

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.

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

**PETITION FOR APPROVAL TO PAY DISTRIBUTIONS
TO INTERNAL REVENUE SERVICE AND
CENTERS FOR MEDICARE AND MEDICAID SERVICES**

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"), by and through her attorneys, Dana Nessel, Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court pursuant to the Liquidation Order and MCL 500.8144 for approval to pay distributions of

liquidation estate assets to: (1) the Internal Revenue Service (“IRS”); and (2) the Centers for Medicare and Medicaid Services (“CMS”). In support of this Petition, the Liquidator states as follows:

1. On November 13, 2015, the Court entered an Order placing Consumers Mutual Insurance of Michigan (“Consumers Mutual”) into rehabilitation and appointing the Director as the Rehabilitator of Consumers Mutual (the “Rehabilitator”).

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 Insurance of Michigan (“Liquidation Petition”), which sought: (a) an order converting the rehabilitation of Consumers Mutual to a liquidation proceeding; and (b) a judicial declaration of Consumers Mutual’s insolvency.

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”). Pursuant to the Liquidation Order, the Court appointed the Director as the Liquidator of Consumers Mutual and affirmed the Liquidator’s appointment of James Gerber and Julieanne Gulliver as Special Deputy Liquidators.

4. 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." Liquidation Order, p 5, ¶ 3.

5. 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." Liquidation Order, pp 5-6, ¶ 3.

6. 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." Liquidation Order, p 13, ¶ 19.

7. On June 17, 2016, IRS timely filed a Proof of Claim in the Consumers Mutual liquidation estate in the amount of \$616,759.67 for an estimated Affordable Care Act ("ACA") Annual Fee payable owed by Consumers Mutual to IRS. IRS subsequently amended its Proof of Claim to increase the amount owed by Consumers Mutual for the actual ACA Annual Fee payable to \$620,502.83. The Liquidator allowed this IRS amended Proof of Claim in the full amount of \$620,502.83, which is accorded Class 3 distribution priority from the assets of Consumers Mutual's liquidation estate under Section 8142(1)(c) of the Michigan Insurance Code, MCL 500.8142(1)(c).

8. On August 10, 2016, CMS timely filed a Corrected Proof of Claim and Proof of Claim Summary in the Consumers Mutual liquidation estate. The CMS Corrected Proof of Claim consists of two major areas. The first involves the CO-OP Start-Up Loan and CO-OP Solvency Loan (collectively, the “Loans”), under which CMS loaned Consumers Mutual the total principal amount of \$71,534,300 to enable the company to commence business. Both Loans were subsequently converted to surplus notes, as authorized and agreed to by CMS and approved by DIFS. The CO-OP Solvency Loan was converted to a surplus note pursuant to an amendment to Appendix 4 of the Loan Agreement, executed and effective on June 21, 2012. The CO-OP Start-Up Loan was converted to a surplus note pursuant to an amendment to the Loan Agreement and Appendix 2, executed and effective on September 26, 2015. (Exhibit A, May 23, 2017 CMS Proof of Claim Determination Letter.)

9. Under MCL 500.8142 governing the priority of distribution from the Consumer’s Mutual liquidation estate, both CMS surplus notes are accorded Class 8 distribution priority from the assets of Consumers Mutual’s liquidation estate under Section 8142(1)(h) of the Michigan Insurance Code, MCL 500.8142(1)(h). There are not liquidation estate assets available to pay these Class 8 claims of CMS relating to the surplus notes. *See* MCL 500.8142(1) (“Every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment.”).

