

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
COUNTY OF INGHAM

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

Case No. 20-452-CR

Petitioner,

HON. JOYCE DRAGANCHUK

v

MIDWESTERN DENTAL PLANS, INC.,

[IN REHABILITATION]

Respondent.

_____/

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_____/

PETITION FOR ORDER
CONVERTING REHABILITATION TO LIQUIDATION
AND FOR JUDICIAL DECLARATION OF INSOLVENCY OF
MIDWESTERN DENTAL PLANS, INC.

Anita G. Fox, Director (“Director”) of the Michigan Department of Insurance and Financial Services (“DIFS”), as Rehabilitator of Midwestern Dental Plans, Inc. (the “Rehabilitator”), by and through her attorneys, Dana Nessel, Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court: (a) for an order converting the current rehabilitation of Midwestern Dental Plans, Inc.

(“Midwestern Dental”) to a liquidation proceeding, pursuant to MCL 500.8116(1) and MCL 500.8117; and (b) for a judicial declaration of Midwestern Dental’s insolvency, pursuant to MCL 500.8118(4). In support of this Petition, the Rehabilitator states as follows:

INTRODUCTION

1. On October 15, 2020, this Court entered an Order placing Midwestern Dental into rehabilitation and appointing the Director as the Rehabilitator of Midwestern Dental (the “Rehabilitation Order”). The Court entered the Rehabilitation Order requested by the Director because Midwestern Dental’s condition was such that its further transaction of business would have been hazardous financially to its policyholders, creditors, and the public. Rehabilitation Order, p 4, ¶¶ F, G; MCL 500.8112(a). The Court further ordered that Midwestern Dental be placed into rehabilitation because: (a) without first obtaining the [Director’s] written consent, the insurer had transferred, or attempted to transfer, in a manner contrary to law, substantially its entire property or business . . . ; and (b) Midwestern Dental was found, after examination, to be in a condition so that it could not presently meet the requirements for incorporation and authorization. Rehabilitation Order, p 4, ¶¶ F, G; MCL 500.8112(g) and (m).

2. Specifically, Midwestern Dental’s condition is such that it is unable to provide its contractual dental coverages and services to its members. Midwestern Dental has communicated to DIFS that its sole provider of dental services is insolvent and closed its offices on May 30, 2020. Midwestern Dental notified its

policyholders that it will no longer fulfill its contractual obligation under the policies it issued and requested policyholders to transfer their coverage effective June 1, 2020. Because Midwestern Dental had a sole provider, and that sole provider's offices are no longer open, Midwestern Dental's members are unable to receive the dental services afforded under the policies issued to them by Midwestern Dental.

3. Despite the best efforts of the Rehabilitator and Special Deputy Rehabilitators to rehabilitate Midwestern Dental, the company is no longer conducting business and is believed to be insolvent. Accordingly, an order to liquidate Midwestern Dental is necessary and appropriate because: (a) further attempts to rehabilitate the company would be futile and would substantially increase the risk of loss to the company's creditors, policyholders, and the public; (b) the company is believed to be insolvent; and (c) the company's condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. MCL 500.8116(1), MCL 500.8117.

THE PARTIES / JURISDICTION

4. Petitioner Anita G. Fox is the duly appointed Director of DIFS and court-appointed Rehabilitator of Midwestern Dental.

5. Respondent Midwestern Dental is a Michigan for-profit company authorized to do business as an alternative health care financing and delivery system under Chapter 35 of the Michigan Insurance Code. It is a managed care entity limited to providing coverage for dental services. Midwestern Dental

received its Michigan certificate of authority on June 29, 2000. From April 30, 1998 to June 28, 2000, Midwestern Dental was licensed jointly by what is now the Michigan Department of Insurance and Financial Services and the Michigan Department of Health and Human Services.

6. Midwestern Dental operates a system of alternative health care financing and delivery offered to individuals in exchange for a fixed payment. The system is organized so that dental health care providers and Midwestern Dental are in some part at risk for the cost of services in a manner similar to a health maintenance organization (“HMO”) regulated under Chapter 35, although Midwestern Dental does not meet all the legal requirements applicable to HMOs. Consequently, Midwestern Dental is regulated in the same manner as HMOs except to the extent that the Director finds that such regulation is inappropriate. MCL 500.3573.

