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May 23, 2017

**Via E-mail, Regular Mail, and Hand Delivery**

Hon. Maria T. Vullo  
New York State Department of Financial Services  
One State Street Plaza  
New York, NY 10004

Re: Health Republic Insurance Company, in Liquidation  
Index No. 450500/2016

Dear Superintendent Vullo:

I'm writing to you in your joint capacity as both Superintendent of the Department of Financial Services and, pursuant to New York Insurance Law Article 74, as the Liquidator of Health Republic Insurance of New York, Inc. (Health Republic).

I have practiced in the area of insurance receivership in New York and other jurisdictions for more than thirty years. Justice Carol R. Edmead, sitting in Supreme Court, New York County, Part 35 (Court), oversees Health Republic's liquidation under NYIL Article 74. In an order entered on November 21, 2016, Justice Edmead denied my application for leave to appear as a friend of the Court, but the Court allowed me to attend proceedings and write to the Court on "discrete issues that require the Court's attention."

As I'm sure you are aware, Justice Edmead has directed that a great deal of information about the Health Republic estate's expenses be posted on a website maintained by the Garden City Group. These materials include, among other things, a monthly claims expense summary, time lines, a docket of all filings in the liquidation proceeding, contracts for outside vendors, including consultants, outside counsel, and accounting specialists, and two balance sheets. As a result, Health Republic's policyholders can find far more information concerning the expenses and status of Health Republic's liquidation than can the policyholders of any other insurer in liquidation, rehabilitation, or ancillary receivership in New York.

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Nevertheless, Health Republic policyholders have not been given at least three critical pieces of information. I write respectfully to request that you direct your agents at the New York Liquidation Bureau (Bureau) to remedy this.

No Claims to Be Paid Until all Claims from or against the Federal Government are Resolved

On February 16, 2017, you testified before the Legislative Fiscal Committees on the State Budget. In your written remarks, you stated that “payments to claimants [including Health Republic policyholders] cannot be made until the dueling claims with the federal government are resolved.” Testimony Delivered to the Legislative Fiscal Committees, dated February 16, 2017, p. 15 (Testimony). By “dueling claims,” you were referring to the “approximately \$432 million due [Health Republic] under the [federal government’s] risk corridors program and \$51 million due under the federal reinsurance program” and about \$264 million in arguably off-setting start-up and solvency loans that Health Republic owes the federal government. Testimony, p. 15.

You also testified on February 16<sup>th</sup> that you had directed that a complaint against the federal government be prepared, but that you had not filed your complaint in order to see how other health insurers (or the receivers of other failed not-for-profit Affordable Care Act insurers) were faring in their litigation against the federal government. See, e.g., Confusion over Risk Corridors Program Payments Continues, Law 360 (May 4, 2017) <https://www.law360.com/articles/920276/print?section=insurance>.

In November 2016, the law firm of Weil, Gotshal & Manges entered into a letter of engagement that was addressed to Ronald Vance, Jr, at Alvarez & Marsal, in his capacity as Health Republic’s Chief Restructuring Officer. Health Republic’s General Counsel executed the agreement, but did so a month or more after Health Republic’s board of directors had consented to the entry of an order liquidating the company pursuant to NYIL Article 74.

On May 11, 2017, the Court entered an order liquidating Health Republic. Weil appeared for you at the hearings that preceded entry of the liquidation order. During subsequent hearings or court appearances, Weil told the Court that the “majority of the asset(s) of [Health Republic would] come from litigation against [certain] parties, including the federal government” and that you, in your capacity as Health Republic’s Liquidator, were focused “like a laser beam” on “bringing in money from the federal government”. Oct. 11, 2016 Trans., p. 44; November 21, 2016 Trans., p. 39.

The New York Liquidation Bureau (Bureau) has now stepped in and substituted for Weil as your attorney of record. Consent to Substitution of Counsel, dated May 11, 2017; Health Republic Docket Item No. 106. The Bureau, acting as your agent, has hired another law firm, Clarick, Gueron & Reisbaum, to represent you with respect to your suit against the federal government. May 10, 2017 Engagement Letter posted on Health Republic Website under Key Documents. Although it’s unclear when your complaint against the federal government will be filed, a time line presented to the Court on May 8, 2017 (and now posted on Health Republic’s

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website) shows the “Resolution \* \*\* [of] Federal and Affirmative Claims” extending up to December 2019. Liquidation of Health Republic Review of Administrative Expenses (May 8, 2017), p. 2 (Review)

Other than footnotes in an unaudited balance sheet prepared as of September 2016 or passing references to a suit against the federal government during court conferences, Health Republic’s policyholders have been told very little about the federal government’s “dueling claims.” Nor, to my knowledge, have Health Republic’s policyholders been advised that their claims will *not be paid until all claims involving the federal government are completely settled (or litigated to a conclusion)*. (The topic of a potential suit against the federal government came up in two recent Court conferences, but transcripts of those proceedings have not yet been posted.)

It would make a great deal of sense to have policyholders advised about these developments. Before policyholders receive their explanations of benefits (EOBs), which will serve as claims determinations, and are asked to object or consent to these claims determination, policyholders should be advised that they will not be paid until all of your claims against the federal government are totally resolved. Policyholders should also be told that if you cannot prevail in your suit to recover on the estate’s loss corridor claims against the federal government, any approved policyholder claims will be worth only pennies on the dollar.