10. The second major area in the CMS Corrected Proof of Claim involves amounts payable by Consumers Mutual to CMS under the ACA, such as cost-

sharing subsidies, advance premium tax credits, and the “3Rs” programs. After reviewing the CMS Corrected Proof of Claim relating to these ACA amounts, the Liquidator determined that they were not entirely accurate and adjusted them as follows:

\$ -0-	Payments Due under ACA Reinsurance Program (paid 11-15-16)
\$ 8,771,355.46	Payments Due under ACA Risk Adjustment Program
\$ 1,837,246.00	Payments Due under ACA Cost Sharing Reductions and Advanced Premium Tax Credits
\$ 796,409.55	ACA Cost Sharing Reductions Reconciliation
\$ 62,863.11	ACA Exchange User Fees
\$ 11,467,874.12	Total ACA-Related Payables (Per Liquidator Adjustments)

(Exhibit A.)

11. Accordingly, the Liquidator allowed the ACA-related portion of the CMS Corrected Proof Claim in the adjusted amount of \$11,467,874.12, which is accorded Class 3 distribution priority from the assets of Consumers Mutual’s liquidation estate under Section 8142(1)(c) of the Michigan Insurance Code, MCL 500.8142(1)(c). However, these ACA-related payables are subject to applicable setoff rights of Consumers Mutual under Section 8130 of the Michigan Insurance Code, MCL 500.8130, to the extent that CMS fails to pay amounts it owes to Consumers Mutual. (Exhibit A.)

12. As reflected by Exhibit A, CMS owed Consumers Mutual the following amounts as of the date of the Liquidator’s claim determination letter:

\$ 2,288,287.00	ACA Reinsurance Program Distribution
\$ 1,375,000.00	ACA 2014 Risk Corridor Distribution Shortfall
<u>\$ 24,319,887.00</u>	ACA 2015 Risk Corridor Calculation of Distribution Due
\$ 27,983,174.00	Total ACA-Related Receivables

However, CMS/the federal government has since paid Consumers Mutual in full for the ACA 2014 Risk Corridor Distribution Shortfall totaling \$1,375,000.00 and for the ACA 2015 Risk Corridor Calculation of Distribution Due totaling \$24,319,887.00, leaving only the ACA Reinsurance Program Distribution totaling \$2,288,287.00 that remains outstanding and due and payable by CMS to Consumers Mutual.

13. Due to Consumers Mutual's setoff rights under MCL 500.8130, the ACA Reinsurance Program Distribution totaling \$2,288,287.00 that CMS continues to owe Consumers Mutual must be setoff against the ACA-related amounts that Consumers Mutual owes CMS totaling \$11,467,874.12, thereby reducing the amount that Consumers Mutual owes CMS for the ACA-related payables to \$9,179,587.12. Consequently, CMS has a valid, allowed Class 3 claim against the Consumers Mutual liquidation estate for the balance of its ACA-related payables totaling \$9,179,587.12.

14. The Liquidator and Special Deputy Liquidators have marshaled all significant assets of Consumers Mutual. Moreover, the Liquidator and Special Deputy Liquidators 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").

15. In addition, the Liquidation Order established a claim bar date of August 10, 2016. Liquidation Order, p 13, ¶ 18(b). Accordingly, 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.

16. For the reasons explained above, the outstanding liabilities of the Consumers Mutual liquidation estate are now completely fixed and known.

17. 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.

18. 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. (Exhibit B, Balance Sheet and Calculation of Class 3 Distribution Percentage.) The Liquidator and Special Deputy Liquidators have determined that it is appropriate (and seek this Court's approval) 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.

19. 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). (Exhibit B, Calculation of Class 3 Distribution Percentage.) 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.

20. MCL 500.8144 provides the following guidance on distributions from the assets of an insurer's liquidation estate:

Under the court's direction, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.

Consistent with these requirements, 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.

21. The above-cited provisions of Chapter 81 of the Insurance Code and the Liquidation Order authorize the proposed distributions to IRS and CMS, subject to this Court's approval. The Liquidator and Special Deputy Liquidators have

further determined 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.

22. As the attached Proof of Service reflects, a copy of this Petition (including the proposed Order attached as Exhibit C) and the Notice of Hearing on the Petition 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.

