

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

July 18, 2011

VIA HAND DELIVERY

Clerk of the Court
Ingham County Circuit Court
Veterans Memorial Courthouse
313 W. Kalamazoo
P.O. Box 40771
Lansing, MI 48901-7971

**Re: *Ken Ross Commissioner, Office of Financial and Insurance Regulation v
National Foot Care Program, Inc.***
Case No. 07-1211-CR

Dear Clerk of the Court:

Enclosed for filing in the above captioned case, please find Liquidator's Verified Motion to Terminate Liquidation, Approve the Actions of the Liquidator, Discharge the Liquidator, Close the Case and For Related Relief along with a Notice of Hearing. I have also enclosed a check in the amount of \$20 to cover the motion fee.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher L. Kerr".

Christopher L. Kerr
Assistant Attorney General
Corporate Oversight Division
(517) 373-1160

Enc

cc James Gerber (w/encls.)

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

KEN ROSS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE
REGULATION

Petitioner,

No. 07-1211-CR

v

HON. JOYCE DRAGANCHUK

NATIONAL FOOT CARE PROGRAM, INC.,

Respondent.

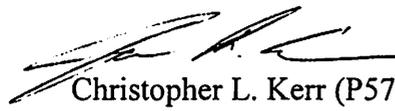
Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Attorney for Petitioner
Michigan Department of Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-1160

NOTICE OF HEARING

Please take notice that Ken Ross, Commissioner of the Office of Financial and Insurance Regulation, by his Attorney, Jason R. Evans, Assistant Attorney General, will bring the attached **Motion to Terminate Liquidation, Approve the Actions of the Liquidator, Discharge the Liquidator, Close the Case, and For Related Relief** for hearing in the above entitled case on **Wednesday, August 3, 2010, at 3:15 P.M.**, or as soon thereafter as parties may be heard, before the Honorable Joyce A. Draganchuk.

Respectfully submitted,

Bill Schuette
Attorney General



Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Special Deputy
Liquidator
P.O. Box 30755
Lansing, MI 48909
(517) 373-1160

Dated: July 18, 2011

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**LIQUIDATOR'S VERIFIED MOTION TO TERMINATE LIQUIDATION, APPROVE
THE ACTIONS OF THE LIQUIDATOR, DISCHARGE THE LIQUIDATOR, CLOSE
THE CASE, AND FOR RELATED RELIEF**

NOW COMES R. Kevin Clinton, the Commissioner of the Office of Financial and Insurance Regulation, the court-appointed and statutory liquidator of National Foot Care Program, Inc. (hereinafter referred to as "Liquidator"), and for his Verified Motion to Terminate Liquidation, Approve the Actions of the Liquidator, Discharge the Liquidator, Close the Case, and For Related Relief ("Verified Motion to Terminate"), states:

HEARING

1. This Verified Motion to Terminate is scheduled for hearing on **Wednesday, August 3, 2011 at 3:15 p.m.** or as soon thereafter as counsel may be heard.

GENERAL MATTERS

2. On September 7, 2007, Linda A. Watters, former Commissioner of the Office of Financial and Insurance Services, petitioned this Court for an Order Authorizing the Commissioner to Rehabilitate National Foot Care Program, Inc. ("NFCP").

3. On October 18, 2007, this Court issued an Order authorizing the Commissioner to rehabilitate NFCP (the "Rehabilitation Order").

4. In the Rehabilitation Order, the Court found that "Rehabilitation of NFCP is appropriate because ... NFCP is in such condition that further transaction of business would be hazardous financially to its members, creditors, or the public; within the previous four years NFCP has violated a valid order of the OFIS Commissioner under MCL 500.8109; and NFCP is in a condition that it could not presently meet the requirements for incorporation and authorization. ...NFCP is insolvent, has negative working capital, and has made transfers to affiliates in contravention of the Commissioner's November 15, 2005 order of supervision."

5. The Rehabilitation Order required the Commissioner, as Rehabilitator of NFCP, to take immediate possession of all assets of NFCP and administer those assets under the Court's general supervision. The Rehabilitation Order further provided that "[p]ursuant to MCL 500.8116(1), if the Rehabilitator believes that further attempts to rehabilitate NFCP would be futile or would substantially increase the risk of loss to creditors, policyholders, or the public, she may petition the Court for an order of liquidation."

