

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 REHABILITATION]

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**ORDER OF LIQUIDATION AND  
DECLARATION OF INSOLVENCY OF  
CONSUMERS MUTUAL INSURANCE OF MICHIGAN**

At a session of said Court  
held in the Circuit Courtrooms  
for the County of Ingham,  
State of Michigan, on the  
10 day of February, 2016.

PRESENT: HONORABLE JAMES S. JAMO, CIRCUIT COURT JUDGE

The Court has reviewed and considered the Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of Consumers Mutual Insurance of Michigan (the “Liquidation Petition”), which was filed by Patrick M. McPharlin, the Director of the Michigan Department of Insurance and Financial Services (“DIFS”) and court-appointed Rehabilitator of Consumers Mutual Insurance of Michigan (the “Rehabilitator”). The Court is also fully informed of the circumstances involving Consumers Mutual Insurance of Michigan (“Consumers Mutual”) because the company has been subject to an ongoing rehabilitation proceeding assigned to and conducted under the supervision of this Court, pursuant to the Rehabilitation Order that the Court entered on November 13, 2015.

Based on the Court’s review of the Liquidation Petition, any objections or responses filed thereto, and the terms of this Order, and following the hearing on the Liquidation Petition conducted on February 10, 2016 at 3:15 p.m., the Court finds as follows:

A. MCL 500.8102 provides that a proceeding under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159, including a liquidation proceeding, may be applied to an insurer: (a) who is or has been transacting insurance business in this state and against whom claims arising from that business may exist now or in the future; or (b) who has insureds resident in this state. Consumers Mutual satisfies both criteria and is therefore subject to liquidation.

B. MCL 500.8104(3) vests this Court with jurisdiction to consider the Liquidation Petition and to enter this Order.

C. MCL 500.8116(1) authorizes the Rehabilitator to petition this Court for an order to liquidate an insurer that is in rehabilitation if he “believes further attempts to rehabilitate [the] insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile.”

D. MCL 500.8117 further authorizes the Rehabilitator to petition this Court for an order to liquidate Consumers Mutual based on any of the following grounds:

(a) Any ground for an order of rehabilitation as specified in section 8112, whether or not there has been a prior order directing the rehabilitation of the insurer.

(b) That the insurer is insolvent.

(c) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

E. Pursuant to MCL 500.8117(b), the liquidation of Consumers Mutual is authorized and appropriate because, as explained more fully in the Liquidation Petition, the company’s admitted assets do not exceed its liabilities (even before taking into account, by adding to the company’s liabilities, the capital and surplus required by law for its organization). Consumers Mutual is therefore by definition “insolvent” under MCL 500.8103(i)(ii), with an unimpaired capital and surplus (i.e., net worth) of *negative* \$1,581,322 as of November 30, 2015.

F. The liquidation of Consumers Mutual is further authorized and appropriate under MCL 500.8117(c) because, as explained more fully in the

Liquidation Petition, Consumers Mutual's financial condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. The company's hazardous condition is evidenced by, *inter alia*, its steady financial decline despite the actions taken in rehabilitation, its current unimpaired surplus of over negative \$1.5 million, and its reduction in active insurance policies to zero with the associated loss of all premium revenues.

G. This Order to liquidate Consumers Mutual is also authorized and appropriate under MCL 500.8116(1) because, as explained more fully in the Liquidation Petition, the Court agrees with the Rehabilitator's conclusion that any further attempts at rehabilitation would be futile and would substantially increase the risk of loss to creditors, policyholders, and the public.

H. Because Consumers Mutual's liabilities exceed its assets by over \$1.5 million and the company is by definition "insolvent," and proper notice and hearing having been provided, the Rehabilitator is entitled to the requested judicial declaration of insolvency under MCL 500.8118(4).

