

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - CIVIL TERM - PART: 35

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In the Matter of the liquidation of:

HEALTH REPUBLIC INSURANCE OF NEW YORK, CORP.

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Index No. 450500/2016

60 Centre Street  
New York, New York  
January 11, 2017

B E F O R E:

HONORABLE CAROL EDMEAD, Justice

A P P E A R A N C E S:

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Liquidator of Health Republic  
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Lisa A. Casey  
Official Court Reporter

## Proceedings

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2 THE COURT: This is the case of Health Republic  
3 Insurance. You are here because -- I just want to get some  
4 clarification.

5 First let me just say to the Liquidation Bureau,  
6 please, when you write letters, don't just E-file and think  
7 I know what you did. I won't. I don't. I didn't, because  
8 we don't get notification. If we did, we would be reading  
9 every day until midnight. We don't get notification of  
10 everything that's posted in any case. If you want me to  
11 know what you have done, you need to E-file, email, email  
12 attach, or fax the communication so that I can see, because  
13 I didn't see your letter, I saw the concern first. So, we  
14 have that in the future.

15 MR. KIRSHNITZ: Yes, your Honor. I do believe  
16 that we did try, and I'm not sure exactly what happened,  
17 but a hard copy, I thought, was delivered to chambers.

18 THE COURT: Never saw it.

19 MR. KIRSHNITZ: If that didn't happen, we  
20 apologize.

21 THE COURT: It's easier with the electronic.  
22 Send it with an email and attach. Much cleaner, easier.  
23 Comes right into chambers. Comes right in, at home and at  
24 work. For good or bad, we see it immediately; okay? So  
25 let's try to do that in the future now.

26 Let's go back to what's the concern here is.

## Proceedings

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2 when we last met, I know there was discussion about doing  
3 an RFP, request for proposal, with respect to a go-ahead.

4 MR. KIRSHNITZ: It's a third-party claims  
5 auditor.

6 THE COURT: Now, when we last met, it was  
7 October.

8 MR. KIRSHNITZ: Well, I think what you are  
9 referring to is the conference that happened on October 11.

10 THE COURT: Yes.

11 MR. KIRSHNITZ: It was during that sort of  
12 discussion that you directed the liquidator to post for a  
13 proposal for a third-party claims auditor. Specifically,  
14 you directed that it should be posted for twenty days, and  
15 then afterwards you asked that we report back to you about  
16 any people who responded.

17 THE COURT: And the letter of December 12th is  
18 the letter detailing that you heard from one vendor -- I'll  
19 say vendor -- in response to the RFP. Am I close?

20 MR. KIRSHNITZ: Correct.

21 THE COURT: And that is Truven?

22 MR. KIRSHNITZ: Truven Health Analytics.

23 THE COURT: Now, let me just back up. What,  
24 again, was the need for that person, or that entity? Did  
25 we discuss that at the conference, the need for the  
26 third-party claims auditor? I'm going, now, to what I

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1  
2 received as further communication from Mr. Veach. Did you  
3 explain the need for that.

4 MR. KIRSHNITZ: Well, I can say this, your Honor.

5 THE COURT: Yes.

6 MR. KIRSHNITZ: From really the beginning of the  
7 liquidation, the expectation to use this claims auditor to  
8 review the inventory of claims, this was -- I don't know if  
9 it was discussed, actually, in court on May 11th. I  
10 certainly know that it was part of the sort of summary of  
11 the liquidation process that was posted to the Health  
12 Republic website. It's been referenced in, I think, many  
13 of the papers for the claims adjudication procedures, et  
14 cetera. I mean, this has been our expectation, as part of  
15 the process, from the beginning.

16 THE COURT: The beginning. Okay.

17 MR. KIRSHNITZ: If you will allow me?

18 THE COURT: Continue.

19 MR. KIRSHNITZ: I'm an attorney with the  
20 liquidation bureau. With me is Gail Pierce-Siponen.

21 THE COURT: Who is?

22 MR. KIRSHNITZ: She is as Assistant Special  
23 Deputy and --

24 THE COURT: Special Deputy --

25 MS. PIERCE-SIPONEN: Superintendent.

26 THE COURT: Thank you. I needed that. Okay.

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Assistant Deputy.

MR. KIRSHNITZ: Special Deputy Superintendent,  
and --

THE COURT: It's a mouthful.

MR. KIRSHNITZ: There's more.

THE COURT: Go ahead.

MR. KIRSHNITZ: There's more coming. She is the  
Director of Creditor and Ancillary Operations at the  
bureau.

THE COURT: And what does that mean?

MR. KIRSHNITZ: Among other things,  
Ms. Pierce-Siponen oversees the team that, in this estate,  
is actually doing the claims management, actually  
interfacing with the actual claimants, and she and her team  
are actually sort of managing this audit process, and she's  
here, hopefully, to be able to provide more detail, really,  
about the claims process about the audit what we envision,  
and really, about what we expect, going forward.

THE COURT: Now, I just want to be clear. You  
are --

MR. BUTLER: I represent Northwell Health System,  
one of the large providers.

THE COURT: I know you are familiar. I just  
needed to you refresh my recollection as to who you are.

You are Mr. Veach?

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MR. VEACH: That's correct.

THE COURT: Now, I know Northwell is a claimant.

MR. BUTLER: Yes.

THE COURT: A pretty large claimant, a Capital-C claimant.

Now, I do recall that the need for a claims auditor was always out there. Everyone agrees this isn't the first time, the December 12th communication was not the first time everyone was made aware that there would be a need for a claims auditor. Does everyone agree to that?

MR. BUTLER: Yes.

THE COURT: It was always mentioned.

MR. VEACH: I think the concern that I had was that POMCO, which is the claims adjudicator, has been paid, just in the past five months, a million nine --

THE COURT: That wasn't my question; was it? Was that the question I asked? Did I not ask if there was an understanding that there needs to be an auditing of the claims, or at least -- a claims auditing?

We'll get to the specifics, but claims auditing is a necessity. It's a requisite. The question is, did they need that third-party claims auditor that they hired. That's the question. That's all. Not that one would not be necessary. Not that it's not a requisite, but a requisite of whom by whom. That's all.

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2 Now, the problem, of course, with the late  
3 raising of issue by Mr. Veach, is that when we had that  
4 conference we talked about the exact fact that they were  
5 going to do, I had ordered that they do, an RFP, so it was  
6 known what it was going to be for. It's not like it was  
7 just figured out, because I directed an RFP be done for the  
8 purpose of identifying the claims auditor, and that it be  
9 posted, and for a period of time, so if there was a  
10 argument that there should not have been or was no need for  
11 a third-party claims auditor, why didn't I hear it then?

12 MR. VEACH: I think our concern here is --

13 THE COURT: Our?

14 MR. VEACH: My concern.

15 THE COURT: Thank you.

16 MR. VEACH: It isn't Truven auditing POMCO.

17 THE COURT: That's what I'll get to. The  
18 question, then, is -- because I have to say I do require  
19 that things be posted, but you understand that it's not  
20 that I'm reading every single thing that's posted on your  
21 website. It's not possible. That's why it doesn't hurt  
22 that I have Northwell and Mr. Veach and other interests  
23 pointing things out to the Court, where I might not have  
24 picked up on something, that I can then say, Oh, let's talk  
25 about this. So yes, a third-party claims auditor was  
26 discussed. The RFP was in place. The question is, was the

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2 contract with Truven posted.

3 MR. KIRSHNITZ: Yes, your Honor.

4 THE COURT: Posted in its entirety?

5 MR. KIRSHNITZ: Yes, your Honor. I can explain  
6 the whole time line to you, if you would like.

7 THE COURT: Great. Go ahead.

8 MR. KIRSHNITZ: All right. Following the Court's  
9 directives we did, in fact, conduct the RFP, and I have a  
10 copy of the document here.

11 (Whereupon, a document was handed to the Court.)

12 MR. KIRSHNITZ: It was posted for more than  
13 twenty days on the Health Republic website. It was posted,  
14 actually, for longer than that on the New York Liquidation  
15 Bureau website. There was -- a proposal was received.  
16 There was --

17 THE COURT: Only one?

18 MR. KIRSHNITZ: Correct. There was a review  
19 process that took place, and Truven was selected as the  
20 auditor. So on December 12 -- and you may recall the Court  
21 actually said we could have given you this information in  
22 camera about the respondents, but the letter on December 12  
23 was, A, designed to respond to your directive, but also to  
24 inform you that Truven had been selected, that we were in  
25 the process of negotiating the agreement. There's  
26 reference in the letter that there was some exigency, some



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2 time crunch as far as some sort of technical prework that  
3 had to occur as far as getting the data from where it is to  
4 Truven.

