

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

LINDA A. WATTERS, COMMISSIONER,
MICHIGAN DEPARTMENT OF LABOR AND
ECONOMIC GROWTH, OFFICE OF FINANCIAL
AND INSURANCE SERVICES

Petitioner,

File No. _____ -CR

Hon. _____

v.

ULTIMED HMO OF MICHIGAN, INC.,
a Michigan health maintenance organization,

Respondent.

_____ /

ORDER
PLACING ULTIMED HMO OF MICHIGAN, INC. INTO REHABILITATION,
APPROVING THE APPOINTMENT OF SPECIAL DEPUTY REHABILITATORS,
AND
PROVIDING INJUNCTIVE RELIEF

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
____ day of _____, 2005

PRESENT: HONORABLE _____
Circuit Court Judge

Petitioner, Linda A. Watters, Commissioner of the Michigan Department of Labor and Economic Growth, Office of Financial and Insurance Services (the "Commissioner"), has filed a Verified Petition seeking an Order of Rehabilitation, Appointment of Special Deputy Rehabilitators, and Injunctive Relief (the "Petition for Order of Rehabilitation"). Respondent Ultimed HMO of Michigan, Inc. ("Ultimed") has consented to being placed into Rehabilitation under Chapter 81 of the Michigan Insurance Code of 1956 (the "Insurance Code"), MCL

500.8101 – 500.8159, under the terms and conditions determined by the Commissioner to be appropriate. The Court is fully advised in the premises and finds:

1. As defined by MCL 500.8103(b), a "Creditor" is a person having a claim against Ultimed, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

2. Based upon MCL 500.8105(1), the Court is authorized to enter an Order it considers to be necessary and proper to prevent:

- a. Interference with the Rehabilitator or with the Rehabilitation proceedings;
- b. The institution or further prosecution of any actions or proceedings against Ultimed, its assets, or its members;
- c. The obtaining of preferences, judgments, attachments, garnishments, or liens against Ultimed, its assets, or its members;
- d. The levying of execution against Ultimed, its assets, or its members;
- e. Any other threatened or contemplated action that might lessen the value of Ultimed's assets or prejudice the rights of its members, creditors, or the administration of this rehabilitation proceeding.

3. All Creditor claims against Ultimed are within the 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.

4. MCL 500.8114(2), in conjunction with MCL 500.8121(1)(m), authorizes the Rehabilitator to: "[P]rosecute an action that may exist on behalf of creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person."

5. Ultimed has stipulated to the existence of the legal and factual basis for the entry of an Order placing Ultimed into rehabilitation.

6. Ultimed has stipulated to the entry of an Order placing Ultimed into rehabilitation under the terms and conditions that the Commissioner deems appropriate.

7. Immediate action placing Ultimed into rehabilitation is necessary to protect the interest of Ultimed's members, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8112 and MCL 500.8113, the Commissioner's Petition for Order of Rehabilitation is GRANTED, and Ultimed HMO of Michigan, Inc. is placed into Rehabilitation pursuant to MCL 500.8101 – 500.8159.

2. The Commissioner is appointed Rehabilitator of Ultimed, and is further authorized to appoint one or more Special Deputy Rehabilitator(s) pursuant to MCL 500.8114(1). Hereafter, the Commissioner shall be referred to as the "Rehabilitator."

3. The Rehabilitator shall take immediate possession of all the assets of Ultimed and administer those assets under the Court's general supervision.

4. By operation of law, legal title to all assets, accounts and moneys of Ultimed is hereby vested in the Rehabilitator. The filing or recording of this Order with the Clerk of the Circuit Court or the Register of Deeds for the county in which the principal office or place of business of Ultimed 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.

5. Pursuant to MCL 500.8115(1), all actions or proceedings in which Ultimed is a party, or is obligated to defend a party, that are pending as of the date this Order is entered are STAYED for ninety (90) days and such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings.

6. The Rehabilitator, without being specifically set forth in this Order, shall have: (a) all the powers set forth in MCL 500.8114 and 500.8115; (b) all 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 Rehabilitator.

7. Upon entry of this Order, all powers of the current directors, officers, and managers of Ultimed are suspended in their entirety, and the Rehabilitator shall have and exercise the full and complete power of such directors, officers, and managers. In her sole discretion, the Rehabilitator may redelegate, in writing, some or all of her authority to a former director, officer, or manager of Ultimed.

