

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

PATRICK M. MCPHARLIN, 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)  
James E. Long (P53251)  
Assistant Attorneys General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

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**EX PARTE PETITION FOR APPROVAL OF PLANTE & MORAN  
PROFESSIONAL SERVICES AGREEMENT FOR CONSULTING SERVICES**

James Gerber, as duly appointed Special Deputy Liquidator of Consumers Mutual Insurance of Michigan (the "Special Deputy Liquidator"), by and through his attorneys, Dana Nessel, Attorney General, and James E. Long, Assistant Attorney General, petitions this Court pursuant to MCL 500.8121(1)(b) and (c) to approve the Professional Services Agreement for consulting services between Plante & Moran, PLLC ("Plante & Moran") and Consumers Mutual Insurance of Michigan

("Consumers Mutual"). In support of this *Ex Parte* Petition, the Special Deputy Liquidator states as follows:

1. On November 13, 2015, this Court entered an Order placing Consumers Mutual into Rehabilitation and appointing the then-Director of Michigan Department of Insurance and Financial Services ("DIFS") as Rehabilitator for Consumers Mutual (the "Rehabilitation Order").

2. On February 3, 2016, the Rehabilitator filed with the Court a Petition for Order Converting Rehabilitation to Liquidation and for Judicial Declaration of Insolvency of Consumers Mutual ("Liquidation Petition"), which sought: (a) an order converting the rehabilitation of Consumers Mutual to a liquidation proceeding, pursuant to MCL 500.8116(1) and MCL 500.8117; and (b) a judicial declaration of Consumer's Mutual's insolvency, pursuant to MCL 500.8118(4).

3. On February 10, 2016, the Court granted the Liquidation Petition and entered an Order of Liquidation and Declaration of Insolvency of Consumers Mutual ("Liquidation Order"). The Liquidation Order appointed the DIFS Director as the Liquidator of Consumers Mutual and approved the compensation of the Liquidator's appointed Special Deputy Liquidators, James Gerber and Julieanne Gulliver.

4. MCL 500.8121(1) grants the Liquidator broad power to marshal assets and take necessary action to liquidate a Michigan insurance company, including the power:

- (b) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she considers necessary to assist in the liquidation.
- (c) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, court's appraisers, and consultants with the court's approval.

5. On July 20, 2017, this Court entered an Order approving Plante & Moran's compensation associated with an audit of third-party administrator Key Benefit Administrators, Inc. ("KBA"), relating to potential overcharges to Consumers Mutual associated with KBA's processing of certain out-of-network claims and preferred provider network claims (the "Claim Audit").

6. Following Plante & Moran's audit of KBA, Plante & Moran produced an "Analysis of Network Service Compensation" report on June 22, 2018 which determined, in part, that KBA overcharged Consumers Mutual for some of its services. KBA, however, has disputed Plante & Moran's determination that it overcharged Consumers Mutual. Accordingly, the Special Deputy Liquidator has determined that to assist in the potential claims against KBA, it is necessary to procure the services of Plante & Moran to provide consulting services, including but not limited to expert testimony in depositions, arbitration, facilitated mediation, or trial, if necessary.

7. Such consultation and potential expert testimony is necessary and appropriate for the effective and efficient administration of this liquidation proceeding and will assist in providing maximum protection to creditors, policyholders, and the public. Moreover, Plante & Moran is an appropriate entity to

provide these consulting services and expert testimony because it has already audited KBA and determined that KBA has overcharged Consumers Mutual for processing of certain out-of-network claims and preferred provider network claims.

8. Plante & Moran's proposed fee for services range from \$90-\$150 per hour for work performed by staff, \$270.00 per hour for work performed by a Manager Holly Stefanski, and \$450.00 per hour for work performed by a Partner. A copy of an engagement letter dated January 15, 2019 and a Professional Services Agreement dated March 7, 2019 between Special Deputy Liquidator James Gerber and Plante & Moran is attached as Exhibit A. As set forth in the January 15, 2019 engagement letter, if Plante & Moran's total fees related to its services exceed \$25,000, Consumers Mutual will seek additional authorization from the Court to amend the Professional Services Agreement.

9. The Special Deputy Liquidator believes that the fee arrangement with Plante & Moran is competitive, reasonable, and appropriate given the scope of its services, and therefore requests that the Court approve Plante & Moran's reasonable compensation fixed by the Special Deputy Liquidator.

