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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EX PARTE APPLICATION FOR APPROVAL OF EARLY ACCESS DISBURSEMENT TO PARTIALLY SATISFY CLAIMS OF THE MICHIGAN LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

Patrick M. McPharlin, Director ("Director") of the Michigan Department of Insurance and Financial Services ("DIFS"), as Liquidator of Consumers Mutual Insurance of Michigan (the "Liquidator"), by and through his attorneys, Bill Schuette, Attorney General, and Christopher L. Kerr and Mark A. Gabrielse, Assistant Attorneys General, files this application ("Application") as required under MCL 500.8134(1) for the Court's approval of an early access disbursement to the

Michigan Life and Health Insurance Guaranty Association ("Guaranty Association") from the assets of Consumers Mutual Insurance of Michigan's ("Consumers Mutual") liquidation estate. Specifically, the Liquidator applies to the Court for approval of the Liquidator's proposed $3 million early access disbursement to the Guaranty Association—again, as required by MCL 500.8134(1) and consistent with MCL 500.8142 and the terms of the Early Access Agreement between the Liquidator and Guaranty Association previously approved by the Court—in partial satisfaction of the Guaranty Association's claims arising from its statutory obligation to process and pay covered healthcare claims under Consumers Mutual insurance policies. In support of this Application, the Liquidator states as follows:

INTRODUCTION

1. On November 13, 2015, the Court entered an Order placing Consumers Mutual into rehabilitation and appointing the Director 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 Insurance of Michigan ("Liquidation Petition"), which sought: (a) an order converting the rehabilitation of Consumers Mutual to a liquidation proceeding; and (b) a judicial declaration of Consumers Mutual's insolvency.

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. Prior to entry of the Liquidation Order, the Liquidator (then the Rehabilitator) and the Guaranty Association executed an Early Access Agreement and a Service Agreement to assist in the effective and efficient administration of Consumers Mutual's liquidation and to help maximize protection of creditors, policyholders, and the public. The Liquidator filed the Early Access and Service Agreements as exhibits to the Liquidation Petition, and the Court approved those agreements as part of the Liquidation Order.

AUTHORITY FOR LIQUIDATOR'S FILING AND COURT'S APPROVAL OF APPLICATION FOR EARLY ACCESS DISBURSEMENT TO THE GUARANTY ASSOCIATION

5. Upon entry of the Liquidation Order, the Guaranty Association, pursuant to Chapter 77 of the Michigan Insurance Code, became 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.

6. As stated, to facilitate this process, the Liquidator and the Guaranty Association entered into the Early Access Agreement that the Court approved in the Liquidation Order. The Early Access Agreement is included in the record as Exhibit C to the Liquidation Petition, and is not separately attached.

7. MCL 500.8134(1) provides that within 120 days after entry of the Liquidation Order, the Liquidator "shall make application to the court for approval of a proposal to make early access disbursements out of" Consumers Mutual's assets "to any guaranty association . . . having obligations because of [Consumers Mutual's] insolvency." The Guaranty Association has such obligations due to Consumers Mutual's insolvency.

8. Alternatively, if the Liquidator determines that the liquidation estate will not have sufficient assets to make any early access disbursements to an obligated guaranty association, the Liquidator "shall file a report with the court supporting this determination" within the 120-day period. MCL 500.8134(1). Moreover, if the estate at any later time recovers assets to support an early access disbursement, the Liquidator must file an application for approval of a proposed disbursement within 60 days after securing those assets. *Id.* Accordingly, the statute mandates that the Liquidator seek Court approval of an early access disbursement whenever assets are (or become) available, or explain to the Court in a filed report that assets are insufficient to make this required disbursement.

9. MCL 500.8134(1) further provides that if the Liquidator fails to file either the application (when assets are available) or report (when no assets are available) within the 120-day period, any obligated guaranty association may file the application, which "shall be approved by the court" if it meets the requirements of MCL 500.8134.

10. Regardless of who files, an application for approval of a proposed early access disbursement "shall at least include provisions" satisfying MCL 500.8134(2)(a) – (e). This Application satisfies each of these provisions, as explained immediately below.

