

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30755
LANSING, MICHIGAN 48909

February 3, 2016

Clerk of the Court
Ingham County Circuit Court
Veterans Memorial Courthouse
313 W. Kalamazoo St.
Lansing, MI 48901

Via Hand Delivery

**Re: *Patrick McPharlin, Director of the Department of Insurance
and Financial Services v Consumers Mutual Insurance of
Michigan***
Case No. 15-948-CR; Honorable James S. Jamo

Dear Clerk of the Court:

Enclosed for filing in the above-referenced case are the **Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of Consumers Mutual Insurance of Michigan with Exhibits A-D** and the **Notice of Hearing**, along with **Proof of Service**. This filing is being submitted via hand delivery directly to the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Kerr", written over the word "Sincerely,".

Christopher L. Kerr (P57131)
Assistant Attorney General
Corporate Oversight Division
(517) 373-1160

Enc

c John C. Colpean, Michigan Life & Health Insurance Guaranty Association
Jay B. Williamson, Centers for Medicare and Medicaid Services
Terrance A. Mebane, U.S. Department of Justice
Robin Reynolds, Former Chairperson of Consumers Mutual Board

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

PATRICK MCPHARLIN, DIRECTOR
OF THE DEPARTMENT OF INSURANCE
AND FINANCIAL SERVICES,

Petitioner,

v

CONSUMERS MUTUAL INSURANCE
OF MICHIGAN,

Respondent.

Case No. 15-948-CR

HON. JAMES S. JAMO

[IN REHABILITATION]

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

NOTICE OF HEARING

To: Clerk of the Court
Michigan Life and Health Insurance Guaranty Association
Centers for Medicare and Medicaid Services (including its U.S. Department
of Justice counsel)
Robin Reynolds
Other Interested Parties

PLEASE TAKE NOTICE that the Petition for Order Converting
Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of
Consumers Mutual Insurance of Michigan, which was filed by the Petitioner,

Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services and duly appointed Rehabilitator of Consumers Mutual Insurance of Michigan, will be heard by the Honorable James S. Jamo in the Veterans Memorial Courthouse, 313 W. Kalamazoo Street, Lansing, Michigan 48933 on **Wednesday, February 10, 2016 at 3:15 p.m.**

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr". The signature is fluid and cursive, with the first name "Chris" and last name "Kerr" being the most prominent parts.

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

Dated: February 3, 2016

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

PATRICK MCPHARLIN, DIRECTOR
OF THE DEPARTMENT OF INSURANCE
AND FINANCIAL SERVICES,

Petitioner,

v

CONSUMERS MUTUAL INSURANCE
OF MICHIGAN,

Respondent.

Case No. 15-948-CR

HON. JAMES S. JAMO

[IN REHABILITATION]

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

PETITION FOR ORDER
CONVERTING REHABILITATION TO LIQUIDATION
AND FOR JUDICIAL DECLARATION OF INSOLVENCY OF
CONSUMERS MUTUAL INSURANCE OF MICHIGAN

Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services (“DIFS”), as Rehabilitator of Consumers Mutual Insurance of Michigan (the “Rehabilitator”), by and through his attorneys, Bill Schuette, Attorney General, and Christopher L. Kerr and Mark A. Gabrielse, Assistant Attorneys General, petitions this Court: (a) for an order converting the current rehabilitation of Consumers Mutual Insurance of Michigan (“Consumers Mutual”)

to a liquidation proceeding, pursuant to MCL 500.8116(1) and MCL 500.8117; and (b) for a judicial declaration of Consumers Mutual's insolvency, pursuant to MCL 500.8118(4). In support of this Petition, the Rehabilitator states as follows:

INTRODUCTION

1. On November 13, 2015, this Court entered an Order placing Consumers Mutual into rehabilitation and appointing the Director as the Rehabilitator of Consumers Mutual (the "Rehabilitation Order"). The Court entered the Rehabilitation Order requested by the Director because Consumers Mutual's financial condition was such that its further transaction of business would have been hazardous financially to its policyholders, creditors, and the public. Rehabilitation Order, p 3, ¶ D; MCL 500.8112(a). The Court further ordered that Consumers Mutual be placed into rehabilitation because the company's Board of Directors consented to rehabilitation under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159. Rehabilitation Order, p 3, ¶ E; MCL 500.8112(l).

2. As explained further below, despite the best efforts of the Rehabilitator and Special Deputy Rehabilitators to restore Consumers Mutual to financial stability, the company is insolvent (with an unimpaired surplus/net worth of *negative* \$1,581,322 as of November 30, 2015) and its financial condition continues to deteriorate. Accordingly, an order to liquidate Consumers Mutual is necessary and appropriate because: (a) further attempts to rehabilitate the company would be futile and would substantially increase the risk of loss to the company's creditors, policyholders, and the public; (b) the company is insolvent; and (c) the company's

financial condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. MCL 500.8116(1), MCL 500.8117.

THE PARTIES / JURISDICTION

3. Patrick M. McPharlin is the duly appointed Director of DIFS and court-appointed Rehabilitator of Consumers Mutual.

4. Consumers Mutual is a Michigan domestic nonprofit mutual health insurance company authorized to transact insurance in Michigan. Consumers Mutual received its Michigan certificate of authority on May 13, 2013. Consumers Mutual was formed as a qualified nonprofit health insurance issuer under the Consumer Operated and Oriented Plan (“CO-OP”) program created by the federal Patient Protection and Affordable Care Act (“PPACA”). As a CO-OP, the federal government awarded Consumers Mutual \$71.5 million in the form of a loan (subsequently converted to surplus notes) to commence and continue operations as a Michigan health insurance company. The Centers for Medicare and Medicaid Services (“CMS”) monitors the CO-OP program and issues the funding awarded under this program.

5. MCL 500.8102 provides that a proceeding under Chapter 81 of the Insurance Code, including a liquidation proceeding, may be applied to an insurer: (a) who is or has been transacting insurance business in this state and against whom claims arising from that business may exist now or in the future; or (b) who

has insureds resident in this state. Consumers Mutual satisfies both criteria and is therefore subject to liquidation.

6. Pursuant to MCL 500.8104(1), only the Director may commence a liquidation proceeding against an insurer under Chapter 81.

7. MCL 500.8104(3) vests the Ingham County Circuit Court with sole jurisdiction over a liquidation proceeding commenced under Chapter 81.

PROCEDURAL BACKGROUND / EFFORTS TO REHABILITATE

8. Among other things, and as required by law, the Rehabilitation Order entered by this Court on November 13, 2015: (a) appointed the Director as Rehabilitator of Consumers Mutual; (b) approved the compensation of James Gerber, the DIFS Director of Receiverships, as the Rehabilitator's appointed Special Deputy Rehabilitator; (c) directed the Rehabilitator to take immediate possession of the company's assets and to administer those assets under the Court's general supervision; (d) granted the Rehabilitator and Special Deputy Rehabilitator full power and authority to direct and manage Consumers Mutual and to deal in totality with the property and business of the company; and (e) authorized the Rehabilitator and Special Deputy Rehabilitator to take such action as they considered necessary or appropriate to reform or revitalize Consumers Mutual. Rehabilitation Order, ¶¶ 2, 3, 8, 11, 29, and 30.

9. Following entry of the Rehabilitation Order, the Rehabilitator and Special Deputy Rehabilitators¹ took possession of Consumers Mutual's assets, evaluated the company's books, records, and business operations, and assumed management of the company with the objective of determining whether its financial condition could be rehabilitated.

10. Specifically, the Rehabilitator and Special Deputy Rehabilitator have taken the following actions during the rehabilitation to reduce Consumers Mutual's business expenses, improve cash flow, enhance revenues, and/or otherwise restore the company to profitability:

- Negotiated a lease amendment for Consumers Mutual's business office that reduced monthly rent payments by \$4,550.
- Began processing and paying accounts payable in-house instead of using an outside CPA firm, resulting in monthly savings of \$4,800.
- Laid off 15 employees resulting in an annual savings of \$1,644,000.
- Negotiated reductions in vendor invoices yielding a total savings of \$12,000.
- Negotiated a contract amendment with the company's third-party claims administrator that resulted in savings of over \$400,000, including a new prospective fee structure.
- Sold excess office equipment for \$12,000.
- Billed \$135,000 to agents for overdue fees from 2014 and 2015 related to certain high deductible policies.
- Identified an overpayment of \$276,000 to a vendor, which Consumers Mutual is in the process of recovering.

¹ On December 21, 2015, this Court approved the compensation of Julieanne Gulliver, whom the Rehabilitator appointed as an additional Special Deputy Rehabilitator to assist Mr. Gerber with the Consumers Mutual rehabilitation.

CURRENT FINANCIAL CONDITION AND POLICY COUNTS

11. Despite the numerous steps to rehabilitate Consumers Mutual outlined above, the company's financial condition has continued to erode during the course of this rehabilitation. As of August 31, 2015 (approximately ten weeks prior to the rehabilitation), Consumers Mutual's internal monthly financial statement reflected unimpaired capital and surplus (i.e., net worth) totaling \$23,517,729. As of November 30, 2015, the company's unimpaired capital and surplus had declined to *negative* \$1,581,322 and the company is now insolvent. (Exhibit A.)

12. Since the rehabilitation, the number of health insurance policies issued by Consumers Mutual has fallen to zero, where the premiums paid for these policies represent the predominant source of the company's revenues. Without any premium revenues or active insurance policies, the company cannot be successfully rehabilitated and must be placed into liquidation.

13. Prior to entry of the Rehabilitation Order, Consumers Mutual decided not to participate on the Michigan Health Insurance Marketplace² ("Marketplace") in 2016 due to its financial condition. As a result, all Consumers Mutual individual and small business policies sold on the Marketplace expired on December 31, 2015, could not be renewed with Consumers Mutual, and these members were encouraged to find replacement coverage effective January 1, 2016 from other Marketplace insurers.

² The Marketplace is the federally-operated insurance exchange where Michigan individuals and small businesses can purchase health insurance from various qualified, participating insurance companies.

14. As of November 16, 2015, Consumers Mutual covered 6,016 members under individual policies and 21,264 members under employer group policies. Again, effective December 31, 2015, all Consumers Mutual individual and small business policies sold on the Marketplace expired and could not be renewed because Consumers Mutual was no longer participating on the Marketplace. Moreover, due to the rehabilitation and Consumers Mutual's hazardous financial condition, the company strongly encouraged and actively assisted both its individual and employer group members with finding alternative coverage. As a result of these efforts, Consumers Mutual had no individual policies and only two remaining employer group policies (representing 275 members) on January 1, 2016. These two employer groups transferred their coverage to another insurer effective January 31, 2016, so Consumers Mutual no longer has any active insurance policies.

15. As stated, the reduction in active policies to zero and associated loss of all premium revenues supports the Rehabilitator's conclusion that Consumers Mutual cannot be successfully rehabilitated. Accordingly, the Court should grant this petition and enter the Rehabilitator's proposed Order of Liquidation and Declaration of Insolvency of Consumers Mutual ("Liquidation Order") in the form attached as Exhibit B.

**AUTHORITY FOR ORDER OF LIQUIDATION AND
JUDICIAL DECLARATION OF INSOLVENCY**

16. MCL 500.8116(1) authorizes the Rehabilitator to petition this Court for an order to liquidate an insurer that is in rehabilitation if he "believes further

attempts to rehabilitate [the] insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile.”

17. MCL 500.8117 further authorizes the Rehabilitator to petition this Court for an order to liquidate Consumers Mutual based on any of the following grounds:

- (a) Any ground for an order of rehabilitation as specified in section 8112, whether or not there has been a prior order directing the rehabilitation of the insurer.
- (b) That the insurer is insolvent.
- (c) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

18. Under MCL 500.8103(i)(ii), an insurer such as Consumers Mutual is defined as “insolvent” when its “admitted assets do not exceed liabilities plus . . . [a]ny capital and surplus required by law for its organization.” This subsection further defines “liabilities” to “include, but not be limited to, reserves required by statute or by rule or specific requirements imposed by the commissioner upon an insurer at the time of admission or subsequent to admission.”

19. Pursuant to MCL 500.8117(b), this Court should grant the Rehabilitator’s petition to liquidate Consumers Mutual because, by definition, the company is insolvent. Consumers Mutual’s admitted assets totaling \$36,812,541 are exceeded by the company’s liabilities totaling \$38,393,863, resulting in unimpaired capital and surplus in the amount of *negative* \$1,581,322 as of November 30, 2015. (Exhibit A.) This is before taking into account (by adding to

the company's liabilities) the \$7.5 million in positive, minimum capital and surplus required by law for Consumers Mutual's organization. See MCL 500.410(2) and (3).

20. The Court should also grant the Rehabilitator's petition under MCL 500.8117(c) because Consumers Mutual's financial condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. Consumers Mutual's hazardous financial condition is evidenced by the company's steady financial decline, current unimpaired surplus of over negative \$1.5 million, and reduction in active policies to zero with the associated loss of all premium revenues.

21. In addition to these bases for liquidation under MCL 500.8117, the Court should enter an order to liquidate Consumers Mutual under MCL 500.8116(1) because the Rehabilitator reasonably believes—again, based on the company's steady financial decline, current unimpaired surplus of over negative \$1.5 million, and loss of all premium revenues—that any further attempts at rehabilitation would be futile and would substantially increase the risk of loss to creditors, policyholders, and the public.

22. The Rehabilitator further requests a judicial declaration of Consumers Mutual's insolvency pursuant to MCL 500.8118(4), which provides:

At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of insolvency. After providing notice and hearing as it considers proper, the court may make the declaration.

