

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 LIQUIDATION]

In Re: Consumers Mutual Insurance of Michigan
v Anesthesiology of Marquette, PC.

PROVIDER PETITION
NO. 26

Christopher L. Kerr (P57131)
Aaron W. Levin (P81310)
James E. Long (P53251)
Assistant Attorneys General
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**PETITION FOR ESTABLISHMENT OF COURT
PROCEDURES TO ADJUDICATE LIQUIDATOR'S
CLAIMS AGAINST ANESTHESIOLOGY OF MARQUETTE, PC**

INTRODUCTION

James Gerber, as duly appointed Special Deputy Liquidator (the "Special Deputy Liquidator") of Consumers Mutual Insurance of Michigan ("Consumers Mutual"), by and through his attorneys, Dana Nessel, Attorney General, and

Christopher L. Kerr and James E. Long, Assistant Attorneys General, files this petition (“Petition”) pursuant to 500.8121(1)(f) for a Court Order establishing procedures for this Court’s adjudication of the Liquidator’s claims for refunds of Consumers Mutual overpayments made to certain healthcare providers, including in this instance, Anesthesiology of Marquette, PC (“Anesthesiology of Marquette”).¹

In addition, the Special Deputy Liquidator files this Petition pursuant to MCL 500.8105(1) to prevent Anesthesiology of Marquette’s interference in this liquidation by refusing to refund Consumers Mutual for overpayments made to Anesthesiology of Marquette that the Court adjudicates as outstanding, due, and owing to Consumers Mutual and orders Anesthesiology of Marquette to pay. These refunds represent assets of the Consumers Mutual liquidation estate that the Special Deputy Liquidator has requested Anesthesiology of Marquette to repay, but to date Anesthesiology of Marquette has refused, subjecting it to a claim of interference with the Liquidator’s duties and obligations in this proceeding. In support of this Petition, the Special Deputy Liquidator states as follows:

FACTS

1. On November 13, 2015, the Court entered an Order placing Consumers Mutual into rehabilitation and appointing the then-Director of the Michigan

¹ Several healthcare providers owe Consumers Mutual similar overpayment refunds. For purposes of identification, this Petition is sub-captioned *In re: Consumers Mutual Insurance of Michigan v Anesthesiology of Marquette, PC, Provider Petition No. 26.*

Department of Insurance and Financial Services (“DIFS”) as the Rehabilitator of Consumers Mutual (the “Rehabilitator”).

2. On February 3, 2016, the Rehabilitator filed with the Court a Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of Consumers Mutual (“Liquidation Petition”), which sought: (a) an order converting the rehabilitation of Consumers Mutual to a liquidation proceeding, pursuant to MCL 500.8116(1) and MCL 500.8117; and (b) a judicial declaration of Consumers Mutual’s insolvency, pursuant to MCL 500.8118(4).

3. On February 10, 2016, the Court granted the Liquidation Petition and entered an Order of Liquidation and Declaration of Insolvency of Consumers Mutual (“Liquidation Order”). Pursuant to the Liquidation Order, the Court appointed the Director as the Liquidator of Consumers Mutual and affirmed the Liquidator’s appointment of James Gerber and Julieanne Gulliver as Special Deputy Liquidators.

4. The Liquidation Order granted the Liquidator all the powers contained in MCL 500.8121, including the power to “collect all debts and money due and claims belonging to” Consumers Mutual, and to “do other acts as necessary or expedient to collect, conserve, or protect the assets or property” of Consumers Mutual. MCL 500.8121(1)(f).

5. MCL 500.8105(1) further authorizes the Liquidator to apply for any order that may be necessary and proper to prevent “[i]nterference with the receiver or with a proceeding under this chapter” and “[w]aste of the insurer’s assets.”

6. Paragraph 14 of the Liquidation Order provides that:

Any person or entity with possession, custody, or control of assets . . . of . . . Consumers Mutual shall immediately:

(b) Tender possession, custody, and control of such assets . . . to the Liquidator/Special Deputy Liquidators.