5 I mean, I'm not a technical person, but as it was  
6 explained to me, the claims data, as it exists now, has  
7 various fields and codes, and those need to match up with  
8 the systems that the auditor had in place to receive the  
9 data, and if they don't, then work-arounds or patches have  
10 to be created, and Truven needed to have the agreement  
11 executed but they would start that prework, sort of, to be  
12 able to accept the data. And it's a very large volume of  
13 data.

14 THE COURT: Let me just back up.

15 MR. KIRSHNITZ: Yes, ma'am.

16 THE COURT: Truven had to have this mechanism in  
17 place before it would execute the contract?

18 MR. KIRSHNITZ: Correct. There was prework. To  
19 be clear, the audit itself, or the audit in full, has not  
20 begun yet. We are still in this sort of pre-audit work of  
21 getting the systems in place and getting the data  
22 transferred.

23 THE COURT: Okay.

24 MR. KIRSHNITZ: So after we posted this letter  
25 and it was done, like I say, on the Court's website for  
26 anybody to respond to, we did actually wait over a week in

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2 case. The Court had questions or concerns about what's set  
3 forth in the letter, but as I say, we did want to get this  
4 process started, because as it's explained in the letter,  
5 the goal was to get this data transfer completed by the end  
6 of 2016 so the actual audit could start in January, and  
7 that plan is still underway. The actual contract was  
8 executed fully on December 22. It was posted to the Health  
9 Republic website where all the other vendor contractor's  
10 contracts are posted. That, I believe, went up on December  
11 23, and it's still up there now. I have a copy of the  
12 agreement, if you would like it.

13 THE COURT: Go ahead. That's the time line.  
14 Now, the real question.

15 MR. KIRSHNITZ: Yes.

16 THE COURT: What is the role of Truven in  
17 comparison, or in conjunction, or as compared with, the  
18 role of -- and I always say it wrong.

19 MR. VEACH: POMCO.

20 THE COURT: POMCO. What does POMCO do, and how  
21 is that different from what Truven is going to do? I want  
22 to know the distinction in the roles of POMCO and Truven.  
23 Why do we have them both? What is the difference in their  
24 roles and duties and obligations?

25 MR. KIRSHNITZ: I'll start, but I'm going to --  
26 hopefully Gail will jump in what I start to say the wrong

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2 thing. Just for context, there's a very large volume of  
3 claims in inventory right now. I don't know the exact  
4 number, but I think it's approaching 700,000 claims, and  
5 when you actually look at the claims, the sort of  
6 individual features or components of these claims, I'm told  
7 it's about two million features, or aspects. It's a very  
8 significant volume of claims, and to date, those claims  
9 have been processed by POMCO, who was Health Republic's,  
10 sort of, third-party claims administrator.

11 THE COURT: Before the --

12 MR. KIRSHNITZ: That was Health Republic's vendor  
13 for that service.

14 THE COURT: Before the liquidation.

15 MR. KIRSHNITZ: Right, when Health Republic was  
16 an operating insurance company.

17 THE COURT: So POMCO was in place, and is still  
18 in place.

19 MR. KIRSHNITZ: Well, there's nuances to that,  
20 your Honor.

21 THE COURT: POMCO was in place and the 700,000 or  
22 so claims with two million features, what did POMCO do with  
23 that already? You said it's already been processed. What  
24 does that mean?

25 MS. PIERCE-SIPONEN: So, what happened is the  
26 claims would come in from the providers. For example,

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2 Northwell with send the claims in electronically. It was  
3 set up so that POMCO would receive them, they would do what  
4 was necessary to determine all the parts of their 30  
5 different insurance programs that the company ran. As you  
6 know from the Affordable Care Act, you can buy a bronze, a  
7 silver, or a platinum, and different co-pays, different  
8 pricings, different what-have-you. So they would run it  
9 through and determine all the usual predicate things like  
10 eligibility timeliness, completeness, and then it would be  
11 priced, and then once it's priced, it comes back, and in  
12 the normal course of business, the EOB would be issued,  
13 either to the --

14 THE COURT: EOB?

15 MS. PIERCE SIPONEN: Explanation of Benefits, to  
16 a provider or to a member, depending on who had put the  
17 claim in. POMCO continued to receive the claims, to  
18 process them, to get them to the stage of the EOB, but not  
19 to have sent them out as the final document, and part of  
20 what this ties into is that now they have come to us, so  
21 the issue -- because now it's in this receivership  
22 proceeding, and we would like, as the liquidator, to have  
23 an independent review of those before they go out, in order  
24 to catch any errors. These are mainly normal, ordinary  
25 course -- I mean, things are going to be caught, because we  
26 would be issuing the EOB's and, as you know from the

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adjudication procedures --

THE COURT: I thought with respect to the 700,000 claims with two million features, that POMCO, at the point of liquidation, had gotten to the EOB stage.

MS. PIERCE-SIPONEN: For a good number of them. Not for all of them, because the claims came in after. But that's the reason why POMCO stayed on, so that those claims could go in in the normal course and go into this master file of all the open claims.

THE COURT: Let's say, up to today, that POMCO is still -- may still possibly be processing those claims that are out there. I'm getting back to the cutoff date. I'll get back to that. Processing those claims up to the EOB stage, they are doing the first round, the review up to EOB of all claims?

MS. PIERCE-SIPONEN: Yes.

THE COURT: Let me be clear on what I'm asking now. I want you to understand what I'm asking.

MS. PIERCE-SIPONEN: Mm-hmm.

THE COURT: Up to today, all claims are getting a first review by POMCO up to the EOB stage?

MS. PIERCE-SIPONEN: Everything that's been presented to date has been put through the POMCO system and added to this file that is now going to transfer --

THE COURT: Don't talk about transfer yet.

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MS. PIERCE-SIPONEN: Okay. Yes.

THE COURT: Everything has been put through, and is processed through, and is being processed, through POMCO.

MS. PIERCE-SIPONEN: Correct.

THE COURT: That will be done for all, now, for all claims.

Now, what was the cutoff date? Don't we have a March cutoff, or is a cutoff date coming? What are the cutoff dates for acceptance of all claims?

MR. KIRSHNITZ: Well, right now there is no sort of Court-ordered cutoff date for the acceptance of claims.

THE COURT: What was posted on the website? We posted certain things on the website letting people know that you have until X day to file your claim.

MR. VEACH: I understood it was March 31.

THE COURT: I thought it was a March date.

MR. KIRSHNITZ: Right.

THE COURT: March of 2017. March of 2017.

MR. VEACH: I think it's '16.

THE COURT: 2016. You're right.

MR. KIRSHNITZ: I think what we are referring to is under the contract, the health insurance accounts that Health Republic had with its members, essentially the last date to timely submit a claim under those contracts was

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2 that date.

3 THE COURT: March of 2016.

4 MR. KIRSHNITZ: Right. That's a contractual  
5 deadline in the contract that's not, sort of, a  
6 court-ordered cutoff date, or bar date.

7 THE COURT: I understand. I didn't imply it was  
8 a Court date. I just said, what's the last date. My  
9 understanding was there was a last date that anyone could  
10 present a claim which, for me, what that then means is that  
11 there should be some finality in the first level of review  
12 of any claim that might come in.

13 MR. KIRSHNITZ: Well, that is correct.

14 THE COURT: Let's just stop right there. Now,  
15 everybody understand, now, where the baseline is? The  
16 baseline is that, not that there may not be exceptions.  
17 There are always exceptions. There is always someone or  
18 something, and I don't mean just one or two, but many  
19 people, for some reason, have a good excuse and rationale  
20 for why they couldn't or didn't get something done, but the  
21 intended line in the sand was March of 2016, based on the  
22 contracts.

23 Now, what I'm getting to, in the very slow -- I'm  
24 trying to find the word that says the process, and it's  
25 very -- I'm doing it in a very predictable way here, is  
26 that POMCO should then be able to, and is expected to, do a

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2 review of all claims up to the EOB stage, and then have it  
3 packaged and ready. You know, packaged and ready for  
4 whatever is coming next. Am I close?

5 MS. PIERCE-SIPONEN: Mm-hmm.

6 THE COURT: Never mm-hmm.

7 MS. PIERCE-SIPONEN: Yes. You are close. Very  
8 close.

9 THE COURT: Good. So POMCO is still functioning  
10 and still doing that review, up to the EOB stage of claims  
11 that are still being processed.