11. First, MCL 500.8134(2)(a) requires the Liquidator to reserve (i.e., not disburse), based on the best information currently available, funds that are needed to pay: (a) administrative expenses having Class 1 priority under MCL 500.8142(1)(a); (b) claims having Class 2 priority under MCL 500.8142(1)(b); (c) claims of secured creditors to the extent of their security; and (d) uncovered "separate account" claims, which may be granted Class 2 priority under MCL 500.8142(2). Here, the Liquidator has reserved sufficient amounts to pay all anticipated Class 1 expenses for his administration of the Consumers Mutual liquidation estate. Likewise, the Liquidator has reserved amounts needed to pay any anticipated Class 2 claims against the estate for losses incurred under Consumers Mutual insurance policies (separate from the Class 2 claims that the Guaranty Association will cover and pay, resulting in a Class 2 reimbursement claim against the estate). Because Consumers Mutual does not have any secured creditors or separate accounts, the Liquidator has no reserve obligations with respect to these claims.

12. Second, MCL 500.8134(2)(b) requires "[d]isbursement of the assets marshaled to date and subsequent disbursement of assets as they become available." This Application proposes a $3 million early access disbursement to the

Guaranty Association based on all Consumers Mutual assets marshaled to date and presently available for disbursement. The Liquidator will propose additional, future disbursements to the Guaranty Association to the extent that additional estate assets become available.

13. Third, MCL 500.8134(2)(c) requires an equitable allocation of disbursements to each guaranty association entitled to a disbursement. Consumers Mutual only conducted business in Michigan. Consequently, the Michigan Life and Health Insurance Guaranty Association is the only State guaranty association having obligations due to Consumers Mutual's insolvency and entitled to a disbursement.

14. Fourth, MCL 500.8134(2)(d) requires the Liquidator to secure from the Guaranty Association "an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 8142 [MCL 500.8142] in accordance with those priorities." Under the Early Access Agreement approved by this Court, the Guaranty Association expressly agreed that any early access disbursements "shall be made pursuant to the early access provisions and priority of claims contained in" MCL 500.8134 and 500.8142. Early Access Agreement, § 2.1. The Guaranty Association further agreed to timely return to the Liquidator any amounts disbursed that are necessary to pay claims falling within equal or higher priority classes in accordance with MCL 500.8142. *Id.* at § 3.1. Moreover, Consumers Mutual has no secured creditors,

while the Liquidator has fully reserved and is not disbursing amounts needed to pay Class 1 administrative expenses of the liquidation estate. Accordingly, the Liquidator has taken adequate precautions—through the Early Access Agreement and otherwise—to satisfy the requirements of MCL 500.8134(2)(d) and fully protect other Consumers Mutual creditors in connection with the proposed early access disbursement.

15. Fifth, MCL 500.8134(2)(e) requires the Guaranty Association to account to the Liquidator for early access disbursements, including its expenditure of the funds and any interest earned thereon. The Early Access Agreement requires the Guaranty Association to provide the Liquidator with reasonable access to its books, records, and files related to Consumers Mutual, as well as to respond to all reasonable requests from the Liquidator for information, files, and documents relating to the distribution or use of early access disbursements. Early Access Agreement, § 4.2. Furthermore, the Liquidator and Guaranty Association have a longstanding history of mutually providing information needed to discharge their respective duties. Accordingly, the Guaranty Association will provide the Liquidator any statutory or other reasonably requested information relating to the early access disbursement, in compliance with MCL 500.8134(2)(e).

16. The remainder of MCL 500.8134 imposes additional requirements regarding a proposed early access disbursement, only two of which are relevant to this Application. MCL 500.8134(3) provides that the Liquidator's proposed disbursements shall be in amounts equal to the estimated claim payments that the

Guaranty Association has made or will make for which it can assert a reimbursement claim against the liquidation estate, or if available estate assets are insufficient to make disbursements in this total amount, in the amount of estate assets actually available. Based on current information, the Liquidator estimates that the Guaranty Association will be statutorily responsible for paying at least $14.5 million in total claims and claims processing expenses under Consumers Mutual insurance policies. However, due to reserve requirements, uncertainties with this liquidation being in its early stages, and other considerations, the Liquidator has determined that only $3 million in estate assets are presently available for an early access disbursement. Thus, in conformity with MCL 500.8134(3), the Liquidator's proposed $3 million early access disbursement is far less than the Guaranty Association's total estimated claim liability and represents the total amount of assets now available for disbursement.