I. As defined by MCL 500.8103(b) and for purposes of this Order, a "Creditor" is a person having a claim against Consumers Mutual, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

J. Under MCL 500.8105(1), the Court is authorized to enter this Order including terms that the Court considers necessary and proper to prevent:

- (a) Interference with the Liquidator or with the liquidation proceeding;
- (b) The institution or further prosecution of any actions or proceedings against Consumers Mutual, its assets, or its policyholders;
- (c) The obtaining of preferences, judgments, attachments, garnishments, or liens against Consumers Mutual, its assets, or its policyholders;
- (d) The levying of execution against Consumers Mutual, its assets, or its policyholders; and
- (e) Any other threatened or contemplated action that might lessen the value of Consumers Mutual's assets or prejudice the rights of its policyholders, creditors, or the administration of the liquidation proceeding.

K. Immediate action placing Consumers Mutual into liquidation is necessary to protect the interests of Consumers Mutual's policyholders, creditors, and the public.

**THEREFORE, IT IS HEREBY ORDERED** that:

1. Pursuant to MCL 500.8116 - 500.8118, the Liquidation Petition is GRANTED, and Consumers Mutual is placed into liquidation under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159.

2. Pursuant to MCL 500.8118(1), the Director of DIFS and Rehabilitator of Consumers Mutual is appointed as Liquidator of the company. Hereafter, the Rehabilitator shall be referred to as the "Liquidator."

3. The Liquidator is directed to take immediate possession of Consumers Mutual's assets and to administer them under the Court's general supervision. MCL 500.8118(1). The Liquidator is vested by operation of law with the title to all of Consumers Mutual's assets, including but not limited to the company's property, bank accounts, contracts, rights of action, and all books and records, wherever

located, as of the date that this Liquidation Order is entered. *Id.* The filing or recording of this Liquidation Order with the Clerk of the Circuit Court and the Register of Deeds of the county in which Consumers Mutual's principal office or place of business is located or, in the case of real estate, with the Register of Deeds of the county where the property 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. *Id.*

4. The Liquidator, without being specifically set forth in this Order, shall have: (a) all the powers contained in MCL 500.8121; (b) all other 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 Liquidator.

5. Except as provided in MCL 500.8119, MCL 500.8137, and this Liquidation Order, the rights and liabilities of Consumers Mutual and of its Creditors, policyholders, insureds, and all other persons interested in Consumers Mutual's estate shall become fixed as of the date that this Liquidation Order is entered. MCL 500.8118(2).

6. Not later than 120 days after entry of this Liquidation Order, the Liquidator shall prepare in duplicate a list of Consumers Mutual's assets, which list shall be amended or supplemented from time to time as the Liquidator deems appropriate. MCL 500.8125. With respect to the asset list and any amendments or supplements thereto, the Liquidator shall file one copy with the Clerk of this Court

and shall retain one copy for his files. *Id.* Thereafter, the Liquidator shall account to this Court no less than annually, pursuant to MCL 500.8118(5).

7. Although there are no known insurance policies issued by Consumers Mutual that remain in effect at the time of the entry of this Liquidation Order, in the event that any such policies are later identified, and pursuant to MCL 500.8119 and MCL 500.7708(6), these policies are terminated as of the earliest of the following dates:

- a. For group policies or contracts, the earlier of the next renewal date under the policy or contract or 45 days, but not less than 30 days, after the date this Liquidation Order is entered;
- b. For individual policies or contracts, the earlier of the next renewal date, if any, under the policies or contracts or 1 year, but not less than 30 days, after the date this Liquidation Order is entered;
- c. The date that the insured replaces the policy's insurance coverage with equivalent insurance in another insurer or otherwise terminates the policy; or
- d. The date that the Liquidator effects a transfer of the policy obligation to a solvent assuming insurer pursuant to MCL 500.8121(1)(h).

8. Pursuant to MCL 500.8118(4), and the Court having found that proper notice and hearing have been provided, the Court declares that Consumers Mutual is insolvent.

9. Pursuant to MCL 500.8124(1), upon entry of this Liquidation Order, an action at law or equity shall not be brought against Consumers Mutual, the Liquidator, or the Special Deputy Liquidators, whether in this State or elsewhere, and any such existing action shall not be maintained or further presented after entry of this Liquidation Order. Accordingly, pursuant to MCL 500.8124(1) and

MCL 500.8105(1)(f), and effective immediately, all persons and entities are expressly enjoined from filing an action at law or equity or maintaining or further presenting any such existing action against Consumers Mutual, the Liquidator, or Special Deputy Liquidators, whether in this State or elsewhere.