12 MS. PIERCE-SIPONEN: We are -- POMCO's contract  
13 expired December 31, 2016.

14 MR. KIRSHNITZ: Correct. Correct. That contract  
15 actually is terminated.

16 MS. PIERCE-SIPONEN: So ultimately, assuming we  
17 can begin, we are ready to proceed with finite claims.  
18 Now, to go to Truven --

19 THE COURT: Yes, but I have a question, then. Is  
20 it possible that as of December 31, 2016, there was still  
21 some initial claims, where the cutoff date was March of  
22 2016, that POMCO had yet not processed up to EOB stage?  
23 Yes or no.

24 MS. PIERCE-SIPONEN: No.

25 THE COURT: Everything should be done?

26 MS. PIERCE-SIPONEN: Yes.



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THE COURT: So POMCO should be done?

MS. PIERCE-SIPONEN: And the contract expired  
December 31.

THE COURT: So POMCO has stopped working?

MR. KIRSHNITZ: Well, your Honor --

MS. PIERCE-SIPONEN: On that piece --

MR. KIRSHNITZ: -- the contract with POMCO has  
terminated.

THE COURT: Right.

MR. KIRSHNITZ: The reality is, you know, when  
Health Republic came into liquidation, it had many service  
providers since that time, so the liquidator has examined  
all these relationships, all these contracts. Some of  
them, these contracts, have been renegotiated. Some of  
them have terminated, but in all cases, what the liquidator  
has done is to manage these service providers, because some  
of them are providing services that are necessary for the  
liquidation.

THE COURT: Independent of the kind of audit  
review that POMCO is doing?

MR. KIRSHNITZ: Well, no. POMCO --

THE COURT: No. I'm saying, independent of the  
review claims that POMCO was doing, you have other  
providers?

MR. KIRSHNITZ: Correct, but specifically with  
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## Proceedings

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2 respect to POMCO, sitting here now, I think it is our  
3 anticipation that we are going -- the liquidator will need  
4 some additional assistance from POMCO getting through the  
5 actual issuance of the EOB's several months from now.

6 THE COURT: I'm going to get back to that,  
7 because I want to know why and what.

8 MR. KIRSHNITZ: Yes.

9 THE COURT: Why and what, because the contract is  
10 over. You have now -- I'm getting ready to move to Truven.  
11 Off the record.

12 (Whereupon, there was a pause in the  
13 proceedings.)

14 THE COURT: I'm going come back to that. So  
15 ostensibly, POMCO has moved approximately 700,000 claims  
16 through and up to the stage of EOB.

17 MR. KIRSHNITZ: Correct.

18 MS. PIERCE-SIPONEN: Correct.

19 THE COURT: Great. Ostensibly there's a  
20 condition, there's things that may not have happened yet.  
21 But now I want to know why? That having been done, why is  
22 there a need for Truven, and what is it that Truven is  
23 doing? I understand you say the liquidator wants to do the  
24 view to insure what --

25 MS. PIERCE-SIPONEN: To insure that -- in the  
26 normal course, what we would do in any liquidation is

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2 whatever the company had done that transfers over to us,  
3 before we issue final determinations of some sort, we would  
4 take to do some sort of a review to make sure that we're  
5 comfortable with what's going out, and it's accurate.

6 THE COURT: No. Not yet. I want to know, first,  
7 that you are telling me, in the normal course of business  
8 of the liquidator -- and we have had other health services  
9 terminated before, unfortunately. I know. I've had the  
10 cases. You are saying in the normal course of business,  
11 not withstanding the status of what POMCO in this case has  
12 done, you would still bring in another third party? You  
13 would bring in another third party claims person to review?

14 MS. PIERCE-SIPONEN: We would do some review. It  
15 might not be the hiring of an auditor, but the size, the  
16 complexity and the enormity of it, the options -- otherwise  
17 we might be able to do it, in theory, with a smaller  
18 company by hiring a couple of experienced health care  
19 claims people to do that, but the size and the scope here  
20 prevents that, from a cost perspective.

21 THE COURT: But typically there is a review --  
22 let me just finish the question -- done by the liquidator  
23 to make its own assessment of the credibility of the review  
24 done, prior to the liquidator stepping in.

25 MS. PIERCE-SIPONEN: Yes, and also, your Honor,  
26 if I could just add a little bit, it's also to catch what,

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2 in the normal course, would be, perhaps, errors, so that  
3 early on, before the EOB's go out, we have made the  
4 corrections during this process so that at the back end, we  
5 avoid more objections, or more people wanting to appeal or  
6 do other things.

7 THE COURT: I understand. My real concern here,  
8 which has been answered, is this is a normal course of  
9 business activity by the liquidator in the course of  
10 liquidating a health provider to do a second independent  
11 review. It is not unique. It is not nefarious. It is not  
12 a covert act. It is the normal course of business, so if  
13 the normal course is to pull in another auditor or reviewer  
14 and, depending on the scope of what has to be reviewed,  
15 that determined the size of the -- I'm just going to say  
16 the size of the RFP. This is not a strange unique  
17 occurrence. So the fact that they brought in Truven is  
18 explained, the purpose of Truven is explained, and the what  
19 they will do is a second review. Where, then, is the  
20 problem?

21 MR. VEACH: Well, first of all, POMCO, in that  
22 contract that's now terminated -- I understand that POMCO  
23 contract is terminated, but POMCO was paid \$181,000 a  
24 month, every month. February, March, April, May, all the  
25 way to the end. They kept working at exactly the same pace  
26 from March all the way to December.

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THE COURT: When you say the same pace, P-A-C-E?

MR. VEACH: Yes.

THE COURT: The size of the contract is not the issue before me, of POMCO's contract, because it was in place before you liquidated.

MS. PIERCE-SIPONEN: Yes.

MR. KIRSHNITZ: Correct.

THE COURT: They continued to do what they were doing before you liquidated, and they completed, ostensibly, what they were hired to do, up to the point of termination. The amount of that contract is not the issue before me, or should they have gone faster or slower. Who is to say? There's no argument before me that says they should have done something faster. No. In fact, speed doesn't mean quality. If they continued to do what they did up until the time that they their contract ended and they have ostensibly completed that piece of the project, there is nothing nefarious in that activity or in that process.

Secondly, with respect to the explanation of Truven, this sounds like a normal course of business activity, when a entity is taken over, that the liquidator does. It's only reviewed because the liquidator is acting on behalf of the people of the State of New York. Am I close?

## Proceedings

1  
2 And POMCO was acting on behalf of the health  
3 provider. Am I close?

4 So the idea is, let's have somebody independent  
5 look at this and make sure everything is done properly on  
6 behalf of the people.

7 MR. VEACH: Well, one of the --

8 THE COURT: So so far, I have no problem with  
9 Truven.

10 MR. VEACH: Just for the record, maybe we should  
11 clarify how often the bureau goes outside and gets  
12 administrators to review work like this, as opposed to  
13 using their own. I know that the company is saying that  
14 ordinarily, I believe ordinarily, the liquidation bureau  
15 reviews those claims --

16 THE COURT: You didn't hear what she said, if  
17 that's your conclusion. That's not what she said. That's  
18 not what she said.

19 MR. VEACH: No. I wasn't suggesting that.

20 THE COURT: But you just said ordinarily that  
21 what happens, and that's inaccurate. And you cannot build  
22 on a false premise. That's not what she said. She said  
23 depending on the various sizes of the entities that are  
24 subsumed or taken over by the liquidator, it depends on  
25 whether they bring in a couple of auditors, whether they  
26 can do it in house with a couple auditors, but based on the

## Proceedings

1  
2 nature, the size of this liquidation, it was necessary to  
3 do a bigger thing.

4 So to the Court's mind, there's nothing  
5 problematic yet with respect to what happened up to  
6 December 31 with POMCO and then the review by a new entity.  
7 I'm okay with it so far.

8 MR. BUTLER: Your Honor, Northwell has no issue  
9 with Truven coming in because of the size and the number of  
10 claims, and we don't want this process delayed longer in  
11 order to have it done in house. It would take  
12 substantially longer to have this done in house.

13 THE COURT: I would imagine they don't have the  
14 staff to do it, and it would pull from doing quite a lot of  
15 other things, but I am given the understanding it's the  
16 normal course of business. When you put that in context,  
17 we understand. Continue.

18 MR. BUTLER: We don't have any issue with that.  
19 I do have one question with regard to POMCO, is when did  
20 POMCO finish its review of the claims and complete doing  
21 the EOB's? If it was continuing to work up until December  
22 31 I have no issue with that, but if they finished on  
23 August 31 and they haven't been processing any additional  
24 claims for the past four months, then I might have an  
25 issue.

