

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

November 2, 2021

***Via Hand Delivery***

Clerk to the Honorable James S. Jamo  
Ingham County Circuit Court  
Veterans Memorial Courthouse  
313 W. Kalamazoo St.  
Lansing, MI 48901

**Re: *Patrick McPharlin, Director of the Department of Insurance  
and Financial Services v Consumers Mutual Insurance of  
Michigan***  
**Case No. 15-948-CR; Honorable James S. Jamo**

Dear Judge Jamo's Clerk:

A hearing on the Liquidator's *Petition for Approval to Pay Distributions to Internal Revenue Service and Centers for Medicare and Medicaid Services* (the "Petition"), which was filed on August 25, 2021, is scheduled for hearing before Judge Jamo tomorrow, November 3, 2021 at 3:15 p.m. The Petition filed with the Court on August 25, 2021 included as Exhibit C a proposed *Order Approving Payment of Distributions to Internal Revenue Service and Centers for Medicare and Medicaid Services* (the "Proposed Order"). After the Petition was filed, however, counsel for the Centers for Medicare and Medicaid Services ("CMS") raised concerns about certain language in the Proposed Order, resulting in negotiations to revise the Proposed Order to resolve CMS counsel's concerns. Based on those negotiations, CMS counsel and the Liquidator's counsel have agreed to revise the Proposed Order, and hereby submit the attached, revised proposed order (the "Revised Proposed Order") to substitute for the Proposed Order that was originally attached as Exhibit C to the Petition.

Accordingly, because the attached Revised Proposed Order resolves CMS counsel's concerns and will facilitate a hearing tomorrow without objection by CMS counsel, please inform Judge Jamo that the Liquidator is no longer seeking entry of the Proposed Order originally attached to the Petition and is instead seeking entry of the attached Revised Proposed Order at tomorrow's hearing.

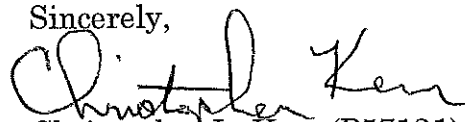
Clerk to the Honorable James S. Jamo

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If you or Judge Jamo have any questions regarding this submission, please do not hesitate to contact me directly. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher Kerr".

Christopher L. Kerr (P57131)

Assistant Attorney General

Corporate Oversight Division

(517) 335-7632

Enc

cc: James Gerber, Special Deputy Liquidator (via e-mail only)  
Terrance A. Mebane, CMS counsel (via e-mail only)

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

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

Petitioner,

Case No. 15-948-CR

v

HON. JAMES S. JAMO

CONSUMERS MUTUAL INSURANCE  
OF MICHIGAN,

[IN LIQUIDATION]

Respondent.

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Christopher L. Kerr (P57131)  
Assistant Attorney General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30736  
Lansing, MI 48909  
(517) 335-7632

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**ORDER APPROVING PAYMENT OF DISTRIBUTIONS  
TO INTERNAL REVENUE SERVICE AND  
CENTERS FOR MEDICARE AND MEDICAID SERVICES**

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

PRESENT: HONORABLE JAMES S. JAMO, CIRCUIT COURT JUDGE

**WHEREAS**, Anita G. Fox, Director ("Director") of the Michigan Department  
of Insurance and Financial Services ("DIFS"), in her capacity as the statutory and  
Court-appointed Liquidator of Consumers Mutual Insurance of Michigan (the

“Liquidator”), has filed a Petition for Approval to Pay Distributions to Internal Revenue Service and Centers for Medicare and Medicaid Services (the “Petition”); and

**WHEREAS**, on February 10, 2016, the Court entered an Order of Liquidation and Declaration of Insolvency of Consumers Mutual Insurance of Michigan (“Liquidation Order”), pursuant to which the Court appointed the Director as the Liquidator of Consumers Mutual Insurance of Michigan (“Consumers Mutual”) and affirmed the Liquidator’s appointment of James Gerber and Julieanne Gulliver as Special Deputy Liquidators; and

**WHEREAS**, as required by MCL 500.8118(1), the Liquidation Order directed the Liquidator “to take immediate possession of Consumers Mutual’s assets and to administer them under the Court’s general supervision”; and

