

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

KEN ROSS, COMMISSIONER,  
OFFICE OF FINANCIAL AND INSURANCE  
REGULATION FOR THE STATE OF MICHIGAN,

Petitioner,

File No. 98-88265-CR

vs

Hon. James R. Giddings

MICHIGAN HEALTH MAINTENANCE  
ORGANIZATION PLANS, INC., a  
Michigan health maintenance organization,  
doing business as OmniCare Health Plan,

Respondent.

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LIQUIDATOR'S PETITION  
TO APPROVE PLAN OF FINAL DISTRIBUTION

Ken Ross, Commissioner of the Office of Financial and Insurance Regulation, in his capacity as Liquidator of Michigan Health Maintenance Organization Plans, Inc., f/k/a OmniCare Health Plan (referred to herein as "MHMO"), through his attorneys, Zausmer, Kaufman, August, Caldwell & Tayler, P.C., consistent with MCL 500.8142(1), asks the Court to enter an Order Approving the Liquidator's Plan of Final Distribution. In support of this Petition, the Liquidator states as follows:

## GENERAL MATTERS

1. In 1998 MHMO was placed under seizure as permitted by Chapter 81 of the Insurance Code of 1956, MCL 500.8101 et seq. In July 2001, the Commissioner of the Office of Financial and Insurance Services ("OFIS") petitioned the Court for an Order of Rehabilitation. Pursuant to MCL 500.8114, the Court appointed Linda A. Watters, who was then the OFIS Commissioner, as the Rehabilitator. On September 14, 2001, the Court entered a final Order of Rehabilitation and Injunctive Relief ("Rehabilitation Order").

2. At the time it was placed in rehabilitation, MHMO was a health maintenance organization with approximately 100,000 members. Its membership was primarily located in southeast Michigan. Most of its members were recipients of health services under Medicaid.

3. In its Rehabilitation Order, the Court directed the Rehabilitator to take immediate possession of the assets of MHMO and to administer those assets under the Court's general supervision.

4. Although substantial efforts were made to rehabilitate the business, due to the continuation of the financial difficulties that resulted initially in MHMO being placed in rehabilitation, the Rehabilitator concluded that MHMO would not be eligible for a new Medicaid contract beginning October 1, 2004. The Commissioner of OFIS therefore petitioned the Court, as of September 30, 2004, for an Order of Liquidation of MHMO. Pursuant to MCR 500.8116, the Court appointed the Commissioner as Liquidator of MHMO. The Liquidation Order was entered on October 28, 2004. The Liquidation Order appointed Commissioner Linda Watters as Liquidator and James Gerber as Special Deputy Liquidator of MHMO. In anticipation of the entry of the

Liquidation Order, the Court on October 14, 2004, approved the appointment of American Insurance Management ("AIM") to serve as Deputy Liquidator of MHMO.

5. As of November 1, 2007, by appointment of the Governor, Ken Ross became the duly-appointed Acting Commissioner of OFIS, and thus became the successor Liquidator of MHMO. Mr. Ross was subsequently appointed Commissioner on February 22, 2008.

6. Effective April 6, 2008, the Governor, through Executive Order 2008-02, reorganized OFIS and changed its official name to the Office of Financial and Insurance Regulation ("OFIR").

7. As related more fully below and in the annual reports filed with this Court, the liquidation of MHMO has been successfully accomplished through:

- a. Implementation of a Proof of Claim process.
- b. Marshaling of assets.
- c. Settlement of various disputes.
- d. Initial distribution of assets resulting in 100% payment of Class 2, 3 and 5 claimants and 24% payment of Class 6 claimants.
- e. Further winding down of the entity including implementation of a document cataloging and storage process and court-sanctioned destruction of documents as appropriate.
- f. Release of AIM as Deputy Liquidator and a transition of the management of the estate to the supervision of Deputy Liquidator James Gerber working with a part-time staff.