26 THE COURT: What I heard -- and thank you -- was  
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## Proceedings

1  
2 that POMCO worked until the 31st. Were they still  
3 processing claims up until then? I thought that's what I  
4 heard, that up until December 31, they were still doing  
5 claims up to the EOB, and I understand -- and this is where  
6 you wanted to step in -- they may still have things they  
7 have to do now, so they were still working up until the end  
8 of the year. No?

9 MR. KIRSHNITZ: So, the answer to that question  
10 is yes.

11 THE COURT: Okay. Now, let's move on. The next  
12 piece of this is what is POMCO doing from January 1 moving  
13 forward, and why? what and why?

14 MS. PIERCE-SIPONEN: There are basically two  
15 things. One is Truven -- assuming, your Honor, we can go  
16 ahead with what we are doing with the audit, Truven will  
17 look at the data that's in the file they are receiving from  
18 POMCO, and the only thing we might need is if Truven says,  
19 I can't read it, or -- I'm not an IT person by nature, but  
20 there are certain fields they need to have in a certain  
21 formatting text, so if there's something that they did that  
22 can't transfer over, we may need POMCO to do some  
23 assistance work there.

24 THE COURT: I understand that POMCO no longer has  
25 that contract, so if they need -- first of all, there's got  
26 to be a limitation on time. There's no way that POMCO is



## Proceedings

1  
2 sitting back in an office somewhere waiting for phone calls  
3 from Truven indefinitely, with respect to whatever Truven  
4 may have. So there's got to be, one, a cap on time that  
5 POMCO can be in this other role, which is basically  
6 advisory; and two, there's got to be a limitation on how  
7 large this POMCO group is that's giving this advice, or  
8 reservice.

9 So POMCO's contract is over. Who is Truven  
10 contacting at POMCO, and how big is this group?

11 MS. PIERCE-SIPONEN: It's very small, and --

12 THE COURT: That's not an answer, by the way.

13 MS. PIERCE-SIPONEN: I don't know the exact  
14 number.

15 THE COURT: You are going to have to get it for  
16 me. I will find out.

17 MS. PIERCE-SIPONEN: Okay. But we have had some  
18 calls, and we are very optimistic that it will be  
19 transferred over rather quickly and that Truven will begin  
20 their work, and we do have a timetable for Truven to have  
21 this audit completed, so --

22 THE COURT: That's not my question.

23 MS. PIERCE-SIPONEN: Okay.

24 THE COURT: My question is with POMCO. How  
25 large, how long and -- it's got to be very skeletal, the  
26 group, and it's advisory only, and it has to have a time

## Proceedings

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cap. You understand what I'm saying?

MR. KIRSHNITZ: I do, your Honor.

MS. PIERCE-SIPONEN: Understood.

THE COURT: Yes?

MR. KIRSHNITZ: The services that POMCO may need to provide, these are really on an as-needed, as you say, sort of advisory or consulting basis. There are ongoing discussions right now with POMCO, business discussions about what this agreement, going forward, will look like.

THE COURT: You can anticipate what I'm going to say, can you not?

MR. KIRSHNITZ: Those are going on now.

THE COURT: I need to see the agreement. I need to see it before it's executed, and I need to have a commentary before it's executed, because it's too nebulous, the agreement, as I'm hearing it. It's so ethereal.

MR. KIRSHNITZ: Yes.

THE COURT: Okay.

MS. PIERCE-SIPONEN: That's fine.

THE COURT: Good. And make sure I see it, and I want the parameters and a time frame, so I can comment and I can hear from other people about it. You know what that means; right? It's posted. This is the most posted liquidation in the history of liquidation, I'm getting the feeling.

## Proceedings

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MR. VEACH: That's true.

MR. KIRSHNITZ: Your Honor, I think there would be a concern if what you are contemplating is posting drafts of an agreement that's being negotiated.

THE COURT: No. What you think is the final. And by the way, I don't care what they do from January 1 until it's approved, by the way, and I want to approve -- I don't care if they are not getting paid, so don't leave me out there hanging around, doing a whole lot of stuff over a period of time and say, But we worked. Make it clear. Unless it's approved, don't look to get paid.

Off the record.

(Whereupon, an off-the-record discussion took place.)

THE COURT: We have to have strictures about time and getting it moving so that because we don't want this to become a ten-year relationship.

MS. PIERCE-SIPONEN: I have no problem with tools and rules.

THE COURT: Okay. I want to see the final posting, and there has to be that period for the posting of the final agreement with POMCO to be reviewed before, and I don't know if I said this, but I'm saying it now, clearly, on the record. Not another agreement without Court approval. Got it, folks? Not another agreement without

## Proceedings

1  
2 Court approval.

3 MR. BUTLER: Your Honor --

4 THE COURT: I don't mean hiring a paralegal. You  
5 see what I mean? I'm just concerned. I don't want things  
6 to just move along and then, way after the fact, I have to  
7 try to unring a bell. It's not good.

8 MR. BUTLER: Can we follow the same process you  
9 suggested last time, that we submitted to Counsel to review  
10 before it's posted so we can work out any issues?

11 THE COURT: Of course. We did that before and  
12 it's a wonderful process, because it clears up nuances that  
13 you all can work out, the interested parties can work out,  
14 before it gets posted. The reality is the people who I  
15 really am trying to get the money back to are not the  
16 people who are paying attention to these nuts and bolts.  
17 This is for us to do. They want their claims paid.  
18 Remember this room was packed with people, so much so that  
19 we needed interpreters because many of them are not English  
20 speakers? So they are not the ones concerned with these  
21 things. This is our obligation. The purpose is to get the  
22 money back to them. Pay the claims. Pay those who are  
23 sitting there with claims. We understand that Northwell is  
24 a pretty big. You know, sitting there waiting. Sitting  
25 there waiting. But there are other legal people, too. We  
26 just want to get them all processed and not have the money

## Proceedings

1  
2 dissipated in a way that is not in the best interests of  
3 paying the claims, which is what we should be doing. All  
4 right?

5 MR. VEACH: Your Honor --

6 MR. KIRSHNITZ: Your Honor --

7 MR. VEACH: One thing, and we'll move on from  
8 POMCO. The original POMCO contract, on page 12, had them  
9 paid \$4 million at the time they signed the contract.

10 THE COURT: What year?

11 MR. VEACH: At the time they signed the contract.

12 THE COURT: What's the date? Because this is not  
13 a contract that the liquidator entered into, so what's  
14 the -- from back in the day?

15 THE COURT: It was a March of 2016. 2016 is the  
16 POMCO?

17 MR. KIRSHNITZ: 2015. I'm sorry.

18 THE COURT: It's before, but it was at the time  
19 that the board had said, we were in the claim work, but the  
20 board had said, we can't pay all our bills, so we are in  
21 that period.

22 MR. KIRSHNITZ: This was prior to liquidation.

23 THE COURT: It was prior to liquidation. It was  
24 prior to the liquidation bureau taking over; right?

25 MS. PIERCE-SIPONEN: Yes.

26 THE COURT: It's not something that the  
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## Proceedings

1  
2 liquidator can re-negotiate. That contract is over, and we  
3 talked about the expiration of the contract at the last  
4 session, so what's the point?

5 MR. VEACH: Well your Honor, there is a reference  
6 in here to a \$4 million payment that was entered into after  
7 the board had stepped in.

8 THE COURT: Before the liquidator was in place?

9 MR. VEACH: That's correct, after the board had  
10 stepped down, and also \$181,000 a month flat fee, month  
11 after month after month, and my question is, will we be  
12 allowed -- Mr. Butler is concerned about the matter I'm  
13 concern about. Will we have an opportunity to look into it  
14 when we look at the expenses during the hearings?

15 THE COURT: No, because it's not a liquidator  
16 issue. It was a contract. My understanding, unless you  
17 have something to show me differently, is it's not part of  
18 the liquidator's obligations and duties. If the liquidator  
19 went out and tried to void that contract, they will be  
20 sued. Am I close?

21 MR. KIRSHNITZ: That is correct.

22 THE COURT: This is not their contract. If you  
23 had a problem with that way back in the day, you should  
24 have done something then.

