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May 2, 2017

Via Electronic Filing/Serve by ECF

Hon. Carol R. Edmead
60 Centre Street, Room 532
New York, New York 10007

Re: In the Matter of the Liquidation of Health Republic Insurance of New York, Inc.
Index No. 450500/2016
In Camera conference now scheduled for May 4, 2017

Dear Justice Edmead:

I write about an *in camera* review of Health Republic's administrative expenses now rescheduled for Thursday, May 4, 2017. This *in camera* review will then be followed with an in-court conference on Monday, May 8, 2017. Health Republic Website Docket, Item 103.

In Camera Presentation on the Estate's Expenses

At the most recent in-court conference, this Court directed that the Superintendent's representatives from the New York Liquidation Bureau make an *in camera* presentation that would, "in little bites," explain "where [the Health Republic estate's] money is being expended." February 17, 2017 conference transcript (Trans.), p. 25.

Health Republic's policyholders and the public, however, will not be allowed to attend the *in camera* conference and, therefore, will not see the bills, invoices, expense records or other materials that the Bureau will show the Court on May 4th. Trans., pp. 27-28.

For this reason, I respectfully request that the materials produced by the Bureau in connection with the \$6.9 million that has been spent since Health Republic's liquidation began be posted on the Health Republic website soon after the May 4th conference. This would allow policyholders and the public to review these records before the May 8th in-court conference.

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The Liquidator's representatives have suggested that some of these expense-related records may contain privileged or confidential information. Trans., p. 28. That may be true with respect to outside counsel's bills, but those bills can be redacted. The bulk of the expenses on the expense summary, however, belong to firms such as Alvarez & Marsal, POMCO, Inc., Truven Health Analytics, and the Garden City Group and would not necessarily contain legal strategies or attorney-client privileged materials.

In this vein, I note that when Superintendent Vullo wrote in January to Senators Hannon and Seward (Health Republic Docket, Item 92) the Superintendent told the Senators that "the first six to twelve months of a liquidation are generally the most intensive and . . . much of the difficult work of setting up an administration process and determining claims necessarily is front-loaded." The Superintendent also advised the Senators that "following the transfer of claims date to the claims auditor (POMCO and Truven Health Analytics) in January 2017, the third-party manager's (Alvarez & Marsal) services will be substantially completed and I have already limited the law firm's (Weil, Gotshal & Manges) services to matters that will benefit from their familiarity with the facts and issues. A downward trend in expenses will be evident in coming months."

Nevertheless, the administrative summary now posted on the Health Republic website reveals that in February the Bureau paid Weil \$139,000 and paid Alvarez & Marsal \$60,000. In addition, the estate's January administrative expenses were greater than the estate's December administrative expenses and were almost as much as the estate's November expenses.

This "downward trend" referenced by the Superintendent is not yet evident. I note also that the expense summary posted on the Health Republic website only shows expenses through February 2017 and is thus a month or so behind schedule.

Expenses for the Period from October 2015 through May 2016

The Superintendent's comments with respect to front-loading the estate's expenses do not address moneys spent from October 2015, when the Health Republic's board consented to liquidation, until May 11, 2016, when this Court granted the Superintendent's April 2016 petition to liquidate the company.

Health Republic's liquidation could have begun in October 2015, which would put us a year and a half into the liquidation, but, to my knowledge, the Superintendent has never reported how much was spent on advisors, outside counsel, and service providers during the six-months that followed the Board's stepping down. We now have an audited statement for the year ending on December 31, 2016, but it's unclear whether the Superintendent will produce another audited statement (or an unaudited balance sheet) to show how much money was spent from the time the Health Republic board stepped down in October 2015 until this Court began supervising the liquidation in May 2016.

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Policyholders Won't Be Paid Until the Federal Government's Claims are Resolved

The steady flow of moneys out of the estate has to be viewed in the context of what will be left to pay policyholders and – more importantly – *when* policyholders will be paid. As the Superintendent made clear in her February testimony in Albany, how claims against and from the federal government will be treated in this liquidation proceeding will ultimately determine how much money will be paid to policyholders and when those claims will be paid.