10. Pursuant to MCL 500.8157, during the pendency of this Liquidation proceeding, an action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this State against Consumers Mutual or its assets. Accordingly, pursuant to MCL 500.8157, together with MCL 500.8105(1) and MCL 500.8124(1) and except as specifically provided in paragraphs 11, 12, 18, and 19 of this Order, all persons and entities are expressly enjoined, effective immediately, from:

- (a) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against Consumers Mutual, its assets, policyholders, insureds, employees, former officers, or former directors;
- (b) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Liquidator or Special Deputy Liquidators, their agents, attorneys, employees, or representatives, or the State of Michigan and its officers, agencies, or departments for claims or causes of action arising out of or relating to Consumers Mutual or any proceedings under Chapter 81;
- (c) Obtaining preferences, judgments, attachments, garnishments, or liens against Consumers Mutual, its assets, policyholders, insureds, employees, former officers, or former directors;
- (d) Levying of execution against Consumers Mutual, its assets, policyholders, insureds, employees, former officers, or former directors; and
- (e) Threatening or taking any other action that may lessen the value of Consumers Mutual's assets or prejudice the rights of Consumers Mutual's

creditors as a whole, its policyholders, insureds, or the administration of this liquidation proceeding.

11. Pursuant to MCL 500.8105(1)(g) and (k), all contracted and non-contracted healthcare providers are hereby specifically enjoined and restrained from pursuing collection against, obtaining judgments against, and/or balance billing of Consumers Mutual's policyholders, insureds, or members for covered healthcare goods provided or services rendered prior to the date of this Order. All contracted and non-contracted healthcare providers that provided such goods or rendered such services prior to the date of this Order shall seek payment solely from Consumers Mutual as a Consumers Mutual Creditor, as defined in this Order and MCL 500.8103(b). The foregoing prohibition does not apply to any applicable co-payments, deductibles, cost sharing, or fees for healthcare goods or services that are not covered by and remain the policyholder's, insured's, or member's responsibility under his or her Consumers Mutual insurance policy.

12. With respect to any claim asserted against Consumers Mutual as a named party in a Michigan court proceeding that: (a) satisfies the requirements for a "covered claim" and is thereby subject to litigation, defense, and/or payment by the Michigan Life and Health Insurance Guaranty Association ("Guaranty Association") under Chapter 77 of the Michigan Insurance Code, MCL 500.7701 – 500.7780; or (b) otherwise involves a matter germane to the Guaranty Association's powers or duties, the proceeding shall be stayed for sixty (60) days from the date of this Liquidation Order, plus any additional time determined necessary by the court

in which the claim is pending, to permit proper legal action by the Guaranty Association. MCL 500.7718.

13. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, or agents of Consumers Mutual, or any other persons or entities having authority over or in charge of any segment of the affairs of Consumers Mutual, shall fully cooperate with the Liquidator and Special Deputy Liquidators. Among other things, "full cooperation" requires a person or entity described in this paragraph to:

- (a) Promptly reply to any inquiry by the Liquidator/Special Deputy Liquidators, including a written reply when requested;
- (b) Provide the Liquidator/Special Deputy Liquidators 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 Consumers Mutual in his, her, or its possession, custody, or control;
- (c) Provide the Liquidator/Special Deputy Liquidators with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Consumers Mutual; and
- (d) Provide the Liquidator/Special Deputy Liquidators 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 Consumers Mutual or the operation of Consumers Mutual and its business, provided to or from Consumers Mutual's in-house or outside counsel by or to Consumers Mutual, its officers, managers, directors, trustees, owners, employees, or agents.

In addition, no person shall obstruct or interfere with the Liquidator or Special Deputy Liquidators in the conduct of this liquidation proceeding.

14. Any person or entity with possession, custody, or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Consumers Mutual shall immediately:

(a) Provide the Liquidator/Special Deputy Liquidators 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 Liquidator/Special Deputy Liquidators.

(c) Take all necessary steps to safeguard, preserve, and retain the assets, documents, data, accounts, moneys, books, records, information, or property.