8. By this Petition, the Liquidator seeks generally to provide for a final distribution of estate assets in anticipation of the final closure of the Receivership. More specifically, the Liquidator, through this Petition, seeks the following:

- a. Approval of a Class 1 administrative expense reserve to cover the final expenses associated with closure of the estate;
- b. Approval of a second pro rata distribution of assets to the Class 6 claimants.

#### BACKGROUND

9. At the time it was placed into rehabilitation, MHMO's primary business asset was a Medicaid contract with the Michigan Department of Community Health ("MDCH"). That Medicaid contract expired on September 30, 2004. In order to remain economically viable, MHMO needed to submit a successful bid for a new Medicaid contract.

10. The Rehabilitator concluded that MHMO would not meet the statutory financial requirements and therefore would not be eligible to receive a new Medicaid contract beginning October 1, 2004. Therefore, the Rehabilitator solicited offers to purchase the assets of MHMO in the hope of completing a sale in time for the prospective purchaser to submit a bid for a new Medicaid contract. Without such a sale of assets to a qualified bidder, it was feared that the MDCH would reassign MHMO's Medicaid members to other HMOs effective no later than October 1, 2004, without compensation to MHMO, leaving MHMO without sufficient assets to satisfy its creditors. Following a request for bid process and after hearing objections from interested parties, the Court approved a sale to Coventry Health of Michigan, Inc., by order dated May 10, 2004.

11. On May 17, 2004 the Rehabilitator and Coventry Health of Michigan, Inc. entered into an Asset Sale and Purchase Agreement whereby the members of OmniCare Health Plan would be transferred to Coventry Health of Michigan, Inc. effective October 1, 2004. On August 31, 2004, the Rehabilitator and Coventry Health of Michigan, Inc. held a closing on the transaction.

12. Following the sale of the right to service the Medicaid members and the sale of its HMO license, MHMO had no source of revenue after September 30, 2004. The Rehabilitator concluded that further attempts to rehabilitate MHMO would be futile. The Commissioner, therefore, by Petition dated September 30, 2004, moved the Court to enter an Order for Liquidating Receivership and Declaration of Insolvency. The requested Order was entered on October 28, 2004.

13. MHMO's pre-liquidation creditor claims were resolved through a Court-approved process.

- \* Consistent with the Liquidation Order, the Liquidator notified all persons or entities that might have a claim against MHMO incurred before October 1, 2004, and advised them of their right to file a Proof of Claim ("POC") form in the Liquidation proceeding.
- \* All POCs were required to be filed no later than March 31, 2005.
- \* The Proof of Claim Instructions that accompanied the Proof of Claim Notice and Form stated that claims would be adjudicated in accordance with OmniCare Health Plan (in Rehabilitation) business rules in the Provider Manual.
- \* Following receipt of claims, the Liquidator reviewed and investigated claims consistent with MCL 500.8143. The Liquidator responded to each claim through a Notice of Determination. Medical provider claimants were also sent a Claim Summary Report.
- \* Consistent with MCL 500.8139, if a claim was denied in whole or in part by the Liquidator, written notice of the determination was given to the claimant or his or her attorney by first-class mail at the address shown in the proof of claim or any updated address provided by the claimant.
- \* The Proof of Claim Instructions, consistent with MCL 500.8139, provided an appeal process in cases where a claimant objected to the Liquidator's claim determination.

The above-described procedure for adjudicating claims was ratified by this Court in an October 12, 2005, Order Ratifying Claims Adjudication Procedures and Approving Additional Procedures for Claims Adjudication (the "Claims Procedure Order").

14. To establish a priority for final resolution of creditor claims against MHMO, the Liquidator in April 2005 asked the Court to establish a notice procedure and set a briefing and hearing schedule to determine the order in which pre-liquidation claims would be addressed and paid by the Liquidator. An Order setting a briefing and hearing schedule was entered by the Court on May 12, 2005. In accordance with the Order, briefs were filed and a hearing was held on October 28, 2005.