10. Personally serving this *Ex Parte* Petition and any resulting Order on individuals or entities that may have a general interest in Consumer Mutual's liquidation would be time-intensive and costly to the Consumer Mutual liquidation estate. For this reason, the Special Deputy Liquidator requests this Court to authorize, approve, and ratify service of this *Ex Parte* Petition and any resulting Order 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 subsection “Consumers Mutual Ins. of Michigan.” Service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

### RELIEF REQUESTED

WHEREFORE, for the reasons stated above, the Special Deputy Liquidator respectfully requests that this Court approve the compensation of Plante & Moran, as fixed by the Special Deputy Liquidator, to provide consulting and expert testimony in connection with the disputed claim that KBA overcharged Consumers Mutual for processing of certain out-of-network claims and preferred provider network claims.

The Liquidator further requests that this Court authorize, approve, and ratify service of this *Ex Parte* Petition and any resulting Order by posting copies on the “Consumers Mutual Ins. of Michigan” section of the DIFS website.

Respectfully submitted,

Dana Nessel  
Attorney General



James E. Long (P53251)  
Assistant Attorney General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30736  
Lansing, MI 48909  
(517) 335-7632

Dated: March 18, 2019

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January 15, 2019

Mr. James Gerber  
Special Deputy Liquidator  
Consumers Mutual Insurance of Michigan

Re: Consumers Mutual Insurance of Michigan – Overpayments to Key Benefit Administrators

Dear Mr. Gerber:

This letter and the accompanying Professional Services agreement, which is hereby incorporated as part of this engagement letter, confirms our understanding of the nature, limitations, and terms of the services Plante & Moran, PLLC ("PM") will provide the Special Deputy Liquidator of Consumers Mutual Insurance of Michigan ("CMI").

**Scope of Services**

We will provide consulting services to you in connection with the disputed claims in the above referenced matter. These services will be performed by Holly Stefanski, CPA, and such other individuals as are appropriate in the circumstances.

It is understood that should counsel at a later date determine that expert testimony be required that relates to the subject matter of our consulting services, Holly Stefanski will be available to testify as an expert in depositions, arbitration, facilitated mediation, or at trial as needed.

**Fees and Payment Terms**

Our fee for these services, subject to the terms and conditions of the accompanying Professional Services agreement, will be based on the value of services provided, which is primarily a function of time that Plante Moran staff expends at our current hourly rates, plus all reasonable and necessary travel and out-of-pocket costs incurred. Invoices for services will be based on the time Plante & Moran staff expend at the following hourly rates:

Michelle McHale-Adams (Partner)	\$450
Holly Stefanski (Manager)	\$270
Staff	\$90 - \$150

If and when total fees related to these services exceed \$25,000, CMI will seek additional authorization from the Court in the CMI Liquidation Proceeding via an amendment to this agreement.

As you probably realize, our primary cost is salaries that are paid currently. Accordingly, our invoices, which will be rendered as services are provided, are due when received. In the event an invoice is not paid timely, a late charge in the amount of 1.25 percent per month will be added, beginning 30 days after the date of the invoice.



Mr. James Gerber  
January 15, 2019  
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If you are in agreement with our understanding of this engagement, as set forth in this engagement letter and the accompanying Professional Services agreement, please sign the enclosed copy of this letter and return it to us with the accompanying Professional Services agreement.

We look forward to working with you on this engagement.

Very truly yours,

PLANTE & MORAN, PLLC



Michelle D. McHale-Adams

**Agreed and Accepted**

**We accept this engagement letter and the accompanying Professional Services Agreement (collectively, the "Agreement"), which set forth the entire Agreement between Consumers Mutual Insurance of Michigan and Plante & Moran, PLLC with respect to the services specified in the "Scope of Services" section of this engagement letter.**

**The Parties understand and Agree that this Agreement is entered into within the context of the liquidation of Consumers Mutual Insurance of Michigan (the "CMI Liquidation Proceeding"), and that this Agreement shall not be binding upon any of the Parties unless and until it has been approved by Order of the Court in the CMI Liquidation Proceeding.**

**This Agreement may be amended by written Agreement between Plante & Moran, PLLC and Consumers Mutual Insurance of Michigan and approved by Order of the Court in the CMI Liquidation Proceeding.**

**Consumers Mutual Insurance of Michigan**

It is understood and acknowledged that Consumers Mutual Insurance of Michigan is responsible for payment of Plante & Moran's fees according to the terms of this Agreement and such fees are neither contingent on a specific outcome nor negotiable.

  
\_\_\_\_\_  
Mr. James Gerber  
Special Deputy Liquidator

3/7/2019  
\_\_\_\_\_  
Date

plante  
moran