8. Among her plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage Ultimed, to hire and discharge Ultimed employees subject to any contract rights they may have, and to deal in totality with the property and business of Ultimed.

9. Any director, manager, officer, employee or agent of Ultimed and any other person shall, at the Rehabilitator's direction, vacate any building, office, or other premise of Ultimed.

10. The Rehabilitator may take such action as she considers necessary or appropriate to reform or revitalize Ultimed, and is empowered to pursue all avenues of reorganization, consolidation, conversion, merger, or other transformation of Ultimed to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services.

11. If the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of Ultimed is appropriate, she shall prepare a plan to effect those changes. The plan shall be submitted to the Court for approval.

12. Pursuant to MCL 500.8116(1), if the Rehabilitator believes that further attempts to rehabilitate Ultimed would be futile or would substantially increase the risk of loss to creditors, policyholders, or the public, she may petition the Court for an order of liquidation.

13. The Rehabilitator shall not pay any Creditor claims for goods or services provided prior to the date of this Order, until further order of this Court.

14. The Rehabilitator shall pay Creditor claims for goods or services provided on or after the date of this Order as they become due in the ordinary course of business.

15. Pursuant to MCL 500.8113(3), entry of this Order shall not constitute an anticipatory breach of any contracts or relationships between Ultimed and any other persons or entities. During the pendency of this rehabilitation, all persons or entities having contractual or other relationships with Ultimed as of the date of this Order, including but not limited to Ultimed's owner, Harley Brown, and Ultimed's parents, subsidiaries, and/or affiliates, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc., are hereby enjoined and restrained from terminating or attempting to terminate such relationships or contracts on the basis of the entry of this Order or Ultimed's financial condition. MCL 500.8105(1)(k). Specifically, and without limitation, the following contracts between Ultimed and third parties remain in full force and effect and may not be terminated by such third parties during the pendency of this rehabilitation: (1) the Management Services Agreement and Assignment and Assumption Agreement entered into on May 14, 2004 between Ultimed and Community Coordinated Care Plan, Inc.; and (2) the Agreement to Lease Network entered into on August 1, 2004 between Ultimed and Beech Street Corporation. Notwithstanding the foregoing, the Rehabilitator shall review the necessity of any contracts subject to this Paragraph 15 during the pendency of this rehabilitation and, upon determining that any such contract is unnecessary to Ultimed's rehabilitation, shall petition the Court to withdraw the injunctive relief provided herein and/or for termination of the contract.

16. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, and affiliates of Ultimed, or any other persons or entities having authority over or in charge of any segment of the affairs of Ultimed, including but not limited to Harley Brown, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc., shall fully cooperate with the Rehabilitator and any Special Deputy Rehabilitator(s) that she appoints.

MCL 500.8106. Among other things, full cooperation requires:

(a) Prompt replies to any inquiry by the Rehabilitator, including a written reply when requested.

(b) Providing the Rehabilitator 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 Ultimed in his, her, or its possession, custody, or control as may be necessary to enable the Rehabilitator and Special Deputy Rehabilitator(s) to operate the business and to maintain the continuity of health care services being provided to all subscribers.

(c) Providing the Rehabilitator with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Ultimed.

(d) Providing the Rehabilitator 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 Ultimed or the operation of Ultimed and its business, provided to or from Ultimed's in-house or outside counsel by or to Ultimed, its officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, or affiliates.

(e) Not obstructing or interfering with the Rehabilitator or Special Deputy Rehabilitator(s) in the conduct of a delinquency proceeding pursuant to MCL 500.8101 – 500.8159.

17. As provided by law, any failure to cooperate with the Rehabilitator or Special Deputy Rehabilitator(s), obstruction or interference with the Rehabilitator or Special Deputy Rehabilitator(s), or violation of any order of the Commissioner 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 Commissioner of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Commissioner, or both. MCL 500.8106(4).

18. Any person or entity with possession, custody or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Ultimed, including but not limited to Harley Brown, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc., shall immediately:

- a. Provide the Rehabilitator 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 Rehabilitator.
- c. Take all necessary steps to safeguard, preserve and retain the assets, documents, data, books, records, accounts, moneys, information or records.