23. As explained above, Consumers Mutual satisfies the definition of "insolvency" because its liabilities exceed its assets by over \$1.5 million, even before

taking into account (by adding to the company's liabilities) the \$7.5 million in positive, minimum capital and surplus required for its organization. Consequently, the Court should grant the Rehabilitator's request under MCL 500.8118(4) and declare that Consumers Mutual is insolvent.

24. The Rehabilitator and Special Deputy Rehabilitators have exhausted all avenues for Consumers Mutual's rehabilitation. The company cannot be successfully rehabilitated, it is insolvent, and it must now be liquidated. The Rehabilitator therefore requests the Court to enter the Liquidation Order in the form attached as Exhibit B.

APPOINTMENT AND COMPENSATION OF SPECIAL DEPUTY LIQUIDATORS

25. MCL 500.8121(1)(a) authorizes the Rehabilitator, upon entry of the Liquidation Order appointing him as Liquidator, to appoint a Special Deputy Liquidator(s), who shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code and who shall serve at the pleasure of the Liquidator.

26. Pursuant to MCL 500.8121(1)(a), the Liquidator may determine the reasonable compensation of any Special Deputy Liquidator(s) that he appoints. The Liquidator is further authorized to pay that reasonable compensation to his appointed Special Deputy Liquidator(s) and to defray from the funds or assets of Consumers Mutual all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with, Consumers Mutual's business and property. MCL 500.8121(1)(d). If Consumers Mutual's property does not

contain sufficient cash or liquid assets to defray the costs incurred, the Liquidator may advance the incurred costs out of an appropriation for the maintenance of DIFS. *Id.* Amounts advanced for expenses of administration shall be repaid to the Liquidator for the use of DIFS out of the first available money of Consumers Mutual. *Id.*

27. Upon his appointment as Liquidator, the Rehabilitator appoints James Gerber, the DIFS Director of Receiverships, and Julieanne Gulliver as Special Deputy Liquidators of Consumers Mutual. Pursuant to the Rehabilitation Order, the Rehabilitator previously appointed Mr. Gerber as Special Deputy Rehabilitator of Consumers Mutual and the Court approved Mr. Gerber's compensation in that capacity. Rehabilitation Order, ¶ 30. Pursuant to the December 21, 2015 Ex Parte Order Approving Julieanne Gulliver's Compensation as Special Deputy Rehabilitator, the Rehabilitator appointed Ms. Gulliver as Special Deputy Rehabilitator of Consumers Mutual (working under the direction and supervision of Mr. Gerber) and the Court approved Ms. Gulliver's compensation in that capacity. Having served as Special Deputy Rehabilitators since their appointments, Mr. Gerber and Ms. Gulliver are intimately familiar with Consumers Mutual's business operations. The Liquidator reserves the right to appoint other Special Deputy Liquidator(s) to replace and/or serve with Mr. Gerber and Ms. Gulliver in the future as the need arises.

28. Upon his appointment as Liquidator, the Rehabilitator has determined the compensation to be paid to Mr. Gerber and Ms. Gulliver as Special Deputy

Liquidators pursuant to the terms set forth in the Liquidation Order attached as Exhibit B.

29. The Rehabilitator has determined that upon his appointment as Liquidator, the appointment of James Gerber and Julieanne Gulliver as Special Deputy Liquidators is both necessary and appropriate for the effective and efficient administration of the liquidation proceeding and will assist in providing the maximum protection to creditors, policyholders, and the public. The Rehabilitator has further determined that the compensation to be paid to Mr. Gerber and Ms. Gulliver as Special Deputy Liquidators is reasonable.

GUARANTY ASSOCIATION COVERAGE AND COURT APPROVAL OF EARLY ACCESS AND SERVICE AGREEMENTS

30. Upon entry of the Liquidation Order, the Michigan Life and Health Insurance Guaranty Association (the "Guaranty Association"), pursuant to Chapter 77 of the Michigan Insurance Code, will become statutorily responsible for covering eligible healthcare claims under Consumers Mutual insurance policies, subject to the Guaranty Association's statutory limits, terms, and conditions of coverage.

31. To facilitate this process, the Rehabilitator and Guaranty Association have negotiated, finalized, and executed both an Early Access Agreement and a Service Agreement, which are subject to the Court's approval and attached as Exhibits C and D, respectively.

32. As with appointment of the Special Deputy Liquidators, the Early Access and Service Agreements are vital to the effective and efficient administration of Consumers Mutual's liquidation and will help maximize

protection of creditors, policyholders, and the public. Accordingly, the Rehabilitator requests that the Court approve these Agreements as provided in the Liquidation Order attached as Exhibit B.

**ADDITIONAL PROVISIONS CONTAINED IN THE
REQUESTED LIQUIDATION ORDER**

33. Without detracting from the importance of and legal authority for each provision contained in the Rehabilitator's requested Liquidation Order attached as Exhibit B, the Rehabilitator highlights the following provisions not previously discussed for the benefit of the Court and any interested parties.

34. Pursuant to MCL 500.8105(1)(f) and 500.8124(1), the Liquidation Order provides that upon its entry, all actions at law or equity against Consumers Mutual, the Liquidator, or the Special Deputy Liquidators are immediately prohibited and enjoined, and any such actions may not be commenced, maintained, or further presented in Michigan or any other State. Likewise, the Liquidation Order provides, consistent with MCL 500.8105(1)(g) and (h) and MCL 500.8157, that all actions or proceedings in the nature of an attachment, garnishment, or levy of execution against Consumers Mutual, its assets, or its policyholders are immediately prohibited, enjoined, and may not be commenced or maintained. All claims by creditors against the assets of Consumers Mutual must be made by filing claims in the liquidation proceeding, consistent with the terms more specifically set forth in the Liquidation Order attached as Exhibit B.

35. Pursuant to MCL 500.8105(1)(g) and (k), all contracted and non-contracted healthcare providers are specifically enjoined and restrained from

pursuing collection against, obtaining judgments against, and/or balance billing of Consumers Mutual's policyholders, insureds, or members for covered healthcare goods provided or services rendered prior to the date of the Liquidation Order. All contracted and non-contracted healthcare providers that provided such goods or rendered such services must seek payment solely from Consumers Mutual as a Consumers Mutual creditor. This prohibition does not apply to any applicable co-payments, deductibles, cost sharing, or fees for healthcare goods or services that are not covered by and remain the policyholder's, insured's, or member's responsibility under his or her Consumers Mutual insurance policy.

36. As described more fully in the Liquidation Order, the deadlines and procedures for filing a claim relating to Consumers Mutual or its insureds are dependent on the nature of the claim.

All creditor claims for healthcare goods and services provided to a Consumers Mutual insured pursuant to a Consumers Mutual insurance policy, whether made by a contracted or non-contracted healthcare provider or the insured, must be submitted to Consumers Mutual for processing in the normal course of business by no later than one (1) year after the date on which the healthcare good or service was provided.³ Claims for healthcare goods or services submitted after this one-year deadline will be denied, and a separate Proof of Claim form should not be filed in the Consumers Mutual liquidation proceeding for any such healthcare claim.

³ This one-year deadline is identical to the deadline within which healthcare providers must submit any claim for payment under their contracts with Consumers Mutual.

Any other creditor claims that do not involve healthcare goods or services provided to a Consumers Mutual insured, including but not limited to claims by trade creditors/vendors, insurance agents, and non-healthcare claims by insureds, must be filed in the Consumers Mutual liquidation proceeding by completing and mailing a Proof of Claim form postmarked on or before the Claim Bar Date of August 10, 2016 established by the Liquidation Order.

NOTICE / SERVICE

37. The Rehabilitator has identified the Guaranty Association—which upon entry of the Liquidation Order will become responsible for covering eligible healthcare claims under Consumers Mutual insurance policies, pursuant to Chapter 77 of the Michigan Insurance Code and subject to the Guaranty Association’s statutory limits, terms, and conditions of coverage—as the party with the strongest potential interest in this Petition. Accordingly, this Petition and the proposed Liquidation Order attached as Exhibit B were provided to and discussed with the Guaranty Association prior to being filed with the Court. In addition, as the attached Proof of Service reflects, a copy of this Petition, the proposed Liquidation Order (attached as Exhibit B), and a Notice of Hearing on this Petition have been served via regular mail on John Colpean, the Guaranty Association’s Administrator and General Counsel.

38. The Rehabilitator has further identified CMS [and its legal counsel at the U.S. Department of Justice (“DOJ”)]—which holds surplus notes totaling approximately \$71.5 million—as Consumers Mutual’s largest creditor that also has

a strong potential interest in this Petition. Accordingly, as the attached Proof of Service reflects, a copy of this Petition, the proposed Liquidation Order (attached as Exhibit B), and a Notice of Hearing on this Petition have been served via regular mail on Jay Williamson and Terrance Mebane, who are the CMS representative and DOJ counsel, respectively, assigned to Consumers Mutual.

39. In addition, the Rehabilitator has identified Robin Reynolds—the former Chairperson of Consumers Mutual’s Board of Directors, which was suspended upon entry of the Rehabilitation Order—as an appropriate representative of the company’s previous management that may have a potential interest in this Petition. Accordingly, as the attached Proof of Service reflects, a copy of this Petition, the proposed Liquidation Order (attached as Exhibit B), and a Notice of Hearing on this Petition have been served via regular mail on Ms. Reynolds.

40. Beyond the Guaranty Association, CMS and its DOJ counsel, and Ms. Reynolds, personally serving this Petition, the Notice of Hearing, and any resulting Order on all other parties that may have a general interest in Consumers Mutual’s rehabilitation / liquidation would be impractical at this time because there has been no claims submission or other process to identify these parties. Moreover, attempting to identify and personally notify every party having such a general interest would be time-intensive and costly to Consumers Mutual’s rehabilitation / liquidation estate. For these reasons, the Rehabilitator requests this Court to authorize, approve, and/or ratify service of this Petition, the Notice of Hearing, and

any resulting Order on any other potentially interested parties by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section “Who We Regulate,” the subsection “Receiverships,” and the sub-subsection “Consumers Mutual Ins. of Michigan.”

41. Service and notice in the foregoing manner is reasonably calculated to give the Guaranty Association, CMS and its DOJ counsel, Ms. Reynolds, and any other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances. The Rehabilitator additionally requests the Court to determine, as provided in the attached Liquidation Order, that this notice is proper to make a judicial declaration of Consumers Mutual’s insolvency under MCL 500.8118(4).

RELIEF REQUESTED

Based on the foregoing, the Rehabilitator respectfully requests this Court to enter the Order of Liquidation and Declaration of Insolvency of Consumers Mutual Insurance of Michigan in the form attached as Exhibit B.

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Chris Kerr", written over the typed name of Christopher L. Kerr.

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

Dated: February 3, 2016

E

X

H

I

B

I

T

A

**Consumers Mutual Insurance
Statutory Balance Sheets**

11/30/2015

Admitted Assets

1. Bonds	21,889,385
2. Stock	-
3. Real Estate/Mortgage Investments	-
4. Affiliated Receivables / Other Admitted Assets	-
5. Cash/Cash Equivalents/Short Term	9,951,102
6. EDP	46,058
7. Other Admitted Assets	4,925,996
8. Total Assets	<u>36,812,541</u>

Liabilities

9. Claims Unpaid	23,767,839
10. Accrued Medical Incentive pool and bonus amounts	-
11. Reserve for Accident and Health Policies (PDR/RA)	3,552,724
12. Ceded Reinsurance Payable	1,446,996
13. Premiums Received in Advance	5,029,598
14. General Expenses Due and Accrued	4,596,706
15. Borrowed Money	-
16. All other Liabilities	-
17. Total Liabilities(9+10+11+12+13+14+15+16)	<u>38,393,863</u>

Capital and Surplus

18. Capital Stock	-
19. Gross Paid In and Contributed Surplus	-
20. Surplus Notes	71,534,300
21. Unassigned Surplus	(73,115,622)
22. Other Items (elaborate)	-
23. Total Capital and Surplus (18+19+20+21+22)	<u>(1,581,322)</u>

Liabilities + Capital and Surplus:

36,812,541

E

X

H

I

B

I

T

B

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

PATRICK MCPHARLIN, DIRECTOR
OF THE DEPARTMENT OF INSURANCE
AND FINANCIAL SERVICES,

Petitioner,

v

CONSUMERS MUTUAL INSURANCE
OF MICHIGAN,

Respondent.

Case No. 15-948-CR

HON. JAMES S. JAMO

[IN REHABILITATION]

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**ORDER OF LIQUIDATION AND
DECLARATION OF INSOLVENCY OF
CONSUMERS MUTUAL INSURANCE OF MICHIGAN**

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
____ day of February, 2016.

PRESENT: HONORABLE JAMES S. JAMO, CIRCUIT COURT JUDGE

The Court has reviewed and considered the Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of Consumers Mutual Insurance of Michigan (the “Liquidation Petition”), which was filed by Patrick M. McPharlin, the Director of the Michigan Department of Insurance and Financial Services (“DIFS”) and court-appointed Rehabilitator of Consumers Mutual Insurance of Michigan (the “Rehabilitator”). The Court is also fully informed of the circumstances involving Consumers Mutual Insurance of Michigan (“Consumers Mutual”) because the company has been subject to an ongoing rehabilitation proceeding assigned to and conducted under the supervision of this Court, pursuant to the Rehabilitation Order that the Court entered on November 13, 2015.

Based on the Court’s review of the Liquidation Petition, any objections or responses filed thereto, and the terms of this Order, and following the hearing on the Liquidation Petition conducted on February 10, 2016 at 3:15 p.m., the Court finds as follows:

A. MCL 500.8102 provides that a proceeding under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159, including a liquidation proceeding, may be applied to an insurer: (a) who is or has been transacting insurance business in this state and against whom claims arising from that business may exist now or in the future; or (b) who has insureds resident in this state. Consumers Mutual satisfies both criteria and is therefore subject to liquidation.