7. HMOs are subject to: “[A]ll of the provisions of [the Insurance Code] that apply to a domestic insurer authorized to issue a health insurance policy” unless “specifically excluded, or otherwise specifically provided for in this chapter.” MCL 500.3503. Chapter 35 does not exclude HMOs from proceedings under Chapter 81 of the Insurance Code, including a rehabilitation proceeding. Moreover, Midwestern Dental is regulated in the same manner as HMOs except to the extent that the Director finds such regulation to be inappropriate. MCL 500.3573. Because the Director has not determined that regulation under Chapter 81 is inappropriate for an alternative health care financing and delivery system,

Midwestern Dental remains subject to proceedings under Chapter 81 of the Insurance Code.

8. MCL 500.8102 provides that a proceeding under Chapter 81 of the Insurance Code, 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. Midwestern Dental satisfies both criteria and is therefore subject to liquidation.

9. Pursuant to MCL 500.8104(1), only the Director may commence a liquidation proceeding against an insurer under Chapter 81.

10. MCL 500.8104(3) vests the Ingham County Circuit Court with sole jurisdiction over a liquidation proceeding commenced under Chapter 81.

PROCEDURAL BACKGROUND

11. Among other things, and as required by law, the Rehabilitation Order entered by this Court on October 15, 2020: (a) appointed the Director as Rehabilitator of Midwestern Dental; (b) approved the compensation of James Gerber, the DIFS Director of Receiverships, and Thomas Mitchell as the Rehabilitator's appointed Special Deputy Rehabilitators; (c) directed the Rehabilitator to take immediate possession of the company's assets and to administer those assets under the Court's general supervision; (d) granted the Rehabilitator and Special Deputy Rehabilitators full power and authority to direct and manage Midwestern Dental and to deal in totality with the property and

business of the company; and (e) authorized the Rehabilitator and Special Deputy Rehabilitators to take such action as they considered necessary or appropriate to reform or revitalize Midwestern Dental.

12. Following entry of the Rehabilitation Order, the Rehabilitator and Special Deputy Rehabilitators took possession of Midwestern Dental's assets, evaluated the company's books, records, and business operations, and assumed management of the company with the objective of determining whether it could be rehabilitated.

FINANCIAL CONDITION AND POLICY COUNTS

13. As of March 31, 2020, Midwestern Dental reported assets of \$848,346, liabilities of \$421,274, and capital and surplus of \$427,072. Although the company's financial reports indicated a surplus of \$427,072, the Rehabilitator anticipates that Midwestern Dental's failure to provide contracted-for dental services will result in significant liabilities to policyholders and members that will exceed this reported surplus. Moreover, given that Midwestern Dental has notified policyholders to move their members, Midwestern Dental has entered a phase of run-off. Accordingly, Midwestern Dental's assets need to be marshalled and preserved to pay any outstanding liabilities of Midwestern Dental and any amounts owed on behalf of members that are in the midst of a dental treatment plan. Further, policyholders were charged, and continued to pay premiums, during Governor Whitmer's "Stay at Home Order" (EO 2020-21, effective March 24, 2020 and extended thereafter), although members were only permitted to receive emergency

services during this time. During this time, most of those premiums (about 97%) were paid to Midwestern Dental's sole provider, which claimed insolvency and closed its offices on May 30, 2020.

14. As stated, prior to the rehabilitation the number of health insurance policies issued by Midwestern Dental had fallen to zero, where the premiums paid for these policies represent the predominant source of the company's revenues. Without any premium revenues or active insurance policies, and without a provider of dental services, the company cannot be successfully rehabilitated and must be placed into liquidation.

15. The reduction in active policies to zero and associated loss of all premium revenues supports the Rehabilitator's conclusion that Midwestern Dental cannot be successfully rehabilitated. Accordingly, the Court should grant this petition and enter the Rehabilitator's proposed Order of Liquidation and Declaration of Insolvency of Midwestern Dental ("Liquidation Order") in the form attached as Exhibit A.