25 MR. VEACH: I don't think anybody would have  
26 known about it.

## Proceedings

1  
2 THE COURT: But now you want to hold them  
3 responsible for what they did not know and were not  
4 responsible for at the time, because it may have been a bad  
5 deal by the health providers, but it's not the liquidator's  
6 obligation. I'm saying it's not there. If wasn't there,  
7 it wasn't there, so why? Under what circumstances would I  
8 be able to analyze and parse a contract that was before  
9 liquidation, that has only continued under its terms  
10 through the end of the year? what I can look at is what  
11 goes forward, but I cannot see a scenario under which I  
12 would have the authority to do that. Now, the point is  
13 maybe the State Attorney General, Eric Schneiderman, that  
14 kind of person, has the ability do something like that. Do  
15 you understand the distinction?

16 MR. VEACH: Yes, your Honor.

17 THE COURT: Okay. I'm done with POMCO. I'm done  
18 with Truven. I told you what I want; I told you what I  
19 need you to do as far as a framework for organizing the  
20 language with respect to Truven; and have I covered  
21 explaining what I want with respect to whatever POMCO may  
22 be doing going forward. I covered POMCO. I covered  
23 Truven. I'm moving on to another tangential, collateral  
24 point.

25 Sir, you sent me a letter, and told me that the  
26 Senate, the State Senate, is interested. Let me just say,

## Proceedings

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how did the State Senate get interested?

MR. VEACH: They held hearings back in January of 2016, and their staff continually follow the case.

THE COURT: And who -- you have been in touch with them, obviously.

MR. VEACH: I have not. I was surprised to see this letter. I have not spoken to these gentlemen.

THE COURT: I'm not putting you under oath.

Okay. If the Senate of the State of New York wants to do something, they know how to do it and they have the clear ability to do a whole lot of things with respect to any aspect of action they think was improper. What is the senate looking at, based on the letter? What is their concern.

MR. VEACH: From the letter they are getting calls from their constituents wanting to know when will policies be paid. They are also concerned about unnecessary expenses.

THE COURT: I only ask you this -- why can't they look at the website like everybody else? Is it the senate committee that's interested in this? The liquidation website is so transparent, all they have to do is look at it, if they want to know what's going on. Because the letter indicated they want to know the status of what's going on. This is the most public liquidation I have ever



## Proceedings

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seen.

MR. VEACH: Your Honor, what they were asking, the letter was directed to the superintendent and they asked the superintendent, Please estimate for me when this process will end, when will the claims be paid, and how much is it going to cost. That was their question.

THE COURT: Didn't we do a time line? I thought there was a time line somewhere.

MR. KIRSHNITZ: Well, I think that --

MS. PIERCE-SIPONEN: For the EOB's, it's the beginning of the second quarter.

THE COURT: Am I correct, or did we not talk about setting up a time line? We did. It's in the transcript. We have a time line of how this process, how this whole liquidation process should play out in a time frame, to the point where we might start seeing payments. It's in the record, maybe, and I thought I had asked -- I'm pretty sure I did this on the record, that I asked that a time line be created and posted.

MR. BUTLER: The time line was, the start, from the issuance of the EOB's, and so until the EOB's get issued, there's no deadlines.

THE COURT: Okay. First let me just say if this: Is the committee on -- who is this again?

MR. VEACH: Joint Committees on Health Insurance.  
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## Proceedings

1  
2 THE COURT: They have reached out to the  
3 superintendent; right?

4 MR. VEACH: They held a hearing in January of  
5 2016, and they have been following, apparently.

6 THE COURT: Okay. What more did you want?

7 MR. VEACH: No. Simply, since the senator has  
8 referred to your Honor in this process, I thought it was  
9 good to bring it to your Honor's attention.

10 THE COURT: Okay. Yes. My point, really, is  
11 that I'm trying to do what the court judiciary is capable  
12 of doing to navigate this liquidation to the best end for  
13 the benefit of the claimants. That's my goal. What the  
14 goal may be for the New York State Senate, I do not know.

15 The other question raised, which gives me pause,  
16 is how much is this going to cost? What kind of question  
17 is that? Cost where? How? What aspect of cost are we  
18 talking about? Because that's such a vague -- how much  
19 will it cost? Cost who?

20 MR. VEACH: The policyholders. The money is  
21 coming out of a pot, and the policyholders are only going  
22 to get what's left.

23 THE COURT: And we would imagine that the State  
24 Senate committee knows that. They are knowledgeable of  
25 this process.

26 MR. VEACH: I would not assume that. They have  
Lisa Casey - Official Court Reporter

## Proceedings

1  
2 asked the superintendent for an answer on this, and I was  
3 hoping that there might be something today, but apparently  
4 there's not.

5 THE COURT: Why would you hope there's an answer  
6 for the Senate today? Why would you hope that the Senate  
7 would get an answer today? Is the Senate here?

8 MR. VEACH: No.

9 THE COURT: You are not a representative of the  
10 Senate.

11 MR. VEACH: No, no, your Honor.

12 THE COURT: How would you anticipate that?

13 MR. VEACH: I would have thought that it would be  
14 an opportunity for the superintendent to respond in a  
15 timely fashion. The letter has been out there for a couple  
16 of weeks, and we bring all of this together for your Honor  
17 and say other, this is my estimate about how long this was  
18 going take.

19 THE COURT: That wasn't my issue. That's the  
20 issue for the Senate that's not my issue. That's not even  
21 my question, and I'm not even the one that's expert. I  
22 know that it's premature, so I'm sure the Senate knows way  
23 better than I do that it's premature to say how much will  
24 it cost and what's the time frame. This is their  
25 bailiwick; right? I expect they are very expert in this.

26 I believe we have been moving expeditiously. I  
Lisa Casey - Official Court Reporter

## Proceedings

1  
2 know that you would basically say I've been pushing, and I  
3 have, but you have been cooperating and doing a fine job of  
4 giving the Court all it asks for, and I ask for a lot, and  
5 I ask often, and you have done a great job, and this is  
6 extremely transparent. Anyone who wants to know what's  
7 going on in this liquidation only had to log in. In  
8 English or Spanish. And that's it. You can't ask for  
9 more. I have done other liquidations. This is the most  
10 transparent.

11 MR. VEACH: Your Honor, two points. First of  
12 all -- requests, rather. Could we meet here every other  
13 wednesday, or at least once a month, to hear a status  
14 report from the liquidation bureau about how they are  
15 doing? Your Honor has said several times you want time  
16 frames, and I mentioned it in the briefing issue, and I  
17 believe that's absolutely right. Without a regular  
18 schedule, I'm afraid this process is going to move along at  
19 a leisurely pace. It's not the Court. It's not the Court.

20 THE COURT: But it hasn't, so you have no basis.  
21 You have no foundation for that fear. Your fear is  
22 baseless, because --

23 MR. VEACH: We have --

24 THE COURT: Excuse me. You have a fear based on  
25 nothing, because they have been moving expeditiously. They  
26 have been moving, so to say, I'm afraid it will do X, based

## Proceedings

1  
2 on what? Based on nothing that has occurred thus far.

3 You would like to be here how often?

4 MR. VEACH: I would suggest every other week, or  
5 once a month, just a regular status report. They can send  
6 someone from the liquidation bureau.

7 THE COURT: You see, but the thing is, they have  
8 a job to do. They have processes they should be engaged  
9 in, and that doesn't mean they have something to tell me  
10 every two weeks, or once a month. That doesn't mean that.  
11 What matters is that I know what's happening on a regular  
12 basis with respect to moving this along.

13 I understand, now, the need for Truven, and I  
14 have explained that I'm going to see it before you do it,  
15 and I've told you I want to see it sooner, and I want the  
16 time frame for what POMCO is going to do now. That can be  
17 sent to me, and if they have issues, I can ask you. I  
18 don't have to bring you in for that. I can see it, because  
19 you are going to send it to me and I will let you know if I  
20 need to talk to you about it.

21 So let's get some time frames; okay? I need to  
22 know the POMCO parameters and I need to see what you have  
23 in mind for POMCO. How much time do you need for me to see  
24 that, a month?

25 MS. PIERCE-SIPONEN: I would go back and talk to  
26 my technical people in the office, and --

## Proceedings

1  
2 THE COURT: what I'm asking for is, I need to  
3 know what is your -- what is your framework that you want  
4 for POMCO, and I need to see that, and I want to know when  
5 I can see what you want for POMCO. Am I not clear?

6 MS. PIERCE-SIPONEN: You are totally clear.

7 THE COURT: Okay.

8 MS. PIERCE-SIPONEN: We can probably can go back  
9 to the office and talk to some people and then send you  
10 something that will tell you what the time frame will be.