15. Following settlement of various objections to the proposed Order, in an Order dated December 14, 2005, the Court held that the claims of medical providers against MHMO would be categorized as Class 2 (policyholder status) claims rather than as Class 5 (general creditor) claims. The Court further held that, to the extent they were not covered by insurance, personal injury claims had a Class 4 priority for payment from the general assets of MHMO. The Court further held that administrative expenses incurred during the rehabilitation period were not Class 1 expenses of the Liquidation proceedings but rather would be prioritized according to the underlying nature of the claim. The Court's Order made other specific holdings regarding the priority of particular claims that had been filed in the Liquidation proceedings. Thereafter, the Liquidator continued the adjudication of claims and was able to resolve all claims filed in the Liquidation proceeding, including two substantial and complicated claims pursued by University Physicians Services, Inc. on behalf of the Wayne State University Physicians Group and by the Detroit Medical Center.

16. On November 13, 2006, the Liquidator filed with the Court a Petition for an Order Approving the Liquidator's Claim Determinations and Allowing Disbursement of Funds to Pay Claims. The Court approved the Liquidator's Petition by Order dated November 30, 2006. As a result, the Liquidator disbursed a total of \$14,721,176.83 as follows:

- a. approved Class 2 (medical provider and other policyholder status) claims totaling \$13,302,787.88 were paid in full;
- b. an approved Class 3 (federal government) claim on behalf of the Federal Employee Health Benefits Program was paid in full in the amount of \$782,000;
- c. five approved Class 5 (general creditor) claims were paid in full in the total amount of \$12,420.38;
- d. two Class 6 (state government) claims were approved in the total amount of \$2,599,869.06, but due to limited assets, were paid at that time at the rate of 24 cents on the dollar, with the total disbursement to this Class at that time being \$623,968.57;
- e. Class 7, 8 and 9 claimants were advised that it was unlikely that they would receive any distribution due to lack of sufficient assets in the estate.

17. During the period from late 2006 through the present, the Liquidator continued working to resolve various issues, including the following:

- \* termination of the estate's lease of office space in Detroit, with related termination of equipment and telephone leases and arrangements for storage of records, and move to shared office space in Bingham Farms, Michigan, with substantial resulting savings to the estate.
- \* termination of AIM as deputy liquidators, by Court order dated October 16, 2007.
- \* participation in pharmaceutical class action suits.
- \* settlement of a reinsurance dispute, resulting in collection of \$50,000.

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- \* document production related to the suit by the OmniCare Provider Creditors Committee against OmniCare's former controlling affiliate, United American Healthcare Corporation.
- \* continued marshaling of assets through collection of provider refunds, subrogation, coordination of benefits recoveries and hospital credit balance refunds – totaling over \$950,000 for years 2006 through 2009.

These activities are described in greater detail in the Deputy Liquidator's Final Report and Accounting, which was filed with this Court on or about March 30, 2010.

THE PROPOSED DISTRIBUTION

18. MCL 500.8142(1) requires that "Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment." Because there are insufficient funds to pay Class 6 claims in their entirety, no claim with a lower priority than Class 6 is entitled to share in the distribution. Class 6 claims must be accorded equal priority and will, therefore, be paid on a pro rata basis from the funds remaining after Class 1 – 5 claims are either paid in full or funds for their payment in full are reserved.

19. Broken down according to the priorities established by MCL 500.8142, the claims and proposed distributions are summarized as follows:

Class 1	<u>Liquidator's Estimated Closing Expenses</u>	\$35,000.00
	The Liquidator has established through June 30, 2010, reserves for closing expenses, which are detailed in the attached Exhibit A. These reserves are estimates of the total costs to close the liquidation estate and should be sufficient to pay these expenses.	
Class 2	<u>Policyholder and Medical Provider claims – previously paid in full</u>	\$0.00
Class 3	<u>Federal claims – previously paid in full</u>	\$0.00

Class 4	<u>Liability claims – no such claims filed</u>	N/A
Class 5	<u>General Creditor claims – previously paid in full</u>	\$0.00
Class 6	<u>State claims – previously approved in the total amount of \$2,599,869.06 with 24% (623,968.57) previously paid</u>	\$246,864.00
Class 7	<u>Late Filed claims</u>	\$0.00
Class 8	<u>Surplus Notes/Premium Refund claims</u>	\$0.00
Class 9	<u>Claims of Shareholders or Owners</u>	\$0.00