**AUTHORITY FOR ORDER OF LIQUIDATION AND
JUDICIAL DECLARATION OF INSOLVENCY**

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

17. MCL 500.8117 further authorizes the Rehabilitator to petition this Court for an order to liquidate Midwestern Dental 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.

18. Under MCL 500.8103(i)(ii), an insurer such as Midwestern Dental is defined as “insolvent” when its “admitted assets do not exceed liabilities plus . . . [a]ny capital and surplus required by law for its organization.” This subsection further defines “liabilities” to “include, but not be limited to, reserves required by statute or by rule or specific requirements imposed by the commissioner upon an insurer at the time of admission or subsequent to admission.”

19. Pursuant to MCL 500.8117(b), this Court should grant the Rehabilitator’s petition to liquidate Midwestern Dental because the company is believed to be insolvent. Midwestern Dental’s primary asset is a PNC Bank operating account number x3752 having a balance of \$622,129.31 as of October 26, 2020. The assets in this PNC Bank account in all likelihood will be exceeded by creditor claims against the company which represent liabilities, making Midwestern Dental insolvent. This is before taking into account (by adding to the company’s liabilities) the positive, minimum capital and surplus required by law for Midwestern Dental’s organization.

20. The Court should also grant the Rehabilitator's petition under MCL 500.8117(c) because Midwestern Dental's condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. Midwestern Dental's hazardous condition is evidenced by the company's lack of any dental services provider and corresponding decision to cease all operations, the lack of any active insurance policies resulting in no source of premium revenues to the company, and limited assets in the PNC Bank account against which there will be numerous creditor claims.

21. In addition, MCL 500.8117(a) authorizes a petition for liquidation based on any of the thirteen grounds for rehabilitation found in MCL 500.8112. The following grounds in MCL 500.8112 continue to be applicable to Midwestern Dental, for the reasons stated above:

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

* * *

- (g) Without first obtaining the commissioner's written consent, the insurer has transferred, or attempted to transfer, in a manner contrary to law, substantially its entire property or business . . .

* * *

- (m) [The insurer i]s found, after examination, to be in a condition so that it could not presently meet the requirements for incorporation and authorization.

22. In addition to these bases for liquidation under MCL 500.8117, the Court should enter an order to liquidate Midwestern Dental under MCL 500.8116(1) because the Rehabilitator reasonably believes—again, based on the company losing its dental service provider and ceasing all operations, associated loss of all premium revenues, and limited assets in the PNC Bank account—that any further attempts at rehabilitation would be futile and would substantially increase the risk of loss to creditors, policyholders, and the public.

23. The Rehabilitator further requests a judicial declaration of Midwestern Dental’s insolvency pursuant to MCL 500.8118(4), which provides:

At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer’s insolvency, may petition the court for a judicial declaration of insolvency. After providing notice and hearing as it considers proper, the court may make the declaration.

24. As explained above, Midwestern Dental is believed to satisfy the definition of “insolvency” because its liabilities in the form of creditor claims will most likely exceed Midwestern Dental’s primary asset, the PNC Bank operating account number x3752 having a balance of \$622,129.31 as of October 26, 2020. This is before taking into account (by adding to the company’s liabilities) the positive, minimum capital and surplus required by law for Midwestern Dental’s organization. Consequently, the Court should grant the Rehabilitator’s request under MCL 500.8118(4) and declare that Midwestern Dental is insolvent.

25. The Rehabilitator and Special Deputy Rehabilitators have exhausted all avenues for Midwestern Dental’s rehabilitation. The company cannot be successfully rehabilitated, it is insolvent, and it must now be liquidated. The

Rehabilitator therefore requests the Court to enter the Liquidation Order in the form attached as Exhibit A.

**APPOINTMENT AND COMPENSATION OF
SPECIAL DEPUTY LIQUIDATORS**

26. MCL 500.8121(1)(a) authorizes the Rehabilitator, upon entry of the Liquidation Order appointing her as Liquidator, to appoint a Special Deputy Liquidator(s), who shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code and who shall serve at the pleasure of the Liquidator.

