

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

PATRICK 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,

Respondent.

_____ /

STIPULATED ORDER
PLACING CONSUMERS MUTUAL INSURANCE OF MICHIGAN INTO
REHABILITATION, APPROVING COMPENSATION OF
SPECIAL DEPUTY REHABILITATOR, AND PROVIDING INJUNCTIVE RELIEF

At a session of said Court
held in the Circuit Courtrooms
in the City of Lansing, Michigan on the
13 day of November, 2015.

PRESENT: HONORABLE James S. Jamo
Circuit Court Judge

WHEREAS, Petitioner Patrick M. McPharlin, Director of the Department of Insurance and Financial Services (“Director”), has filed a Stipulated Petition seeking an Order Placing Consumers Mutual Insurance of Michigan into Rehabilitation, Approving the Compensation of the Special Deputy Rehabilitator, and Providing Injunctive Relief (the “Rehabilitation Petition”); and

WHEREAS, Respondent Consumers Mutual Insurance of Michigan (“Consumers Mutual”), by and through its Board of Directors, has consented to being placed into Rehabilitation under Chapter 81 of the Michigan Insurance Code of 1956, MCL 500.8101 – 500.8159 (“Chapter 81”), under the terms and conditions determined by the Director to be appropriate; and

WHEREAS, Consumers Mutual has further stipulated to the relief sought in the Rehabilitation Petition and to the entry of this Order; and

WHEREAS, the Court has reviewed the Rehabilitation Petition and the terms of this Order, and being otherwise fully advised, finds as follows:

A. MCL 500.8102 provides that a proceeding under Chapter 81, including a rehabilitation proceeding, may be applied to an insurer who: (a) is or has been transacting insurance business in this state and against whom claims arising from that business may exist now or in the future; or (b) has insureds resident in this state. Consumers Mutual satisfies both criteria and is therefore subject to rehabilitation or any other proceeding authorized by Chapter 81.

B. MCL 500.8112 vests this Court with jurisdiction to consider the Director’s Rehabilitation Petition and to enter this Order.

C. MCL 500.8112 authorizes the Director to petition this Court for an Order authorizing the Director to rehabilitate Consumers Mutual based on one or more of thirteen (13) listed grounds. These grounds include:

(a) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.

* * *

(l) The board of directors . . . request[s] or consent[s] to rehabilitation under this chapter.

D. Pursuant to MCL 500.8112(a), this Order authorizing the Director to rehabilitate Consumers Mutual is proper and should be entered because the Court finds that Consumers Mutual's financial condition is such that further transaction of business would be hazardous financially to its policyholders, creditors, or the public.

E. Pursuant to MCL 500.8112(l), this Order authorizing the Director to rehabilitate Consumers Mutual is also proper and should be entered because Consumers Mutual's Board of Directors has consented to rehabilitation under Chapter 81.

F. Consumers Mutual has stipulated to the relief sought in the Rehabilitation Petition and to the entry of this Order.

G. As defined by MCL 500.8103(b), a "Creditor" is a person having a claim against Consumers Mutual, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

H. Based upon MCL 500.8105(1), the Court is authorized to enter this Order including terms that the Court considers necessary and proper to prevent:

(a) Interference with the Rehabilitator or with the rehabilitation proceedings;

(b) The institution or further prosecution of any actions or proceedings against Consumers Mutual, its assets, or its policyholders;

- (c) The obtaining of preferences, judgments, attachments, garnishments, or liens against Consumers Mutual, its assets, or its policyholders;
- (d) The levying of execution against Consumers Mutual, its assets, or its policyholders; and
- (e) Any other threatened or contemplated action that might lessen the value of Consumers Mutual's assets or prejudice the rights of its policyholders, creditors, or the administration of this rehabilitation proceeding.

I. All 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.

J. MCL 500.8114(2), in conjunction with MCL 500.8121(1)(m), authorizes the Rehabilitator "[t]o prosecute an action that may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person."