7. Pursuant to MCL 500.8106 and paragraph 15 of the Liquidation Order, any interference with the Liquidator in this liquidation proceeding may be punished by a “fine not exceeding \$10,000.00, or imprisonment for a term of not more than 1 year, or both.”

8. As the Liquidator worked to marshal all assets of the Consumers Mutual liquidation estate, the Liquidator identified numerous healthcare providers, including but not limited to Anesthesiology of Marquette, that had received overpayments from Consumers Mutual and, therefore, owed refunds to Consumers Mutual of the overpayment amounts. These refunds are assets of the Consumers Mutual liquidation estate.

9. In November 2016, the Liquidator mailed demand letters to Anesthesiology of Marquette and each other provider that owed a refund to Consumers Mutual. A sample of this form letter is attached as Exhibit 1. The letters to the various providers identified each overpayment and the total refund amount due to Consumers Mutual. The letters informed each provider of the Liquidation Order entered by this Court and that if payment was not provided within 30 days, the Liquidator would pursue additional legal action in this Court.

Some providers promptly refunded the overpayments to Consumers Mutual. Anesthesiology of Marquette, however, did not respond to the November 2016 demand letter. Accordingly, Anesthesiology of Marquette has refused to provide refunds of overpayments made by and owed to Consumers Mutual. The total amount of refunds due from Anesthesiology of Marquette is \$1,082.70. Support for the amount of the refund the Liquidator has determined Anesthesiology of Marquette owes is attached as Exhibit 2.

10. As of the date of this Petition, the Anesthesiology of Marquette refunds are over 90 days past due. Anesthesiology of Marquette's refusal to pay refunds has created additional burdens and costs for the Liquidator, which further reduces the assets of the liquidation estate.

11. Contemporaneously with the filing of this Petition, the Liquidator has served a copy of this Petition on Anesthesiology of Marquette.

12. To allow Anesthesiology of Marquette the opportunity to provide any information or argument it may have to show why this Court should not order prompt payment of the refunds totaling \$1,082.70, the Liquidator requests that the Court enter the proposed order attached as Exhibit 3, which grants this Petition and sets a schedule for Anesthesiology of Marquette's response and oral argument.

13. Upon the Court's entry of an order against Anesthesiology of Marquette requiring prompt payment of all refunds due to Consumers Mutual, Anesthesiology of Marquette's refusal to pay these refunds as ordered—which are assets of the Consumers Mutual liquidation estate—would constitute interference

with the Liquidator's conduct of this proceeding, subjecting Anesthesiology of Marquette to additional fines and penalties under MCL 500.8106 and paragraph 15 of the Liquidation Order.

RELIEF REQUESTED

WHEREFORE, for the reasons stated above, the Liquidator respectfully requests the Court to grant this Petition for Establishment of Court Procedures to Adjudicate Liquidator's Claims against Anesthesiology of Marquette and to enter the proposed order attached as Exhibit 3.

Respectfully submitted,

Dana Nessel
Attorney General



Christopher L. Kerr (P57131)
Aaron W. Levin (P81310)
James E. Long (P53251)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30736
Lansing, MI 48909
(517) 335-7632

Dated: March 19, 2019

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11/17/2016

[REDACTED]
[REDACTED]
[REDACTED]

Re: Overpayment of Claims

Dear Provider,

CMI has made multiple attempts to recover claims overpayments made to you. As of this date, payment has not been received for claim overpayment(s) listed on the attached sheet.

Total overpayment refund due CMI: \$ [REDACTED]

On February 10, 2016, the Honorable James S. Jamo, Ingham County Circuit Court Judge, entered an Order placing Consumers Mutual Insurance of Michigan into Liquidation (Case Number 15-948-CR). This debt is an asset of the Consumers Mutual Insurance of Michigan Liquidation Estate. If payment is not received within 30 days from the date of this letter, the Special Deputy Liquidator will be forced to proceed with legal action to collect this debt in Ingham County Circuit Court.

