

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

ANITA G. FOX, DIRECTOR  
OF THE DEPARTMENT OF INSURANCE  
AND FINANCIAL SERVICES,

Case No. 15-948-CR

Petitioner,

HON. JAMES S. JAMO

v

CONSUMERS MUTUAL INSURANCE  
OF MICHIGAN,

[IN LIQUIDATION]

Respondent.

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**FINAL ORDER APPROVING PREPAID FORWARD PURCHASE  
AGREEMENT WITH RC OPPORTUNITIES FUND LP AND  
AUTHORIZING DISTRIBUTION OF SALE PROCEEDS**

At a session of said Court  
held in the Circuit Courtrooms  
for the County of Ingham,  
State of Michigan, on the  
15 day of January, 2020

PRESENT: HONORABLE JAMES S. JAMO, CIRCUIT COURT JUDGE

**WHEREAS**, Consumers Mutual Insurance of Michigan (“Consumers Mutual”) is a member of the claimant class in a case styled *Health Republic Insurance Company on behalf of itself and all others similarly situated v. the United States of America*, filed February 24, 2016 in the United States Court of Federal Claims as Case No. 16-259C, which lawsuit seeks to recover amounts due and owing Consumers Mutual and the other claimants in the class under the risk corridors provisions, Section 1342, of the Patient Protection and Affordable Care Act (Pub. L. No. 111-148 (Mar. 23, 2010), 124 Stat. 119) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152 (Mar. 30, 2010)) (collectively, the “ACA”) (hereinafter the “Litigation”); and

**WHEREAS**, Anita G. Fox, Director of the Michigan Department of Insurance and Financial Services (“DIFS”), in her capacity as the statutory and Court-appointed Liquidator of Consumers Mutual (the “Liquidator”), has filed a *Petition for Order Approving Prepaid Forward Purchase Agreement with RC Opportunities Fund LP and Authorizing Distribution of Sale Proceeds* (the “Petition”); and

**WHEREAS**, the Court held a hearing on the Petition on January 15, 2020 and has reviewed and considered the Petition and the information and arguments presented during the hearing, and is also fully informed of the circumstances involving Consumers Mutual because the company has been subject to ongoing receivership proceedings assigned to and conducted under the supervision of this Court pursuant to the Rehabilitation Order that the Court

entered on November 13, 2015 and the Order of Liquidation and Declaration of Insolvency of Consumers Mutual (“Liquidation Order”) that the Court entered on February 10, 2016; and

**WHEREAS**, a number of other health insurers not members of the claimant class in the Litigation have filed similar actions to recover outstanding risk corridors payments, and the federal government has vigorously defended all of the actions; and

**WHEREAS**, several such actions are pending before the United States Supreme Court with a decision likely sometime in the first half of 2020, but the outcome of such decision and the effect of such a decision on the Litigation remains uncertain, including whether and when Consumers Mutual may recover any moneys in connection with its risk corridors claims; and

**WHEREAS**, the Liquidator’s representatives (and other state rehabilitators and liquidators) have been approached by investors, and other similar entities, who have proposed to purchase an interest in the Litigation-related claims against the federal government, and for the past year the Liquidator’s representatives have had numerous discussions with at least four litigation investors exploring the possibility of a transaction involving the Litigation; and

**WHEREAS**, RC Opportunities Fund LP (“RC Opportunities”) proposed a Prepaid Forward Purchase Agreement (“Agreement”) to the Liquidator’s representatives, and after review and negotiation, the Liquidator entered into the

Agreement subject to this Court's approval and requested the Court's approval of the Agreement, which was attached as Exhibit B to the Petition; and

**WHEREAS**, in succinct terms, RC Opportunities proposes to purchase an interest in the proceeds of the Litigation and assume the economic risk of the Litigation pursuant to the terms of the Agreement, and in return, the Consumers Mutual estate will receive an initial payment of \$4,460,000 payable within two business days of this order approving the Agreement being entered, with all of that amount except for potentially \$200,000 being non-refundable; and

**WHEREAS**, subject to the terms and conditions of the Agreement, the Liquidator is selling Consumers Mutual's rights, title, and interest in and to the Claims Proceeds (as defined in the Agreement) in an amount equal to the first \$14,227,013.00 of Claims Proceeds as reduced by: (a) any fees or expenses incurred in connection with obtaining or collecting the Claims Proceeds (including any contingency fees); and (b) recoupments or set-offs asserted against the Liquidator or Consumers Mutual by the federal government solely in connection with the ACA; provided, however, for the avoidance of doubt, state or federal taxes that are not directly related to statutory or regulatory provisions of the ACA are not considered to be in connection with the ACA; and

**WHEREAS**, the Investment Return (as defined in the Agreement) with respect to the Claims Proceeds, whenever received, is \$13,515,662.00 with the Claims Proceeds to be distributed within five business days of receipt by the Liquidator in the following order of priority: (1) first, to pay the Investment Return

to RC Opportunities which may include an additional amount equal to 67% of any Claims Proceeds between \$13,515,662.00 and \$14,227,013.00; and (2) second, after the Investment Return has been paid in full, to the Liquidator or as the Liquidator shall direct; and