B. MCL 500.8104(3) vests this Court with jurisdiction to consider the Liquidation Petition and to enter this Order.

C. MCL 500.8116(1) authorizes the Rehabilitator to petition this Court for an order to liquidate an insurer that is in rehabilitation if he “believes further attempts to rehabilitate [the] insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile.”

D. MCL 500.8117 further authorizes the Rehabilitator to petition this Court for an order to liquidate Consumers Mutual based on any of the following grounds:

(a) Any ground for an order of rehabilitation as specified in section 8112, whether or not there has been a prior order directing the rehabilitation of the insurer.

(b) That the insurer is insolvent.

(c) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

E. Pursuant to MCL 500.8117(b), the liquidation of Consumers Mutual is authorized and appropriate because, as explained more fully in the Liquidation Petition, the company’s admitted assets do not exceed its liabilities (even before taking into account, by adding to the company’s liabilities, the capital and surplus required by law for its organization). Consumers Mutual is therefore by definition “insolvent” under MCL 500.8103(i)(ii), with an unimpaired capital and surplus (i.e., net worth) of *negative* \$1,581,322 as of November 30, 2015.

F. The liquidation of Consumers Mutual is further authorized and appropriate under MCL 500.8117(c) because, as explained more fully in the

Liquidation Petition, Consumers Mutual's financial condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. The company's hazardous condition is evidenced by, *inter alia*, its steady financial decline despite the actions taken in rehabilitation, its current unimpaired surplus of over negative \$1.5 million, and its reduction in active insurance policies to zero with the associated loss of all premium revenues.

G. This Order to liquidate Consumers Mutual is also authorized and appropriate under MCL 500.8116(1) because, as explained more fully in the Liquidation Petition, the Court agrees with the Rehabilitator's conclusion that any further attempts at rehabilitation would be futile and would substantially increase the risk of loss to creditors, policyholders, and the public.

H. Because Consumers Mutual's liabilities exceed its assets by over \$1.5 million and the company is by definition "insolvent," and proper notice and hearing having been provided, the Rehabilitator is entitled to the requested judicial declaration of insolvency under MCL 500.8118(4).

I. As defined by MCL 500.8103(b) and for purposes of this Order, a "Creditor" is a person having a claim against Consumers Mutual, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

J. Under MCL 500.8105(1), the Court is authorized to enter this Order including terms that the Court considers necessary and proper to prevent:

- (a) Interference with the Liquidator or with the liquidation proceeding;
- (b) The institution or further prosecution of any actions or proceedings against Consumers Mutual, its assets, or its policyholders;
- (c) The obtaining of preferences, judgments, attachments, garnishments, or liens against Consumers Mutual, its assets, or its policyholders;
- (d) The levying of execution against Consumers Mutual, its assets, or its policyholders; and
- (e) Any other threatened or contemplated action that might lessen the value of Consumers Mutual's assets or prejudice the rights of its policyholders, creditors, or the administration of the liquidation proceeding.

K. Immediate action placing Consumers Mutual into liquidation is necessary to protect the interests of Consumers Mutual's policyholders, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8116 - 500.8118, the Liquidation Petition is GRANTED, and Consumers Mutual is placed into liquidation under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159.

2. Pursuant to MCL 500.8118(1), the Director of DIFS and Rehabilitator of Consumers Mutual is appointed as Liquidator of the company. Hereafter, the Rehabilitator shall be referred to as the "Liquidator."

3. The Liquidator is directed to take immediate possession of Consumers Mutual's assets and to administer them under the Court's general supervision. MCL 500.8118(1). The Liquidator is vested by operation of law with the title to all of Consumers Mutual's assets, including but not limited to the company's property, bank accounts, contracts, rights of action, and all books and records, wherever

located, as of the date that this Liquidation Order is entered. *Id.* The filing or recording of this Liquidation Order with the Clerk of the Circuit Court and the Register of Deeds of the county in which Consumers Mutual's principal office or place of business is located or, in the case of real estate, with the Register of Deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted. *Id.*

4. The Liquidator, without being specifically set forth in this Order, shall have: (a) all the powers contained in MCL 500.8121; (b) all other applicable powers set forth in Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159; and (c) such additional powers as the Court shall grant from time to time upon petition of the Liquidator.

5. Except as provided in MCL 500.8119, MCL 500.8137, and this Liquidation Order, the rights and liabilities of Consumers Mutual and of its Creditors, policyholders, insureds, and all other persons interested in Consumers Mutual's estate shall become fixed as of the date that this Liquidation Order is entered. MCL 500.8118(2).

6. Not later than 120 days after entry of this Liquidation Order, the Liquidator shall prepare in duplicate a list of Consumers Mutual's assets, which list shall be amended or supplemented from time to time as the Liquidator deems appropriate. MCL 500.8125. With respect to the asset list and any amendments or supplements thereto, the Liquidator shall file one copy with the Clerk of this Court

and shall retain one copy for his files. *Id.* Thereafter, the Liquidator shall account to this Court no less than annually, pursuant to MCL 500.8118(5).

7. Although there are no known insurance policies issued by Consumers Mutual that remain in effect at the time of the entry of this Liquidation Order, in the event that any such policies are later identified, and pursuant to MCL 500.8119 and MCL 500.7708(6), these policies are terminated as of the earliest of the following dates:

- a. For group policies or contracts, the earlier of the next renewal date under the policy or contract or 45 days, but not less than 30 days, after the date this Liquidation Order is entered;
- b. For individual policies or contracts, the earlier of the next renewal date, if any, under the policies or contracts or 1 year, but not less than 30 days, after the date this Liquidation Order is entered;
- c. The date that the insured replaces the policy's insurance coverage with equivalent insurance in another insurer or otherwise terminates the policy; or
- d. The date that the Liquidator effects a transfer of the policy obligation to a solvent assuming insurer pursuant to MCL 500.8121(1)(h).

8. Pursuant to MCL 500.8118(4), and the Court having found that proper notice and hearing have been provided, the Court declares that Consumers Mutual is insolvent.

9. Pursuant to MCL 500.8124(1), upon entry of this Liquidation Order, an action at law or equity shall not be brought against Consumers Mutual, the Liquidator, or the Special Deputy Liquidators, whether in this State or elsewhere, and any such existing action shall not be maintained or further presented after entry of this Liquidation Order. Accordingly, pursuant to MCL 500.8124(1) and

MCL 500.8105(1)(f), and effective immediately, all persons and entities are expressly enjoined from filing an action at law or equity or maintaining or further presenting any such existing action against Consumers Mutual, the Liquidator, or Special Deputy Liquidators, whether in this State or elsewhere.

10. Pursuant to MCL 500.8157, during the pendency of this Liquidation proceeding, an action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this State against Consumers Mutual or its assets. Accordingly, pursuant to MCL 500.8157, together with MCL 500.8105(1) and MCL 500.8124(1) and except as specifically provided in paragraphs 11, 12, 18, and 19 of this Order, all persons and entities are expressly enjoined, effective immediately, from:

(a) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against Consumers Mutual, its assets, policyholders, insureds, employees, former officers, or former directors;

(b) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Liquidator or Special Deputy Liquidators, their agents, attorneys, employees, or representatives, or the State of Michigan and its officers, agencies, or departments for claims or causes of action arising out of or relating to Consumers Mutual or any proceedings under Chapter 81;

(c) Obtaining preferences, judgments, attachments, garnishments, or liens against Consumers Mutual, its assets, policyholders, insureds, employees, former officers, or former directors;

(d) Levying of execution against Consumers Mutual, its assets, policyholders, insureds, employees, former officers, or former directors; and

(e) Threatening or taking any other action that may lessen the value of Consumers Mutual's assets or prejudice the rights of Consumers Mutual's

creditors as a whole, its policyholders, insureds, or the administration of this liquidation proceeding.

11. Pursuant to MCL 500.8105(1)(g) and (k), all contracted and non-contracted healthcare providers are hereby specifically enjoined and restrained from pursuing collection against, obtaining judgments against, and/or balance billing of Consumers Mutual's policyholders, insureds, or members for covered healthcare goods provided or services rendered prior to the date of this Order. All contracted and non-contracted healthcare providers that provided such goods or rendered such services prior to the date of this Order shall seek payment solely from Consumers Mutual as a Consumers Mutual Creditor, as defined in this Order and MCL 500.8103(b). The foregoing prohibition does not apply to any applicable co-payments, deductibles, cost sharing, or fees for healthcare goods or services that are not covered by and remain the policyholder's, insured's, or member's responsibility under his or her Consumers Mutual insurance policy.

12. With respect to any claim asserted against Consumers Mutual as a named party in a Michigan court proceeding that: (a) satisfies the requirements for a "covered claim" and is thereby subject to litigation, defense, and/or payment by the Michigan Life and Health Insurance Guaranty Association ("Guaranty Association") under Chapter 77 of the Michigan Insurance Code, MCL 500.7701 – 500.7780; or (b) otherwise involves a matter germane to the Guaranty Association's powers or duties, the proceeding shall be stayed for sixty (60) days from the date of this Liquidation Order, plus any additional time determined necessary by the court

in which the claim is pending, to permit proper legal action by the Guaranty Association. MCL 500.7718.

13. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, or agents of Consumers Mutual, or any other persons or entities having authority over or in charge of any segment of the affairs of Consumers Mutual, shall fully cooperate with the Liquidator and Special Deputy Liquidators. Among other things, "full cooperation" requires a person or entity described in this paragraph to:

- (a) Promptly reply to any inquiry by the Liquidator/Special Deputy Liquidators, including a written reply when requested;
- (b) Provide the Liquidator/Special Deputy Liquidators with immediate, full, and complete possession, control, access to, and use of all books, accounts, documents, and other records, information, or property of or pertaining to Consumers Mutual in his, her, or its possession, custody, or control;
- (c) Provide the Liquidator/Special Deputy Liquidators with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Consumers Mutual; and
- (d) Provide the Liquidator/Special Deputy Liquidators with full and complete access to all legal opinions, memoranda, letters, documents, information, correspondence, legal advice, and any other attorney-client privileged and/or attorney work product materials relating to Consumers Mutual or the operation of Consumers Mutual and its business, provided to or from Consumers Mutual's in-house or outside counsel by or to Consumers Mutual, its officers, managers, directors, trustees, owners, employees, or agents.

In addition, no person shall obstruct or interfere with the Liquidator or Special Deputy Liquidators in the conduct of this liquidation proceeding.

14. Any person or entity with possession, custody, or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Consumers Mutual shall immediately:

(a) Provide the Liquidator/Special Deputy Liquidators with notice that such assets, documents, data, accounts, moneys, books, records, information, or property are in his, her, or its possession, custody or control, together with a description of the assets, documents, data, accounts, books, records, information, or property in his, her, or its possession, custody, or control.

(b) Tender possession, custody, and control of such assets, documents, data, accounts, moneys, books, records, information, or property to the Liquidator/Special Deputy Liquidators.

(c) Take all necessary steps to safeguard, preserve, and retain the assets, documents, data, accounts, moneys, books, records, information, or property.

15. As provided by MCL 500.8106(4), any failure to cooperate with the Liquidator/Special Deputy Liquidators, any obstruction or interference with the Liquidator/Special Deputy Liquidators in the conduct of this liquidation proceeding, or any violation of an order of the DIFS Director validly entered under Chapter 81 of the Insurance Code, may result in:

(a) A sentence requiring the payment of a fine not exceeding \$10,000.00, or imprisonment for a term of not more than one year, or both; and

(b) After a hearing, the imposition by the Director of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Director, or both.

16. Any person who violates an injunction contained in this Liquidation Order shall be liable to the Liquidator/Special Deputy Liquidators, the Consumers Mutual policyholder/insured, or both, for the reasonable costs and attorney fees

incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

17. Pursuant to MCL 500.8136(4), any judgment or order against Consumers Mutual or a Consumers Mutual insured entered after the date the Liquidation Petition was filed, and any judgment or order against Consumers Mutual or a Consumers Mutual insured entered at any time by default or by collusion, need not be considered as evidence of liability or of quantum of damages. Similarly, any judgment or order against Consumers Mutual or a Consumers Mutual insured entered within four (4) months before the filing of the Liquidation Petition need not be considered as evidence of liability or of the quantum of damages. *Id.*

18. The deadlines and procedures for filing a claim relating to Consumers Mutual, its policyholders, or insureds are dependent on the nature of the claim and are governed as follows:

- (a) All Creditor claims for healthcare goods and services provided to a Consumers Mutual policyholder or insured pursuant to a Consumers Mutual insurance policy, whether made by a contracted or non-contracted healthcare provider or the policyholder/insured, must be submitted to Consumers Mutual for processing in the normal course of business by no later than one (1) year after the date on which the healthcare good or service was provided. Claims for healthcare goods or services submitted after this one-year deadline will be denied. A separate Proof of Claim form should not be filed in the Consumers Mutual liquidation proceeding for any such healthcare claim.

- (b) Any other Creditor claims that do not involve healthcare goods or services provided to a Consumers Mutual policyholder or insured, including but not limited to claims by trade creditors/vendors, insurance agents, and non-healthcare claims by policyholders/insureds, must be filed in the Consumers Mutual liquidation proceeding by completing and mailing a Proof of Claim form postmarked on or before August 10, 2016 (the “Claim Bar Date”), which is six (6) months after the date of this Liquidation Order.¹

Notwithstanding the claim-filing deadlines set forth in this paragraph 18 or the Liquidator’s notice, for any claim to be approved, it must be filed not later than any applicable deadline imposed by contract between the Creditor and Consumers Mutual; the claim-filing deadlines provided in this paragraph or the Liquidator’s notice do not extend any applicable contractual limitation period within which claims must be filed.