**WHEREAS**, consistent with MCL 500.8118(1), the Liquidation Order further provided that “[t]he 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 entered”; and

**WHEREAS**, pursuant to the Liquidation Order, “[a]ll 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”; and

**WHEREAS**, as described in the Petition, the Internal Revenue Service (“IRS”) has a valid, allowed Class 3 claim against the Consumers Mutual liquidation estate for its Affordable Care Act (“ACA”) Annual Fee payable totaling \$620,502.83; and

**WHEREAS**, as described in the Petition, the Centers for Medicare and Medicaid Services (“CMS”) has a valid, allowed Class 3 claim against the Consumers Mutual liquidation estate for the balance of its ACA-related payables; and

**WHEREAS**, as described in the Petition, the Liquidator asserts that the amount of CMS’ valid, allowed Class 3 claim against the Consumers Mutual liquidation estate for the balance of its ACA-related payables totals \$9,179,587.12, after setoff of the ACA Reinsurance Program Distribution totaling \$2,288,287.00 that the Liquidator asserts CMS continues to owe Consumers Mutual; and

**WHEREAS**, CMS does not object to use of the Liquidator’s calculation of \$9,179,587.12 for purposes of resolving this matter and accepts the distribution to CMS provided below in Paragraph 1 of this Order with the understanding that no further distributions will be made to CMS, unless the Consumers Mutual liquidation estate receives additional funds that in the Liquidator’s discretion economically justify a further distribution to CMS and IRS on the outstanding balances of their valid, allowed Class 3 claims. However, CMS does not concede the accuracy or validity of the Liquidator’s methodology for calculating the aggregate amount of \$9,179,587.12 or the components of the aggregate amount, including the

Liquidator's determination of the balance due to CMS under the ACA risk adjustment program; and

**WHEREAS**, the Liquidator and Special Deputy Liquidators have marshaled all significant assets of Consumers Mutual, and have identified and paid all known, allowed claims against the Consumers Mutual liquidation estate that have higher payment priority than the Class 3 claim of IRS for the ACA Annual Fee payable and the Class 3 claim of CMS for the ACA-related payables, with the exception of Class 1 claims for the ongoing and future expenses of administering Consumers Mutual's liquidation estate (the "Estate Administrative Expenses"); and

**WHEREAS**, the Liquidation Order established a claim bar date of August 10, 2016, such that any claims against the Consumers Mutual liquidation estate asserted at this time are forever barred by the Liquidation Order's claim bar date and there can be no new claims asserted that are legally viable. Accordingly, the outstanding liabilities of the Consumers Mutual liquidation estate are now completely fixed and known; and

**WHEREAS**, the Liquidator and Special Deputy Liquidators have determined that the Consumers Mutual liquidation estate possesses sufficient assets to pay a distribution of estate funds to IRS on its Class 3 claim for the ACA Annual Fee payable and to CMS on its Class 3 claim for the ACA-related payables, while reserving amounts sufficient to pay the Estate Administrative Expenses; and

**WHEREAS**, as of July 31, 2021, the Consumers Mutual liquidation estate possessed liquid assets totaling \$9,767,145.10 in its PNC Bank checking and savings accounts; and

**WHEREAS**, the Liquidator and Special Deputy Liquidators have determined that it is appropriate to pay a 99.256% pro rata distribution to IRS and CMS on their respective Class 3 claims, resulting in a \$615,886.29 distribution to IRS on its Class 3 claim totaling \$620,502.83 and a \$9,111,290.99 distribution to CMS on its Class 3 claim totaling \$9,179,587.12; and

**WHEREAS**, after paying the \$615,886.29 distribution to IRS and the \$9,111,290.99 distribution to CMS, which together total \$9,727,177.28, Consumers Mutual's liquidation estate will still possess liquid assets totaling roughly \$40,000.00 (or precisely \$39,967.82 based on the \$9,767,145.10 in Consumers Mutual's PNC Bank checking and savings accounts as of July 31, 2021). Based on conservative estimates, the Liquidator and Special Deputy Liquidators have determined that these remaining funds of approximately \$40,000.00 are sufficient to pay all Estate Administrative Expenses; and