15. As provided by MCL 500.8106(4), any failure to cooperate with the Liquidator/Special Deputy Liquidators, any obstruction or interference with the Liquidator/Special Deputy Liquidators in the conduct of this liquidation proceeding, or any violation of an order of the DIFS Director 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 Director of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Director, or both.

16. Any person who violates an injunction contained in this Liquidation Order shall be liable to the Liquidator/Special Deputy Liquidators, the Consumers Mutual policyholder/insured, or both, for the reasonable costs and attorney fees

incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

17. Pursuant to MCL 500.8136(4), any judgment or order against Consumers Mutual or a Consumers Mutual insured entered after the date the Liquidation Petition was filed, and any judgment or order against Consumers Mutual or a Consumers Mutual insured entered at any time by default or by collusion, need not be considered as evidence of liability or of quantum of damages. Similarly, any judgment or order against Consumers Mutual or a Consumers Mutual insured entered within four (4) months before the filing of the Liquidation Petition need not be considered as evidence of liability or of the quantum of damages. *Id.*

18. The deadlines and procedures for filing a claim relating to Consumers Mutual, its policyholders, or insureds are dependent on the nature of the claim and are governed as follows:

- (a) All Creditor claims for healthcare goods and services provided to a Consumers Mutual policyholder or insured pursuant to a Consumers Mutual insurance policy, whether made by a contracted or non-contracted healthcare provider or the policyholder/insured, must be submitted to Consumers Mutual for processing in the normal course of business by no later than one (1) year after the date on which the healthcare good or service was provided. Claims for healthcare goods or services submitted after this one-year deadline will be denied. A separate Proof of Claim form should not be filed in the Consumers Mutual liquidation proceeding for any such healthcare claim.

- (b) Any other Creditor claims that do not involve healthcare goods or services provided to a Consumers Mutual policyholder or insured, including but not limited to claims by trade creditors/vendors, insurance agents, and non-healthcare claims by policyholders/insureds, must be filed in the Consumers Mutual liquidation proceeding by completing and mailing a Proof of Claim form postmarked on or before August 10, 2016 (the “Claim Bar Date”), which is six (6) months after the date of this Liquidation Order.<sup>1</sup>

Notwithstanding the claim-filing deadlines set forth in this paragraph 18 or the Liquidator’s notice, for any claim to be approved, it must be filed not later than any applicable deadline imposed by contract between the Creditor and Consumers Mutual; the claim-filing deadlines provided in this paragraph or the Liquidator’s notice do not extend any applicable contractual limitation period within which claims must be filed.

19. Unless otherwise provided in paragraph 18 above, all claims by Creditors against the assets of Consumers Mutual must be made by filing a Proof of Claim in this liquidation proceeding. All Creditor claims against Consumers Mutual 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.

20. As authorized by MCL 500.8121(1)(a), the Liquidator appoints James Gerber, the DIFS Director of Receiverships, and Julieanne Gulliver as Special Deputy Liquidators of Consumers Mutual. Mr. Gerber and Ms. Gulliver shall serve as Special Deputy Liquidators at the pleasure of the Liquidator, who reserves the

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<sup>1</sup> Unless the Liquidator specifies a different Claim Bar Date in the notice provided pursuant to MCL 500.8122(2), which is not anticipated.

right to appoint other Special Deputy Liquidators to replace and/or serve with Mr. Gerber and Ms. Gulliver in the future as the need arises. *Id.* Ms. Gulliver will serve as Special Deputy Liquidator under the direction and supervision of Mr. Gerber, and shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code subject to the supervision and direction of Mr. Gerber, the Liquidator, and this Court. *Id.* As Special Deputy Liquidator, Mr. Gerber shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code, subject to the supervision and direction of the Liquidator and this Court. *Id.*

21. Pursuant to MCL 500.8121(1)(a) and (d), the Liquidator has determined the reasonable compensation to be paid to Mr. Gerber as Special Deputy Liquidator as follows: Mr. Gerber shall continue to be compensated as a salaried employee of DIFS and shall not receive any additional salary in his capacity as Special Deputy Liquidator of Consumers Mutual. However, Mr. Gerber's expenses for travel, lodging, meals, and other expenses incurred in connection with his appointment as Special Deputy Liquidator shall be paid out of the funds or assets of Consumers Mutual pursuant to MCL 500.8121(1)(d). Mr. Gerber will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates. If the Liquidator so elects in the future, he may allocate to Consumers Mutual the pro rata portion of Mr. Gerber's salary, at the rate of \$86.43 an hour, attributable to the performance of his duties as Special Deputy Liquidator, which compensation shall be paid out of the funds or assets of Consumers Mutual pursuant to MCL 500.8121(1)(d). In the event that Consumers

