

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

PATRICK MCPHARLIN, DIRECTOR  
OF THE DEPARTMENT OF INSURANCE AND  
FINANCIAL SERVICES,

Petitioner,

v

CONSUMERS MUTUAL INSURANCE OF  
MICHIGAN,

Respondent.

Case No. 15-948-CR

HON. JAMES S. JAMO

[IN LIQUIDATION]

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In Re: Consumers Mutual Insurance of Michigan  
v Eastwood Clinics

PROVIDER PETITION  
NO. 11

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Christopher L. Kerr (P57131)  
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Assistant Attorneys General  
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P. O. Box 30755  
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**PETITION FOR ESTABLISHMENT OF COURT PROCEDURES TO  
ADJUDICATE LIQUIDATOR'S CLAIMS AGAINST  
EASTWOOD CLINICS**

**INTRODUCTION**

Patrick M. McPharlin, Director of the Michigan Department of Insurance and  
Financial Services ("DIFS"), as Liquidator of Consumers Mutual Insurance of

Michigan (the “Liquidator”), by and through his attorneys, Bill Schuette, Attorney General, and Christopher L. Kerr and Aaron W. Levin, Assistant Attorneys General, files this petition (“Petition”) pursuant to 500.8121(1)(f) for a Court Order establishing procedures for this Court’s adjudication of the Liquidator’s claims for refunds of Consumers Mutual Insurance of Michigan (“Consumers Mutual”) overpayments made to certain healthcare providers, including in this instance, Eastwood Clinics (“Eastwood”).<sup>1</sup>

In addition, the Liquidator files this Petition pursuant to MCL 500.8105(1) to prevent Eastwood’s interference in this liquidation by refusing to refund Consumers Mutual for overpayments made to Eastwood that the Court adjudicates as outstanding, due, and owing to Consumers Mutual and orders Eastwood to pay. These refunds represent assets of the Consumers Mutual liquidation estate that the Liquidator has requested Eastwood to repay, but to date Eastwood has refused, subjecting it to a claim of interference with the Liquidator’s duties and obligations in this proceeding. In support of this Petition, the Liquidator states as follows:

### FACTS

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

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<sup>1</sup> Several healthcare providers owe Consumers Mutual similar overpayment refunds. For purposes of identification, this Petition is sub-captioned *In re: Consumers Mutual Insurance of Michigan v Eastwood Clinics*, Provider Petition No. 11.

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 (the “Special Deputy Liquidators”).

4. The Liquidation Order granted the Liquidator all the powers contained in MCL 500.8121, including the power to “collect all debts and money due and claims belonging to” Consumers Mutual, and to “do other acts as necessary or expedient to collect, conserve, or protect the assets or property” of Consumers Mutual. MCL 500.8121(1)(f).

5. MCL 500.8105(1) further authorizes the Liquidator to apply for any order that may be necessary and proper to prevent “[i]nterference with the receiver or with a proceeding under this chapter” and “[w]aste of the insurer’s assets.”

6. Paragraph 14 of the Liquidation Order provides that

Any person or entity with possession, custody, or control of assets . . .  
of . . . Consumers Mutual shall immediately:

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(b) Tender possession, custody, and control of such assets . . . to the  
Liquidator/Special Deputy Liquidators.

7. Pursuant to MCL 500.8106 and paragraph 15 of the Liquidation Order,  
any interference with the Liquidator in this liquidation proceeding may be punished  
by a “fine not exceeding \$10,000.00, or imprisonment for a term of not more than 1  
year, or both.”

8. As the Liquidator worked to marshal all assets of the Consumers  
Mutual liquidation estate, the Liquidator identified numerous healthcare providers,  
including but not limited to Eastwood, that had received overpayments from  
Consumers Mutual and, therefore, owed refunds to Consumers Mutual of the  
overpayment amounts. These refunds are assets of the Consumers Mutual  
liquidation estate.

9. In November 2016, the Liquidator mailed demand letters to Eastwood  
and each other provider that owed a refund to Consumers Mutual. A sample of this  
form letter is attached as Exhibit 1. The letters to the various providers identified  
each overpayment and the total refund amount due to Consumers Mutual. The  
letters informed each provider of the Liquidation Order entered by this Court and  
that if payment was not provided within 30 days, the Liquidator would pursue  
additional legal action in this Court. Some providers promptly refunded the  
overpayments to Consumers Mutual. Eastwood, however, did not respond to the

November 2016 demand letter. Accordingly, Eastwood has refused to provide refunds of overpayments made by and owed to Consumers Mutual. The total amount of refunds due from Eastwood is \$4,009.96. Support for the amount of the refund the Liquidator has determined Eastwood owes is attached as Exhibit 2.

10. As of the date of this Petition, the Eastwood refunds are over 90 days past due. Eastwood's refusal to pay refunds has created additional burdens and costs for the Liquidator, which further reduces the assets of the liquidation estate.

11. Contemporaneously with the filing of this Petition, the Liquidator has served a copy of this Petition on Eastwood.

12. To allow Eastwood the opportunity to provide any information or argument it may have to show why this Court should not order prompt payment of the refunds totaling \$4,009.96, the Liquidator requests that the Court enter the proposed order attached as Exhibit 3, which grants this Petition and sets a schedule for Eastwood's response and oral argument.

13. Upon the Court's entry of an order against Eastwood requiring prompt payment of all refunds due to Consumers Mutual, Eastwood's refusal to pay these refunds as ordered—which are assets of the Consumers Mutual liquidation estate—would constitute interference with the Liquidator's conduct of this proceeding, subjecting Eastwood to additional fines and penalties under MCL 500.8106 and paragraph 15 of the Liquidation Order.

