall remain enforceable to the fullest extent allowed by applicable law.

EXHIBIT A

1. Grinnell Mutual Insurance

- E. Waiver of Rights. No waiver by WRC or the Executive of a right or remedy hereunder shall be deemed to be a waiver of any other right or remedy or of any subsequent right or remedy of the same kind.
- F. Definitions; Headings; and Number. A term defined in any part of this Agreement shall have the defined meaning wherever such term is used herein. The headings contained in this Agreement are for reference purposes only and shall not affect in any manner the meaning or interpretation of this Agreement. Where appropriate to the context of this Agreement, use of the singular shall be deemed also to refer to the plural, and use of the plural to the singular.
- G. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original but both of which taken together shall constitute but one and the same instrument.
- H. Governing Laws and Forum. This Agreement shall be governed by, construed, and enforced in accordance with the laws of Wisconsin. The parties hereto further agree that any action brought to enforce any right or obligation under this Agreement must be brought in a court of competent jurisdiction located in Dane County, Wisconsin.

IN WITNESS WHEREOF, Wisconsin Reinsurance Corporation and the Executive have executed and delivered this Agreement as of the date written below.

Executive

Wisconsin Reinsurance Corporation


Jason A. Fogg

By 
Tony Wilke, WRC Chairman of the Board

Date: 5/6/22

Date: 5/06/22

\\msnfs2\share\DOCS\WD\273631\A4513570.DOCX

EXHIBIT 2

December 28, 2023

Via Email and Registered Mail

Mr. Jason A. Fogg
1244 N. Thompson Road
Sun Prairie, WI 53590

RE: Notice of Termination for Cause

Dear Jason:

This letter is to inform you that we are hereby terminating your employment with Wisconsin Reinsurance Corporation (“WRC”) on the effective date of the WRC Liquidation Order, which we expect to be January 1, 2024 (the “Separation Date”). As described below, this termination is for cause in accordance with Section 5. C. of your Executive Employment Agreement with WRC, dated May 6, 2022 (the “employment agreement”), and Wisconsin law applicable to insurance company liquidations.

As you know, WRC will be formally placed into liquidation effective January 1, 2024. Section 5.C.(f) of the employment agreement allows for termination for cause based on the suspension or prohibition (whether temporary or permanent) of your participation in the conduct of WRC’s affairs by action of any regulatory agency having supervisory responsibility over WRC.

The liquidation petition was filed on behalf of the Wisconsin Office of the Commissioner of Insurance, the regulatory agency with supervisory responsibility over WRC. Pursuant to the liquidation order and applicable law, your authority as an officer of WRC will be suspended. *Proposed Order, Section 7.*

Additionally, pursuant to Wis. Stat. § 645.46(11)(a), the liquidator will disavow the employment agreement immediately upon the entry of the Liquidation Order. Further, upon the entry of the liquidation order, the contractual obligations of WRC for unperformed services under the employment agreement are terminated. Wis. Stat. § 611.63(6).

Please note, claims made under employment contracts by officers of the company are limited to payment for services rendered before the liquidation. Wis. Stat. § 645.63(6). Therefore, while you are free to submit a proof of claim to the estate, the claim is limited by state law to payment for services rendered before the issuance of the Liquidation Order.

With your final regular paycheck, you also will be paid for 129.5 hours of accrued, unused PTO.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Schrader', with a stylized, sweeping flourish at the end.

Justin Schrader
Special Deputy Rehabilitator

EXHIBIT 3

 Richman & Richman LLC

122 W. Washington Avenue Suite 850
Madison, WI 53703



7020 3160 0001 9261 4004



quadiant

\$005.52⁰⁰

09/23/2024 14:00:00

U.S. POSTAGE

Wisconsin Reinsurance Corporation, In Liquidation
Attn: Justin Schrader, Special Deputy Commissioner
2810 City View Drive
Madison, WI 53718

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee	\$	
Extra Services & Fees (check box, add fee as appropriate)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$	
<input type="checkbox"/> Return Receipt (electronic)	\$	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	
<input type="checkbox"/> Adult Signature Required	\$	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	
Postage	\$	
Total Postage and Fees	\$	

Postmark
Here

Sent to Wisconsin Personnel Organization, Inc. Liquidation
Attn: John Schrader, Special Delivery Letter Carrier
Street and Apt. No., or PO Box No.
3810 City View Drive
City, State, ZIP+4[®] Madison, WI 53718

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

0004 7926 7000 097E 0202

EXHIBIT 4

WISCONSIN REINSURANCE CORPORATION IN LIQUIDATION

2810 City View Drive • Madison, Wisconsin 53718
(800) 939-9473 • Fax: (608) 242-4515 • thewrcgroup.com

July 2, 2024

Jason A. Fogg
c/o Richman & Richman LLC
122 W Washington Ave, Ste 850
Madison, WI 53703-2732

Claimant Name: Jason Fogg
Liquidation Claim No.: 027 WRC

The Liquidator of Wisconsin Reinsurance Corporation in Liquidation has received your Proof of Claim in the amount of \$660,968.16 on July 1, 2024, and has assigned it the Liquidator claim number cited above. For prompt responses to any inquiries, please use this claim number for future correspondence.

We will follow up with a claims determination letter with an approved amount and also a claims priority under Wis. Stat. § 645.68. You will have a right at that time to object to both the amount and priority under Section 645.65.