K. Immediate action placing Consumers Mutual into rehabilitation is necessary to protect the interests of Consumers Mutual's policyholders, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8112 and MCL 500.8113, the Director's Rehabilitation Petition is GRANTED, and Consumers Mutual is placed into rehabilitation under Chapter 81.

2. Pursuant to MCL 500.8113(1), the Director is appointed Rehabilitator of Consumers Mutual, and is further authorized to appoint one or more Special

Deputy Rehabilitator(s) pursuant to MCL 500.8114(1). Hereafter, the Director shall be referred to as the “Rehabilitator.”

3. Pursuant to MCL 500.8113(1), the Rehabilitator shall take immediate possession of all the assets of Consumers Mutual and administer those assets under the Court’s general supervision.

4. Pursuant to MCL 500.8113(1), this Order shall by operation of law vest legal title to all assets, accounts, and moneys of Consumers Mutual in the Rehabilitator. The filing or recording of this Order with the Clerk of the Circuit Court or the Register of Deeds for the county in which the statutory home office, principal place of business, or resident agent of Consumers Mutual is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted.

5. Pursuant to MCL 500.8115(1) and paragraph 23(a) of this Order, all actions or proceedings in which Consumers Mutual is a plaintiff that are pending as of the date this Order is entered are automatically STAYED for ninety (90) days plus such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings. Pursuant to paragraph 23(a) of this Order, the institution or continuation of any actions or proceedings in which Consumers Mutual is a defendant, or is obligated to defend another party, is PROHIBITED AND ENJOINED until such time as this Court enters an order lifting the injunction or the Rehabilitator agrees that the matter may proceed.

6. The Rehabilitator, without being specifically set forth in this Order, shall have: (a) all the powers contained in MCL 500.8114 and 500.8115; (b) all applicable powers set forth in Chapter 81; and (c) such additional powers as the Court shall grant from time to time upon petition of the Rehabilitator.

7. Pursuant to MCL 500.8114(2), upon entry of this Order, all powers of the current directors, officers, and managers of Consumers Mutual are suspended in their entirety, and the Rehabilitator shall have and exercise the full and complete power of such directors, officers, and managers. In his sole discretion, the Rehabilitator may redelegate, in writing, some or all of his authority to a former director, officer, or manager of Consumers Mutual.

8. Among his plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage Consumers Mutual, to hire and discharge Consumers Mutual's officers, managers, and employees subject to any contract rights that they may have, and to deal in totality with the property and business of Consumers Mutual.

9. Subject to any contractual rights and applicable law, upon entry of this Order all pre-rehabilitation employment contracts of Consumers Mutual's officers, managers, and employees are terminated. Notwithstanding the termination of their pre-rehabilitation employment contracts, the officers, managers, and employees of Consumers Mutual shall remain employed as at-will employees until such time as they are notified by the Rehabilitator or Special Deputy Rehabilitator(s) that they have been discharged. Within their sole discretion, the

Rehabilitator and Special Deputy Rehabilitator(s) may re-contract with any officers, managers, or employees of Consumers Mutual whose pre-rehabilitation employment contracts are terminated pursuant to this paragraph 9 upon terms agreeable to the parties.

10. Any director, manager, officer, employee, or agent of Consumers Mutual and any other person shall, at the Rehabilitator's direction, vacate any building, office, or other premise of Consumers Mutual.

11. Pursuant to MCL 500.8114(2) and (4), the Rehabilitator may take such action as he considers necessary or appropriate to reform or revitalize Consumers Mutual, and is empowered to pursue all avenues of reorganization, consolidation, conversion, reinsurance, merger, or other transformation of Consumers Mutual to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of insurance coverage.

12. Pursuant to MCL 500.8114(4), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of Consumers Mutual is appropriate, he shall prepare a plan to effect those changes and shall apply to the Court for approval of such plan.

13. Pursuant to MCL 500.8116(1), if the Rehabilitator believes that further attempts to rehabilitate Consumers Mutual would be futile or would substantially increase the risk of loss to creditors, policyholders, or the public, he may petition the Court for an order of liquidation.