Mutual does not possess sufficient cash or liquid assets to pay Mr. Gerber's expenses, or his salary if the Liquidator makes the allocation election permitted by this paragraph, the Liquidator may advance the necessary funds out of an appropriation for the maintenance of DIFS, which shall be repaid out of the first available money of Consumers Mutual pursuant to MCL 500.8121(1)(d).

22. Pursuant to MCL 500.8121(1)(a) and (d), the Liquidator has determined the reasonable compensation to be paid to Ms. Gulliver as Special Deputy Liquidator as follows: Ms. Gulliver shall continue to be compensated in accordance with the terms of her Retainer Agreement, which was attached as Exhibit A to the Ex Parte Petition for Approval of Julieanne Gulliver's Compensation as Special Deputy Rehabilitator filed with and approved by this Court on December 21, 2015. Specifically, Ms. Gulliver will be paid at the rate of \$50.00 per billed hour up to 40 hours each week. Ms. Gulliver will also be reimbursed for her travel, lodging, meals, and other expenses incurred in connection with her appointment as Special Deputy Liquidator. Ms. Gulliver will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates, except for mileage which will be reimbursed at the IRS standard business mileage rate. Pursuant to MCL 500.8121(1)(d), Ms. Gulliver's compensation will be paid as it becomes due from the available funds and assets of Consumers Mutual. Although it is not expected to occur, in the event that Consumers Mutual does not possess sufficient cash or liquid assets to pay Ms. Gulliver's compensation, the Liquidator may advance (but is not required to

advance) the necessary amounts out of DIFS funds, which shall be repaid out of the first available money of Consumers Mutual pursuant to MCL 500.8121(1)(d).

23. Pursuant to MCL 500.8121(1)(d), the Liquidator and Special Deputy Liquidators are authorized to pay from the funds or assets of Consumers Mutual all expenses associated with taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the company's business and property.

24. The Liquidator and Special Deputy Liquidators shall provide notice of this Liquidation Order in accordance with MCL 500.8122.

25. The Court approves the Early Access Agreement and Service Agreement executed by the Rehabilitator (now Liquidator) and Guaranty Association, which were attached to the Liquidation Petition as Exhibits C and D, respectively.

26. The Court authorizes, approves, and/or ratifies the Liquidator's service of the Liquidation Petition (together with the attached Exhibits), the Notice of Hearing, and this Liquidation Order via regular mail on the following parties only:

- (a) John Colpean, the Guaranty Association's Administrator and General Counsel;
- (b) Jay Williamson and Terrance Mebane, who are the Centers for Medicare and Medicaid Services ("CMS") representative and U.S. Department of Justice ("DOJ") counsel for CMS, respectively, assigned to Consumers Mutual; and (c) Robin Reynolds, the former Chairperson of Consumers Mutual's Board of Directors, which was suspended upon entry of the Rehabilitation Order. Due to the difficulty and prohibitive cost associated with personally serving the Petition, Notice of Hearing,

and this Order on all other parties that may have a general interest in Consumers Mutual's rehabilitation / liquidation, the Court authorizes, approves, and/or ratifies the Liquidator's service of these papers on any other potentially interested parties 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." The Court finds that service in this manner is reasonably calculated to give the Guaranty Association, CMS and its DOJ counsel, Ms. Reynolds, and any other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

27. The Court reserves the ability to amend this Liquidation Order and to issue such further orders as it deems just, necessary, and appropriate.

**IT IS SO ORDERED.**

  
Honorable James S. Jamo  
Circuit Court Judge

**CERTIFIED COPY**  
**30TH CIRCUIT COURT**

FEB 10 2016

I hereby certify that this document is a true and correct copy of the original on file with this court.

 Deputy Clerk