19. In conjunction with Paragraph 18, and because Ultimed's financial records reflect receivables owing from its owner and affiliates in the amount of \$3,452,000, requiring the Rehabilitator to make an expeditious determination as to whether these receivables are valid and/or collectible, without which the rehabilitation of Ultimed may be futile, Ultimed's owner, Harley Brown, and Ultimed's affiliates, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc., shall specifically provide the following documents and information to the Rehabilitator and/or Special Deputy Rehabilitator within thirty (30) days after entry of this Order:

- (a) Each company's balance sheets, income statements, and audited financial statements, and Harley Brown's federal, state and local income tax returns, for the years 2000 through 2005;
- (b) Each company's monthly cash disbursement reports and/or journals for the years 2000 through 2005;
- (c) Any and all documents evidencing any lawsuits or judgments settled or paid by Ultimed on behalf of others, including but not limited to the above-named companies;
- (d) The names, addresses, and titles of each company's officers and directors;

- (e) Copies of all officers' and directors' liability insurance policies and/or errors and omissions insurance policies issued to each company; and
- (f) All banks and bank account numbers used by Harley Brown and each company from January 1, 2000 to the present.

In addition, to preserve Ultimed's assets in the form of receivables owing from its owner and affiliates, Harley Brown, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc. are expressly enjoined from transferring, dissipating, wasting, or otherwise disposing of their assets during the pendency of this rehabilitation unless, after notice, the Court orders otherwise.

20. Pursuant to MCL 500.8105(1)(g) and (k), and MCL 500.3529(3), all non-contracted and contracted medical care providers are hereby enjoined and restrained from pursuing collection against, obtaining judgments against, and/or balance billing of Ultimed's subscribers, enrollees or members for medical goods provided or services rendered prior to the date of this Order. All non-contracted and contracted medical care providers that provided such goods or rendered such services prior to the date of this Order shall seek payment solely from Ultimed as an Ultimed Creditor, as defined in this Order and MCL 500.8103(b). The foregoing prohibition does not apply to any applicable co-payments, deductibles or fees for medical goods or services that are not covered by Ultimed.

21. Pursuant to MCL 500.8105(1) and MCL 500.8114(2), and except as provided in ¶¶ 20, 23, 24, and 25 of this Order, all Creditors of Ultimed are enjoined from:

- a. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against Ultimed, its assets, its members, its enrollees, its subscribers, its officers, its directors, or its employees;

- b. Institution or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Rehabilitator, her agents, or the State of Michigan and its officers, agencies or departments for claims or causes of action arising out of or relating to Ultimed or proceedings under MCL 500.8101 – 500.8159;
- c. Obtaining preferences, judgments, attachments, garnishments, or liens against Ultimed, its assets, subscribers, members, enrollees, officers, directors, or employees;
- d. Levying of execution against Ultimed, its assets, subscribers, members, enrollees, officers, directors, or employees; and
- e. Taking any other action that may lessen the value of Ultimed's assets or prejudice the rights of Ultimed's creditors as a whole, its subscribers, enrollees or members or the administration of this rehabilitation proceeding.

22. Any person who violates an injunction issued in this matter shall be liable to the Rehabilitator or subscriber, member or enrollee for the reasonable costs and attorney fees incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

23. All creditor claims against Ultimed 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.

24. Any and all claims by Creditors against Ultimed must be raised or asserted within the rehabilitation proceedings before this Court and are subject to this Court's orders regarding the submission and determination of claims.

25. The Rehabilitator shall develop a method for the submission, evaluation and resolution of all claims for goods and services provided to Ultimed and its subscribers, members or enrollees prior to the date of this Order.

26. The Rehabilitator's appointment of James Gerber, the Director of Receiverships at OFIS, and Karl V. Kovacs as Special Deputy Rehabilitators is approved. The Commissioner further reserves the right to appoint other Special Deputy Rehabilitator(s) to replace and/or serve with Mr. Gerber and Mr. Kovacs in the future as the need arises. James Gerber and Karl V. Kovacs shall have such authority and responsibilities as may be delegated to them by the Rehabilitator. The proposed compensation for James Gerber and Karl V. Kovacs' services is approved, and the Rehabilitator shall seek this Court's approval of the compensation to be paid to any other Special Deputy Rehabilitator(s) appointed in this matter in the future. James Gerber and Karl V. Kovacs' costs and expenses shall be paid pursuant to MCL 500.8114(1).

27. The Rehabilitator shall make an accounting to the Court of Ultimed's financial condition and progress towards rehabilitation on or before May 31, 2006, and each succeeding six-month period thereafter.

28. The Court reserves jurisdiction to amend this Order of Rehabilitation or issue such further orders as it deems just, necessary and appropriate.

Circuit Court Judge