The Liquidator and Special Deputy Liquidators have identified Terri Jones and Terrance A. Mebane as having the strongest potential interest in the proposed distributions to IRS and CMS, respectively, justifying their receipt of personal service. The Liquidator and Special Deputy Liquidators intend to serve any Order resulting from this Petition on Terri Jones and Terrance A. Mebane in the same manner.

23. There are no other individuals or entities that have a particular interest in the distributions to IRS and CMS proposed by this Petition. Moreover, due to the difficulty and prohibitive cost associated with personally serving this Petition, the Notice of Hearing, and any resulting Order on any other individuals or entities that may have a general interest in Consumers Mutual's liquidation, the Liquidator and Special Deputy Liquidators request that the Court authorize,

approve, and/or ratify service of this Petition, the Notice of Hearing, and any resulting Order on any other potentially interested individuals or entities (i.e., other than Terri Jones and Terrance A. Mebane) 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."

24. Service in the foregoing manner is reasonably calculated to give Terri Jones, Terrance A. Mebane, and any other potentially interested individuals or entities actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, for the reasons stated above, the Liquidator and Special Deputy Liquidators respectfully request this Court to approve: (1) 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 (2) 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. In addition, the Liquidator and Special Deputy Liquidators request the Court to authorize, approve, and/or ratify service of this Petition, together with the attached Exhibits (including the proposed Order), Notice of Hearing, and any resulting Order, in the manner outlined in Paragraphs 22 and 23 above.

Respectfully submitted,

Dana Nessel
Attorney General



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

Dated: August 25, 2021

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May 23, 2017

U.S. Department of Health and Human Services, CMS
Att. Mr. Matthew Lynch, Director
Insurance Program Group, CCIIO, CMS
7500 Security Blvd.
WB-22-75
Baltimore, MD 21244

Re: Consumers Mutual Insurance of Michigan, in Liquidation
Ingham County (MI) Circuit Court, Case Number 15-948-CR
Proof of Claim #73 - U.S. Department of Health and Human Services (CMS)

Dear Mr. Lynch:

This letter is to inform you of the Liquidator's determination concerning the Proof of Claim ("Claim") filed by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services ("CMS"), in connection with the liquidation of Consumers Mutual Insurance of Michigan ("Consumers Mutual"), which we received on August 10, 2016.

The CMS Claim consists of two major areas. The first involves the CO-OP Start-Up Loan and CO-OP Solvency Loan (collectively, the "Loans"), under which CMS loaned Consumers Mutual the total principal amount of \$71,534,300 to enable the company to commence business. Both Loans were subsequently converted to surplus notes, as authorized and agreed to by CMS and approved by the Michigan Department of Insurance and Financial Services ("DIFS"). The CO-OP Solvency Loan was converted to a surplus note pursuant to an amendment to Appendix 4 of the Loan Agreement, executed and effective on June 21, 2012. The CO-OP Start-Up Loan was converted to a surplus note pursuant to an amendment to the Loan Agreement and Appendix 2, executed and effective on September 26, 2015. The CMS Claim is deficient and inaccurate, however, because it does not attach the amendment converting the Start-Up Loan to a surplus note or acknowledge this conversion in any way. The CMS Claim is also deficient because the Solvency Loan conversion documents that it does attach include an unrecognized signature page with the wrong execution date (5/17/2012).¹

¹ These identified deficiencies are not exhaustive, and the Liquidator reserves the right to assert other deficiencies and/or issues regarding the Claim and converted Loans.