19. Unless otherwise provided in paragraph 18 above, all claims by Creditors against the assets of Consumers Mutual must be made by filing a Proof of Claim in this liquidation proceeding. All Creditor claims against Consumers Mutual are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

20. As authorized by MCL 500.8121(1)(a), the Liquidator appoints James Gerber, the DIFS Director of Receiverships, and Julieanne Gulliver as Special Deputy Liquidators of Consumers Mutual. Mr. Gerber and Ms. Gulliver shall serve as Special Deputy Liquidators at the pleasure of the Liquidator, who reserves the

¹ Unless the Liquidator specifies a different Claim Bar Date in the notice provided pursuant to MCL 500.8122(2), which is not anticipated.

right to appoint other Special Deputy Liquidators to replace and/or serve with Mr. Gerber and Ms. Gulliver in the future as the need arises. *Id.* Ms. Gulliver will serve as Special Deputy Liquidator under the direction and supervision of Mr. Gerber, and shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code subject to the supervision and direction of Mr. Gerber, the Liquidator, and this Court. *Id.* As Special Deputy Liquidator, Mr. Gerber shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code, subject to the supervision and direction of the Liquidator and this Court. *Id.*

21. Pursuant to MCL 500.8121(1)(a) and (d), the Liquidator has determined the reasonable compensation to be paid to Mr. Gerber as Special Deputy Liquidator as follows: Mr. Gerber shall continue to be compensated as a salaried employee of DIFS and shall not receive any additional salary in his capacity as Special Deputy Liquidator of Consumers Mutual. However, Mr. Gerber's expenses for travel, lodging, meals, and other expenses incurred in connection with his appointment as Special Deputy Liquidator shall be paid out of the funds or assets of Consumers Mutual pursuant to MCL 500.8121(1)(d). Mr. Gerber will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates. If the Liquidator so elects in the future, he may allocate to Consumers Mutual the pro rata portion of Mr. Gerber's salary, at the rate of \$86.43 an hour, attributable to the performance of his duties as Special Deputy Liquidator, which compensation shall be paid out of the funds or assets of Consumers Mutual pursuant to MCL 500.8121(1)(d). In the event that Consumers

Mutual does not possess sufficient cash or liquid assets to pay Mr. Gerber's expenses, or his salary if the Liquidator makes the allocation election permitted by this paragraph, the Liquidator may advance the necessary funds out of an appropriation for the maintenance of DIFS, which shall be repaid out of the first available money of Consumers Mutual pursuant to MCL 500.8121(1)(d).

22. Pursuant to MCL 500.8121(1)(a) and (d), the Liquidator has determined the reasonable compensation to be paid to Ms. Gulliver as Special Deputy Liquidator as follows: Ms. Gulliver shall continue to be compensated in accordance with the terms of her Retainer Agreement, which was attached as Exhibit A to the Ex Parte Petition for Approval of Julieanne Gulliver's Compensation as Special Deputy Rehabilitator filed with and approved by this Court on December 21, 2015. Specifically, Ms. Gulliver will be paid at the rate of \$50.00 per billed hour up to 40 hours each week. Ms. Gulliver will also be reimbursed for her travel, lodging, meals, and other expenses incurred in connection with her appointment as Special Deputy Liquidator. Ms. Gulliver will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates, except for mileage which will be reimbursed at the IRS standard business mileage rate. Pursuant to MCL 500.8121(1)(d), Ms. Gulliver's compensation will be paid as it becomes due from the available funds and assets of Consumers Mutual. Although it is not expected to occur, in the event that Consumers Mutual does not possess sufficient cash or liquid assets to pay Ms. Gulliver's compensation, the Liquidator may advance (but is not required to

advance) the necessary amounts out of DIFS funds, which shall be repaid out of the first available money of Consumers Mutual pursuant to MCL 500.8121(1)(d).

23. Pursuant to MCL 500.8121(1)(d), the Liquidator and Special Deputy Liquidators are authorized to pay from the funds or assets of Consumers Mutual all expenses associated with taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the company's business and property.

24. The Liquidator and Special Deputy Liquidators shall provide notice of this Liquidation Order in accordance with MCL 500.8122.

25. The Court approves the Early Access Agreement and Service Agreement executed by the Rehabilitator (now Liquidator) and Guaranty Association, which were attached to the Liquidation Petition as Exhibits C and D, respectively.

26. The Court authorizes, approves, and/or ratifies the Liquidator's service of the Liquidation Petition (together with the attached Exhibits), the Notice of Hearing, and this Liquidation Order via regular mail on the following parties only:

- (a) John Colpean, the Guaranty Association's Administrator and General Counsel;
- (b) Jay Williamson and Terrance Mebane, who are the Centers for Medicare and Medicaid Services ("CMS") representative and U.S. Department of Justice ("DOJ") counsel for CMS, respectively, assigned to Consumers Mutual; and (c) Robin Reynolds, the former Chairperson of Consumers Mutual's Board of Directors, which was suspended upon entry of the Rehabilitation Order. Due to the difficulty and prohibitive cost associated with personally serving the Petition, Notice of Hearing,

and this Order on all other parties that may have a general interest in Consumers Mutual's rehabilitation / liquidation, the Court authorizes, approves, and/or ratifies the Liquidator's service of these papers on any other potentially interested parties by posting electronic copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Consumers Mutual Ins. of Michigan." The Court finds that service in this manner is reasonably calculated to give the Guaranty Association, CMS and its DOJ counsel, Ms. Reynolds, and any other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

27. The Court reserves the ability to amend this Liquidation Order and to issue such further orders as it deems just, necessary, and appropriate.

IT IS SO ORDERED.

Honorable James S. Jamo
Circuit Court Judge

E

X

H

I

B

I

T

C

EARLY ACCESS AGREEMENT

Between
Michigan Life & Health
Insurance Guaranty Association
and
Patrick M. McPharlin,
Director of the Michigan Department of
Insurance and Financial Services,
in his Capacity as Receiver of
Consumers Mutual Insurance of Michigan

Table of Contents

	<u>Page</u>
RECITALS	1
AGREEMENTS	1
1. Definitions.....	1
2. Duties of the Receiver.....	3
3. Duties of the Michigan GA.....	3
4. Access to Records and Information	4
5. Premiums	5
6. Review of Records.....	5
7. Notice.....	5
8. Merger and Amendment	6
9. Choice of Law and Disputes.....	6
10. Termination.....	6
11. Waiver.....	6
12. Counterparts.....	7
13. No Third Party Beneficiaries	7
14. Interpretation of Ambiguities.....	7
15. Court Approval	7

EARLY ACCESS AGREEMENT

THIS EARLY ACCESS AGREEMENT is entered into as of February 3, 2016 by and between the Michigan Life and Health Insurance Guaranty Association and Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services, in his capacity as Receiver of Consumers Mutual Insurance of Michigan.

RECITALS

WHEREAS, on November 13, 2015, Ingham County Circuit Court Judge James S. Jamo issued a Rehabilitation Order placing Consumers Mutual into Rehabilitation. Pursuant to the Rehabilitation Order, Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services, was appointed Rehabilitator of Consumers Mutual under Mich. Comp. Laws Ann. §§ 500.8101 to 500.8159 and was bestowed with all power and authority granted to a rehabilitator pursuant to that statute.

WHEREAS, as of the entry of the Rehabilitation Order, Consumers Mutual had in force certain health insurance policies, contracts and certificates.

WHEREAS, the Receiver filed a Petition for Liquidation with the Court with respect to Consumers Mutual on February 3, 2016.

WHEREAS, prior to Rehabilitation, Consumers Mutual was licensed to engage in the business of insurance in Michigan. In the event that the Receiver's Petition for Liquidation is granted and Consumers Mutual is placed under an Order of Liquidation with a finding of insolvency, the Michigan GA will have obligations, subject to statutory conditions and limitations on coverage and applicability, to holders of the Policies.

WHEREAS, the Receiver and the Michigan GA have executed a Service Agreement, subject to the Court's approval, in order to facilitate and expedite claims processing and other administrative functions required for the Michigan GA to begin providing coverage and benefits under Covered Obligations as soon as practical after entry of a Liquidation Order.

WHEREAS, the parties believe that this Agreement and its terms are necessary and appropriate to carry out the provisions of a Liquidation Order and Mich. Comp. Laws Ann. § 500.8142 and to ensure the proper return of early access distributions if necessary to facilitate the orderly and efficient liquidation of the Consumers Mutual estate and recognize the priority to be accorded all creditors of Consumers Mutual under Mich. Comp. Laws Ann. § 500.8142.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and intending to be legally bound, the parties agree as follows:

1. **Definitions.** As used in the Recitals and Agreements, the following terms have the meanings set forth below:

- 1.1. Agreement. Agreement means this Early Access Agreement.
- 1.2. Court. Court means the Ingham County Circuit Court, State of Michigan, with jurisdiction over the Consumers Mutual receivership in the case entitled *Patrick McPharlin, Director of the Department of Insurance and Financial Services, Petitioner v Consumers Mutual Insurance of Michigan, Respondent*, Case Number 15-948-CR, assigned to the Honorable James S. Jamo.
- 1.3. Consumers Mutual. Consumers Mutual means Consumers Mutual Insurance of Michigan, in Receivership.
- 1.4. Covered Obligations. Covered Obligations means the obligations of the Michigan GA, pursuant to its governing law and subject to statutory conditions and limitations on coverage and applicability, which may arise in connection with the Policies as a result of a Liquidation Order.
- 1.5. Effective Date. The Effective Date of this Agreement shall be the date that this Agreement is approved by order of the Court.
- 1.6. Liquidation Order. Liquidation Order means an Order of Liquidation entered by the Court placing Consumers Mutual into liquidation and declaring Consumers Mutual to be insolvent.
- 1.7. Liquidation Order Date. Liquidation Order Date means the date on which a Liquidation Order is entered.
- 1.8. Michigan GA. Michigan GA means the Michigan Life & Health Insurance Guaranty Association that, as a result of a Liquidation Order has, or will have, obligations, subject to statutory conditions and limitations on coverage and applicability, to policyholders, contract holders and/or certificate holders under the Policies.
- 1.9. Policies. Policies means all health insurance policies, contracts and certificates issued by Consumers Mutual for which the Michigan GA has or may have Covered Obligations.
- 1.10. Receiver. Receiver means Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services, in his capacity as rehabilitator of Consumers Mutual (prior to the Liquidation Order Date) and also in his capacity as liquidator of Consumers Mutual (after the Liquidation Order Date), his successors in office and any and all special deputy receivers appointed or hired by the Receiver with respect to Consumers Mutual, legal counsel, actuaries, accountants, consultants and other personnel who are retained by and operate under the control and supervision of the Receiver and all personnel who are employees of Consumers Mutual subsequent to the Liquidation Order Date and who are under the control and supervision of the Receiver.

- 1.11. Rehabilitation Order. Rehabilitation Order means the Rehabilitation Order, described in the Recitals, placing Consumers Mutual into rehabilitation.
- 1.12. Service Agreement. Service Agreement means the Service Agreement between the Receiver and the Michigan GA executed on February 3, 2016.

2. Duties of the Receiver.

- 2.1. The Receiver may make to the Michigan GA, as available, early access distributions of the cash assets of Consumers Mutual attributable to policies or contracts giving rise to Covered Obligations, which cash assets are not reasonably necessary for use by the Receiver for (i) expenses of administration of the estate of Consumers Mutual, (ii) claims of secured creditors, to the extent of the value of the security held, or (iii) as a reserve for claims accorded a higher or equal priority of distribution by Michigan law. The amount of the early access distribution shall be made pursuant to the early access provisions and priority of claims contained in Mich. Comp. Laws Ann. §§ 500.8134 and 500.8142, respectively, and the early access distributions the Michigan GA shall receive that are not returned to the Receiver shall be applied to its pro rata share of the assets reserved for each class in which it has qualifying claims. The early access distribution may not exceed the amount needed to pay each such claim in full for each class of claim. The availability and/or payment of assets hereunder shall be as determined by the Receiver and approved by the Court.
- 2.2. Early access assets shall consist of funds received by the Michigan GA as distributions from the Receiver classified as early access distributions provided such funds are attributable to policies or contracts giving rise to Covered Obligations as defined above.
- 2.3. The reasonable expenses of the Michigan GA will be treated by the Receiver as administrative expenses of the estate (Class 1), subject to Court approval.

3. Duties of the Michigan GA.

- 3.1. The Michigan GA will return to the Receiver, within thirty days of the receipt of a written demand from the Receiver (or within ninety days if an assessment is required), (a) any amounts distributed to the Michigan GA in excess of the amount ultimately determined by the Court to be due the Michigan GA, and (b) any amounts representing the proportional share of the assets distributed to the Michigan GA by the Receiver which may be required to make equivalent distribution to creditors of the same priority class as policyholders (Class 2) in the event that the Michigan GA may have received a policyholder level distribution of assets (including early access distributions) in excess of that available to pay such equivalent distribution to all Consumers Mutual creditors in the same priority class.
- 3.2. In the event that a claim is made against the Receiver by the United States Government pursuant to 31 U.S.C. § 3713 for any liability arising from the

liquidation, the Michigan GA will indemnify and hold harmless the Receiver for all costs, including but not limited to taxes, interest and penalties, incurred in connection with such claim up to the amount of any distributions (including early access distributions) made to the Michigan GA to the extent that assets of the Consumers Mutual estate are unavailable to pay these costs. In consultation with the Michigan GA, the Receiver shall have the authority to settle any such claim under 31 U.S.C. § 3713, and the costs of settlement shall be included in the amount to be indemnified by the Michigan GA up to the amount of any distributions (including early access distributions) made to the Michigan GA to the extent that assets of the Consumers Mutual estate are unavailable to pay these settlement costs. Any payment from the Michigan GA to the Receiver under this Section will be made in accordance with the payment procedures contained in **Section 3.1**.