14. Pursuant to MCL 500.8116(2), the Rehabilitator may petition the Court at any time for an order terminating the rehabilitation of Consumers Mutual.

15. Except as provided in this paragraph 15, the Rehabilitator shall not pay any Creditor claims for goods or services provided prior to the date of this Order until further order of this Court. In order to ensure the continuity of insurance coverage to Consumers Mutual's policyholders, and to minimize disruptions to Consumers Mutual's business operations, the Rehabilitator shall pay: (a) all Creditor claims for covered goods and services provided to Consumers Mutual's policyholders/insureds prior to the date of this Order, according to the company's normal claim processing procedures; and (b) all Creditor claims for wages of Consumers Mutual's officers, managers, and employees that were earned but unpaid as of the date of this Order.

16. Pursuant to MCL 500.8137(4), claims made under pre-rehabilitation employment contracts by Consumers Mutual's directors, officers, or persons in fact performing similar functions or having similar powers are statutorily limited to the payment of earned but unpaid wages for services they rendered prior to the date of this Order. Accordingly, the provision in paragraph 15 requiring payment of pre-rehabilitation wages does not apply to, and at no time shall the Rehabilitator pay, any claims for severance, post-termination benefits, or other non-wage payments that might otherwise be payable to a Consumers Mutual director or officer upon the termination of his or her employment contract entered into prior to the date of this Order.

17. The Rehabilitator shall pay all Creditor claims for goods or services provided on or after the date of this Order as they become due in the ordinary course of business.

18. The Rehabilitator shall pay any other normal administrative expenses incurred on or after the date of this Order that are necessary for the continued operation and/or rehabilitation of Consumers Mutual as they become due in the ordinary course of business.

19. Pursuant to MCL 500.8113(3), entry of this Order shall not constitute an anticipatory breach of any contracts or relationships between Consumers Mutual and any other persons or entities. Except for employment contracts terminated under paragraph 9 of this Order, and pursuant to MCL 500.8105(1)(k), during the pendency of this rehabilitation, all persons or entities other than Consumers Mutual policyholders that have contractual or other relationships with Consumers Mutual as of the date of this Order are hereby ENJOINED AND RESTRAINED from terminating or attempting to terminate such contracts or relationships on the basis of the entry of this Order or Consumers Mutual's financial condition. This injunction against terminating existing contracts or relationships applies, without limitation, to any contracts or relationships between Consumers Mutual and health care providers, provider networks, third party administrators, financial reporting vendors, and utilization review vendors. Notwithstanding the foregoing, the Rehabilitator shall review the necessity of any contracts subject to this Paragraph 19 during the pendency of this rehabilitation and, upon determining that any such

contract is unnecessary to Consumers Mutual's rehabilitation, the Rehabilitator is authorized to terminate the contract either in accordance with the contract's notice and other applicable provisions or under such varying terms and conditions as the Rehabilitator deems necessary and appropriate.

20. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, or agents of Consumers Mutual, or any other persons or entities having authority over or in charge of any segment of the affairs of Consumers Mutual, shall fully cooperate with the Rehabilitator and any Special Deputy Rehabilitator(s) that he appoints. Among other things, "full cooperation" requires a person or entity described in this paragraph to:

- (a) Promptly reply to any inquiry by the Rehabilitator, including a written reply when requested;
- (b) Provide the Rehabilitator with immediate, full, and complete possession, control, access to, and use of all books, accounts, documents, and other records, information, or property of or pertaining to Consumers Mutual in his, her, or its possession, custody, or control as may be necessary to enable the Rehabilitator and Special Deputy Rehabilitator(s) to operate the business and to maintain the continuity of insurance coverage for all policyholders;
- (c) Provide the Rehabilitator with full and complete access to and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Consumers Mutual; and
- (d) Provide the Rehabilitator with full and complete access to all legal opinions, memoranda, letters, documents, information, correspondence, legal advice, and any other attorney-client privileged and/or attorney work product materials relating to Consumers Mutual or the operation of Consumers Mutual and its business, provided to or from Consumers Mutual's in-house or outside counsel by or to Consumers Mutual, its officers, managers, directors, trustees, owners, employees, or agents.