6. On November 19, 2007, Ken Ross, former Commissioner of the Office of Financial and Insurance Regulation ("OFIR"), filed a Petition for Liquidating Receivership and Declaration of Insolvency of National Foot Care Program, Inc. (the "Liquidation Petition").

7. The Liquidation Petition indicated that since the filing of the petition for rehabilitation on September 7, 2007, NFCP's financial condition had significantly deteriorated. In fact, Chrysler Motors Corporation ("Chrysler"), Ford Motor Company ("Ford"), and Blue Cross Blue Shield of Michigan terminated their contracts with NFCP. These contracts represented 97% of NFCP's premium, leaving it with insufficient funds to develop a successful rehabilitation plan to continue operations and pay past due obligations. NFCP-prepared internal financial statements dated September 30, 2007 also showed that the company had negative working capital of \$1,894,541 and negative net worth of \$1,317,054. NFCP, therefore, was insolvent and failed to meet the standards for incorporation and authorization. Further attempts to rehabilitate NFCP would have been futile.

8. On December 14, 2007, the Court issued an Order to Liquidate National Foot Care Program, Inc. and Declaring that the Company is Insolvent (the "Liquidation Order"). In the Liquidation Order, the Court found that further transaction of business by NFCP would have been hazardous, financially or otherwise, to its policyholders, its creditors, or the public and that

NFCP was in such condition that it could not presently meet the requirement for incorporation and authorization. The Court further found that additional attempts to rehabilitate NFCP would substantially increase the risk of loss to creditors, subscribers, or the public or would be futile.

9. The Liquidation Order placed NFCP into liquidation and appointed the Commissioner of OFIR as Liquidator of NFCP. Additionally, all contracts or certificates of coverage to subscribers issued by NFCP in effect at the time of entry of the Liquidation Order were to terminate no more than 30 days after the liquidation date was entered. The Liquidation Order also established a claims filing deadline of six months after the date of its entry.

10. As of the date that the Liquidation Petition was filed, the estate had no assets and was operating on funds advanced by OFIR.

11. On December 8, 2008, the Liquidator filed a Petition for Order Approving the Liquidator's Plan for Distribution. The Liquidator previously marshaled the assets of NFCP and received claims against the estate as required by the Liquidation Order.

12. According to the Liquidator's Plan for Distribution, NFCP entered into Escrow Agreements with Chrysler and Ford to secure the payment of claims on behalf of Chrysler and Ford beneficiaries upon termination of their health care contract with NFCP, which Chrysler and Ford agreed to when NFCP's financial difficulties came to light. The Chrysler escrow account had approximately \$142,000 and the Ford escrow account had approximately \$250,000.

13. As the liquidation estate was operating on money advanced by OFIR pursuant to MCL 500.8121(1)(d), there were no assets available to the Liquidator outside of the escrow accounts.

14. The Liquidator, therefore, requested that the Court order an alternative distribution, separate from the plans established in the escrow accounts, which dedicated the

escrow accounts to the Ford and Chrysler claims, but applied the claims priorities and procedures of Chapter 81.

15. On January 9, 2009, the Court entered an Order approving the Liquidator's Plan of Distribution. The Court ordered Chrysler and Ford to instruct their respective escrow agents to pay the total escrow funds to the Liquidator for distribution as provided in the Liquidator's plan. The costs of administration were to be paid pro rata from the Chrysler and Ford escrow accounts based on the relative percentage of premium each company had paid. As a result, \$192,099.71 of the Ford escrow funds were distributed to pay Ford claims and administrative expenses, while \$96,641.10 of the Chrysler escrow funds were distributed to pay Chrysler claims and administrative expenses. The total amount of funds distributed to all claimants was \$322,513.27.

16. Even with funds from the escrow accounts, OFIR has not received reimbursement for approximately \$70,000 of its advanced administrative expenses.

17. Further, on April 9, 2009, this Court granted the Liquidator's Ex Parte Petition for Approval of Record Destruction. This Order permitted the Liquidator to destroy documents according to NFCP's seven-year retention and destruction policy.

18. On January 4, 2010, the Liquidator filed his Motion for Order Compelling North Park Realty Management, LLC to Return Security Deposit to National Foot Care Program, Inc. seeking return of a \$9,371.16 security deposit that NFCP paid to North Park for the lease of office space.