- 3.3. To the extent that the Michigan GA objects to or desires to be heard regarding a written demand from the Receiver to repay all or any portion of a distribution pursuant to **Section 3.1**, such dispute shall be submitted to and resolved by the Court. The Receiver will not contest the Michigan GA's standing to object or be heard regarding the Receiver's written demand to repay all or any portion of a distribution pursuant to **Section 3.2**, whether before the Court or another tribunal.
- 3.4. The Michigan GA will file a proof of claim, as supplemented from time to time and in a form mutually agreed to by the Receiver and the Michigan GA, for all obligations of the Michigan GA which are paid or otherwise discharged.
- 3.5. In addition to the accounting and reports required herein, the Michigan GA will respond in good faith to reasonable requests for information from the Receiver concerning the receipt and disbursement of all assets transferred under this Agreement.

4. Access to Records and Information.

The Receiver and the Michigan GA mutually agree to provide each other with reasonable access to certain business records and information, as follows:

- 4.1. The Receiver will provide the Michigan GA with reasonable access, during normal business hours, to the books, records and files of Consumers Mutual under the control of the Receiver which are reasonably related to Policies giving rise to Covered Obligations or to this Agreement and will respond affirmatively and in good faith to all reasonable requests from the Michigan GA for information, files and documents pertaining to the adjudication, administration and payment of Covered Obligations or the distribution or use of early access distributions pursuant to this Agreement.
- 4.2. The Michigan GA will provide the Receiver with reasonable access, during normal business hours, to the books, records and files of the Michigan GA which are reasonably related to Policies giving rise to Covered Obligations or to this

Agreement and will respond affirmatively and in good faith to all reasonable requests from the Receiver for information, files and documents pertaining to the adjudication, administration and payment of Covered Obligations or the distribution or use of early access distributions pursuant to this Agreement.

- 4.3. Within one hundred twenty days of the Liquidation Order Date and semi-annually thereafter, the Receiver shall provide to the Michigan GA an unaudited balance sheet and an income statement of Consumers Mutual which shall disclose the Receiver's best estimate of the nature and amount of all remaining assets, the nature and amount of all known liabilities, a classification of these liabilities by priority classification, and the nature and amount of all income and disbursements for the period in question.
5. **Premiums.** Any unpaid premiums due on the Policies for coverage periods prior to the Liquidation Order Date shall be assets of the estate, and if received by the Michigan GA shall be transferred to the Receiver.
6. **Review of Records.** The Receiver shall, prior to and in connection with the final distribution of assets of this liquidation, be authorized to review the financial accounts and records of the Michigan GA with respect to receipt of assets and early access distributions and with respect to the payment or discharge of Covered Obligations.
7. **Notice.**
 - 7.1. Any notice required or permitted to be given hereunder shall be deemed to be given if delivered by hand or if mailed by certified mail, postage prepaid, or by postal or a commercial express document delivery service which issues an individual delivery receipt, to the following address:
 - (a) If to the Michigan GA, to:

John Colpean
Administrator and General Counsel
Michigan Life & Health Insurance Guaranty Association
1640 Haslett Road, Suite 160
Haslett, MI 48840-8683
jcolpean@milifega.org (courtesy copies)
 - and to:

Richard T. Freije, Jr.
Faegre Baker Daniels LLP
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204
dick.freije@FaegreBD.com (courtesy copies)

(b) If to the Receiver, to:

James Gerber
Special Deputy Receiver, Consumers Mutual
P.O. Box 30220
Lansing, MI 48909-7720
gerberj@michigan.gov (courtesy copies)

and to:

Christopher L. Kerr
Assistant Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
Kerrc2@michigan.gov (courtesy copies)

- 7.2. Each Party shall be responsible for notifying the other party promptly of any change of address or addressee, which change shall become effective upon notice given in accordance with the terms of this **Section 7**.
8. **Merger and Amendment.** This Agreement constitutes the entire agreement and merges and supersedes all prior and contemporaneous oral or written representations, promises, agreements, understandings, and negotiations of the parties hereto pertaining to the subject matter of this Agreement. No parol evidence of any prior or contemporaneous agreements, understandings, or negotiations shall govern or be used to construe or modify this Agreement. This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of the Receiver and the Michigan GA.
9. **Choice of Law and Disputes.** This Agreement is made under, and its validity, interpretation, and construction shall be governed in accordance with, the laws of the State of Michigan. The sole forum to resolve any controversy, claim or dispute arising out of or relating to this Agreement, including the breach thereof, shall be the Court.
10. **Termination.** This Agreement may be terminated by the Michigan GA by giving written notice in accordance with **Section 7** to the Receiver and by returning to the Receiver all assets, together with income earned thereon, previously distributed to the Michigan GA by the Receiver under this Agreement.
11. **Waiver.** Any waiver of or failure to require adherence to any provision of this Agreement in any instance or series of instances by any Party hereto shall not constitute a waiver of such provision in any other instance or constitute a modification of this Agreement.

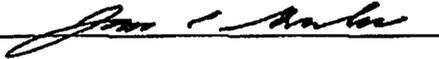
12. **Counterparts.** This Agreement may be executed electronically, which shall be binding on such party as an original signature, and/or in separate counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. **No Third Party Beneficiaries.** This Agreement creates no third party beneficiaries and shall not create any rights or benefits that may be enforced by any persons not party to this Agreement.
14. **Interpretation of Ambiguities.** The parties agree that they and/or their counsel have reviewed this Agreement and have suggested changes to its language and, therefore, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
15. **Court Approval.** The parties agree that this Agreement is subject to Court approval, is not binding upon the parties unless and until it has been approved by the Court, and that barring such approval, this Agreement is null and void. Notwithstanding this condition, the parties are executing this Agreement prior to obtaining the requisite Court approval, agree to cooperate in good faith to secure Court approval, and agree that this Agreement shall become fully effective and binding upon the Court's entry of an order approving same.

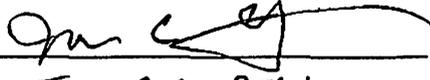
[Signature page follows. Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement on the date noted below.

CONSUMERS MUTUAL INSURANCE OF MICHIGAN, by and through its Receiver

MICHIGAN LIFE & HEALTH INSURANCE GUARANTY ASSOCIATION

By: 
Name: James E Gerder
Title: Deputy Rehabilitator
Date: 2-3-2016

By: 
Name: JOHN C. COLPETAN
Title: GENERAL COUNSEL
Date: 2-3-2016

**E
X
H
I
B
I
T
D**

SERVICE AGREEMENT

Between
Michigan Life & Health Insurance
Guaranty Association
and
Patrick M. McPharlin,
Director of the Michigan Department of
Insurance and Financial Services,
in his Capacity as Receiver of
Consumers Mutual Insurance of Michigan

Table of Contents

	Page
RECITALS	2
AGREEMENTS	3
1. Definitions	3
2. Retention of Receiver as Servicing Agent; Services Provided by the Receiver.	4
3. Payment of Administrative Expenses.....	10
4. Payment of Covered Obligation Benefits.....	10
5. Additional Duties of the Michigan GA.	11
6. Records.....	12
7. Independent Contractor.	12
8. Term and Termination.....	13
9. Miscellaneous.....	14
Exhibit A Claims Review and Reporting.....	18
Exhibit B Administrative Fees.....	22
Exhibit C Business Associate Contract Terms Addendum To Service Agreement	23
Exhibit D Insurance Coverage	30

SERVICE AGREEMENT

THIS SERVICE AGREEMENT is entered into as of February 3, 2016 by and between the Michigan Life and Health Insurance Guaranty Association and Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services, in his capacity as Receiver of Consumers Mutual Insurance of Michigan.

RECITALS

A. On November 13, 2015, Ingham County Circuit Court Judge James S. Jamo issued a Rehabilitation Order placing Consumers Mutual into Rehabilitation. Pursuant to that Order, Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services, was appointed Rehabilitator of Consumers Mutual under Mich. Comp. Laws Ann. §§ 500.8101 to 500.8159 and was bestowed with all power and authority granted to a rehabilitator pursuant to that statute.

B. As of the Rehabilitation Order Date, Consumers Mutual had in force certain health insurance policies, contracts and certificates.

C. The Receiver filed a Petition for Liquidation with the Court with respect to Consumers Mutual on February 3, 2016.

D. Prior to Rehabilitation, Consumers Mutual was licensed to engage in the business of insurance in Michigan. In the event that the Receiver's Petition for Liquidation is granted and Consumers Mutual is placed under an Order of Liquidation with a finding of insolvency, the Michigan GA will have obligations, subject to statutory conditions and limitations on coverage and applicability, to holders of the Policies.

E. The Receiver and the Michigan GA are entering into this Agreement in order to permit the Michigan GA to begin providing coverage and benefits under Covered Obligations as soon as practical after entry of a Liquidation Order.

F. There may be currently in effect certain agreements between Consumers Mutual and provider groups, prescription discount groups, third party administrators, and other third parties under which services are provided to or for the benefit of policyholders, contract holders and certificate holders under Policies for which the Michigan GA may or will have Covered Obligations, and it would be beneficial to those policyholders, contract holders and certificate holders, the estate, the Receiver, the Michigan GA and the third parties to continue those agreements and arrangements to ensure timely handling of the Consumers Mutual insurance benefits that are Covered Obligations.

G. The Receiver is willing and able to provide the services specified in this Agreement to the Michigan GA should the Court enter a Liquidation Order and approve this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and intending to be legally bound, the parties agree as follows:

1. **Definitions.** As used in the Recitals, Agreements and Exhibits, the following terms have the meanings set forth below:
 - 1.1 **Administrative Expenses.** Administrative Expenses mean all of the costs, fees and expenses incurred by the Receiver in the performance of the Services, including as set forth on **Exhibit B**.
 - 1.2 **Agreement.** Agreement means this Service Agreement.
 - 1.3 **Court.** Court means the Ingham County Circuit Court, State of Michigan, with jurisdiction over the Consumers Mutual receivership in the case entitled *Patrick McPharlin, Director of the Department of Insurance and Financial Services, Petitioner v Consumers Mutual Insurance of Michigan, Respondent*, Case Number 15-948-CR, assigned to the Honorable James S. Jamo.
 - 1.4 **Consumers Mutual.** Consumers Mutual means Consumers Mutual Insurance of Michigan, in Receivership.
 - 1.5 **Covered Obligations.** Covered Obligations means the obligations of the Michigan GA, pursuant to its governing law and subject to statutory conditions and limitations on coverage and applicability, which may arise in connection with the Policies as a result of a Liquidation Order.
 - 1.6 **Early Access Agreement.** Early Access Agreement means the Early Access Agreement between the Receiver and the Michigan GA executed on February 3, 2016.
 - 1.7 **Effective Date.** The Effective Date of this Agreement shall be the date that this Agreement is approved by order of the Court.
 - 1.8 **Liquidation Order.** Liquidation Order means an Order of Liquidation that is issued by the Court placing Consumers Mutual into liquidation and declaring Consumers Mutual to be insolvent.
 - 1.9 **Liquidation Order Date.** Liquidation Order Date means the date on which a Liquidation Order is entered.
 - 1.10 **Michigan GA.** Michigan GA means the Michigan Life & Health Insurance Guaranty Association that, as a result of a Liquidation Order has, or will have, obligations, subject to statutory conditions and limitations on coverage and applicability, to policyholders, contract holders and/or certificate holders under the Policies.

- 1.11 Policies. Policies means all health insurance policies, contracts and certificates issued by Consumers Mutual for which the Michigan GA has or may have Covered Obligations.
- 1.12 Receiver. Receiver means Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services, in his capacity as rehabilitator of Consumers Mutual (prior to the Liquidation Order Date) and also in his capacity as liquidator of Consumers Mutual (after the Liquidation Order Date), his successors in office and any and all special deputy receivers appointed or hired by the Receiver with respect to Consumers Mutual, legal counsel, actuaries, accountants, consultants and other personnel who are retained by and operate under the control and supervision of the Receiver and all personnel who are employees of Consumers Mutual subsequent to the Liquidation Order Date and who are under the control and supervision of the Receiver.
- 1.13 Rehabilitation Order. Rehabilitation Order means the Rehabilitation Order, described in Recital A, placing Consumers Mutual into rehabilitation.
- 1.14 Rehabilitation Order Date. Rehabilitation Order Date means November 13, 2015, the date the Rehabilitation Order became effective.
- 1.15 Services. Services means the policy, claim and other services to be provided by the Receiver following the Liquidation Order Date, either directly or through agreements with third parties, with respect to Covered Obligations under this Agreement. Services are detailed in **Section 2** of this Agreement.