11 THE COURT: Some time frame, for you to let me  
12 know what your --

13 MS. PIERCE-SIPONEN: I'm hopeful that it will be  
14 the time frame for POMCO, because I know there are  
15 discussions going on right now as to where they are in  
16 terms of the file, and the expectation is we would have the  
17 audits beginning at the end of this month.

18 THE COURT: Audits beginning by whom?

19 MR. KIRSHNITZ: Truven.

20 THE COURT: Got it.

21 MS. PIERCE-SIPONEN: And if that's still on  
22 track, we would be able to answer your question quite  
23 quickly, because we would know what we need.

24 THE COURT: The parameters of --

25 MS. PIERCE-SIPONEN: Correct.

26 THE COURT: -- POMCO's relationship.

## Proceedings

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2           Going forward, I want to know now, since you are  
3 having difficulty telling me, I'll tell you. 30 days.

4           MS. PIERCE-SIPONEN: That's fine.

5           THE COURT: 30 days. That's the parameters of  
6 POMCO.

7           MS. PIERCE-SIPONEN: That's fine.

8           THE COURT: Now, what did I ask for with respect  
9 to Truven --

10          MR. BUTLER: Can we have an idea, your Honor, of  
11 how long they expect Truven to take to do its audit.

12          THE COURT: That's what I said. What did I want  
13 with Truven.

14          MS. PIERCE-SIPONEN: The audit will probably take  
15 until the end -- we are anticipating until in the end of  
16 first quarter.

17          THE COURT: First quarter of what.

18          MR. KIRSHNITZ: Of 2017.

19          THE COURT: That, I think --

20          MS. PIERCE-SIPONEN: Sorry. And then the EOB's  
21 would begin to go out the second quarter of 2017 on a  
22 rolling basis. As they are ready, they will be sent out  
23 and then we'll be able to give you what I believe you had  
24 wanted at one point, which is like a score card of how they  
25 are going and how many have gone out.

26          THE COURT: But you see, what you just explained  
Lisa Casey - Official Court Reporter

## Proceedings

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2 to me you could have done in a time line and posted. You  
3 could post that time line. What I'm suggesting is I can  
4 get a flexible time line. I can get a time line from  
5 January 1 to June 30th, and then I can get a time line that  
6 picks up from March to maybe August. You see how I'm doing  
7 this? And then from maybe June to October. I want a  
8 rolling time line. I would like a rolling time line that  
9 picks up from January 1, 2017 and a quarterly rolling time  
10 line, and I want it to roll, and I want you to post the  
11 first rolling time line from January 1 through whatever,  
12 the first quarter, April. I would like that posted in two  
13 weeks; okay? And then just keep that rolling time line  
14 rolling. Keep the time line rolling.

15 Now we have an understanding of what we'll see  
16 with Truven. We have an understanding of POMCO. I'm going  
17 to get a rolling time line. I'm so happy, and the State  
18 Senate, if they wish to speak to me, I'm easily found.

19 MR. BUTLER: One other outstanding issue that's  
20 going to impact the time line, and we have discussed it a  
21 couple of times in the past, and it has to do with the  
22 total amount that's going to be available to the estate,  
23 and that depends on claims that may or may not be --

24 THE COURT: Off the record.

25 (Whereupon, an off-the-record discussion took  
26 place.)



## Proceedings

1  
2 THE COURT: I thought I had asked that we, at  
3 some point, post the pot. Not how its divided, but what  
4 the pot is. We should know. We should have a number of  
5 what's in the pot. I thought I asked this before. How is  
6 it we don't have a number of what the pot consists of  
7 today?

8 MR. KIRSHNITZ: There is a balance sheet that's  
9 been posted on the website.

10 MR. BUTLER: But there's supposed to be, on the  
11 balance sheet, whether or not they were going to have a  
12 contingency for the claim against the federal government.

13 THE COURT: That's right.

14 MR. BUTLER: We haven't seen that.

15 THE COURT: The point was, and this now comes  
16 back, we haven't heard from the Feds. The Court hasn't  
17 heard from the Feds.

18 MR. BUTLER: We are not sure what's being done to  
19 make a claim against the Feds.

20 THE COURT: So the question is, what has the  
21 liquidator done to proceed with its federal claims. Is  
22 that close?

23 MR. VEACH: Yes.

24 MR. BUTLER: Yes, your Honor.

25 MS. PIERCE-SIPONEN: I leave that to the lawyer.

26 MR. KIRSHNITZ: Your Honor, let me try to put  
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## Proceedings

1  
2 this carefully.

3 THE COURT: Okay.

4 MR. KIRSHNITZ: I mean, to the extent that the  
5 liquidator has claims discussions, negotiations, et cetera  
6 with third parties, whomever they maybe, I don't think it  
7 would be controversial to say it would not be beneficial to  
8 be discussing that in an open forum.

9 THE COURT: When you say third parties, whoever  
10 they may be, would that include someone like Northwell? Is  
11 that a third party, that you could have negotiations with?  
12 I'm just trying to get a picture of what this group of  
13 potential third parties could look like. It doesn't  
14 include a claimant?

15 Okay. This is going to be like twenty questions  
16 here, and maybe you will answer; maybe you won't.

17 These are claims that the liquidator may have for  
18 the benefit of the estate?

19 MR. KIRSHNITZ: Correct.

20 THE COURT: Got it. So, let me just ask this,  
21 then. Or say this. Are you able to say that the  
22 liquidator is in discussions with parties, third parties,  
23 against whom the liquidator has claims?

24 That's a yes or no.

25 You know it's a yes. You know it's a yes.

26 MR. KIRSHNITZ: Your Honor --

## Proceedings

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THE COURT: Let it go. Let it go. It's a yes.

MR. KIRSHNITZ: Your Honor, if you wanted to discuss this in camera --

THE COURT: I don't want to discuss this, I just want you to say yes or no. Is that a --

MR. KIRSHNITZ: Absolutely.

THE COURT: And that's all I needed to know. See? That wasn't hard. It was, I'm not going to make you or ask you to go beyond that, because I don't want to -- we never want to jeopardize --

MR. BUTLER: Absolutely.

THE COURT: We don't want to jeopardize negotiations that are beneficial to the estate.

Now, let's be clear. You can't finalize those without the getting back to me in camera. You understand?

MR. KIRSHNITZ: As I'm saying, there's number of issues that, if the Court wants to discuss in camera, we are happy to do so. The liquidator.

THE COURT: Let me just say, I don't want to learn that something has been finalized without putting it before the Court, if need be in camera, of the nature of a claim that we have just kind of discussed, and incorrectly; all right? I have no problem doing it in camera, and if need be I'll seal that piece of the record, if that's warranted, and if need be I will bring in, hypothetically,

## Proceedings

1  
2 somebody like Northwell and have them do a confidentiality  
3 agreement to bring them into the loop, because it's that  
4 important to them.

5 I'm just saying what the possibilities are. I  
6 wouldn't be bringing you. Don't look for that invitation.

7 MR. VEACH: Okay.

8 THE COURT: Okay? Everybody understood that?

9 MR. BUTLER: Yes, your Honor.

10 MR. KIRSHNITZ: Yes.

11 THE COURT: You seem stressed.

12 MR. KIRSHNITZ: I'm not. I just look like this.

13 THE COURT: All right. I think we are good  
14 today.

15 MR. KIRSHNITZ: Your Honor?

16 THE COURT: Yes.

17 MR. KIRSHNITZ: We do have a few housekeeping  
18 issues to discuss with you.

19 THE COURT: Okay. Go ahead.

20 MR. KIRSHNITZ: So, the first issue is this, and  
21 I think this was also at the October 11 conference. There  
22 was a discussion with Northwell about a memo regarding the  
23 potential issue of a member and provider, possibly --

24 THE COURT: Conflicting?

25 MR. KIRSHNITZ: Making the same claim.

26 THE COURT: I thought we set up a mechanism for  
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## Proceedings

1  
2 that.

3 MR. KIRSHNITZ: I mean, I think our opinion is  
4 that this is not likely to be an actual significant issue  
5 in the case, but your Honor asked for a memo about the  
6 issue, and that memo is pretty much complete right now.

7 What we were envisioning was presenting that to  
8 the Court, not just as a sort of academic memo of law, but  
9 as an application for relief, because the memo comes to  
10 conclusions and we would ask the Court to --

11 THE COURT: Let me just say this: If, in fact,  
12 you are going to ask for relief that would be reduced to an  
13 order, then it be a Court document. Do you see? Unless  
14 the request is that it be handled as a sealed submission.  
15 But at the end of the day, you have to, if you are looking  
16 for Court relief, you are going to have to take a posture  
17 that's generally considered open, unless and until it's  
18 deemed closed. Do you see?