Please review the name, address, and claim amount noted above, and notify the Liquidator if any information is incorrect. It is your duty to keep the Liquidator advised of any address changes by writing to the Liquidator at:

Wisconsin Reinsurance Corporation in Liquidation
Att. Justin Schrader, Special Deputy Commissioner
2810 City View Drive
Madison, WI 53718

Sincerely,

Janice Sylvertooth
Assistant Liquidation Manager
Wisconsin Reinsurance Corporation in Liquidation

EXHIBIT 5

WISCONSIN REINSURANCE CORPORATION IN LIQUIDATION

2810 City View Drive • Madison, Wisconsin 53718
(800) 939-9473 • Fax: (608) 242-4515 • thewrcgroup.com

July 24, 2024

Attorney Michael P. Richman
Richman & Richman LLC
122 W. Washington Ave., Suite 850
Madison, WI 53703-2732

Claimant Name: Jason A. Fogg
Liquidation Claim No.: 0327

Dear Attorney Richman:

By order dated January 1, 2024, the Dane County Circuit Court placed Wisconsin Reinsurance Corporation ("WRC") and 1st Auto & Casualty Company ("1st Auto") into liquidation, pursuant to Wis. Stat. § 645.41 (the "Liquidation Order"). The Liquidation Order appointed the Wisconsin Commissioner of Insurance as Liquidator of WRC and 1st Auto.

You have filed a proof of claim ("POC") in the WRC liquidation on behalf of Jason A. Fogg, the former President and Chief Executive Officer of WRC (the "Fogg Claim"). The Liquidator has reviewed the Fogg Claim and determined that it meets the definition of a class (5) residual classification claim under Wis. Stat. § 645.68.

Unfortunately, this letter is to inform you that the Liquidator will recommend to the Court that the Fogg Claim be denied.

The Fogg Claim arises from the alleged breach of the Executive Employment Agreement, dated May 6, 2022, between WRC and Mr. Fogg. The POC seeks payment in the amount of \$660,968.16. Based on the description accompanying the POC, we understand that you have calculated this amount based on your belief that Mr. Fogg was not properly terminated "for cause" and, pursuant to the Executive Employment Agreement, Mr. Fogg was entitled to (1) all compensation due under the Agreement for a period of 12 weeks following his termination based on the purported failure to provide 12 week notice of termination without cause, and (2) severance pay for a period of 12 months following termination.

Please note, Wis. Stat. § 645.63(6) specifically addresses claims of principal officers and limits the amount of the claim that may be filed:

(6) CLAIMS UNDER EMPLOYMENT CONTRACTS WITH DIRECTORS AND OTHERS. Claims made under employment contracts by directors, principal officers or persons in fact performing similar functions or having similar powers are

RECEIVED
JUL 25 2024

WISCONSIN REINSURANCE CORPORATION IN LIQUIDATION

2810 City View Drive • Madison, Wisconsin 53718
(800) 939-9473 • Fax: (608) 242-4515 • thewrcgroup.com

limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under s. 645.32 or 645.42.

That is, state law limits any claim of Mr. Fogg as an officer of the company to services rendered prior to the date of the liquidation order: January 1, 2024.

Based on our review of the POC, we understand that no amount of the claim relates to “services rendered prior to the issuance of any order of rehabilitation or liquidation.” Instead, Mr. Fogg was compensated in full for the services he provided before the Liquidation Order. Therefore, Wis. Stat. § 645.63(6) bars the Fogg Claim because it arises from an employment contract between Mr. Fogg and WRC, and the claim is not related to services rendered before the effective date of the Liquidation Order.

Moreover, the Liquidator rejects your assertion that Mr. Fogg was not appropriately terminated “for cause”. As referenced in the December 28, 2023 Notice of Termination, the Executive Employment Agreement specifies that “cause” includes “the suspension or prohibition (whether temporary or permanent) from the Executive participating in the conduct of WRC’s affairs by action of any regulatory agency having supervisory responsibility over WRC.” Paragraph 7 of the Liquidation Order specifies that “[t]he existing boards of directors of WRC and 1st Auto are terminated and the Liquidator is granted all the power of the board, *as well as the officers and managers, whose authority shall be suspended.*” (Emphasis added.) This suspension of Mr. Fogg’s authority as an officer of WRC was the direct result of the Commissioner exercising his supervisory responsibility over WRC through the filing of the Petition for Order to Terminate Rehabilitation and for Order for Liquidation. Therefore, Mr. Fogg was appropriately terminated for cause.

Please note, however, that if Mr. Fogg has not been fully compensated for services provided before January 1, 2024, we will consider an amended POC providing an accounting of any uncompensated services provided before that date.

Pursuant to Wis. Stat. § 645.71, the Liquidator’s recommendation that the Fogg Claim be denied will be reported to the Court as soon as reasonably possible after the last day for filing claims, which was July 1, 2024. Additionally, pursuant to Wis. Stat. § 645.65, you may file an objection with the Court to the Liquidator’s determination within 60 days of receiving this notice. If an objection is not filed within that period, the claimant may not further object to the determination.

Please direct any further inquiries relating to this claim to: Attorney Zachary Bemis at Godfrey & Kahn, 608-284-2224, ZBemis @gklaw.com

WISCONSIN REINSURANCE CORPORATION IN LIQUIDATION

2810 City View Drive • Madison, Wisconsin 53718
(800) 939-9473 • Fax: (608) 242-4515 • thewrcgroup.com

Sincerely,



James E. Gerber
Liquidation Manager
Wisconsin Reinsurance Corporation, in Liquidation