19. On February 3, 2010, this Court issued its Order Compelling North Park Realty Management, LLC to Return Security Deposit to National Foot Care Program, Inc.

20. Because North Park is in receivership, the security deposit has not been repaid. However, the Liquidator has recorded a judgment lien with the Oakland County Register of

Deeds against North Park's current or future interest in any real property in Oakland County, including the property that NFCP leased space in. Upon the sale of such property, the judgment lien will be paid from any sale proceeds that remain available after superior liens are paid.

21. While NFCP was in liquidation, the Internal Revenue Service levied against NFCP's bank account with JP Morgan in the amount of \$2,980.79 for payment of a penalty and interest for failure to furnish a taxpayer identification number for the 2006 tax year. The IRS did this even though the Deputy Liquidator previously informed the IRS that NFCP was in liquidation and that the IRS would need to file a proof of claim in the liquidation proceeding. After the IRS levied against NFCP's account, the Deputy Liquidator sent a letter to the IRS objecting to the levy and requesting that the IRS return the funds taken from the account. The Deputy Liquidator again informed the IRS that under MCL 500.8142, U.S. Government claims are classified as third priority and only payable after all policyholder obligations are paid in full. To date, the IRS has not returned, and it appears unlikely that the IRS will return, the \$2,980.79.

22. Even if the Liquidator receives the \$9,371.16 owed by North Park Realty Management, LLC and the \$2,980.79 owed by the IRS, OFIR's advanced but unpaid administrative expenses will still total approximately \$57,648.

23. The Liquidator has filed all necessary state and federal tax filings.

24. The Liquidator's Plan of Distribution has been carried out and the Liquidator has completed winding up the affairs of NFCP.

25. By this Verified Motion to Terminate, the Liquidator seeks generally to terminate the liquidation, close the case, and discharge the Liquidator. More specifically, the Liquidator seeks the following:

- a. Approval of all actions taken or not taken by the Liquidator;
- b. Discharge of and release of all claims against the Liquidator;
- c. Implementation and enforcement of the bar order;
- d. Entry of a final order terminating the liquidation and closing the case; and
- e. Entry of an Order permitting destruction of records.

REQUEST FOR COURT APPROVAL OF ALL ACTIONS
TAKEN OR NOT TAKEN BY THE COMMISSIONER AS THE LIQUIDATOR OF NFCP

26. In general, the Liquidator of NFCP has, from the inception of the receivership, taken possession of NFCP's assets, marshaled assets, compromised claims, mitigated liabilities, sought and received recovery from various individuals and entities, and administered the business of the receivership as provided in the Insurance Code of 1956, as amended. The Liquidator has done so under this Court's general supervision.

27. Further, the Liquidator has complied with this Court's directives in this matter.

28. In addition, throughout the course of this liquidation, the Liquidator sought court approval of all material transactions.

29. As a result, the Liquidator seeks an order approving all actions taken or not taken by the Liquidator and his deputy liquidators, accountants, agents, attorneys, successors, officers, directors, special deputies, and assigns throughout the liquidation, and providing that such actions taken or not taken have been properly executed and have met the requirements of Chapter 81 of the Insurance Code and the laws of the State of Michigan in general, as ascertained by and reviewed by this Court through the date of the order.

DISPOSITION OF ANY FUNDS RECOVERED

30. As previously indicated, the liquidation estate has been operating on money advanced by OFIR pursuant to MCL 500.8121(1)(d). Further, although MCL 500.8121(1)(d) anticipated that the advance of funds by OFIR would be repaid, there were no assets available outside of the escrow accounts.

31. The escrow account funds have been distributed according to the Court-approved Liquidator's Plan of Distribution.

32. Although unlikely, the Liquidator may still be able to recover the \$9,371.16 security deposit given to North Park Realty Management, LLC for the lease of office space for NFCP and the \$2,980.79 inappropriately taken by the IRS. In any event, these funds will not be sufficient to pay the approximately \$70,000 in unpaid administrative expenses advanced by OFIR.

33. The Liquidator, therefore, requests approval to use any money recovered after the close of this estate to reimburse OFIR for advanced but unpaid administrative expenses.

REQUEST FOR DISCHARGE OF LIQUIDATOR AND RELEASE OF ALL CLAIMS AGAINST COMMISSIONER AS THE LIQUIDATOR OF NFCP

34. The Insurance Code provides:

If all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be considered appropriate.