19 MR. KIRSHNITZ: Yes.

20 MR. BUTLER: What we anticipated at the last  
21 hearing is that if the memo, which I understand is going to  
22 be given to me for comment before it's submitted to the  
23 Court, what we discussed at the last hearing, would set  
24 out, be a part of the process of the review of claims. So  
25 I'm not sure if that would --

26 THE COURT: Okay. So if what you are proposing  
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## Proceedings

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2 is not like an order of relief, like that. You are saying  
3 we are going to discuss setting up a potential mechanism to  
4 handle a certain category of claims that may arise, and in  
5 putting this mechanism forward, we are going to discuss it  
6 and include, at least, Northwell, I'm not sure who else, in  
7 the formulation of this, and then we are going to present  
8 it to the Court and ask the court to approve this  
9 mechanism.

10 MR. KIRSHNITZ: I think that was the form,  
11 originally.

12 THE COURT: You have to understand, any time you  
13 are going to ask for a mechanism to be put in place, that  
14 I'm going post it before it's finalized.

15 MR. KIRSHNITZ: That's fine, but part of the  
16 question was, as far as, let's say, we submitted this,  
17 posted it to the Court's docket via the electronic case  
18 filing, so that would give service to Northwell, and  
19 Northwell was the claimant that raised the issue.

20 THE COURT: You are talking about the --

21 MR. KIRSHNITZ: This application.

22 THE COURT: The proposed -- is it an application  
23 or a mechanism? I'm viewing it as more of a mechanism than  
24 an application to apply a certain time line in certain  
25 categories of claims, such as duplicative claims. Is that  
26 sort of --

## Proceedings

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2 MR. KIRSHNITZ: Well, the question that was  
3 presented was -- and again, we don't think this would be a  
4 significant issue in the case, in the matter, but if a  
5 member and provider are sort of claiming the same amount of  
6 money and one has -- so the question, one, was does the  
7 liquidator have the ability to pay the money to the actual  
8 person.

9 THE COURT: That was the issue of law.

10 MR. KIRSHNITZ: Either to the member or the  
11 provider, depending on who is the one who actually needs to  
12 be paid now. So that was question one. The second  
13 question was --

14 THE COURT: Can you modify the agreement.

15 MR. KIRSHNITZ: Exactly.

16 THE COURT: And under what theory of law or  
17 practice can the agreement be modified. I remember.

18 MR. KIRSHNITZ: Correct. And so that work has  
19 been, that analysis has been done, and so what we were  
20 envisioning was presenting that to the Court, and not just  
21 as an academic memorandum of law, but as an application  
22 asking -- because a conclusion has to have some sort of  
23 approval, for that.

24 THE COURT: Has this at least been shared, on the  
25 initial level, with Northwell.

26 MR. KIRSHNITZ: It has not, your Honor.

## Proceedings

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2 THE COURT: Okay. The thing is this: The  
3 concern was really raised by Northwell, but it's a concern.  
4 It may not be great, but it's still a concern. The point  
5 is that at some point before it becomes done, I've got to  
6 post it and I have to have comments, because it doesn't  
7 matter that you may think, Northwell is the primary one  
8 that raises it. If it's going to change the parameters of  
9 how claims are treated, I've got to deal with it and give a  
10 comment, period, before I rule. You see what I'm saying?

11 MR. BUTLER: Yes.

12 MR. KIRSHNITZ: Well, you are leading up to the  
13 question I was trying to articulate earlier. If this is  
14 submitted via the electronic docket, the NYCF Electronic  
15 Case Filing, that will give service to Northwell and the  
16 other parties that have appeared in the case, and the  
17 question is, for many of the applications that have  
18 happened, we have done, sort of, global service to all of  
19 the members and providers.

20 THE COURT: You have done it by posting?

21 MR. KIRSHNITZ: No. Well, there is postings, but  
22 there also has been.

23 MS. PIERCE-SIPONEN: Mailing.

24 MR. KIRSHNITZ: Actual mailing, emails, and the  
25 concern is, correct me if I'm wrong --

26 MS. PIERCE-SIPONEN: 200,000.



## Proceedings

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2 MR. KIRSHNITZ: That's \$200,000 of service, and  
3 so the question is, for this particular application, when  
4 posting it to the Court's docket, which is a public  
5 documents, and also posting on the New York Liquidation  
6 Bureau website, which is our normal practice in other  
7 estates, and also the Health Republic website, whether that  
8 would be sufficient for service.

9 THE COURT: Comments?

10 MR. BUTLER: I believe that would be sufficient  
11 public notice, to both have it on the website, which  
12 everyone knows.

13 THE COURT: I think I can plug in one more thing.  
14 I can have it published in a local newspaper. How long is  
15 this? We are talking about the notice of a proposed change  
16 in the plan; right? Or modification of plan? Is what we  
17 are getting down to the potential modification of plan, or  
18 what?

19 MR. KIRSHNITZ: I think I would almost put this  
20 more under the category of tools and rules.

21 MS. PIERCE-SIPONEN: My tools and rules.

22 I think what it is, it's contracts with the  
23 members would indicate that the check, on an out-of-network  
24 provider, would go to them, and then they would, in turn,  
25 pay.

26 THE LAW SECRETARY: And not actually the  
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## Proceedings

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recipient?

MS. PIERCE-SIPONEN: Correct. However, in the ordinary course of business, the member signs an assignment with the providers, and so the check goes to the providers, with the member getting notice that the provider has been paid.

THE COURT: I understand, but this is an issue with respect to dealing with the potential overlap on the same claim and whether the Court has the ability, as I recall, to modify or make a ruling on how to treat, or how to interpret the agreement, and my concern is, if I'm making a ruling that's affecting the essence of the agreement, I have to give notice to the participants, and I'm trying to think of the best way to give them notice other than what we just talked about. You see, because it's a modification of their agreement, or it's an interpretation and possibly a modification, and to me, anyone -- it's like, you know, a contract with your auto insurance, you want to know when they change your agreement. When they change your agreement, they send you the big old thing that no one reads.

MR. BUTLER: There are two different categories that people fall into in this situation. One is where the member is not making their own claim. That check, then, when it's processed, should go directly to the provider,

## Proceedings

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2 because the member hadn't made a claim. But under the  
3 contract, the member still would be entitled to get the  
4 check.

5 THE COURT: Right. And that's the issue of the  
6 modification. That's what we talked about, whether this  
7 should be modified.

8 MR. BUTLER: One, there's probably not an issue  
9 whether the member -- because the member hasn't submitted a  
10 claim, yet, to the Liquidation Bureau, but the provider  
11 has, so there's a conflict there, because the member is not  
12 asserting a claim. The second one is the one that's more  
13 troubling, and that's where both the member has submitted a  
14 claim and the provider has submitted a claim, and we  
15 discussed at the last conference, then, that we would  
16 consent that the Liquidation Bureau would make the  
17 determination on who the proper payee is.

18 THE COURT: But the Liquidation Bureau needed  
19 clarification on whether they could do that, and that's why  
20 it's coming to the Court, because they need to get  
21 clarification on whether they have the ability to do that.

22 off the record.

23 (Whereupon, an off-the-record discussion took  
24 place.)

25 THE COURT: This is my thinking. That notice,  
26 one-page notice in bold, black, big, oversized letters,

## Proceedings

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2 Notice, Proposed Modifications are being made to the --

3 MR. KIRSHNITZ: Health Republic.

4 THE COURT: -- Health Republic agreement, being  
5 put before the Court on two issues, sentence, sentence.  
6 For further information, sentence. That kind of notice is  
7 a one-page, and you can print it in the Daily News and the  
8 Post. Those are the things that the normal claimants in  
9 the City are going to see, and that's my way of making sure  
10 they get notice. How about that? I like it. Do you  
11 understand what I'm thinking?

12 MR. KIRSHNITZ: I do.

13 THE COURT: I like it. There we go.

14 Before I rule on it, that notice is printed. You  
15 know, like one of those liquidation sales, the notices they  
16 put in the papers, that kind of bold, one page, and it  
17 grabs your attention, and that's what we'll do.

18 Okay. Next.

19 MR. KIRSHNITZ: The last piece of the  
20 adjudication procedure that is still somewhat undetermined,  
21 and it's been discussed a number of times, are the  
22 referees, and qualified health care.