In addition, pursuant to MCL 500.8105(1)(c), no person shall obstruct or interfere with the Rehabilitator or Special Deputy Rehabilitator(s) in the conduct of this rehabilitation proceeding.

21. As provided by MCL 500.8106(4), any failure to cooperate with the Rehabilitator or Special Deputy Rehabilitator(s), any obstruction or interference with the Rehabilitator or Special Deputy Rehabilitator(s) in the conduct of this rehabilitation proceeding, or any violation of an order of the Director validly entered under Chapter 81, may result in:

(a) A sentence requiring the payment of a fine not exceeding \$10,000.00, or imprisonment for a term of not more than one year, or both; and

(b) After a hearing, the imposition by the Director of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Director, or both.

22. Any person or entity with possession, custody, or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Consumers Mutual, shall immediately:

(a) Provide the Rehabilitator with notice that such assets, documents, data, accounts, moneys, books, records, information, or property are in his, her, or its possession, custody, or control, together with a description of the assets, documents, data, accounts, moneys, books, records, information, or property in his, her, or its possession, custody, or control.

(b) Tender possession, custody, and control of such assets, documents, data, accounts, moneys, books, records, information, or property to the Rehabilitator.

(c) Take all necessary steps to safeguard, preserve, and retain the assets, documents, data, accounts, moneys, books, records, information, or property.

23. Pursuant to MCL 500.8105(1) and MCL 500.8114(2), and except as specifically provided in paragraphs 5, 24, 26, 27, and 28 of this Order, all Creditors of Consumers Mutual are ENJOINED from:

(a) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against Consumers Mutual, its assets, policyholders, insureds, members, officers, directors, or employees;

(b) Instituting or continuing to prosecute any actions or proceedings to determine, enforce, collect, or assert any claims against the Rehabilitator or Special Deputy Rehabilitator(s), their agents, attorneys, employees, or representatives, or the State of Michigan and its officers, agencies, or departments for claims or causes of action arising out of or relating to Consumers Mutual or any proceedings under Chapter 81;

(c) Obtaining preferences, judgments, attachments, garnishments, or liens against Consumers Mutual, its assets, policyholders, insureds, members, officers, directors, or employees;

(d) Levying of execution against Consumers Mutual, its assets, policyholders, insureds, members, officers, directors, or employees; and

(e) Threatening or taking any other action that may lessen the value of Consumers Mutual's assets or prejudice the rights of Consumers Mutual's creditors as a whole, its policyholders, insureds, or members, or the administration of this rehabilitation proceeding.

24. Pursuant to MCL 500.8105(1)(g) and (k), all non-contracted and contracted health care providers are hereby specifically enjoined and restrained from pursuing collection against, obtaining judgments against, and/or balance billing of Consumers Mutual's policyholders, insureds, or members for health care goods provided or services rendered prior to the date of this Order. All non-contracted and contracted health care providers that provided such goods or rendered such services prior to the date of this Order shall seek payment solely from Consumers Mutual as a Consumers Mutual Creditor, as defined in this Order

and MCL 500.8103(b). The foregoing prohibition does not apply to any applicable co-payments, deductibles, cost sharing, or fees for health care goods or services that are not covered by and remain the policyholder's, insured's, or member's responsibility under his or her Consumers Mutual insurance policy.

25. Any person who violates an injunction issued in this matter shall be liable to the Rehabilitator, the policyholder/insured, or both, for the reasonable costs and attorney fees incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

26. All 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.

27. Any and all claims by Creditors against Consumers Mutual must be raised or asserted within the rehabilitation proceeding before this Court and are subject to this Court's orders regarding the submission and determination of claims.

28. At the appropriate time and if necessary, the Rehabilitator shall develop a method for the submission, evaluation, and resolution of any unpaid Creditor claims for goods and services provided to Consumers Mutual prior to the date of this Order.