27. Pursuant to MCL 500.8121(1)(a), the Liquidator may determine the reasonable compensation of any Special Deputy Liquidator(s) that she appoints. The Liquidator is further authorized to pay that reasonable compensation to her appointed Special Deputy Liquidator(s) and to defray from the funds or assets of Midwestern Dental all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with, Midwestern Dental's business and property. MCL 500.8121(1)(d). If Midwestern Dental's property does not contain sufficient cash or liquid assets to defray the costs incurred, the Liquidator may advance the incurred costs out of an appropriation for the maintenance of DIFS. *Id.* Amounts advanced for expenses of administration shall be repaid to the Liquidator for the use of DIFS out of the first available money of Midwestern Dental. *Id.*

28. Upon her appointment as Liquidator, the Rehabilitator appoints James Gerber, the Director of Receiverships at DIFS, as Special Deputy Liquidator

for Midwestern Dental. The Rehabilitator further appoints Thomas Mitchell as Special Deputy Liquidator, who shall report to Mr. Gerber. Pursuant to the Rehabilitation Order, the Rehabilitator previously appointed Mr. Gerber and Mr. Mitchell as Special Deputy Rehabilitators of Midwestern Dental and the Court approved their compensation in that capacity. Rehabilitation Order, ¶ 28. Having served as Special Deputy Rehabilitators since their appointments, Mr. Gerber and Mr. Mitchell are intimately familiar with Midwestern Dental's business operations. The Liquidator reserves the right to appoint other Special Deputy Liquidator(s) to replace and/or serve with Mr. Gerber and Mr. Mitchell in the future as the need arises.

29. Upon her appointment as Liquidator, the Rehabilitator has determined the compensation to be paid to Mr. Gerber and Mr. Mitchell as Special Deputy Liquidators pursuant to the terms set forth in the Liquidation Order attached as Exhibit A.

30. The Rehabilitator has determined that upon her appointment as Liquidator, the appointment of James Gerber and Thomas Mitchell as Special Deputy Liquidators is both necessary and appropriate for the effective and efficient administration of the liquidation proceeding and will assist in providing the maximum protection to creditors, policyholders, and the public. The Rehabilitator has further determined that the compensation to be paid to Mr. Gerber and Mr. Mitchell as Special Deputy Liquidators is reasonable.

**ADDITIONAL PROVISIONS CONTAINED IN THE
REQUESTED LIQUIDATION ORDER**

31. Without detracting from the importance of and legal authority for each provision contained in the Rehabilitator's requested Liquidation Order attached as Exhibit A, the Rehabilitator highlights the following provisions not previously discussed for the benefit of the Court and any interested individuals or entities.

32. Pursuant to MCL 500.8122(1), the Liquidator or Special Deputy Liquidators will cause notice of the Liquidation Order to be provided promptly after its entry by first-class mail to at least the following: (a) the Director of DIFS, because Michigan is the only jurisdiction in which Midwestern Dental conducted business; (b) all insurance agents of Midwestern Dental; and (c) all persons known or reasonably expected to have claims against Midwestern Dental including all policyholders and potential creditors, at their last known address as indicated by the records of Midwestern Dental. In addition, the Liquidator or Special Deputy Liquidators will provide general notice of the Liquidation Order by publication in a newspaper of general circulation in the county in which Midwestern Dental has its principal place of business.

33. Pursuant to MCL 500.8105(1)(f) and 500.8124(1), the Liquidation Order provides that upon its entry, all actions at law or equity against Midwestern Dental, the Liquidator, or the Special Deputy Liquidators are immediately prohibited and enjoined, and any such actions may not be commenced, maintained, or further presented in Michigan or any other State. Likewise, the Liquidation Order provides, consistent with MCL 500.8105(1)(g) and (h) and MCL 500.8157,

that all actions or proceedings in the nature of an attachment, garnishment, or levy of execution against Midwestern Dental, its assets, or its policyholders are immediately prohibited, enjoined, and may not be commenced or maintained. All claims by creditors against the assets of Midwestern Dental must be made by filing claims in the liquidation proceeding, consistent with the terms more specifically set forth in the Liquidation Order attached as Exhibit A.