23 THE COURT: We talked about that.

24 MR. KIRSHNITZ: That's correct. We have. Now,  
25 under normal circumstances, the liquidator does not have a  
26 panel of referees, does not suggest referees, does not

## Proceedings

1  
2 choose referees. Under the normal circumstances, the  
3 liquidator would make an application to the Court for an  
4 appointment of the referee. The Court would appoint  
5 whatever referees he or she sees fit. The person that we  
6 have had here, and if your Honor wanted to proceed that  
7 way, that is --

8 THE COURT: I'm listening for Plan B.

9 MR. KIRSHNITZ: The concern here has been sort of  
10 just the volume of claims that at least are out there now  
11 showing that the internal process is going to result in a  
12 small number of claims that aren't resolved by consent  
13 through the internal process, so that hopefully there would  
14 be a small universe of actual disputes that need to go to  
15 the referee, or the medical claims experts. So what we  
16 would propose, if that's the way we are going to proceed,  
17 is -- again, we would make an application to the Court with  
18 sort of a suggestion, or sort of the solicitation we would  
19 make for referees and the qualified medical experts to be  
20 on this panel.

21 THE COURT: Absolutely. That makes sense.

22 MR. KIRSHNITZ: And sort of, in that  
23 application -- I mean, there are a number of questions  
24 around how this process has worked that could be within  
25 that application for your Honor to rule on.

26 THE COURT: The application for identification,  
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## Proceedings

1  
2 solicitation and hiring of referees would be in that, the  
3 submission.

4 MR. KIRSHNITZ: The suggested language for the  
5 solicitations, and for how they would be posted on the  
6 Health Republic website, or the Liquidation Bureau website.

7 THE COURT: The Court would not be the one with  
8 the expertise to identify. I would have to go through the  
9 same process that you are going through to identify, and  
10 rather than go through the process, I can just be Appellate  
11 and then rule on your selection. Because it will be  
12 public, other people will be able to chime in, comment and  
13 also propose names. It will be the solicitation for  
14 potential referees. It will be a solicitation that allows  
15 anyone to put forward a name. Good. That's good.

16 MR. KIRSHNITZ: And we'll do that. I mean, there  
17 are ancillary questions that go along with that. I mean,  
18 we don't have to address this now, but just, for instance,  
19 whether the Court would want the liquidator to, out of  
20 these respondents, to vet candidates and suggest them to  
21 the Court, or whether all the candidates should just be  
22 present, that those be addressed in that case.

23 THE COURT: Sure. Because the thought would be  
24 that there would be a collection of CV's, CV's of those who  
25 would be applying, and then the outline attached would be  
26 in the package. The Court would see the collection of

## Proceedings

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2 CV's, the outline of the questions that were used in the  
3 interim process to see, what did you ask them that resulted  
4 in you identifying the ones you chose; then your list,  
5 selected final list, and then I would go from there. But  
6 that all would be preserved so that it could be reviewed,  
7 and I would then sit down and review it, of course, but I  
8 would not do it. Meaning, you would do that. It would  
9 just be my review of what you have done, and then I would  
10 get comments from others that, you know, this is just --  
11 what's the firm? Who is the firm, the law firm that's  
12 working with you?

13 MR. KIRSHNITZ: It's Weil Gotchal.

14 THE COURT: That every referee isn't a partner  
15 from Weil Gotchal. Hypothetically, we would make sure that  
16 every referee wasn't a partner from Weil Gotchal. That's  
17 all.

18 MR. KIRSHNITZ: I wanted to make sure the Court  
19 understands the liquidator, under normal circumstances,  
20 does not have a panel of referees, does not select  
21 referees, does not propose referees.

22 THE COURT: I understand. I'm just saying, we'll  
23 avoid the ridiculous. That's all.

24 MR. BUTLER: This is something that, actually,  
25 the providers and the insurance company do on a regular  
26 basis, is selecting third-party claim administrators.

## Proceedings

1  
2 THE COURT: Then I would think you would be very  
3 happy to give them suggestions and make sure the CV's were  
4 forwarded on.

5 MR. BUTLER: Absolutely.

6 THE COURT: Knowing what we know, and the CV's  
7 would be experiences having served has referees in similar  
8 circumstances.

9 MR. BUTLER: Absolutely.

10 THE COURT: Great. Off the record.

11 (Whereupon, an off-the-record discussion took  
12 place.)

13 THE COURT: Instead of saying proposed  
14 modifications, she's saying proposed changes, because the  
15 average reader will more likely understand that you are  
16 making changes, not the word modification.

17 THE LAW SECRETARY: It's a little simpler.

18 THE COURT: I'm going to tell what you she  
19 raised, even though I don't think it's an issue. She  
20 wanted to know why, hypothetically, say August 1, the  
21 liquidator steps in; right? Hypothetically. The question  
22 she had is, from August 1 through December 31, why wasn't  
23 POMCO treated like any other claimant -- creditor to the  
24 estate of Health Republic? why was POMCO not treated like  
25 a claimant and their creditor on their claim from August to  
26 December, in the pool of creditors who will get paid from



## Proceedings

1  
2 the estate? That was her question. I had an answer, but  
3 that's her question. Did everybody understand the  
4 question?

5 MR. BUTLER: Yes.

6 MR. VEACH: Yes.

7 THE COURT: Why, from August to December 31, and  
8 it's not the new arrangement you made, because the new  
9 arrangement from January 1, 2017 is a new arrangement that  
10 the liquidator is taking on, but from August to December,  
11 why wasn't the claim of POMCO a creditor claim, and they  
12 just go, and they get from the pot, what everybody else  
13 gets, and they don't get paid, as on this monthly basis?

14 MR. KIRSHNITZ: I mean, the short answer is that  
15 are we speaking about POMCO, or --

16 THE COURT: No. Real POMCO.

17 MR. KIRSHNITZ: Because they were a service  
18 provider that was providing service necessary for the  
19 liquidation.

20 THE COURT: But so was Northwell. Northwell was  
21 a service provider, and Northwell is a service provider in  
22 that they provided medical care to participants, but for  
23 them to get their money, they have to wait. I don't know  
24 what POMCO --

25 MR. KIRSHNITZ: POMCO provides services directly  
26 to the liquidator for the administration of the estate.

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THE COURT: For the administration of the estate?  
For the administration --

THE LAW SECRETARY: Pursuant to the contract,  
that was preliquidation.

THE COURT: In other words, you affirm the  
contract.

MR. KIRSHNITZ: Yes.

THE COURT: But you ostensibly, without doing it,  
affirm the POMCO contract from the time of liquidation  
until the end, because they got paid, but they were -- if  
they were any other provider of a service with a contract,  
that all other people with contracts with POMCO have who  
are participating, to --

MR. VEACH: Your Honor, may I add to these facts?  
POMCO was working for Health Republic when it was in  
business.

THE COURT: We know that.

MR. VEACH: Right. They had their contract, back  
to February of 2013. Then, in March of 2016, after the  
board had stepped down and --

THE COURT: Before the liquidator was in place.

MR. VEACH: And only two months before the  
liquidator came in, the superintendent affirmed and  
re-executed this contract.

THE LAW SECRETARY: It was affirmed. Thank you.  
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## Proceedings

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MR. VEACH: In March of 2016.

THE COURT: That's even a better explanation. why. I've got it now.

MR. VEACH: And my question is more -- if the liquidator could have come to Court and could have, any time from October 2015, gone forward and obtained an order of liquidation, why did the superintendent go ahead and execute a contract and pay POMCO \$4 million in March of 2017, without --

THE COURT: That's a good question for you to go to your senator. That's a good question for you and the Senate, because it's before you came to Court, and I've had this discussion with you at least twice. It's before they came to court.

off the record.

(Whereupon, an off-the-record discussion took place.)

THE COURT: If there was a reaffirmation of the POMCO contract after the Court had jurisdiction, the expenses under that reaffirmation are within the Court's discretion for review.

MR. BUTLER: Yes.

THE COURT: Of course. Okay? Is that pretty clear?

MR. BUTLER: Yes.

## Proceedings

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2 THE COURT: Off the record.

3 (Whereupon, an off-the-record discussion took  
4 place.)

5 THE COURT: It's always a pleasure to see you  
6 all. This was helpful, and --

7 MS. PIERCE-SIPONEN: Thank you very much.

8 THE COURT: I imagine I will see you sometime in  
9 March.

10 The transcript is so ordered, and the transcript  
11 is to be posted.

12 \* \* \* \* \*

13 Certified to be a true and accurate transcription  
14 of the above-entitled matter.

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18 \_\_\_\_\_  
Lisa A. Casey  
Senior Court Reporter