The amounts purportedly due from the federal government under the loss corridor and reinsurance programs and the loans owed by Health Republic make up the largest part of the estate. The Liquidator has now posted on the Health Republic site a “statutory basis financial statement” for Health Republic prepared by Eisner & Amper (E & A), an accounting firm that has been paid \$471,989 since the liquidation began to audit Health Republic’s accounts. Claims Expense Summary; Health Republic Insurance of New York, Corp. Statutory Basis Financial Statements as of December 31, 2015 (Statement).

Both the audited E & A Statement and the unaudited balance sheet posted on the Health Republic site show the Health Republic estate with liabilities that include two loans from the federal government -- a \$23 million start-up loan and a \$241 million solvency loan. (Health Republic also owes some \$191 million to other insurers under the Affordable Care Act’s risk adjustment program.)

On the asset side, both the unaudited and audited statements show “accrued retrospective premiums” or “receivables” of about \$400 million. These are amounts purportedly owed by the federal government under the risk corridor program. Unaudited Balance Sheet; E & A Statement, p. 3. Both the unaudited balance sheet and the E & A statement come up with about the same total deficit for the estate – either \$364 million or \$366 million.

The Superintendent, in her role as Liquidator, is personally liable for, among other things, the filing of federal income tax returns and the premature release of funds that might otherwise be paid to the federal government. *See generally*, Warren and Jones, *Selected Issues and Developments in Federal Income Taxes, The Insurance Receiver, Spring 2017*, pp. Vol. 24, Number 2 (Spring 2017). For this reason, the Superintendent made it quite clear in her February appearance in Albany that “*payments to claimants cannot be made until the dueling claims with the federal government are resolved.*”

Moratorium on Claims Adjudication

I urge, therefore, that this Court impose a moratorium on the adjudication of all claims and halt, to the extent possible, the payments of moneys to advisors and service providers until these “dueling claims” of the federal government are settled. This Court will consider on May 17th whether to approve the appointment of referees to determine any disputed claims/explanations of benefits. If approved, these referees will charge the estate \$250/hour for their services. In addition, yet another firm, Independent Medical Expert Consulting Services,

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Inc., has been proposed to assist in the claim adjudication/resolution process. But no matter how efficiently this claims review process operates, no policyholder (or health provider) will be paid anything *until all of the offset and other issues concerning the federal government and its risk loss and reinsurance programs are resolved.*

The Superintendent, in her role as Health Republic's Liquidator, is, in her words, "sitting on a complaint" against the federal government to recover the loss corridor amounts due. Until, however, the Superintendent either reaches an agreement with the federal government or files her complaint and concludes her action against the federal government, no moneys will be paid to policyholders.

The only moneys being distributed now consist of funds paid to the advisors, managers, consultants, auditors, accountants, law firms, web site administrators, and the Bureau itself to administer the estate and process claims. The building and maintenance of an elaborate claims processing protocol may give the policyholders only an expensive bridge to nowhere.

For this reason, we ask that the claims adjudication process be placed on hold until the policyholders and the public know whether there will be any money left to pay anything to anyone.

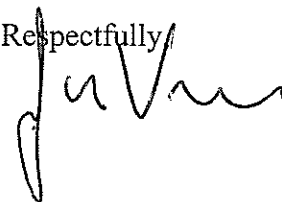
Class Two and Class Sixth Creditors

Finally, I note that the status of health providers claims against the estate has not been fully resolved. Health providers such as Northwell are class six creditors and, as such, would be paid only after all class one, two, three, four, and five creditors are paid in full. New York Insurance Law § 7434.

While this Court has ruled that no anti-assignment provisions contained in Health Republic policies would bar paying health providers, "where appropriate," the priority of payment issue has not yet been addressed. I do not suggest that this issue be briefed and argued *now*, but only note that Northwell's status as a class two creditor has not been squarely determined.

I thank the Court for allowing me to write to the Court with respect to Health Republic's liquidation.

Respectfully,



cc: David Axinn, Esq.
Timothy Butler, Esq.

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