#### Future Claims Adjudication Expenses (and Need for a Moratorium)

Despite the likelihood that policyholders may not be paid for many years, your agents at the Bureau have built an elaborate claims adjudication procedure that now includes two referees and a “medical claims examiner” (Independent Medical Expert Consulting Services Inc.). These referees and the claims examiner will resolve any disputed claims that may arise after policyholders receive the explanations of benefits (EOBs) that will serve as the policyholders’ claims in the liquidation proceeding.

Over the past ten months, the Bureau has spent more than \$7.4 million dollars in administrative expenses, *i.e.*, non-claims payment costs. Most of this money went to POMCO, Truven Analytics, Alvarez & Marsal, Weil, Health Republic’s website administrator, and the Bureau itself. Much of that money was spent reviewing claims, preparing EOBs and building an elaborate claim adjudication procedure. But the \$7.4 million spent over the past ten months *does not include* moneys spent from October 2015, when Health Republic’s board stepped down and consented to Liquidation, and May 11, 2016, when the Court entered its order placing Health Republic in liquidation.

The Bureau’s 2016 Annual Report, p. 48, shows that in “2016” the Bureau disbursed from the Health Republic estate \$6.7 million to pay for, among other things, the Bureau’s “professional fees,” salaries, and , as I understand the report, the Bureau’s “Employee Relations and welfare.” But the Annual Report’s “Receipts and Disbursements” for Health Republic does

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not indicate what period the report covers. It's unclear, therefore, whether the Bureau's 2016 Annual Report was prepared on a calendar year basis or only shows moneys spent by the Bureau *after* May 11, 2016. Will an accounting be prepared that shows how much money was spent during the six months after the Health Republic board stepped down, but before you petitioned to liquidate Health Republic, *i.e.*, from October 2015 until May 11, 2016?

The Bureau now projects that the Health Republic estate's expenses, which had over the past couple of months been trending down, will soon be trending up again to nearly \$500,000 a month. See Health Republic Review of Administrative Expenses presented to the Court on May 8, 2017, p. 19. The Bureau projects spending more than \$3.6 million dollars from the Health Republic estate from April 2017 to December 2017. *Id.* Presumably the bulk of this money relates to "adjudicating" approximately 690,000 claims for policyholders who will soon receive EOBs/claim determinations - whether they asked for them or not.

Until all claims against and from the federal government are sorted out, I respectfully urge that you direct your agents to request a moratorium or stay of the claims adjudication process, particularly where the amount of Health Republic's "assets" has not been determined.

#### Health Republic's Assets Unclear

The Health Republic website now contains an audited "Statutory Basis Financial Statement" (Statement) prepared as of December 31, 2015. This Statement shows Health Republic's total admitted assets at \$118 million. An unaudited balance sheet, however, prepared by the Bureau at the Court's direction, sets Health Republic's total assets as of September 30, 2015 at \$99 million.

Nevertheless, on May 8, 2017, the Bureau's Chief Financial Officer told the Court that Health Republic's assets now stand at only *\$43 million*. The Bureau's 2016 Annual Report, p. 47, also puts Health Republic's assets at only *\$43 million*.

The Bureau should certainly update its unaudited September 30, 2016 balance sheet to show current assets. The Bureau should also be directed to update regularly the balance sheet. More importantly, Health Republic's policyholders and other creditors should be given at least a rough idea of how much an approved policyholder claim may be worth.

Policyholders should also be told that health providers, such as Northwell, maintain that as entities that provided services to policyholders, they, the hospitals and practice groups who were not paid for services rendered, are entitled to claim moneys from the estate as if they, the providers, were Class 2 policyholders. NYIL 7434. In other words, health providers may be standing next to policyholders and sharing in Health Republic's limited and dwindling assets. This will further reduce the value of any approved policyholder claim. Policyholders and other creditors need to have a much better idea of the likely value of their claims and should also be told that any approved claim payments may be deferred for years.

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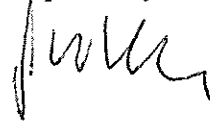
Plain English for Policyholders/Claimants

The Court has opened up the Health Republic estate so that policyholders can follow the estate's expenses, but your agents at the Bureau have, in my opinion, not been forthcoming with either the Court or Health Republic's policyholders with respect to *when* policyholders will be paid or *why* their claims may be worth only a fraction of any approved amount.

For this reason, at least one policyholder and I have asked the Court to impose a stay or moratorium on the claims adjudication process until policyholders have at least an inkling about their potential recoveries. Before policyholders are asked to review and contest claims determinations with contained within the EOBs, they should have some idea whether reviewing their EOBs and then contesting or appealing a claims determination is worth the effort.

And I also respectfully urge that you direct your agents at the Bureau to post information on the Health Republic website concerning the status of any law suits you may bring against the federal government and the status of any claims that the federal government may have against the Health Republic estate.

Respectfully,



Enc.

cc: Justice Carol R. Edmead, Supreme Court, New York County, Part 35 (via e-filing and by hand)  
Senator James L. Seward (via e-mail to assistant)  
Senator Kemp Hannon (via e-mail to assistant)