Notwithstanding the deficiencies in the CMS Claim, the Liquidator has the correct, final documents converting the Loans to surplus notes for purposes of Michigan law, which dictates their priority of distribution from the assets of Consumers Mutual's liquidation estate. The Liquidator is therefore prepared to determine this part of the CMS Claim, which includes the following amounts related to the two surplus notes:

\$18,687,000.00	Principal amount of Start-Up Surplus Note
\$52,847,300.00	Principal amount of Solvency Surplus Note
\$ 305,238.56	Accrued Interest on Solvency Surplus Note
\$71,839,238.56	Total Amount Related to Start-Up and Solvency Surplus Notes

The Liquidator allows this part of the CMS Claim in the submitted amount of \$71,839,238.56, which is accorded Class 8 distribution priority from the assets of Consumers Mutual's liquidation estate under Section 8142(1)(h) of the Michigan Insurance Code, MCL 500.8142(1)(h). However, with respect to this allowed amount, the Liquidator reserves any applicable setoff rights of Consumers Mutual under Section 8130 of the Michigan Insurance Code, MCL 500.8130, to the extent that CMS fails to pay amounts it owes Consumers Mutual. The Liquidator also observes that under the terms of the two surplus notes, CMS has no setoff rights with respect to this allowed Class 8 portion of its claim.

The second major area in the CMS Claim involves amounts payable under the Affordable Care Act ("ACA") (i.e., cost-sharing subsidies, advance premium tax credits, and "3Rs" programs), which include the following:

\$ 293,777.00	Payments Due under ACA Reinsurance Program
\$ 8,771,807.98	Payments Due under ACA Risk Adjustment Program
\$ 1,616,639.87	Payments Due under ACA Cost Sharing Reductions and Advanced Premium Tax Credits
\$ 1,331,244.87	ACA Cost Sharing Reductions Reconciliation
\$ 62,909.94	ACA Exchange User Fees
\$12,076,379.66	Total ACA-Related Payables (Per CMS Claim)

After review of the above amounts, the Liquidator has determined that they are not entirely accurate and require the following adjustments:

\$ -0-	Payments Due under ACA Reinsurance Program (paid 11-15-16)
\$ 8,771,355.46	Payments Due under ACA Risk Adjustment Program
\$ 1,837,246.00	Payments Due under ACA Cost Sharing Reductions and Advanced Premium Tax Credits
\$ 796,409.55	ACA Cost Sharing Reductions Reconciliation
\$ 62,863.11	ACA Exchange User Fees
\$ 11,467,874.12	Total ACA-Related Payables (Per Liquidator Adjustments)

Accordingly, the Liquidator allows this part of the CMS Claim in the adjusted amount of \$11,467,874.12, which is accorded Class 3 distribution priority from the assets of Consumers Mutual's liquidation estate under Section 8142(1)(c) of the Michigan Insurance Code, MCL 500.8142(1)(c). However, with respect to this allowed amount, the Liquidator reserves any applicable setoff rights of Consumers Mutual under Section 8130 of the Michigan Insurance Code, MCL 500.8130, to the extent that CMS fails to pay amounts it owes Consumers Mutual.

The Liquidator's records show the following ACA-related receivables owed by CMS to Consumers Mutual that to date have not been paid:

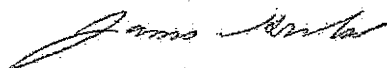
\$ 2,288,287.00	ACA Reinsurance Program Distribution
\$ 1,375,000.00	ACA 2014 Risk Corridor Distribution Shortfall
<u>\$ 24,319,887.00</u>	ACA 2015 Risk Corridor Calculation of Distribution Due
\$ 27,983,174.00	Total ACA-Related Receivables ²

The Liquidator requests that CMS pay this \$27,983,174.00 owed to the Consumers Mutual liquidation estate.

In accordance with Section 8139(1) of the Michigan Insurance Code, MCL 500.8139(1), this letter constitutes your formal notice of the Liquidator's claim determination. You have sixty (60) days from the date this letter was mailed to file written objections to this determination, including but not limited to the above summary detailing conversion of the Loans to surplus notes and the Liquidator's adjusted ACA-related payable amounts. Any objections should be mailed to:

Consumers Mutual Insurance of Michigan, in Liquidation
Att. Mr. James Gerber, Special Deputy Liquidator
Suite 200
2601 Coolidge Road
East Lansing, MI 48823

Yours truly,



James Gerber
Special Deputy Liquidator
Consumers Mutual Insurance of Michigan, in Liquidation

² The CMS Claim is further deficient and inaccurate because it fails to disclose any of these ACA-related receivables owed to Consumers Mutual, despite CMS' obligation to include this information in its Claim under MCL 500.8136 and Item #8 on the Proof of Claim form.

