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April 30, 2018

Via Electronic Filing/Served via ECF

The Hon. Carol R. Edmead
Supreme Court of the State of New York, County of New York
60 Centre Street, Room 532
New York, New York 10007

Re: Maria T. Vullo v. Health Republic Insurance of New York, Corp.
Index No. 450500/2016
(1) Transcript of Proceedings on February 14, 2018
(2) Application that resulted in March 8, 2017 MagnaCare Order

Dear Justice Edmead:

Your Honor, I write with respect to a transcript of Health Republic proceedings on February 14, 2018 and a subsequent request for approval of additional expenses that resulted in a March 8, 2018 order approving the payment of \$353,576 to MagnaCare Administrative Services, LLC (MagnaCare).

I was out of the country on February 14th and - for the first time - missed a hearing in the Health Republic liquidation proceedings. Nevertheless, I looked forward to reading a transcript of the hearing when I returned.

When nothing appeared on the Health Republic website, I wrote on April 9th to Eliot Kirshnitz and John P. Kelly, both attorneys with the New York Liquidation Bureau (Bureau) and asked if minutes for the February 14th proceeding had been taken or ordered. Receiving no response, I called Part 35 Clerk Allan Croney who referred me to court reporter Lisa DeCrescinzo who had no record of having taken minutes for the Health Republic proceeding on February 14th. I also spoke to Ms. DeCrescinzo's supervisor who had no record of any other reporter's assignment to Part 35 on February 14th.

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On April 18th, I emailed Mr. Kirshnitz again and again asked about the minutes for the February 14, 2018 hearing at which this Court approved the Liquidator's report on expenses. I also asked Mr. Kirshnitz about an order entered on March 8, 2018.

The March 8th order approved the Bureau's application to pay MagnaCare \$353,576. The March 8th order directed that the Liquidator "list" the MagnaCare expense on the Health Republic website. The March 8th order also stated that the order had been granted "pursuant to a [February 22, 2018]e-mail request of Eliot Kirshnitz, Esq., of the New York Liquidation Bureau"

I've found no email from Mr. Kirshnitz on February 22nd. Nor have I found Mr. Kirshnitz's February 22nd email on the Health Republic docket posted on the Health Republic website. And I never received a response from Mr. Kirshnitz to my April 9th or my April 18th e-mails.

In a last gasp effort to determine whether minutes had been taken on February 14th and to locate the February 22nd email that resulted in this Court's March 20th order, I called the Bureau and learned that Mr. Kirshnitz is no longer employed by the Bureau. I subsequently spoke to the Bureau's Deputy General Counsel who confirmed that: (1) the Bureau no long employs Mr. Kirshnitz; and (2) no transcript of the February 14th hearing on the Liquidator's order to show cause exists.

Given the 206,000 plus policyholders (and potential Health Republic claimants) affected by Health Republic's liquidation, this Court's direction that minutes be prepared and posted on the Health Republic website was certainly a great idea. To my knowledge, this Court is the *only* New York Supreme Court overseeing the liquidation or rehabilitation of a New York insurance company that has consistently directed that minutes of liquidation proceedings be prepared and made available.

Your Honor has, from the outset, promoted transparency in Health Republic's liquidation, which is remarkable given how insurance liquidations have been handled in New York State in the past. The Bureau, however, doesn't appear to share this Court's enthusiasm for transparency or responsiveness as evidenced by, among other things, the Bureau's refusal to answer my emails, its failure to update Mr. Kirshnitz's email with an auto-reply advising that he is no long employed by the Bureau (and rerouting incoming e-mail to the appropriate party), and, more importantly, its failure to see to it that minutes for the February hearing on the Liquidator's order to show cause be prepared and posted.

At this point, the minutes for at least six Health Republic proceedings *are* posted on the website under "Important Documents." Indeed, the Liquidator even prepared and posted an errata sheet for the transcript of a May 18, 2017 proceeding at which this Court reviewed the estate's expenses. Minutes for at least one other proceeding may be found in the "Court Docket" section of the Health Republic website. And representatives from the Bureau seeking to

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justify moneys paid to the Garden City Group to administer the Health Republic website, have touted the number of visits to the site. (*See*, May 8, 2017 Trans. at p. 55).

Accordingly, the Bureau is in no position to feign surprise that minutes should have been taken on February 14th or to argue that it was unaware of the Court's desire to maintain a complete record of all Health Republic proceedings in order for policyholders/claimants to follow the proceedings via the Health Republic website.

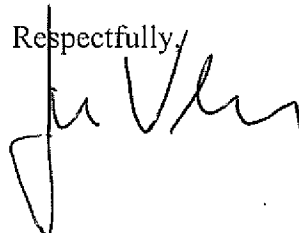
The February 14th hearing concerned the Liquidator's efforts to obtain approval of more than \$10,000,000 spent by the Liquidator since the Health Republic liquidation began. Because of the importance of the February 14th hearing, the Bureau spent considerable money placing notices of the February 14th hearing in the *New York Post* and the *NY Daily News*. Despite all of this, the Liquidator apparently made no effort to preserve a record of the hearing.

Nor can I find Mr. Kirshnitz's application to approve the MagnaCare expenses, even though I have twice raised this with the Bureau. Nor do I see MagnaCare listed among the vendors on the modified cash basis expenses spreadsheet posted on the Health Republic website, although I recognize that the vendor expense spreadsheet now only runs through February 2018.

Given these circumstances, I respectfully request that the Court schedule a conference to address these transparency issues going forward. At such conference, it would also be appropriate for the Liquidator to update the Court and Health Republic's policyholders and claimants with respect to:

- (1) the status of the 186,346 Explanation of Benefits (EOBS) determinations;
- (2) the status of appeals taken from these EOBs determinations;
- (3) the status of any discussions with the Federal government with respect to *Vullo v. Untied States of America*, and
- (4) whether the Liquidator will post the MagnaCare application that led to the March 20th order.

Again, I thank Your Honor for allowing me to write to the Court in connection with Health Republic's liquidation,

Respectfully,


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cc: Scott Fischer, Executive Deputy Superintendent, New York Department of Financial Services (via email).
David Axinn, Special Deputy Superintendent, New York Liquidation Bureau (via e-serve, e-mail, and regular mail)
John P. Kelly, General Counsel, New York Liquidation Bureau (via e-mail)
Timothy Butler, Esq. (via e-mail)
David Young, Esq. (via e-mail)
Senator James L. Seward (via e-mail to Legislative Director)
Senator Kemp Hannon (via e-mail to Legislative Director)