Please forward a check or money order in the amount listed above to:

**Consumers Mutual Insurance of Michigan
P.O. Box 1738
Fort Mill, SC 29716**

If you have questions in regards to this refund request, please contact our office at (877) 371-9112.
Thank you,

Yours truly,

A handwritten signature in cursive script, appearing to read 'James Gerber'.

James Gerber
Special Deputy Liquidator
Consumers Mutual Insurance of Michigan



11/17/2016

[REDACTED]
[REDACTED]
[REDACTED]

Claims Detail

<u>Member ID</u>	<u>Last Name</u>	<u>First Name</u>	<u>Date of Service</u>	<u>Claim #</u>	<u>Refund Owed</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]

Total Refund Owed to CMI: \$ [REDACTED]

If you have recently sent payment, please disregard. If you have question regarding refund amount, please contact CMI at 1-877-371-9112 for further assistance.

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**ORDER GRANTING PETITION FOR
ESTABLISHMENT OF COURT PROCEDURES
TO ADJUDICATE LIQUIDATOR'S CLAIMS
AGAINST ANESTHESIOLOGY OF MARQUETTE, PC**

At a session of said Court held in the Circuit Courtrooms
for the County of Ingham, State of Michigan, on the
_____ day of _____, 2019.

PRESENT: HONORABLE JAMES S. JAMO, CIRCUIT COURT JUDGE

WHEREAS, James Gerber, as duly appointed Special Deputy Liquidator (“Special Deputy Liquidator”) of Consumers Mutual Insurance of Michigan (“Consumers Mutual”), has filed a Petition for Establishment of Court Procedures to Adjudicate Liquidator’s Claims against Anesthesiology of Marquette, PC (the “Petition”); and

WHEREAS, as described in the Petition, there is an unresolved dispute requiring this Court’s review and adjudication that has been raised by the Liquidator regarding refunds of overpayments made to Anesthesiology of Marquette, PC and the determinations on those claims made by Special Deputy Liquidator James Gerber; and

WHEREAS, the Court therefore finds it appropriate for the Court’s orderly, thorough, and fair adjudication of this dispute, as well as in the interest of judicial economy, to set a schedule for Anesthesiology of Marquette, PC’s response and oral argument and to establish certain other procedures governing the Court’s adjudication of this dispute;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Court GRANTS the Liquidator’s Petition, and the Court will adjudicate the Liquidator’s unresolved claims regarding refunds of overpayments made to Anesthesiology of Marquette, PC, as described more fully in the Petition and the Exhibits attached thereto.

IT IS FURTHER ORDERED that the Court’s adjudication of the Liquidator’s claims against Anesthesiology of Marquette, PC is governed by the following procedures:

- 1) Anesthesiology of Marquette, PC will file a response to the Petition with the Court and serve its response on the Liquidator's counsel within 30 days of the date of this Order.
- 2) The Court will schedule oral argument to adjudicate the Liquidator's claims against Anesthesiology of Marquette, PC at an available date and time not earlier than 45 days after Anesthesiology of Marquette, PC files its response.
- 3) At least 7 days before the oral argument, the Liquidator may file a reply.

IT IS SO ORDERED.

Honorable James S. Jamo
Circuit Court Judge

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(517) 373-1160

PROOF OF SERVICE

The undersigned certifies that a copy of the **Petition for Establishment of Court Procedures to Adjudicate Liquidator's Claims against Anesthesiology of Marquette, PC**, together with this Proof of Service, was served upon the party listed below by mailing the same to the address indicated with first class postage fully prepaid thereon, on the 20th day of March, 2019:

Anesthesiology of Marquette, PC
580 W. College Ave.
Marquette, MI 49855

Mark A. Washnock, Resident Agent
710 Chippewa Square, Suite 103
Marquette, MI 49855

In addition, electronic copies of the foregoing documents will be provided to the Department of Insurance and Financial Services, which will provide courtesy notice to other potentially interested individuals/entities by posting the documents on its 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