2. Retention of Receiver as Servicing Agent; Services Provided by the Receiver.

- 2.1 Retention of Receiver. Upon approval of this Agreement by the Court and the Liquidation Order Date, the Michigan GA retains Receiver as its servicing agent to provide Services to the Michigan GA with respect to the Covered Obligations that the Michigan GA has in connection with the Policies. The Receiver agrees to render the Services, on the terms herein set forth.
- 2.2 Administration. The Receiver, either directly or through agreements with third parties, will administer all Policies and process all claims (as more specifically described throughout the remainder of this **Section 2**) in accordance with this Agreement, the terms of the underlying Policies, the terms of all preferred provider discount contracts, and the provisions of applicable state and federal law, including (but not limited to) applicable insurance receivership law and insurance guaranty association law.
- 2.3 Identification of Information related to Covered Obligations. In cooperation with the Michigan GA, the Receiver will, based upon the information contained in Consumers Mutual's records, identify and list the certificate holders under all group Policies and the policyholders for all individual Policies. The information to be identified includes, where applicable, employer name, employer address, employer number, certificate holder number, name and address, paid through

date, plan codes, effective date, and other relevant Policy data if requested by the Michigan GA. Any determination of Covered Obligations remains within the sole discretion of the Michigan GA subject to its governing statute.

- 2.4 The Michigan GA Funds. The Receiver will comply with the reasonable requests of the Michigan GA relative to the reporting and safekeeping of all monies received for or from the Michigan GA, holding any funds received for or from the Michigan GA in trust, which funds shall not be considered part of the general assets of Consumers Mutual or any third party administrator, and establishing and maintaining segregated accounting of such funds of and for the benefit of the Michigan GA.
- 2.5 Notices. The Receiver will provide notices to policyholders, contract holders, certificate holders, insureds and other claimants, as appropriate and as reasonably directed by the Michigan GA, concerning its coverage and applicable limitations, as more particularly provided in this Agreement. The content of such notices shall be developed and approved by the Michigan GA before any such notice is sent.
- 2.6 Claims Audit. The Receiver will establish and follow policy claim audit, oversight and reporting procedures reasonably requested by the Michigan GA from time to time.
- 2.7 Medical Forms. The Receiver will obtain appropriate medical forms and any necessary legal releases for claimants' medical records (including physicians' statements). These forms will be similar in nature to the forms utilized by Consumers Mutual prior to the Liquidation Order Date.
- 2.8 Claims Review and Reporting. The Receiver will review, evaluate, investigate, and process for payment, for further negotiation, or for denial, claims submitted under the Policies with respect to the Covered Obligations of the Michigan GA. As part of this process, the Receiver shall deliver to the Michigan GA statements of the processed claims, including the identification of amounts due for benefits. The reporting shall be delivered bi-weekly and shall be in accordance with, and substantially similar to, **Exhibit A**. It shall reflect the amount of estate assets (if any) that will be used to fund payment of claims and Administrative Expenses under the Early Access Agreement. The Receiver shall also provide an Explanation of Benefits ("EOB") form as detailed below.
- 2.9 Coordination of Benefits and Subrogation. The Receiver will review coordination of benefits and subrogation provisions, if any, and investigate the applicability of such provisions to claims under the Policies. The Receiver shall further: (1) identify all claims eligible for subrogation with respect to Covered Obligations and undertake commercially reasonable efforts to pursue subrogation recoveries (including but not limited to the issuance of demand letters); and (2) coordinate benefits payable under the Policies with other benefit plans or coverage, if any, according to the coordination of benefits provisions in the Policies.

- 2.10 Certificates of Creditable Coverage. The Receiver shall prepare and distribute Certificates of Creditable Coverage to policyholders upon cancellation or as otherwise required by law.
- 2.11 Third Party Administrators and Preferred Provider Organizations. The Receiver will facilitate the administration of any agreements with third party administrators and preferred provider organizations and other third party providers or vendors of products or services (including prescription drug card plans) that provide benefits or Services in connection with the Policies, and negotiate any necessary changes to these agreements, applicable to the Covered Obligations, under the reasonable direction of the Michigan GA. The Receiver will coordinate and will be the primary point of contact with any such third parties relative to the processing and administration of the benefits and Services provided by any such third party administrators, networks, organizations or other third party arrangements, and shall report information to, and receive information on behalf of, the Michigan GA in connection therewith. The Receiver will monitor all such third party administrators, preferred provider organizations and other such providers or vendors and shall notify the Michigan GA if the Receiver becomes concerned about the performance of any such providers.
- 2.12 Explanation of Benefits. The Receiver shall prepare all EOBs for Policies using a standard format that should conform to the EOB form utilized by Consumers Mutual prior to the Liquidation Order Date and would generally include the following information:

Statement that the EOB is prepared on behalf of the Michigan GA;

Claim Number;

EOB Date;

Name and Address of Claimant;

Name and Address of Insured;

Provider's ID Number (Insured's Policy Number);

Patient Name and Account Number;

Name, Address and Tax Identification Number of Payee;

Dates of Service;

Total Charges;

Ineligible Amount with Explanation;

Provider Discount;

Copay Amount;

Coinsurance Amount and Percentage; and

Amount of Check (Total Benefit Amount).

- 2.13 Payments Approaching Statutory Limits. To assure that no insured receives benefits in excess of the maximum amount available under the Michigan GA's statute, the Receiver shall advise the Michigan GA at the same time EOBs are forwarded to the Michigan GA of any insured whose total claims for payments equal or exceed seventy-five percent (75%) of the \$500,000 statutory limit on benefits as set forth in Mich. Comp. Laws Ann. § 500.7704(6)(b)(v). The Receiver and the Michigan GA shall coordinate with respect to providing appropriate notice(s) to the insured of the statutory limit on benefits.
- 2.14 Rejection of Benefits. The Receiver shall print all non-payment EOBs and distribute them to the involved provider and/or insured.
- 2.15 IRS Form 1099. The Receiver will calculate, prepare and mail Internal Revenue Service form 1099s to all appropriate claimants and to the Internal Revenue Service, as required under applicable Internal Revenue Service statutes and regulations, on or before the last day of January of the calendar year following the year in which benefits under this Agreement are paid, using Consumers Mutual's tax-payer identification number. Any fees and penalties levied by the IRS for incorrect 1099 reporting will be the responsibility of the Receiver. In addition, before making any payments to policy owners, beneficiaries, payees, medical providers etc., the Receiver shall secure a completed IRS Form W-9 "Request for Taxpayer Identification Number and Certification". A completed W-9 is a condition for a payee to receive payment.
- 2.16 IRS Health Coverage Information Returns. The Receiver will prepare and mail Internal Revenue Service Health Coverage Information Forms, including but not limited to IRS Forms 1094-B and 1095-B, to all appropriate persons and to the Internal Revenue Service, as required under applicable Internal Revenue Service statutes and regulations, on or before the deadline established by such Internal Revenue Service statutes, regulations and relevant guidance. Any fees and penalties levied by the IRS for incorrect reporting will be the responsibility of the Receiver.
- 2.17 Complaint Log. The Receiver will coordinate the handling of and response to any policy related complaints with the Michigan GA and will maintain a complaint log in a form approved by the Michigan GA that includes name of claimant, name of insured, date and nature of complaint, action taken and date of resolution. A copy of the log shall be submitted to the Michigan GA on a monthly basis.

- 2.18 Privacy and Security Procedures. In providing the Services, the Receiver will perform all obligations of a Business Associate under the Business Associate Contract Terms Addendum to this Agreement (“Business Associate Contract”), set forth in Exhibit C. In accordance with the Business Associate Contract, the Receiver shall maintain and safeguard the confidentiality of all personal data and information regarding the owners, insureds, beneficiaries and assignees of the Policies subject to this Agreement, and all other confidential information obtained by the Receiver in the course of providing Services under this Agreement, consistent with all applicable state and federal laws and regulations and shall comply with standards at least as rigorous and protective as the standards established by (1) the implementing regulations at 45 C.F.R. Parts 160, 162, and 164 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (i.e., the HIPAA Privacy Rule, the HIPAA Security Standards, and the HIPAA Standard for Electronic Transactions) (collectively referred to as the “HIPAA Regulations”), and (2) the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) that are applicable to Business Associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services. The Receiver agrees to maintain compliance with all such privacy laws or regulations that are now or may hereafter become effective in those states in which the owners, insureds, beneficiaries and assignees of the Policies reside.
- 2.19 Files. The Receiver will (1) review policy and claim files for adequacy and completeness and, where necessary, obtain additional information, and (2) maintain policy files, claims information, and any other information obtained, assembled, produced or maintained pursuant to the provisions of this Agreement in a reasonable manner and form.
- 2.20 Policy Information. The Receiver will make available to the Michigan GA all information in the Receiver’s possession, including the books, records and files of Consumers Mutual, related in any way to Policies giving rise to Covered Obligations. If the Michigan GA requests possession of the originals of such information, it is agreed and acknowledged that the Receiver may retain copies thereof. The Receiver will respond promptly and in good faith to all reasonable requests from the Michigan GA for information, files and documents pertaining to Covered Obligations. Such information to be provided by the Receiver includes but is not limited to Policies, policy files, medical forms, personal health information, any form of electronic data and any other information related to the consideration and provision of benefits under Policies giving rise to Covered Obligations.
- 2.21 Reinsurance. If applicable, the Receiver shall prepare appropriate reinsurance reports in connection with the Policies on a similar basis as were prepared by Consumers Mutual prior to the Liquidation Order Date.

- 2.22 Returned Funds. The Receiver will establish procedures to assure that returned funds (for example undeliverable or uncashed checks) received by the Receiver are properly credited and/or returned to the Michigan GA for disposition consistent with the requirements of the Michigan Uniform Unclaimed Property Act, Mich. Comp. Laws Ann. §§ 567.221 to 567.265, or other applicable state or federal law.
- 2.23 Staff and Resources. In coordination and cooperation with the Michigan GA, the Receiver will provide sufficient staff, systems and resources to provide the administrative, accounting, bookkeeping, data processing and clerical services necessary to fulfill the terms of this Agreement.
- 2.24 Reports Regarding Claims Not Paid. The Receiver will provide to the Michigan GA reports for claims not yet paid (claims backlog) and such other reports as may reasonably be requested by the Michigan GA.
- 2.25 Audit. If requested by the Michigan GA, the Receiver will arrange for an internal control review by its outside auditor that complies with industry standards and will make such review or other relevant information available to the Michigan GA upon request.
- 2.26 Insurance. The Receiver has obtained (or will obtain) and shall maintain insurance coverage as set forth in the insurance coverage exhibit attached hereto as **Exhibit D**.
- 2.27 Compliance with Federal Laws and Regulations. The Receiver agrees to comply with all applicable federal laws and regulations as they may relate to the Services provided under the terms and conditions of this Agreement.
- 2.28 Medicare Secondary Payer Reporting. Receiver warrants and represents that it will at all times during the term of this Agreement implement all procedures necessary to maintain compliance with the Medicare, Medicaid and SCHIP Extension Act of 2007, including, to the extent applicable, the mandatory registration and reporting requirements under the Medicare Secondary Payer rules for Group Health Plans pursuant to 42 U.S.C. § 1395y(b)(7), and all federal rules and regulations that are now or may hereinafter become applicable in accordance therewith.
- 2.29 Affordable Care Act. The Receiver shall, at all times during the term of this Agreement, assist the Michigan GA with any rights or obligations Consumers Mutual or the Michigan GA may have under the Affordable Care Act and related regulations to the extent applicable.
- 2.30 Customer Service. The Receiver will respond to consumer inquiries and provide customer service in a reasonably appropriate manner under the circumstances and, in so doing, will coordinate with the Michigan GA upon request.

2.31 Other Services. The Receiver shall perform any other Services relating to this Agreement as may be agreed upon in a written Addendum to this Agreement executed by the Receiver and the Michigan GA.

3. Payment of Administrative Expenses.

3.1 **Exhibit B** sets forth generally the Administrative Expenses the Receiver and the Michigan GA anticipate being incurred by the Receiver in connection with performance of the Services.

3.2 The Receiver and the Michigan GA agree to treat all Administrative Expenses attributable to the Michigan GA as a claim against the Consumers Mutual estate entitled to Class 1 priority under Mich. Comp. Laws Ann. § 500.8142(1)(a).

3.3 The Administrative Expenses attributable to the Michigan GA will be paid on a periodic basis using assets of Consumers Mutual to the extent such assets are available pursuant to the terms of the Early Access Agreement. If assets of Consumers Mutual are not available to pay such Administrative Expenses, the Michigan GA will fund the payment of such Administrative Expenses within thirty (30) days of receipt of an invoice sent by Receiver for such Administrative Expenses to the Michigan GA. The availability and/or payment of assets hereunder shall be as determined by the Receiver and approved by the Court.

4. Payment of Covered Obligation Benefits.

4.1 The Receiver and the Michigan GA agree to treat all benefit payments for Covered Obligations under this Agreement as a claim against the Consumers Mutual estate entitled to Class 2 priority under Mich. Comp. Laws Ann. § 500.8142(1)(b).

4.2 All benefit payments for Covered Obligations will be paid as set forth in this **Section 4.2**. On a periodic basis, but no less frequently than bi-weekly, the Receiver, either directly or through agreements with third parties, will send the reports referenced in **Section 2.8 (Exhibit A)** and the EOB forms) to the Michigan GA. Within seven days, the Michigan GA will report back on the approval/disapproval of the claims information and, to the extent not caused by the Receiver to be paid directly on behalf of the Michigan GA as early access distributions within seven days of such approval by the Michigan GA, deliver funding to the Receiver to permit the Receiver to cause the approved claims to be paid in accordance with the last sentence of this **Section 4.2**. Within seven days of receipt of approval (and, as applicable, funding) from the Michigan GA, the Receiver will cause the appropriate payments to be issued on behalf of the Michigan GA.

The Receiver will deposit such funds in a separate bank account designated to be used solely for paying approved claims related to the Covered Obligations. The Receiver and the Michigan GA further agree that (1) the account is not an asset of the estate and funds in the account will be maintained for the benefit of the

Michigan GA, (2) the Receiver will make payments from the claims paying account solely for the purpose of paying approved claims related to Covered Obligations, and (3) the Michigan GA shall have complete access to the accounts. The Receiver is not obligated to pay any claim until it has received the necessary funding from the Michigan GA.