**RELIEF REQUESTED**

WHEREFORE, for the reasons stated above, the Liquidator respectfully requests the Court to grant this Petition for Establishment of Court Procedures to Adjudicate Liquidator's Claims against Eastwood Clinics and to enter the proposed order attached as Exhibit 3.

Respectfully submitted,

Bill Schuette  
Attorney General



Christopher L. Kerr (P57131)  
Aaron W. Levin (P81310)  
Assistant Attorneys General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

Dated: December 5, 2018

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11/17/2016

[REDACTED]  
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Re: Overpayment of Claims

Dear Provider,

CMI has made multiple attempts to recover claims overpayments made to you. As of this date, payment has not been received for claim overpayment(s) listed on the attached sheet.

**Total overpayment refund due CMI: \$ [REDACTED]**

On February 10, 2016, the Honorable James S. Jamo, Ingham County Circuit Court Judge, entered an Order placing Consumers Mutual Insurance of Michigan into Liquidation (Case Number 15-948-CR). This debt is an asset of the Consumers Mutual Insurance of Michigan Liquidation Estate. If payment is not received within 30 days from the date of this letter, the Special Deputy Liquidator will be forced to proceed with legal action to collect this debt in Ingham County Circuit Court.

Please forward a check or money order in the amount listed above to:

**Consumers Mutual Insurance of Michigan  
P.O. Box 1738  
Fort Mill, SC 29716**

If you have questions in regards to this refund request, please contact our office at (877) 371-9112.  
Thank you,

Yours truly,

A handwritten signature in dark ink, appearing to read "James Gerber".

James Gerber  
Special Deputy Liquidator  
Consumers Mutual Insurance of Michigan





11/17/2016

[Redacted]

### Claims Detail

<u>Member ID</u>	<u>Last Name</u>	<u>First Name</u>	<u>Date of Service</u>	<u>Claim #</u>	<u>Refund Owed</u>
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	\$ [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	\$ [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	\$ [Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	\$ [Redacted]

Total Refund Owed to CMI: \$ [Redacted]

If you have recently sent payment, please disregard. If you have question regarding refund amount, please contact CMI at 1-877-371-9112 for further assistance.

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**ORDER GRANTING PETITION FOR ESTABLISHMENT OF  
COURT PROCEDURES TO ADJUDICATE LIQUIDATOR'S CLAIMS  
AGAINST EASTWOOD CLINICS**

At a session of said Court  
held in the Circuit Courtrooms  
for the County of Ingham,  
State of Michigan, on the  
\_\_\_\_ day of \_\_\_\_\_, 2018.

PRESENT: HONORABLE JAMES S. JAMO, CIRCUIT COURT JUDGE

**WHEREAS**, Patrick M. McPharlin, Director of the Michigan Department of Insurance and Financial Services and duly appointed Liquidator of Consumers Mutual Insurance of Michigan (the “Liquidator”), has filed a Petition for Establishment of Court Procedures to Adjudicate Liquidator’s Claims against Eastwood Clinics (the “Petition”); and

**WHEREAS**, as described in the Petition, there is an unresolved dispute requiring this Court’s review and adjudication that has been raised by the Liquidator regarding refunds of overpayments made to Eastwood Clinics (“Eastwood”) and the determinations on those claims made by the Liquidator and his appointed Special Deputy Liquidator James Gerber (the “Special Deputy Liquidator”); and

**WHEREAS**, the Court therefore finds it appropriate for the Court’s orderly, thorough, and fair adjudication of this dispute, as well as in the interest of judicial economy, to set a schedule for Eastwood’s response and oral argument and to establish certain other procedures governing the Court’s adjudication of this dispute;

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Court GRANTS the Liquidator’s Petition, and the Court will adjudicate the Liquidator’s unresolved claims regarding refunds of overpayments made to Eastwood, as described more fully in the Petition and the Exhibits attached thereto.

**IT IS FURTHER ORDERED** that the Court’s adjudication of the Liquidator’s claims against Eastwood is governed by the following procedures:

- 1) Eastwood will file a response to the Petition with the Court and serve its response on the Liquidator's counsel within 30 days of the date of this Order.
- 2) The Court will schedule oral argument to adjudicate the Liquidator's claims against Eastwood at an available date and time not earlier than 45 days after Eastwood files its response.
- 3) At least 7 days before the oral argument, the Liquidator may file a reply.

**IT IS SO ORDERED.**

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Honorable James S. Jamo  
Circuit Court Judge

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**PROOF OF SERVICE**

The undersigned certifies that a copy of the **Petition for Establishment of Court Procedures to Adjudicate Liquidator's Claims against Eastwood Clinics**, together with this Proof of Service, was served upon the party listed below by mailing the same to the address indicated with first class postage fully prepaid thereon, on the 5<sup>th</sup> day of December, 2018:



**Ascension - Eastwood Clinics**  
ATTN: Payment/Billing Department  
101 South Hanley Road  
Suite 450  
St. Louis, MO 63105

In addition, electronic copies of the foregoing documents will be provided to the Department of Insurance and Financial Services, which will provide courtesy notice to other potentially interested individuals/entities by posting the documents on its website, [www.michigan.gov/difs](http://www.michigan.gov/difs), under the section "Who We Regulate," the subsection "Receiverships," and the sub-subsection "Consumers Mutual Ins. of Michigan."

  
\_\_\_\_\_  
Linda S. Miers, Legal Secretary