34. Pursuant to MCL 500.8105(1)(g) and (k), all contracted and non-contracted healthcare providers are specifically enjoined and restrained from pursuing collection against, obtaining judgments against, and/or balance billing of Midwestern Dental's policyholders, insureds, or members for covered healthcare goods provided or services rendered prior to the date of the Liquidation Order. All contracted and non-contracted healthcare providers that provided such goods or rendered such services must seek payment solely from Midwestern Dental as a Midwestern Dental creditor. This 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 Midwestern Dental insurance policy.

35. As described more fully in the Liquidation Order, the deadlines and procedures for filing a claim relating to Midwestern Dental are as follows:

Any creditor claims against Midwestern Dental, including but not limited to claims by health care providers, trade creditors/vendors, insurance agents, and claims by policyholders/insureds, must be filed in the Midwestern Dental

liquidation proceeding by completing and mailing a Proof of Claim form postmarked on or before the Claim Bar Date of June 30, 2021 established by the Liquidation Order.

NOTICE / SERVICE

36. Personally serving this Petition, the Notice of Hearing, and any resulting Order on all individuals or entities that may have a general interest in Midwestern Dental's rehabilitation / liquidation would be impractical at this time because there has been no claims submission or other process to identify these parties. Moreover, attempting to identify and personally notify every individual or entity having such a general interest would be time-intensive and costly to Midwestern Dental's rehabilitation / liquidation estate. For these reasons, the Rehabilitator requests this Court to authorize, approve, and/or ratify service of this Petition, the Notice of Hearing, and any resulting Order on any potentially interested individuals or entities 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 "Midwestern Dental."

42. Service and notice in the foregoing manner is reasonably calculated to give any potentially interested individuals or entities actual notice of these proceedings and is otherwise reasonable under the circumstances. The Rehabilitator additionally requests the Court to determine, as provided in the attached Liquidation Order, that this notice is proper to make a judicial declaration of Midwestern Dental's insolvency under MCL 500.8118(4).

RELIEF REQUESTED

Based on the foregoing, the Rehabilitator respectfully requests this Court to enter the Order of Liquidation and Declaration of Insolvency of Midwestern Dental Plans, Inc. in the form attached as Exhibit A.

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Christopher L. Kerr
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Dated: January 26, 2021

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STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
COUNTY OF INGHAM

ANITA G. FOX, DIRECTOR OF THE
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**ORDER OF LIQUIDATION AND
DECLARATION OF INSOLVENCY OF
MIDWESTERN DENTAL PLANS, INC.**

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
_____ day of February, 2021.

PRESENT: HONORABLE JOYCE DRAGANCHUK, CIRCUIT COURT JUDGE

The Court has reviewed and considered the Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of Midwestern Dental Plans, Inc. (the “Liquidation Petition”), which was filed by Anita G. Fox, the Director (“Director”) of the Michigan Department of Insurance and Financial Services (“DIFS”) and court-appointed Rehabilitator of Midwestern Dental Plans, Inc. (the “Rehabilitator”). The Court is also fully informed of the circumstances involving Midwestern Dental Plans, Inc. (“Midwestern Dental”) 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 October 15, 2020.

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 Wednesday, February 3, 2021 at 2:15 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. Midwestern Dental 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 Midwestern Dental 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 Midwestern Dental is authorized and appropriate because, as explained more fully in the Liquidation Petition, the company is believed to be insolvent. Midwestern Dental’s primary asset is a PNC Bank operating account number x3752 having a balance of \$622,129.31 as of October 26, 2020. The assets in this PNC Bank account in all likelihood will be exceeded by creditor claims against the company which represent liabilities, making Midwestern Dental insolvent. This is before taking into account (by adding to the company’s liabilities) the positive, minimum capital and surplus required by law for Midwestern Dental’s organization. Therefore, under MCL 500.8103(i)(ii), Midwestern Dental is believed to satisfy the definition of “insolvent”

because its “admitted assets do not exceed liabilities plus . . . [a]ny capital and surplus required by law for its organization.”

