

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of

Index No.: 450500/16

the Liquidation of

(Hon. Carol R. Edmead)

HEALTH REPUBLIC INSURANCE OF
NEW YORK, CORP.

AFFIRMATION

-----X

John Pearson Kelly, an attorney at law, duly admitted to practice before the Courts of the State of New York, affirms as follows:

1. I am General Counsel and Assistant Special Deputy Superintendent employed by the New York Liquidation Bureau (“NYLB”) which serves as the staff for Linda A. Lacewell, Acting Superintendent of Financial Services of the State of New York in her capacity as liquidator (“Liquidator”) of Health Republic Insurance of New York, Corp. (“Health Republic”). I submit this affirmation, upon information and belief, based on my review of the Health Republic files maintained by the NYLB, and conversations I have had with NYLB employees, in support of the Liquidator’s *ex parte* motion to approve the Liquidator’s recommended determinations of policy claims as reflected in Explanation of Benefits (“EOB”) forms sent to claimants in accordance with the claims adjudication procedure approved by the Court. The Liquidator’s recommended determinations include both allowances and disallowances of claims as reflected in the EOBs. The Liquidator now requests that the claims recommended for disallowance be disallowed, and that claims recommended for allowance be allowed in the amounts set forth in the EOBs as Class 2 claims in accordance with New York Insurance Law Section 7434.

2. At a status conference held on November 29, 2018 (the “November 2018 Conference”), the Liquidator reported that 190,369 EOBs had been sent to claimants in accordance with the approved adjudication procedure, and that the total amount of recommended allowances

reflected in the EOBs was \$217,950,702.¹ This total amount of recommended allowances has now been updated to \$217,955,319.63. *See* the accompanying Affidavit of Gail Pierce-Siponen (Pierce-Siponen Aff) at ¶2.

3. As discussed at the November 2018 Conference, the Liquidator is submitting for the Court's in-camera review a thumb drive containing a summary of the EOBs and showing the amounts of recommended allowances and disallowances. *See* Tr. of November 2018 Conference at Pgs 12-13 (Exh A), Pierce-Siponen Aff at ¶3. The thumb drive contains 4139 pages of information covering the 190,369 EOBs, including the EOB number (styled the "EOB Voucher number"), the name of the claimant and the recommended allowance or disallowance. Recommended disallowances are shown as 0 dollars. Pierce-Siponen Aff at ¶¶4-5.

4. The thumb drive is designated as Exhibit "A" to the accompanying Pierce-Siponen Affidavit. The contents of the thumb drive will not be e-filed, but will be delivered to the Court for in-camera review in accordance with the Court's direction at the November 2018 Conference. Pierce-Siponen Aff at ¶3.

5. By Order dated October 17, 2016, this Court granted the Liquidator's motion and established a procedure ("Adjudication Procedure") to resolve claims against the Health Republic estate finding the "Adjudication Procedure is required for the orderly administration of the [Health Republic] estate."² Pierce-Siponen Aff at ¶6.

¹ A copy of the transcript of the November 2018 Conference is annexed hereto as Exhibit "1."

² A copy of the October 17, 2016 Order is annexed hereto as Exhibit "2".

6. The Adjudication Procedure applies to claims of persons covered by a Health Republic insurance policy (“Members”) and health care professionals and facilities who provided Members with covered medical services (“Providers”). Pierce-Siponen Aff at ¶4. The claims of Members and Providers (collectively, “Claimants”) are referred to as “Policy Claims.”³

7. The Adjudication Procedure is set forth on pages 2-6 of the October 17, 2016 Order. As relevant to this motion, the Adjudication Procedure provides that: (i) the Liquidator will serve an EOB, the form of which was approved by the Court, on each Claimant with a Policy Claim, which EOB will serve as a notice of determination of the Policy Claim; (ii) the EOB will inform each Claimant of the amount of the recommended allowance or disallowance of their Policy Claim and the reasons for the Liquidator’s recommendation; (iii) the EOB will be sent by email or first class mail to all Claimants or their authorized representatives, such as counsel; (iv) each Claimant will have the opportunity to submit an appeal of the EOB within 60-days (or such other time as may be agreed by the parties) of receipt of the EOB; (v) the Liquidator will review the appeal and either grant it by revising the EOB to reflect an allowance agreed upon by the parties, or deny it and provide the Claimant with the reasons for the denial; (vi) if an appeal is denied, the Claimant may submit an objection within 30-days of the denial; (vii) upon receipt of an objection, the Liquidator may, within her discretion, refer the matter to mediation; (viii) all remaining objections, including any not resolved through mediation, will be referred by the Liquidator to either a referee or a health care qualified claims examiner appointed by the Court to hear the objection and issue a report and recommended determination of the Policy Claim; and (ix) the Liquidator will

³ Exhibit A to the Pierce-Siponen Affidavit is substantially similar to the Policy Claim List referenced in the Adjudication Procedure and the Court is requested to order this exhibit sealed, as contemplated in the Adjudication Procedure, if it is made a permanent part of the Court file. The exhibit may also be returned to the Liquidator after the Court’s review, if the Court does not wish to make it a permanent part of the Court record.

schedule, within 30-days of the issuance of such a report and recommendation, a hearing before the Court to accept or reject the report and determine the amount of the disputed Policy Claim.

8. The Liquidator, in accordance with the material provisions of the Adjudication Procedure, has resolved all Policy Claims, subject only to the Court's final allowances on this motion. Each Claimant was sent an EOB showing the Liquidator's determination of their claims and afforded the opportunity to submit appeals and objections as provided in the Adjudication Procedure. In some cases, the EOBs aggregated the claims of the same Claimants, many of which had multiple claims in the proceeding. The purpose of the aggregation was to streamline the process and reduce administrative costs to the extent possible. *Pierce-Siponen Aff* at ¶7. In total, the Liquidator issued 190,369 EOBs to Health Republic Claimants resolving 881,903 Policy Claims. *Id.* at ¶¶7-8, Exh "A" (in-camera submission), Tr. of November 2018 Conference at Pg 6 (Exh "1").

9. The Liquidator received 1457 appeals⁴, and was able to resolve all of them without reference to the Court-appointed referees or health care qualified claims examiner. *Pierce-Siponen Aff* at ¶9. In addition, certain Claimants did not formally appeal from their EOBs, but rather contacted the NYLB with questions or issues about their claims. These matters, too, were resolved by the NYLB to the satisfaction of both parties without the necessity of further process under the Adjudication Procedure and did not result in appeals or objections. *Id.*, Tr. of November 2018 Conference at Pg 7 (Exh "1").

10. The Liquidator respectfully requests that the Court now accept the Liquidator's recommendation and approve the determinations made in the 190,369 EOBs contained in the in-

⁴ The Liquidator has now determined that 1457 appeals were resolved, not 1401, as reported at the conference.

camera submission designated as Exhibit A to the Pierce-Siponen Affidavit, including both disallowances shown as 0 dollars and allowances in the total amount of \$217,955,319.63.

Wherefore, the Liquidator respectfully requests that this Court grant the instant *ex parte* motion and enter the Order annexed hereto and grant the Liquidator such other and further relief as is just and proper.

Dated: New York, New York
March 5, 2019



John Pearson Kelly

L26058/map