- 4.3 In addition to the account referenced in **Section 4.2** above, the Michigan GA may establish one or more pre-funded accounts to ensure that certain benefits, such as any prescription drug cards, are available. The Receiver agrees to cooperate with respect to the establishment and maintenance of such pre-funded accounts.
- 4.4 In the event that claims for benefits under Covered Obligations are subject to dispute, including litigation, the Michigan GA reserves all rights and authority to address and resolve such disputed claims in its sole discretion. Notwithstanding **Section 4.2** above, the Michigan GA may pay directly any claims under Covered Obligations, particularly those subject to dispute or litigation. This **Section 4.4** does not apply to claims for benefits that are or may become claims against the Consumers Mutual estate, either in whole or in part, based on the Michigan GA's statutory conditions and limitations on coverage and applicability, which claims the Receiver and the Michigan GA will mutually address and resolve.
- 4.5 The Receiver shall document for each claim all claim activity including, but not limited to, telephone conversations and correspondence.
- 4.6 To the extent assets are available, the Receiver will make early access payments under the Early Access Agreement to the Michigan GA associated with approved claims for benefits for which the Michigan GA has Covered Obligations. The availability and/or payment of assets hereunder shall be as determined by the Receiver and approved by the Court.

5. Additional Duties of the Michigan GA.

- 5.1 Guaranty Laws. The Michigan GA shall provide to the Receiver such information as may be necessary for the Receiver to comply with the requirements of the laws governing the Michigan GA, including, without limitation, the conditions and limits on coverage, and any requirements of notice to policy, contract or certificate holders or insureds. The Receiver shall make available the information provided by the Michigan GA to all persons who need such information to provide the Services contemplated by this Agreement, including any third party that may be used to provide administrative services under this Agreement, and shall assist the Michigan GA in ensuring that all such persons comply with those requirements. Neither the Receiver nor any third party providing services hereunder shall have any authority to interpret the laws governing the Michigan GA.

6. **Records.**

- 6.1 **Maintenance of Records.** The Receiver shall maintain records of its activities sufficient to inform the Michigan GA of the Services performed by the Receiver under this Agreement, as well as any costs, fees or expenses incurred in accordance with the terms of this Agreement, including but not limited to any out-of-pocket expenses that may be authorized pursuant to this Agreement.
- 6.2 **Disposition of Records.** All records and information concerning the Covered Obligations as obtained, assembled and maintained by the Receiver under this Agreement shall be the property of the Michigan GA and shall be kept current by the Receiver. The Receiver shall maintain all such records and information in accordance with the document retention procedures mutually agreed upon by the parties and in accordance with applicable state and federal laws. Upon notice of termination of this Agreement, in accordance with the provisions of **Section 8**, all such records and information shall be made available to the Michigan GA consistent with instructions to be provided by the Michigan GA, although it is acknowledged and agreed that the Receiver may retain copies thereof.
- 6.3 **Disaster Recovery Plans.** The Receiver shall prepare and maintain throughout the term of this Agreement disaster recovery, business resumption, and contingency plans appropriate for the nature and scope of the Services provided hereunder and sufficient to back up and recover any necessary data, files, and records, and to enable the Receiver to resume promptly the provision of Services for the benefit of the Michigan GA upon the occurrence of any event which may materially delay or prevent the rendering of Services, such as a natural disaster, act of God, labor dispute, utility or telecommunications failures, or similar event. The Receiver shall provide the Michigan GA with copies of any such disaster recovery, business resumption, and contingency plans upon request. The Receiver agrees to periodically test such disaster recovery, business resumption, and contingency plans upon request by the Michigan GA, and shall provide promptly copies of the results of any such tests to the Michigan GA.
- 6.4 **Inspection and Audit.** The Michigan GA or its designated agents may inspect, copy and audit all records and any other information obtained, assembled, maintained or produced by or for the Receiver, pertaining to the performance of any of the Services under this Agreement (including any claims or financial audits or reviews) and the expenses incurred in the performance of the Services, at the locations of such records during normal business hours and upon reasonable notice.

7. **Independent Contractor.**

- 7.1 The parties hereto agree that, in performing Services hereunder, the Receiver shall be an independent contractor and not an employee of the Michigan GA. This Agreement shall not be construed as creating a partnership or joint venture, and

no party hereto shall be liable for any obligations incurred by any other party except as expressly provided herein.

- 7.2 The Receiver agrees to make any payments or withholding required for federal income tax, social security, federal and state self-employment taxes, state unemployment tax and any related statutes or regulations with respect to the Services performed pursuant to this Agreement.
- 7.3 The Receiver is not authorized to and shall not accept service of process on behalf of the Michigan GA. The Michigan GA is not authorized to and shall not accept service of process on behalf of the Receiver.

8. Term and Termination.

- 8.1 The term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of the following dates:
 - 8.1.1 Ninety days after written notice is given in accordance with **Section 9.4** by the Michigan GA declaring that this Agreement is to be terminated in its entirety.
 - 8.1.2 One Hundred and Eighty days after written notice is given in accordance with **Section 9.4** by the Receiver declaring that this Agreement is to be terminated in its entirety.
 - 8.1.3 Thirty days after written notice is given in accordance with **Section 9.4** either by the Receiver or the Michigan GA declaring that this Agreement is to be terminated in its entirety for failure of another party to comply with the terms of this Agreement, and the other party having failed to cure the failure within that 30-day period.
 - 8.1.4 Upon satisfactory completion, as reasonably determined by the Michigan GA, of the Services provided by the Receiver under the terms of this Agreement.
- 8.2 Upon termination of this Agreement and in accordance with the provisions of **Section 6.2**, the Receiver shall:
 - 8.2.1 Make available to the Michigan GA all records and information related to the Covered Obligations in the Receiver's custody or control, although it is acknowledged and agreed that the Receiver may retain copies thereof.
 - 8.2.2 Cooperate with the Michigan GA and any successor administrator in the orderly transition of the administrative functions and policy and claim records (including computer files), although it is acknowledged and agreed that the Receiver may retain copies thereof.

- 8.3 Upon termination of this Agreement, the Michigan GA shall cooperate with the Receiver and make available records in its custody and control related to the Policies.
- 8.4 Subject to the specific terms and conditions contained in the Business Associate Contract attached hereto as Exhibit C, the provisions in **Section 2.18** of this Agreement providing for the protection of privacy and security of certain information shall not terminate and such obligations remain in full force and effect notwithstanding termination.

9. Miscellaneous.

- 9.1 Assignment and Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns. The Receiver may not assign his obligations to provide Services hereunder without express written consent from the Michigan GA.
- 9.2 Controversy, Claim or Dispute. The sole forum to resolve any controversy, claim or dispute arising out of or relating to this Agreement, including the breach thereof, shall be the Court.
- 9.3 Choice of Law. This Agreement is made under, and its validity, interpretation, and construction shall be governed in accordance with, the laws of the State of Michigan.
- 9.4 Notice. Any notice required or permitted to be given hereunder shall be deemed to be given if delivered by hand or if mailed by certified mail, postage prepaid, or by postal or a commercial express document delivery service which issues an individual delivery receipt, to the following address:

If to the Michigan GA, to:

John Colpean
Administrator and General Counsel
Michigan Life & Health Insurance Guaranty Association
1640 Haslett Road, Suite 160
Haslett, MI 48840-8683
jcolpean@milifega.org (courtesy copies)

and to:

Richard T. Freije, Jr.
Faegre Baker Daniels LLP
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204
dick.freije@FaegreBD.com (courtesy copies)

If to the Receiver, to:

James Gerber
Special Deputy Receiver, Consumers Mutual
P.O. Box 30220
Lansing, MI 48909-7720
gerberj@michigan.gov (courtesy copies)

and to:

Christopher L. Kerr
Assistant Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
Kerrc2@michigan.gov (courtesy copies)

Each party shall be responsible for notifying the other party hereto promptly of any change in addressee or address, which change shall become effective upon notice given in accordance with the terms of this **Section 9.4**.

- 9.5 Mutual Duty of Cooperation / No Third Party Beneficiaries. The Receiver and the Michigan GA will cooperate with each other in all matters necessary to ensure that Consumers Mutual's policyholders receive the protections required under the Michigan GA's guaranty association laws. Nothing in this Section or in this Agreement is intended, nor shall be construed, to create a right to enforce this Agreement by or on behalf of any person who is not a party to this Agreement.
- 9.6 Merger and Amendment / Waiver. This Agreement, including all Exhibits hereto, constitutes the entire agreement and merges and supersedes all prior and contemporaneous oral or written representations, promises, agreements, understandings, and negotiations of the parties hereto pertaining to the subject matter of this Agreement. No parol evidence of any prior or contemporaneous agreements, understandings, or negotiations shall govern or be used to construe or modify this Agreement. This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of the Receiver and the Michigan GA. Any waiver of or failure to require adherence to any provision of this Agreement in any instance or series of instances by any party hereto shall not constitute a waiver of such provision in any other instance or constitute a modification of this Agreement.
- 9.7 Counterparts. This Agreement may be executed electronically, which shall be binding on such party as an original signature, and/or in separate counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

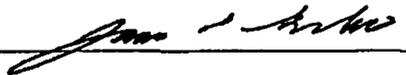
- 9.8 Interpretation of Ambiguities. The parties agree that they and/or their counsel have reviewed this Agreement and have suggested changes to its language and, therefore, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- 9.9 Exhibits. The Exhibits referenced in and attached to this Agreement are incorporated herein by reference as if set forth at length in the text of this Agreement.
- 9.10 Court Approval. The parties agree that this Agreement is subject to Court approval, is not binding upon the parties unless and until it has been approved by the Court, and that barring such approval, this Agreement is null and void. Notwithstanding this condition, the parties are executing this Agreement prior to obtaining the requisite Court approval, agree to cooperate in good faith to secure Court approval, and agree that this Agreement shall become fully effective and binding upon the Court's entry of an order approving same.

[Signature page follows. Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement on the date noted below.

CONSUMERS MUTUAL INSURANCE OF MICHIGAN, by and through its Receiver

MICHIGAN LIFE & HEALTH INSURANCE GUARANTY ASSOCIATION

By: 

By: 

Name: JAMES E. GERBER

Name: JOHN C. COLBRAN

Title: Deputy Rehabilitator

Title: GENERAL COUNSEL

Date: 2-3-2016

Date: 2-3-16

EXHIBIT A

CLAIMS REVIEW AND REPORTING

The Receiver's statement of processed claims under the Policies, including the identification of amounts due for benefits, shall be reported as follows:

For the health claims there shall be a "Batch Summary Report" that identifies the batch number, the processing period and the distribution date and that contains the following columns:

Number of Payment EOBs
Number of Zero Pay EOBs
Amount Due from the Michigan GA for benefits

There shall be a "Batch Detail Report" that identifies the batch number, the claim number, the EOB Date, the Claimant Relationship (Policyholder (P), Insured (I), or Dependent (D)), the Claimant Name and Address, the Patient First Name, MI, Last Name and Address, the Primary Insured SSN and Policy Number, the Dates of Service, the Total Charges and the Check Amount.

Examples of the "Batch Summary Reports" and of the "Batch Detail Report" are set forth below.

CONSUMERS MUTUAL INSURANCE OF MICHIGAN, IN LIQUIDATION
SERVICE AGREEMENT
HEALTH BATCH SUMMARY REPORT
Example

Batch Number _____
 Processing Period _____
 Distribution Date _____

State	Number of Payment EOBs	Number of Zero Pay EOBs	Amount Due from GA for benefits (Current Batch)
Totals			

CONSUMERS MUTUAL INSURANCE OF MICHIGAN, IN LIQUIDATION
SERVICE AGREEMENT
BATCH DETAIL REPORT (Payment EOBs)

Batch No.	Claim Number	EOB Date	Claimant Relationship (P, I, or D)	Claimant Name And Address	Pt First Name	MI	Patient Last Name	Patient Address	Primary Insured SSN	Primary Insured Policy No.	Date(s) of Service	Total Charges	Check Amt
-----------	--------------	----------	------------------------------------	---------------------------	---------------	----	-------------------	-----------------	---------------------	----------------------------	--------------------	---------------	-----------

CONSUMERS MUTUAL INSURANCE OF MICHIGAN, IN LIQUIDATION
SERVICE AGREEMENT
BATCH DETAIL REPORT (Zero Payment EOBs)

Batch No.	Claim Number	EOB Date	Claimant Relationship (P, I, or D)	Claimant Name And Address	Pt First Name	MI	Patient Last Name	Patient Address	Primary Insured SSN	Primary Insured Policy No.	Date(s) of Service	Total Charges	Denial Code
-----------	--------------	----------	------------------------------------	---------------------------	---------------	----	-------------------	-----------------	---------------------	----------------------------	--------------------	---------------	-------------

EXHIBIT B
ADMINISTRATIVE FEES

1. The Receiver and Michigan GA agree that the Administrative Expenses to be allocated to the Michigan GA pursuant to **Section 3** of this Agreement shall be determined in two parts:

a. A pro rata portion of the Key Benefit Administrators (“KBA”) fees paid by the Receiver to KBA under the Consumers Mutual agreement with KBA, as amended, for post-liquidation services rendered by KBA related to Michigan GA Covered Obligations and claim adjudication and payments related thereto plus reasonable out of pocket expenses in connection with those services.

b. A pro rata portion of the Receiver’s administrative expenses for post-liquidation services of Consumers Mutual employees related to Michigan GA Covered Obligations and claim adjudication and payments related thereto plus reasonable out of pocket expenses in connection with those services.

c. The pro rata portions referenced above shall be determined from time to time by mutual agreement between the Receiver and the Michigan GA.