20. Attached as Exhibit B is the Proposed Plan of Distribution. This plan proposes to pay all Class 1 claims at 100% as required by MCL 500.8141(1). The Class 6 claims will be paid an additional 12.49% by the proposed distribution of \$246,864.00, for a total recovery of 36.49%. No other claims will receive any distribution at this time.<sup>1</sup>

NOTICE

21. The Liquidator has served a copy of this Petition upon all persons/entities and/or their counsel who are known to have outstanding or ongoing claims, suits or controversies that affect or that are or may be affected by the Receivership proceeding.

22. The Liquidator has or shortly will post a copy of this Petition on the State of Michigan website along with the other MHMO documents previously posted there.

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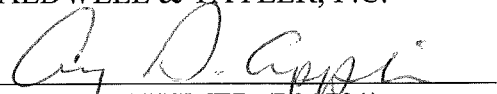
<sup>1</sup> There does remain the potential for further recoveries on behalf of MHMO through pending pharmaceutical class action lawsuits, and possible coordination of benefits or subrogation recoveries. However, particularly given the contingent nature of the claims, the Liquidator has concluded that they do not justify the continuation of the Receivership. The Liquidator intends to address the handling of such potential recoveries in his anticipated Petition for Termination of Receivership.

RELIEF REQUESTED

WHEREFORE, the Liquidator respectfully requests entry of an order granting the Liquidator's Petition to Approve Plan of Final Distribution and authorizing the Liquidator to distribute assets of the MHMO estate accordingly.

Respectfully Submitted,

ZAUSMER, KAUFMAN, AUGUST,  
CALDWELL & TAYLER, P.C.



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Dated: June 21, 2010

**MICHIGAN HMO PLANS, INC., IN LIQUIDATION  
ESTIMATED ADMINISTRATIVE CLOSING EXPENSES  
THROUGH JUNE 30, 2010**

**EXHIBIT A**

GENERAL OPERATING EXPENSES THROUGH JUNE 30, 2010

SALARIES	
POSTAGE	
TELEPHONE	
COMPUTER SOFTWARE EXPENSE	
RENT AND UTILITIES	
<b>TOTAL GENERAL ADMIN EXPENSES</b>	<b>\$ 6,000.00</b>

CLOSING COST

EMPLOYEE SEVERENCE	\$ 2,000.00
STATE OF MICHIGAN OFIR RECEIVER EXPENSE	\$ 5,000.00
RCS AND LONG TERM STORAGE	\$ 3,000.00
BOXES, PACKING, SHREDDING EXP	\$ 1,500.00
ACCOUNTING	\$ 5,000.00
FINAL RETURN AND CLOSING DOCS - LEGAL	\$ 12,500.00
<b>TOTAL CLOSING COSTS</b>	<b>\$ 29,000.00</b>

<b>TOTAL ACCRUAL</b>	<b>\$ 35,000.00</b>
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**MICHIGAN HMO PLANS, INC., IN LIQUIDATION  
FINAL PROPOSED DISTRIBUTION  
CLASS 6 CLAIMANTS**

**EXHIBIT B**

CLAIM NO.	CLAIMANT	CLAIMANT ADDRESS	CLASS OF CLAIM	AMOUNT OF CLAIM	FORMULA	PROPOSED DISTRIBUTION AMOUNT
MI 06-01	MICHIGAN DEPARTMENT OF COMMUNITY HEALTH	CAPITOL VIEW BUILDING 201 TOWNSEND STREET LANSING, MICHIGAN 48913	6	\$ 1,947,785.00	0.1249	\$ 243,338.00
MI 06-02	MICHIGAN OFFICE OF FINANCIAL & INSURANCE REGULATION	611 WEST OTTAWA STREET LANSING, MICHIGAN 48913	6	\$ 28,020.48	0.1249	\$ 3,526.00