F. The liquidation of Midwestern Dental is further authorized and appropriate under MCL 500.8117(c) because, as explained more fully in the Liquidation Petition, Midwestern Dental’s condition is such that its further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, and the public. Midwestern Dental’s hazardous condition is evidenced by, *inter alia*, the company’s lack of any dental services provider and corresponding decision to cease all operations, the lack of any active insurance policies resulting in no source of premium revenues to the company, and limited assets in the PNC Bank account against which there will be numerous creditor claims.

G. In addition, this Order to liquidate Midwestern Dental is authorized and appropriate under MCL 500.8117(a), which authorizes a petition for liquidation based on any of the thirteen grounds for rehabilitation found in MCL 500.8112. The following grounds in MCL 500.8112 continue to be applicable to Midwestern Dental, for the reasons stated above:

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

* * *

- (g) Without first obtaining the commissioner’s written consent, the insurer has transferred, or attempted to transfer, in a manner contrary to law, substantially its entire property or business . . .

* * *

(m) [The insurer i]s found, after examination, to be in a condition so that it could not presently meet the requirements for incorporation and authorization.

H. This Order to liquidate Midwestern Dental 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.

I. As explained above, Midwestern Dental is believed to satisfy the definition of “insolvency” because its liabilities in the form of creditor claims will most likely exceed Midwestern Dental’s primary asset, the PNC Bank operating account number x3752 having a balance of \$622,129.31 as of October 26, 2020. This is before taking into account (by adding to the company’s liabilities) the positive, minimum capital and surplus required by law for Midwestern Dental’s organization. Because Midwestern Dental’s liabilities are likely to exceed its assets and the company is believed to be 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).

J. As defined by MCL 500.8103(b) and for purposes of this Order, a “Creditor” is a person having a claim against Midwestern Dental, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

K. 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 Midwestern Dental, its assets, or its policyholders;
- (c) The obtaining of preferences, judgments, attachments, garnishments, or liens against Midwestern Dental, its assets, or its policyholders;
- (d) The levying of execution against Midwestern Dental, its assets, or its policyholders; and
- (e) Any other threatened or contemplated action that might lessen the value of Midwestern Dental's assets or prejudice the rights of its policyholders, creditors, or the administration of the liquidation proceeding.

L. Immediate action placing Midwestern Dental into liquidation is necessary to protect the interests of Midwestern Dental'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 Midwestern Dental 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 Midwestern Dental 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 Midwestern Dental'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 Midwestern Dental'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 Midwestern Dental'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 Midwestern Dental and of its Creditors, policyholders, insureds, and all other persons interested in Midwestern Dental'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 Midwestern Dental'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 and Special Deputy Liquidators shall account to this Court each succeeding one-year period from the date of this Order during which Midwestern Dental remains in liquidation, pursuant to MCL 500.8118(5).

7. Although there are no known insurance policies issued by Midwestern Dental 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, these policies are terminated as of the earliest of the following dates:

- a. A period of 30 days from the date of entry of the Liquidation Order;
- b. The expiration of the policy coverage;
- c. The date the insured replaces the insurance coverage with equivalent insurance in another insurer or otherwise terminates the policy; or
- d. The date 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 Midwestern Dental 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 Midwestern Dental, 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 Midwestern Dental, the Liquidator, or the 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 Midwestern Dental 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, 17, and 18 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 Midwestern Dental, 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 Midwestern Dental or any proceedings under Chapter 81;
- (c) Obtaining preferences, judgments, attachments, garnishments, or liens against Midwestern Dental, its assets, policyholders, insureds, employees, former officers, or former directors;
- (d) Levying of execution against Midwestern Dental, its assets, policyholders, insureds, employees, former officers, or former directors; and

(e) Threatening or taking any other action that may lessen the value of Midwestern Dental's assets or prejudice the rights of Midwestern Dental'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 Midwestern Dental'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 Midwestern Dental as a Midwestern Dental 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 Midwestern Dental insurance policy.

12. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, or agents of Midwestern Dental, or any other persons or entities having authority over or in charge of any segment of the affairs of Midwestern Dental, 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 Midwestern Dental 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 Midwestern Dental; 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 Midwestern Dental or the operation of Midwestern Dental and its business, provided to or from Midwestern Dental's in-house or outside counsel by or to Midwestern Dental, 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.