17. Lastly, MCL 500.8134(5) governs notice of an application for approval of a proposed early access disbursement, which must be provided to any affected State guaranty association and insurance commissioner. Again, Consumers Mutual only conducted business in Michigan, so only the Michigan Life and Health Insurance Guaranty Association and Michigan Director of DIFS are affected by this Application and entitled to notice under MCL 500.8134(5). The Director is well aware of this Application, having filed it in his capacity as Liquidator. Likewise, the Application and proposed, accompanying Order were provided to, discussed with, and approved by the Guaranty Association, through its Administrator and

General Counsel, John Colpean, before being submitted to the Court. Consequently, the Liquidator and Guaranty Association, as the only parties entitled by statute to notice of this Application, have been amply notified, consented to the relief sought, and agreed to waive any further notice requirements under MCL 500.8134(5). These circumstances, together with the mandatory nature of early access disbursements when estate assets are available, further justify the *ex parte* filing of this Application and *ex parte* entry of the proposed, accompanying Order.

18. The provisions of the Early Access Agreement are consistent with MCL 500.8134, ensuring performance of the foregoing statutory requirements. In addition to the examples previously cited, the Early Access Agreement complies with MCL 500.8134(2)(a) and MCL 500.8134(3) by authorizing the Liquidator to make to the Guaranty Association, as available, early access disbursements from liquidation estate assets attributable to Guaranty Association covered obligations under Consumers Mutual insurance policies, to the extent those assets are not reasonably necessary for: (a) expenses of administration of the liquidation estate; (b) claims of secured creditors, to the extent of the value of the security held; or (c) as a reserve for claims accorded a higher or equal priority of distribution by Michigan law. Early Access Agreement, § 2.1. The agreement similarly provides that the availability and/or payment of early access disbursements "shall be as determined by the [Liquidator] and approved by the Court." *Id.*

19. In summary, and as explained in more detail above, the Liquidator has determined that there are currently $3 million in estate assets available for an

early access disbursement to the Guaranty Association. This proposed disbursement is net of amounts that the Liquidator has conservatively and fully reserved/retained in the liquidation estate for the payment of all anticipated claims required under MCL 500.8134. The Liquidator has similarly considered and satisfied every other statutory requirement relevant to this Application. Overall, the Liquidator has determined that this $3 million early access disbursement is necessary and appropriate, will assist with the effective and efficient administration of Consumers Mutual's liquidation, and will help maximize protection of creditors, policyholders, and the public.

20. Pursuant to MCL 500.8134(5), and as discussed in Paragraph 17, a copy of the filed Application and any resulting Order will be personally served via regular mail on John Colpean, the Guaranty Association's Administrator and General Counsel. Beyond the Guaranty Association, providing personal notice of this Application and any resulting Order to other parties that may have a general interest in Consumers Mutual's liquidation: (a) is not required by MCL 500.8134(5); (b) would be impractical at this time because there has been no claims submission or other process to identify those parties; and (c) would be time-intensive and costly to the Consumers Mutual liquidation estate. However, DIFS' standard receivership procedure is to post on its website all filings made in this and other insurance receivership proceedings. For these reasons, the Liquidator requests that the Court authorize, approve, and/or ratify courtesy notice of the Application and any resulting Order on any other potentially interested parties by posting electronic

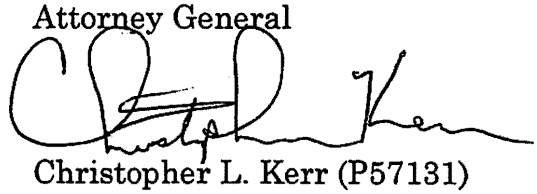
copies on the DIFS website, www.michigan.gov/difs, under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Consumers Mutual Ins. of Michigan."

RELIEF REQUESTED

Based on the foregoing, and pursuant to MCL 500.8134, 500.8142, and the terms of the Early Access Agreement, the Liquidator respectfully requests the Court to grant this Application and approve the Liquidator's proposed early access disbursement to the Guaranty Association in the amount of $3 million. The Liquidator further requests the Court to authorize and ratify service of this Application and any resulting Order by personally serving the Guaranty Association via regular mail, and by posting electronic, courtesy copies on the "Consumers Mutual Ins. of Michigan" section of the DIFS website consistent with DIFS' standard receivership procedure.

Respectfully submitted,

Bill Schuette
Attorney General



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