

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]

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In Re: Consumers Mutual Insurance of Michigan  
v Bellin Anesthesia Associates, SC.

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PROVIDER PETITION  
NO. 23

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

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**PETITION FOR ESTABLISHMENT OF COURT  
PROCEDURES TO ADJUDICATE LIQUIDATOR'S  
CLAIMS AGAINST BELLIN ANESTHESIA ASSOCIATES, SC**

**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, Bellin Anesthesia Associates, SC (“Bellin Anesthesia”).<sup>1</sup>

In addition, the Special Deputy Liquidator files this Petition pursuant to MCL 500.8105(1) to prevent Bellin Anesthesia’s interference in this liquidation by refusing to refund Consumers Mutual for overpayments made to Bellin Anesthesia that the Court adjudicates as outstanding, due, and owing to Consumers Mutual and orders Bellin Anesthesia to pay. These refunds represent assets of the Consumers Mutual liquidation estate that the Special Deputy Liquidator has requested Bellin Anesthesia to repay, but to date Bellin Anesthesia 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

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<sup>1</sup> 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 Bellin Anesthesia Associates, SC, Provider Petition No. 23*.

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:

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(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 Bellin Anesthesia, 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 Bellin  
Anesthesia 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. Bellin Anesthesia, however, did not respond to the November 2016 demand letter. Accordingly, Bellin Anesthesia has refused to provide refunds of overpayments made by and owed to Consumers Mutual. The total amount of refunds due from Bellin Anesthesia is \$1,128.08. Support for the amount of the refund the Liquidator has determined Bellin Anesthesia owes is attached as Exhibit 2.

10. As of the date of this Petition, the Bellin Anesthesia refunds are over 90 days past due. Bellin Anesthesia'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 Bellin Anesthesia.

12. To allow Bellin Anesthesia 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 \$1,128.08, the Liquidator requests that the Court enter the proposed order attached as Exhibit 3, which grants this Petition and sets a schedule for Bellin Anesthesia's response and oral argument.

13. Upon the Court's entry of an order against Bellin Anesthesia requiring prompt payment of all refunds due to Consumers Mutual, Bellin Anesthesia'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

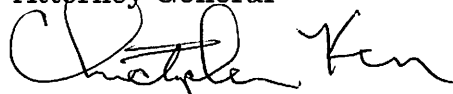
this proceeding, subjecting Bellin Anesthesia to additional fines and penalties under MCL 500.8106 and paragraph 15 of the Liquidation Order.

**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 Bellin Anesthesia Associates, SC 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 black ink, 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 BELLIN ANESTHESIA ASSOCIATES, SC**

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 Bellin Anesthesia Associates, SC (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 Bellin Anesthesia Associates, SC 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 Bellin Anesthesia Associates, SC’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 Bellin Anesthesia Associates, SC, 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 Bellin Anesthesia Associates, SC is governed by the following procedures:

- 1) Bellin Anesthesia Associates, SC 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 Bellin Anesthesia Associates, SC at an available date and time not earlier than 45 days after Bellin Anesthesia Associates, SC files its response.
- 3) At least 7 days before the oral argument, the Liquidator may file a reply.

**IT IS SO ORDERED.**

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Honorable James S. Jamo  
Circuit Court Judge

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P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

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**PROOF OF SERVICE**

The undersigned certifies that a copy of the **Petition for Establishment of Court Procedures to Adjudicate Liquidator's Claims against Bellin Anesthesia Associates, SC**, 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 20<sup>th</sup> day of March, 2019:

Bellin Anesthesia Associates, SC  
744 S. Webster Ave.  
Green Bay, WI 54301

Dianna Seymour, Resident Agent  
440 Woodward Ave.  
Iron Mountain, MI 49801



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](http://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