**WHEREAS**, consistent with the requirements of MCL 500.8144 governing distributions from the assets of an insurer's liquidation estate, the proposed distributions to IRS and CMS strike a reasonable balance between: (a) making a timely payment from excess estate funds on IRS' allowed, outstanding Class 3 claim for the ACA Annual Fee payable and on CMS' allowed, outstanding Class 3 claim for the ACA-related payables; (b) properly recognizing and protecting claims that

have higher payment priority than the IRS and CMS claims, specifically the Estate Administrative Expenses, by reserving roughly \$40,000.00 for their payment; and (c) facilitating the completion and closure of this liquidation proceeding; and

**WHEREAS**, this Court agrees that the above-cited provisions of Chapter 81 of the Insurance Code and the Liquidation Order authorize the distributions to IRS and CMS. The Court further agrees with the Liquidator's and Special Deputy Liquidators' determination that the distributions to IRS and CMS are necessary and appropriate for the effective and efficient administration of this liquidation proceeding and will assist in providing the maximum protection to creditors, policyholders, and/or the public; and

**WHEREAS**, the Petition, together with the attached Exhibits (which included a copy of this Order) and Notice of Hearing have been personally served:

- (a) Via U.S. First Class Mail on Terri Jones, IRS' representative who filed the IRS Proof of Claim for the ACA Annual Fee payable; and
- (b) Via U.S. First Class Mail and e-mail on Terrance A. Mebane, CMS' legal counsel at the Department of Justice; and

**WHEREAS**, because there are no other individuals or entities that have a particular interest in the distributions to IRS and CMS, and due to the difficulty and prohibitive cost associated with personally serving any other individuals or entities that may have a general interest in Consumers Mutual's liquidation, the Petition, together with the attached Exhibits (which included a copy of this Order) and Notice of Hearing have been served on any other 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 “Consumers Mutual Ins. of Michigan”; and

**WHEREAS**, the Liquidator and Special Deputy Liquidators will serve this Order in the same manner outlined above, i.e.: (a) via U.S. First Class Mail on Terri Jones; (b) via U.S. First Class Mail and e-mail on Terrance A. Mebane; and (c) via posting on the DIFS website with respect to any other potentially interested individuals or entities; and

**WHEREAS**, the Court having reviewed the Petition and any objections or responses filed thereto, having heard oral argument on November 3, 2021 at 3:15 p.m., and being otherwise fully advised;

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Court APPROVES and GRANTS the Petition; authorizes: (a) payment of a 99.256% pro rata distribution to IRS on its allowed, outstanding Class 3 claim for the ACA Annual Fee payable in the total amount of \$615,886.29; and (b) payment of a 99.256% pro rata distribution to CMS on its allowed, outstanding Class 3 claim for the ACA-related payables in the total amount of \$9,111,290.99, from the assets of Consumers Mutual’s liquidation estate; and authorizes the Liquidator and Special Deputy Liquidators to execute any necessary documentation and take such other action required to finalize the distributions to IRS and CMS.

2. Any objections to the Petition that have not been stricken, withdrawn, waived, or settled, and all reservations of rights pertaining to the Petition included therein or otherwise made in any pleading, correspondence, written or oral

statement, or other communication to: (a) the Court; or (b) Consumers Mutual, the Liquidator or Special Deputy Liquidators, or their counsel, are OVERRULED.

3. Consumers Mutual, the Liquidator and Special Deputy Liquidators, IRS, and CMS, together with any of their respective directors, officers, shareholders, members, partners, associates, employees, attorneys, agents, representatives, third-party professionals, parent companies, subsidiaries, affiliates, predecessors, successors, heirs, and assigns, shall not have or incur any liability to any person or entity (including each other) for any act or omission made in good faith in connection with or related to the distributions to IRS and CMS.

4. The Court authorizes, approves, and/or ratifies the Liquidator's and Special Deputy Liquidators' service of the Petition, together with the attached Exhibits (which included a copy of this Order), the Notice of Hearing, and this Order, in the manner described above and in Paragraphs 22 and 23 of the Petition. The Court finds that service in this manner is reasonably calculated to give Terri Jones (IRS), Terrance A. Mebane (CMS), and any other potentially interested individuals or entities actual notice of these proceedings and is otherwise reasonable under the circumstances.

**IT IS SO ORDERED.**

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Honorable James S. Jamo  
Circuit Court Judge