29. Pursuant to MCL 500.8114(1), the Rehabilitator appoints James Gerber, the Director of Receiverships at DIFS, as Special Deputy Rehabilitator for Consumers Mutual. Mr. Gerber shall serve at the pleasure of the Rehabilitator,

who reserves the right to appoint other Special Deputy Rehabilitator(s) to replace and/or serve with Mr. Gerber in the future as the need arises. Subject to the supervision and direction of the Rehabilitator and this Court, Mr. Gerber shall have all the powers and responsibilities of the Rehabilitator granted under MCL 500.8114.

30. Pursuant to MCL 500.8114(1), the Rehabilitator has fixed the compensation of Mr. Gerber as follows, which this Court approves: Mr. Gerber shall be compensated as a salaried employee of DIFS and shall not receive any additional salary in his capacity as Special Deputy Rehabilitator for Consumers Mutual. However, Mr. Gerber's expenses for travel, lodging, meals, and other expenses incurred in connection with his appointment as Special Deputy Rehabilitator shall be paid out of the funds or assets of Consumers Mutual as normal administrative expenses pursuant to paragraph 18 of this Order. Mr. Gerber will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates. If the Rehabilitator so elects in the future, he may allocate to Consumers Mutual the pro rata portion of Mr. Gerber's salary, at the rate of \$86.43 an hour, attributable to the performance of his duties as Special Deputy Rehabilitator, which compensation shall be paid out of the funds or assets of Consumers Mutual pursuant to MCL 500.8114(1). In the event that Consumers Mutual does not possess sufficient cash or liquid assets to pay Mr. Gerber's expenses, or his salary if the Director makes the allocation election permitted by this paragraph, the Rehabilitator may advance the necessary funds, which shall be

repaid out of the first available money of Consumers Mutual pursuant to MCL 500.8114(1).

31. If Consumers Mutual remains in rehabilitation, the Rehabilitator and Special Deputy Rehabilitator(s) shall make an accounting to the Court of Consumers Mutual's financial condition and progress towards rehabilitation on or before May 18, 2016. Thereafter, the Rehabilitator and Special Deputy Rehabilitator(s) shall make a similar accounting to the Court each succeeding one-year period during which Consumers Mutual remains in rehabilitation.

32. The Court reserves jurisdiction to amend this Order of Rehabilitation or issue such further orders as it deems just, necessary, and appropriate.


Ingham County
Circuit Court Judge

Stipulated and Agreed:



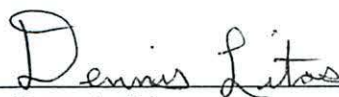
Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Attorneys for Petitioner

11/13/15
Date

CERTIFIED COPY
30TH CIRCUIT COURT

NOV 13 2015

**CONSUMERS MUTUAL INSURANCE
OF MICHIGAN**

By: 
Dennis Litos

(CLK by consent
via PAF Signature --
See attached)

11/9/15
Date

I hereby certify that this document is a true and correct copy of the original on file with this court.


Tara Duffey, Deputy Clerk

Its: Chief Executive Officer

repaid out of the first available money of Consumers Mutual pursuant to MCL 500.8114(1).

31. If Consumers Mutual remains in rehabilitation, the Rehabilitator and Special Deputy Rehabilitator(s) shall make an accounting to the Court of Consumers Mutual's financial condition and progress towards rehabilitation on or before May 18, 2016. Thereafter, the Rehabilitator and Special Deputy Rehabilitator(s) shall make a similar accounting to the Court each succeeding one-year period during which Consumers Mutual remains in rehabilitation.

32. The Court reserves jurisdiction to amend this Order of Rehabilitation or issue such further orders as it deems just, necessary, and appropriate.

Ingham County
Circuit Court Judge

Stipulated and Agreed:

Christopher L. Kerr (P57131)
Mark A. Gabrielse (P75163)
Attorneys for Petitioner

Date

**CONSUMERS MUTUAL INSURANCE
OF MICHIGAN**

By: _____

Dennis Litos

Date

11-9-15

Its: Chief Executive Officer