2. The above referenced Administrative Expenses shall be paid in accordance with **Section 3.3** of this Agreement.

EXHIBIT C
BUSINESS ASSOCIATE CONTRACT TERMS
ADDENDUM TO SERVICE AGREEMENT

This Addendum to Service Agreement (“Addendum”) is made part of the Service Agreement (“Agreement”) by and between the Receiver (“Business Associate”) and the Michigan GA.

A. Privacy and Security of Protected Health Information.

1. Permitted Uses and Disclosures. Business Associate is permitted or required to use or disclose Protected Health Information it creates or receives for or from the Michigan GA only as follows:

(a) Functions and Activities on GA’s Behalf. Business Associate is permitted to use and disclose Protected Health Information it creates or receives for or from the Michigan GA solely for carrying out its obligations under the Agreement.

(b) Business Associate’s Operations. Business Associate may use Protected Health Information it creates or receives for or from the Michigan GA as necessary for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities. Business Associate may disclose the Protected Health Information as necessary for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities only if:

(i) The disclosure is required by law; or

(ii) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate will disclose the Protected Health Information that the person or organization will:

a. Hold the Protected Health Information in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and

b. Notify Business Associate (who will in turn promptly notify the Michigan GA) of any instance of which the person or organization becomes aware in which the confidentiality of such Protected Health Information was breached.

2. **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose Protected Health Information it creates or receives for or from the Michigan GA or from another business associate of the Michigan GA, except as permitted or required by this Addendum or the Health Privacy Procedures, as required by law, or as otherwise permitted in writing by the Michigan GA.

3. **Information Safeguards.**
 - (a) **Administrative, Technical, and Physical Safeguards.** Business Associate will develop, implement, maintain and use appropriate administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of, and that prevent non-permitted or violating use or disclosure of, Protected Health Information that it creates, receives, or transmits on behalf of the Michigan GA. Business Associate will document and keep these safeguards current.

 - (b) **Technology to Secure Protected Health Information.** With respect to all electronic Protected Health Information that Business Associate transmits electronically or stores on portable electronic devices, Business Associate will secure the Protected Health Information by a technology standard that renders the Protected Health Information unusable, unreadable or indecipherable to unauthorized individuals.

 - (c) **Application of Security Standards.** Business Associate will maintain the security of all Protected Health Information in compliance with the Security Standards.

4. **Sub-Contractors and Agents.** Business Associate will require any of its subcontractors and agents, to which Business Associate is permitted by this Addendum or in writing by the Michigan GA to disclose any of the Protected Health Information Business Associate creates or receives for or from the Michigan GA, to provide reasonable assurance, evidenced by written contract, that subcontractor or agent will comply with the same privacy and security obligations as Business Associate with respect to the Protected Health Information.

5. **Minimum Necessary.** Business Associate will, in its performance of the functions, activities, services, and operations specified in Section 1(a) above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum necessary limitation with respect to:

- (a) Disclosure to or request by a health care provider for treatment;
- (b) Use with or disclosure to an individual who is the subject of the Protected Health Information, or that individual's personal representative;
- (c) Use or disclosure made pursuant to a written authorization that is signed by an individual who is the subject of the Protected Health Information to be used or disclosed, or by that individual's personal representative; or
- (d) Use or disclosure that is required by law.

B. Compliance with Standard Transactions. If Business Associate conducts in whole or part Standard Transactions for or on behalf of the Michigan GA, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 Code of Federal Regulations Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of the Michigan GA that:

- 1. Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;
- 2. Adds any data elements or segments to the maximum defined data set;
- 3. Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or
- 4. Changes the meaning or intent of the Standard Transaction's implementation specification.

C. Protected Health Information Access, Amendment and Disclosure Accounting.

- 1. **Access.** Upon the Michigan GA's request, Business Associate will promptly make available to the Michigan GA or, at the Michigan GA's direction, to the individual (or the individual's personal representative) for inspection and obtaining copies any Protected Health Information about the individual (in a format, electronic or otherwise, designated by the Michigan GA) that Business Associate created or received for or from the Michigan GA and that is in Business Associate's custody or control.
- 2. **Amendment.** Business Associate will, upon receipt of notice from the Michigan GA, promptly amend or permit the Michigan GA access to amend any portion of the Protected Health Information which Business Associate created or received for or from the Michigan GA.

3. **Disclosure Accounting.** So that the Michigan GA may meet its disclosure accounting obligations:
- (a) **Disclosure Tracking.** Business Associate will record for each disclosure, not excepted from disclosure accounting under Addendum Section C.3(b) below, that Business Associate makes to the Michigan GA or a third party of Protected Health Information that Business Associate creates or receives for or from the Michigan GA (i) the disclosure date, (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure (items i-iv, collectively, the “disclosure information”). For repetitive disclosures Business Associate makes to the same person or entity (including the Michigan GA) for a single purpose, Business Associate may provide (x) the disclosure information for the first of these repetitive disclosures, (y) the frequency, periodicity or number of these repetitive disclosures, and (z) the date of the last of these repetitive disclosures. Business Associate will make this disclosure information available to the Michigan GA promptly upon the Michigan GA’s request or, as directed by the Michigan GA, to the individual (or the individual’s personal representative).
 - (b) **Exceptions from Disclosure Tracking.** Business Associate need not record disclosure information or otherwise account for disclosures of Protected Health Information that this Addendum or the Michigan GA in writing permits or requires made (i) for the purpose of GA’s treatment activities, payment activities or health care operations, except to the extent that Business Associate maintains the Protected Health Information in electronic form and has disclosed that Protected Health Information within the prior three years, (ii) to the individual who is the subject of the Protected Health Information disclosed or to that individual’s personal representative, or (iii) pursuant to a written authorization from the affected individual.
 - (c) **Disclosure Tracking Time Periods.** Business Associate must have available for the Michigan GA the disclosure information required by Addendum Section C.3(a) for the 6 years preceding the Michigan GA’s request for the disclosure information or any longer time period prescribed by applicable law.
4. **Restriction Agreements and Confidential Communications.** Business Associate will comply with any agreements that the Michigan GA makes that either (i) restrict use or disclosure of Protected Health Information, or (ii) require confidential communication about Protected Health Information, provided that the Michigan GA notifies Business Associate in writing of the restrictions or confidential communication obligations that Business Associate must follow and

furnishes Business Associate copies of the agreements. The Michigan GA will promptly notify Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of the Michigan GA's Protected Health Information will remain subject to the terms of the restriction agreement.

5. **Inspection of Books and Records.** Business Associate will make its internal practices, books and records, relating to its use and disclosure of the Protected Health Information it creates or receives for or from the Michigan GA, available to the Michigan GA.

D. Breach of Privacy or Security Obligations.

1. **Reporting.** Business Associate will report to the Michigan GA in writing any acquisition, access, use or disclosure of Protected Health Information not permitted by this Addendum or in writing by the Michigan GA ("Security Breach") or any Security Incident of which Business Associate becomes aware. Business Associate will make the report to the Michigan GA without unreasonable delay, but in no event later than 10 calendar days, after Business Associate knows or should have reasonably known of such Security Breach or Security Incident. Business Associate will cooperate promptly with the Michigan GA as is reasonably required for the Michigan GA to comply with applicable breach reporting and notification laws ("Breach Notification Laws"). In the event of a Security Breach arising out of Business Associate's failure to comply with any provision of this Addendum or applicable law, Business Associate will reimburse the Michigan GA for all resulting costs it incurs to comply with Breach Notification Laws and, at the Michigan GA's election and under its direction, will perform the Michigan GA's resulting notification obligations at Business Associate's own expense. Business Associate's report will at least:
 - (a) Identify the nature of the Security Breach or Security Incident;
 - (b) Identify the individuals (by full name and address) whose Protected Health Information was, or is reasonably believed by Business Associate to have been, subject to a Security Breach and the total number of those individuals;
 - (c) Identify the Protected Health Information subject to the Security Breach or Security Incident;
 - (d) Identify who committed the Security Breach or Security Incident and who acquired, accessed, used or received the Protected Health Information;
 - (e) Identify what corrective action Business Associate took or will take to prevent further Security Breaches or Security Incidents;

- (f) Identify what Business Associate did or will do to mitigate any deleterious effect of any Security Breach or Security Incidents; and
- (g) Provide such other information as the Michigan GA may reasonably request.

2. **Termination of Agreement.**

- (a) **Right to Terminate for Breach of Addendum.** The Michigan GA may terminate the Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Addendum. The Michigan GA may exercise this right to terminate the Agreement by providing Business Associate written notice of termination, stating the breach of the Addendum that provides the basis for the termination. Any such termination will be effective immediately or at such other date specified in the notice of termination.
- (b) **Obligations upon Termination.**
 - (i) **Return or Destruction.** Upon termination, cancellation, expiration or other conclusion of the Agreement, Business Associate will, as directed by the Michigan GA and subject to all terms of the Agreement permitting the Receiver's retention of copies, return to the Michigan GA, as applicable, or destroy all Protected Health Information, in whatever form or medium (including in any electronic medium under Business Associate's custody or control), that Business Associate created or received for or from the Michigan GA, including all copies of and any data or compilations derived from and allowing identification of any individual who is a subject of the Protected Health Information. Business Associate will complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. If the Agreement authorizes Business Associate to retain certain Protected Health Information because the Business Associate has a need for continued use or disclosure of that Protected Health Information, the Business Associate will identify that Protected Health Information and will limit its further use or disclosure to those necessary uses or disclosures. Within 30 days, Business Associate will certify on oath in writing to the Michigan GA that such return or destruction has been completed, will deliver to the Michigan GA the identification of any Protected Health Information for which return or destruction is infeasible and, for that Protected Health Information, will certify that it will only use or disclose such Protected Health Information for those purposes that make return or destruction infeasible.

- (ii) Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of the Protected Health Information it created or received for or from the Michigan GA will be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.
- (iii) Other Obligations and Rights. Business Associate's other obligations and rights and the Michigan GA's obligations and rights upon termination, cancellation, expiration or other conclusion of the Agreement will be those set out in the Agreement.

E. General Provisions. For purposes of this Addendum, the following capitalized terms have the assigned meanings: (a) "Health Privacy Procedures" means the privacy standards at least as protective and rigorous as those established by the HIPAA Regulations and HITECH Act applicable to Business Associates; (b) "Protected Health Information" means individually identifiable health information; (c) "Security Breach" has the meaning provided in Section D.1 of this Addendum; (d) "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of, or interference with operations to process and maintain, Protected Health Information in electronic form, except to the extent that such action constitutes a Security Breach; (e) "Security Standards" means information security standards at least as protective and rigorous as those established by the HIPAA Regulations and HITECH Act; and (f) "Standard Transaction" has the meaning set out in 45 Code of Federal Regulations § 160.103.

F. Conflicts. The terms and conditions of this Addendum will override and control any conflicting term or condition of the Agreement. All nonconflicting terms and conditions of the Agreement remain in full force and effect.

EXHIBIT D

INSURANCE COVERAGE

1. The Receiver will maintain and renew from time to time during the term of this Agreement the commercial general liability, property damage, excess/umbrella liability and fidelity bond coverages Consumers Mutual currently has in place, including maintaining coverages on computer equipment, electronic records and valuable papers. If any such coverages are terminated or nonrenewed, the Receiver will give the Michigan GA notice of such termination or nonrenewal within two business days of Receiver receiving notice of any termination or nonrenewal.
2. The Receiver will ensure that any third party administrator maintain and renew from time to time during the term of this Agreement the appropriate insurance coverages identified in Item 1 of this Exhibit D. If any such coverages are terminated or nonrenewed, the Receiver will give the Michigan GA notice of such termination or nonrenewal within two business days of Receiver receiving notice of any termination or nonrenewal.

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

PATRICK MCPHARLIN, DIRECTOR
OF THE DEPARTMENT OF INSURANCE
AND FINANCIAL SERVICES,

Petitioner,

v

CONSUMERS MUTUAL INSURANCE
OF MICHIGAN,

Respondent.

Case No. 15-948-CR

HON. JAMES S. JAMO

[IN REHABILITATION]

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

PROOF OF SERVICE

The undersigned certifies that a copy of the **Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of Consumers Mutual Insurance of Michigan along with Exhibits A-D and the Notice of Hearing**, together with this Proof of Service, was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, on the 3rd day of February, 2016:

Michigan Life & Health Insurance Guaranty Association:

John C. Colpean, Administrator and General Counsel
Michigan Life & Health Insurance Guaranty Association
1640 Haslett Road, Suite 160
Haslett, MI 48840

Centers for Medicare and Medicaid Services:

Jay Williamson
Centers for Medicare & Medicaid Services (CMS)
Center for Consumer Information and Insurance Oversight (CCIIO)
Insurance Programs Group (IPG)
2810 Lord Baltimore Drive
Windsor Mill, MD 21244

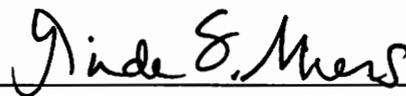
-and-

Terrance A. Mebane, Trial Attorney
U.S. Department of Justice
Civil Division, Commercial Litigation Branch
1100 L Street NW, Room 10004
Washington, DC 20005

Former Chairperson of Consumers Mutual Board of Directors:

Robin Reynolds, MPA
Executive Director
Ingham Health Plan Corporation
3425 Belle Chase Way, Suite 1
Lansing, MI 48911

And on all other parties in interest by submitting electronic copies for posting on the Department of Insurance and Financial Services website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Consumers Mutual Ins. of Michigan."



Linda S. Miers, Legal Secretary