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Consumers Mutual Insurance of Michigan

Balance Sheet

07/31/2021

ASSETS

CURRENT ASSETS

PNC Checking	\$1,999,972.45	
PNC Savings	\$7,767,172.65	
PNC Trust	\$0.00	
Premium Account	\$0.00	
Petty Cash	\$0.00	
Reinsurance Recovery Receivable	\$2,288,287.00	
Other Receivable	\$0.00	
Risk Corridor Receivable	\$0.00	
Prepaid Insurance	\$0.00	
Prepaid Expenses	\$0.00	
TOTAL CURRENT ASSETS		<u>12,055,432.10</u>

TOTAL ASSETS

12,055,432.10

LIABILITIES AND NET ASSETS

CURRENT LIABILITIES

Administrative Expense Payables	\$40,000.00	
Accounts Payable- CMS	\$2,633,655.55	
Liability for Discontinued Operating Expenses	\$0.00	
Guarantee Association Administrative Expenses Payable	\$0.00	
Unclaimed Property - Pre Liquidation	\$0.00	
Unclaimed Property - Post Liquidation	\$0.00	
Policyholder Claim Payable	\$0.00	
Risk Adjustment Payable	\$8,771,355.46	
Risk Corridor Litigation Payable	\$0.00	
ACA Annual Fee Payable	\$620,502.83	
Commissions/Agent Bonuses Payable	\$727,193.25	
Risk Adjustment User Fees Payable	\$62,863.11	
Health Insurance Claims Assessment Payable	\$0.00	
Accrued Compensation & Benefits	\$0.00	
TOTAL CURRENT LIABILITIES		<u>12,855,571</u>

LONG-TERM LIABILITIES

Solvency Loan	71,534,300.00	
Guarantee Association Payable	-	
Deferred Interest Payable	305,238.56	
TOTAL LONG-TERM LIABILITIES		<u>71,839,538.56</u>

TOTAL LIABILITIES

84,695,109.28

NET ASSETS

Unrestricted Net Assets-beginning of year	(72,644,102.18)	
Change in Net Assets	4,425.52	
TOTAL NET ASSETS		<u>(72,639,677.18)</u>

TOTAL LIABILITIES AND NET ASSETS

12,055,432.10

Class 3 Liabilities

ACA Related Payables

Accounts Payable- CMS	\$2,633,655.55	
Risk Adjustment Payable	\$8,771,355.46	
Risk Adjustment User Fees Payable	\$62,863.11	
Reinsurance Recovery Receivable	<u>(\$2,288,287.00)</u>	
Total Net ACA Related Payables		\$9,179,587.12

ACA Annual Fee Payable (I.R.S.) \$620,502.83

Total Class 3 Liabilities \$9,800,089.95

Net Current Assets

PNC Bank Checking Account	\$1,999,972.45	
PNC Bank Savings Account	\$7,767,172.65	
Estate Administrative Expense - Class 1 Payable	<u>(\$40,000.00)</u>	
Total Current Assets Net of Class 1 Liabilities		<u><u>\$9,727,145.10</u></u>

Assets Net of Class 1 Liabilities divided by Class 3 Liabilities 99.256%

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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.

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

**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 totaling \$9,179,587.12, after setoff of the ACA Reinsurance Program Distribution totaling \$2,288,287.00 that CMS continues to owe Consumers Mutual; 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 September 29, 2021 at 4:00 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, employees, shareholders, members, partners, agents, representatives, third-party professionals, parent companies, subsidiaries, 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.

Honorable James S. Jamo
Circuit Court Judge