13. Any person or entity with possession, custody, or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Midwestern Dental 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.

14. 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.

15. Any person who violates an injunction contained in this Liquidation Order shall be liable to the Liquidator/Special Deputy Liquidators, the Midwestern Dental 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.

16. Pursuant to MCL 500.8136(4), any judgment or order against Midwestern Dental or a Midwestern Dental insured entered after the date the Liquidation Petition was filed, and any judgment or order against Midwestern Dental or a Midwestern Dental 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 Midwestern Dental or a Midwestern Dental 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.*

17. The deadline and procedures for filing a claim relating to Midwestern Dental, its policyholders, or insureds are governed as follows:

- (a) Any Creditor claims against Midwestern Dental, including but not limited to claims by health care providers, trade creditors/vendors, insurance agents, and claims by policyholders/insureds, must be filed in the Midwestern Dental liquidation proceeding by completing and mailing a Proof of Claim form postmarked on or before June 30, 2021 (the “Claim Bar Date”), which is approximately five (5) months after the date of this Liquidation Order.¹

Notwithstanding the claim-filing deadline set forth in this paragraph 17 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 Midwestern Dental; 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.

18. All claims by Creditors against the assets of Midwestern Dental must be made by filing a Proof of Claim in this liquidation proceeding. All Creditor claims against Midwestern Dental 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.

19. As authorized by MCL 500.8121(1)(a), the Liquidator appoints James Gerber, the DIFS Director of Receiverships, and Thomas Mitchell as Special Deputy Liquidators of Midwestern Dental. Mr. Gerber and Mr. Mitchell shall serve as Special Deputy Liquidators at the pleasure of the Liquidator, who reserves the right to appoint other Special Deputy Liquidators to replace and/or serve with Mr. Gerber

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

and Mr. Mitchell in the future as the need arises. *Id.* Mr. Mitchell 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.*

20. Pursuant to MCL 500.8121(1)(a) and (d), the Liquidator has determined the reasonable compensation to be paid to Mr. Gerber and Mr. Mitchell as Special Deputy Liquidators as follows: Mr. Gerber and Mr. Mitchell shall continue to be compensated as salaried employees of DIFS and shall not receive any additional salary in their capacity as Special Deputy Liquidators of Midwestern Dental. However, Mr. Gerber's and Mr. Mitchell's expenses for travel, lodging, meals, and other expenses incurred in connection with their appointment as Special Deputy Liquidators shall be paid out of the funds or assets of Midwestern Dental pursuant to MCL 500.8121(1)(d). Mr. Gerber and Mr. Mitchell 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, she may allocate to Midwestern Dental the pro rata portion of Mr. Gerber's and Mr. Mitchell's salary and benefits, at the rate of \$92.36 an hour (Mr. Gerber) and \$73.89 an hour (Mr. Mitchell), respectively, attributable to the performance of their duties as Special Deputy Liquidators, which compensation shall be paid out of the funds or

assets of Midwestern Dental pursuant to MCL 500.8121(1)(d). In the event that Midwestern Dental does not possess sufficient cash or liquid assets to pay Mr. Gerber's and Mr. Mitchell's expenses, or their salary and benefits 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 Midwestern Dental pursuant to MCL 500.8121(1)(d).

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

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

23. Due to the difficulty and prohibitive cost associated with personally serving the Petition, Notice of Hearing, and this Order on all individuals or entities that may have a general interest in Midwestern Dental's rehabilitation / liquidation, the Court authorizes, approves, and/or ratifies the Liquidator's service of these papers on any potentially interested individuals or entities 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 "Midwestern Dental." The Court finds that service and notice in this manner is reasonably calculated to give any potentially interested individuals or entities

actual notice of these proceedings and is otherwise reasonable under the circumstances.

24. None of the provisions contained in this Order shall be construed to limit the Liquidator's authority to conduct receivership proceedings in accordance with the powers granted to her under Chapter 81.

25. 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.

This Order does not resolve the last pending claim and does not close this case.

Honorable Joyce Draganchuk
Circuit Court Judge