MCL 500.8146(1).

35. The Commissioner as Liquidator of NFCP further seeks an order that the Liquidator and his deputy liquidators, accountants, agents, attorneys, successors, officers,

directors, special deputies, and assigns are fully, finally, and unconditionally discharged and released from any duties, obligations, and liabilities with respect to the liquidation of the NFCP.

REQUEST FOR BAR ORDER FOR ALL CLAIMS AGAINST THE LIQUIDATOR

36. The Liquidator also requests an order that all claims and causes of action against the Liquidator and his deputy liquidators, accountants, agents, attorneys, successors, officers, directors, special deputies, and assigns for any and all actions taken or not taken throughout the liquidation of NFCP shall be completely and forever barred, and that from and after entry of the order terminating the liquidation, the Liquidator shall have no further responsibility or obligations under Chapter 81 of the Insurance Code or the laws of the state of Michigan with respect to any matter relating to the Liquidation.

REQUEST FOR FINAL ORDER CLOSING ESTATE

37. The Liquidator seeks a final order terminating the liquidation of NFCP and closing this case.

38. The Liquidator also requests that no further reports be required of the Liquidator to any person or entity, including but not limited to reports to this Court and reports to OFIR.

39. By operation of law, the corporate existence of NFCP will be dissolved effective on the date of the order discharging the Liquidator. MCL 500.8120.

REQUEST FOR CONTINUED APPROVAL OF RECORD DESTRUCTION

40. On April 9, 2009, this Court granted the Liquidator's Ex Parte Petition for Approval of Record Destruction. This Order permitted the Liquidator to destroy documents according to NFCP's seven-year retention and destruction policy. The Liquidator recommends and seeks authority to destroy documents on a rolling, yearly basis, such that every year all

documents more than seven (7) years old will be destroyed without further request of the Court by the Liquidator and without further review or order of this Court.

AUTHORIZATION OF SERVICE

41. Due to the difficulty and prohibitive cost associated with providing personalized notice of this Verified Motion to Terminate and any resulting Order to all parties with an interest in this matter, the Liquidator requests that the Court authorize, approve, and/or ratify the Liquidator's service of the Verified Motion to Terminate and any resulting Order by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate" and the subsection "National Foot Care Program, Inc." Service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

VERIFICATION

42. This Motion is verified by James Gerber, the Special Deputy Liquidator.

RELIEF REQUESTED

WHEREFORE, the Commissioner of the Office of Financial and Insurance Regulation, acting solely in his capacity as the court-appointed Liquidator of National Foot Care Program, Inc., respectfully requests entry of a final order:

- a. Granting the Liquidator's Verified Motion to Terminate;
- b. Approving all actions taken or not taken by the Liquidator;
- c. Unconditionally releasing the Liquidator and the Liquidator's past and present agents;
- d. Discharging the Liquidator and the Liquidator's agents;

- e. Barring all claims against the Liquidator;
- f. Terminating the liquidation;
- g. Closing the case;
- h. Approving continued record destruction;
- i. Authorizing the Liquidator to serve this Verified Motion to Terminate and any resulting Order by posting electronic copies on the "National Foot Care Program, Inc" section of OFIR's website; and
- j. Granting such other and further relief as equity requires.

Respectfully submitted

Bill Schuette
Attorney General



Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Michigan Department of Attorney General
Corporate Oversight Division
Attorneys for Liquidator
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

Dated: July 18, 2011

VERIFICATION

STATE OF MICHIGAN)
)ss.
COUNTY OF INGHAM)

James Gerber, court-appointed Special Deputy to the statutory Liquidator of NFCP, being first duly sworn, deposes and says that he makes this Verification on the Liquidator's behalf; that he has read the Verified Motion to Terminate Liquidation, Approve the Actions of the Liquidator, Discharge Liquidator, Close the Case, and For Related Relief, and that he executes the Motion for and on behalf of the Liquidator, and is duly authorized to do so; as that the matters contained in the Motion are true to his personal knowledge and/or are true to the best of his information and belief.

Marilyn C. Rzepecki

Subscribed and sworn to before me,
a Notary Public in and for said county,
this 18th day of July, 2011

James Gerber
James Gerber

Marilyn C. Rzepecki, Notary Public
State of Michigan, County of Eaton
My Commission Expires 8/3/2011
Acting in the County of Ingham