

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 Northern Michigan Anesthesia

PROVIDER PETITION  
NO. 14

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Christopher L. Kerr (P57131)  
Aaron W. Levin (P81310)  
Assistant Attorneys General  
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**PETITION FOR ESTABLISHMENT OF COURT PROCEDURES TO  
ADJUDICATE LIQUIDATOR'S CLAIMS AGAINST  
NORTHERN MICHIGAN ANESTHESIA**

**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, Northern Michigan Anesthesia (“NMI Anesthesia”).<sup>1</sup>

In addition, the Liquidator files this Petition pursuant to MCL 500.8105(1) to prevent NMI Anesthesia’s interference in this liquidation by refusing to refund Consumers Mutual for overpayments made to NMI Anesthesia that the Court adjudicates as outstanding, due, and owing to Consumers Mutual and orders NMI Anesthesia to pay. These refunds represent assets of the Consumers Mutual liquidation estate that the Liquidator has requested NMI Anesthesia to repay, but to date NMI Anesthesia 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:

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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 Northern Michigan Anesthesia, Provider Petition No. 14*.

## 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”).

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 NMI Anesthesia, 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 NMI Anesthesia 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. NMI Anesthesia, however, did not respond to the November 2016 demand letter. Accordingly, NMI Anesthesia has refused to provide refunds of overpayments made by and owed to Consumers Mutual. The total amount of refunds due from NMI Anesthesia is \$1,807.65. Support for the amount of the refund the Liquidator has determined NMI Anesthesia owes is attached as Exhibit 2.

10. As of the date of this Petition, the NMI Anesthesia refunds are over 90 days past due. NMI Anesthesia'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 NMI Anesthesia.

12. To allow NMI Anesthesia 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 \$1,807.65, the Liquidator requests that the Court enter the proposed order attached as Exhibit 3, which grants this Petition and sets a schedule for NMI Anesthesia's response and oral argument.

13. Upon the Court's entry of an order against NMI Anesthesia requiring prompt payment of all refunds due to Consumers Mutual, NMI Anesthesia'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 NMI Anesthesia 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 Northern Michigan Anesthesia 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]  
[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 cursive script, appearing to read 'James Gerber', is written in black ink.

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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Claim #	Incurred From	Incurred To	Amount	Service Provider	Service Provider	Payment Provider	Payment Provider	REFUND REASON
5010850009	20150407	20150407	\$395.87	PONTTI CRNA PEGGY	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5010352802	20150128	20150128	\$485.00	PONTTI CRNA PEGGY	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5006742812	20150130	20150130	\$20.30	SPIGARELLI CRNA BROOKE R	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5007076906	20150216	20150216	\$13.58	BRANT CRNA BRIAN	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5010462806	20150325	20150325	\$26.68	BRANT CRNA BRIAN	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5004379305	20150129	20150129	\$22.07	BRANT CRNA BRIAN	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5015339503	20150430	20150430	\$522.90	KUBE JR DO DONALD G	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5008143506	20150304	20150304	\$33.95	SPIGARELLI CRNA BROOKE R	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5010352702	20150128	20150128	\$31.43	SPIGARELLI CRNA BROOKE R	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5009914911	20150322	20150322	\$50.66	SPIGARELLI CRNA BROOKE R	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5016352508	20150605	20150605	\$188.48	KELLY CRNA ROBERT	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
5014348302	20150409	20150409	\$16.73	PONTTI CRNA PEGGY	383574395	NORTHERN MICHIGAN ANESTH	383574395	CORRECTED REPRICING
			\$1,807.65					

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**ORDER GRANTING PETITION FOR ESTABLISHMENT OF  
COURT PROCEDURES TO ADJUDICATE LIQUIDATOR'S CLAIMS  
AGAINST NORTHERN MICHIGAN ANESTHESIA**

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 Northern Michigan Anesthesia (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 Northern Michigan Anesthesia (“NMI Anesthesia”) 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 NMI Anesthesia’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 NMI Anesthesia, 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 NMI Anesthesia is governed by the following procedures:

- 1) NMI Anesthesia 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 NMI Anesthesia at an available date and time not earlier than 45 days after NMI Anesthesia 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

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
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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 Northern Michigan Anesthesia**, 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:



**Northern Michigan Anesthesia**  
ATTN: Payment/Billing Department  
602 Jackson St.  
Petoskey, MI 49770

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