**WHEREAS**, in no event will RC Opportunities be entitled to share in any Claims Proceeds which exceed \$14,227,013.00; and

**WHEREAS**, if the Liquidator prevails in the Litigation on its risk corridors claims, but RC Opportunities receives less than \$13,515,662 of the Claims Proceeds, then the Liquidator will pay RC Opportunities 33% of the difference between \$13,515,662 and the net amount received by RC Opportunities up to \$200,000; and

**WHEREAS**, a copy of the Petition (including this Order attached as Exhibit A and the Agreement attached as Exhibit B) and the Notice of Hearing was filed with the Court and sent by regular mail on December 30, 2019 to the persons listed in the proof of service to the Petition. In addition, a copy of the Petition (including this Order attached as Exhibit A and the Agreement attached as Exhibit B, without the exhibits thereto) and the Notice of Hearing was posted on the DIFS website, [www.michigan.gov/difs](http://www.michigan.gov/difs), under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Consumer Mutual Ins. of Michigan"; and

**WHEREAS**, based on review of the Petition and oral arguments at the hearing, the Court hereby determines that the Agreement is in the best interest of

the Consumers Mutual estate and is within the discretion of the Liquidator as the Agreement: (a) provides a substantial and immediate infusion of cash into the estate; and (b) shifts a portion of the risk of the Litigation away from the estate to RC Opportunities.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Petition is GRANTED, and the Court further orders as follows:

- a. The notice provided regarding the Liquidator's Petition and the hearing thereon was proper and comported with due process;
- b. The Court approves the Agreement and the Special Deputy Liquidator's execution of the Agreement;
- c. The Special Deputy Liquidator is authorized to execute any and all other documents necessary to effectuate the Agreement;
- d. The Special Deputy Liquidator is authorized to use and/or distribute \$4,260,000 of the \$4,460,000 payment, at the Liquidator's discretion, but only after it is determined that no outstanding objections, challenges, or appeals have been filed to this Order within the 21-day period for such actions.
- e. The Liquidator is authorized and directed to establish and hold in reserve \$200,000 of the \$4,460,000 payment in accordance with the terms of the Agreement;

- f. If there is no unresolved motion for rehearing or appeal of this Order approving the Agreement, the Liquidator is authorized and directed to transfer to RC Opportunities, without further order of this Court, RC Opportunities' share of the Claims Proceeds pursuant to the Agreement terms (i.e., the Investment Return plus any additional amounts provided for in the Agreement) within five (5) business days after the date on which such funds are received by the Consumers Mutual estate;
- g. For as long as the Agreement remains in force, the Liquidator and her representatives are prohibited from selling, transferring, or otherwise disposing of any interest in the Claims Proceeds from the Litigation without the written consent of RC Opportunities;
- h. In the event there is an unresolved motion for rehearing or appeal of this Order approving the Agreement, the Liquidator is authorized and directed to hold any moneys subject to the Agreement (i.e., RC Opportunities' payment of \$4,460,000 and/or Claims Proceeds) in the Consumers Mutual estate, and the Liquidator is further directed that she shall not make any distribution of said moneys, in the form of early access distribution or otherwise, pending full and final resolution of such motion or appeal;

- i. Any appeals or requests for rehearing of this Order must be made within 21 days following entry of this Order after which it shall be deemed final;
- j. In the event of any future successful challenge to the validity of the sale of Consumers Mutual's interest in the Claims Proceeds to RC Opportunities, RC Opportunities' right to receive the Investment Return shall be treated as a Class 1 administrative expense of the Consumers Mutual estate payable in accordance with the priority of distributions set forth in Michigan Compiled Laws Section 500.8142 of Chapter 500 (the Insurance Code of 1956), Subarticle Chapter 81 – Insurers Supervision, Rehabilitation and Liquidation; and
- k. In the event there is a dispute between the Liquidator and RC Opportunities with regard to the Agreement, RC Opportunities shall have standing in this Court.

**IT IS FURTHER ORDERED** that a copy of this Order will be personally served via regular mail on the persons listed in the proof of service to the Petition.

**IT IS FURTHER ORDERED** that because personally serving the Petition and this Order on other individuals or entities that may have a general interest in Consumers Mutual's liquidation would be time-intensive and costly to




the Consumers Mutual liquidation estate, the Court authorizes, approves, and/or ratifies service of the Petition and this Order on any other potentially interested individuals or entities by posting electronic copies on the DIFS 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," which is consistent with DIFS' standard receivership procedure.

The Court finds that service in the foregoing manner is reasonably calculated to give the persons listed in the proof of service to the Petition and any other potentially interested individuals or entities actual notice of these proceedings and is otherwise reasonable under the circumstances.

**IT IS SO ORDERED.**

In accordance with MCR 2.602(A)(3), this Order does not resolve the last pending claim and does not close the case.

  
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Honorable James S. Jamo  
Circuit Court Judge