

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

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Index No. 450500/2016

In the Matter of the Liquidation of  
HEALTH REPUBLIC INSURANCE OF  
NEW YORK, CORP.

**Emergency Affirmation of James  
Veach In Support of His Motion  
For Leave to Appear as *Amicus  
Curiae***

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JAMES VEACH, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the truth of the following:

1. I am a Senior Counsel with the firm of Mound Cotton Wollan & Greengrass and am familiar with the facts and circumstances of Health Republic Insurance Company of New York's (Health Republic) liquidation proceeding undertaken pursuant to N.Y. INS. L. Article 74.

2. Affirmant has substantial experience representing parties in insurance insolvency proceedings in New York and other states. In New York, your affirmant has represented parties in the rehabilitation or liquidation proceedings for the following companies: Constellation Reinsurance Company, Midland Insurance Company, Nassau Insurance Company, Frontier Insurance Company, Insurance Corporation of New York (INSCORP), Professional Liability Insurance Company of America (PLICA), as well as syndicates with the former New York Insurance Exchange. I attach as Ex. 1 my biography/resume, including a list of cases argued and articles written relating to insurance company insolvencies in the United States.

3. Affirmant has represented receivers of insurance companies in liquidation, including Physicians Insurance Exchange (PIE), an Ohio-domiciled insurer. Your affirmant has also acted for parties with interests in rehabilitation or liquidation proceedings conducted in California, New Jersey, Pennsylvania, New Hampshire, Illinois, Missouri, Vermont, Florida, Texas, and other states.

4. I submit this affirmation in support of my motion for leave to appear as a friend of the court in this proceeding to liquidate Health Republic, a not-for-profit health insurer domiciled in New York State, capitalized with moneys loaned by the federal government under the Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010 (ACA), and regulated by both the United States Department of Health and Human Services (HHS) and the Insurance Division of the New York Department of Financial Services (DFS).

5. Affirmant does not seek leave to intervene in Health Republic's liquidation proceeding.

6. Pursuant to this Court's May 10, 2016 order, Health Republic was placed in liquidation upon the petition of the Attorney General and pursuant to N.Y. INS. L. Article 74.

7. Affirmant attended the liquidation petition hearing.

8. On July 12, 2016, affirmant wrote to DFS Superintendent Maria T. Vullo in her capacity as Health Republic's Liquidator. Affirmant urged that the Liquidator appoint committees of policyholders and medical services providers to expedite the liquidation process and bolster transparency. Ex. 2.

9. Affirmant attended a July 28, 2016 status conference convened at the request of counsel acting for the Liquidator.

10. During the July 28th conference, this Court directed that outside counsel, retained originally by Health Republic prior to its liquidation and then presumably by the DFS and/or the Liquidator, post on Health Republic's website Health Republic's (or the Liquidator's) contracts or engagement agreements with third-party administrators or vendors.

11. During the July 28th status conference, this Court also directed that counsel for the Liquidator post an account of administrative expenses incurred to date "so that those

[claimants who] may be left out will understand where the money went.” July 28, 2016 Trans., p.

7.

12. On September 30, 2016, I wrote to the Court to raise certain questions/issues concerning the third-party administrative contracts and engagement agreements as well as a one-page paid expenses summary that counsel posted on Health Republic’s website. I copied counsel on my letter and filed my September 30th letter electronically. Health Republic Docket No. 31. I attach a copy of my September 30th letter as Ex. 3.

13. On October 3rd, this Court directed that counsel, “for the benefit of the parties to [the liquidation proceeding],” post my September 30th letter on the Health Republic website. Email from the Court to affirmant, a copy of which is attached as Ex. 4. That has been done and policyholders and other creditors now have access to my September 30th letter.

14. This Court, however, also expressed concern about the “propriety of acting on the recommendation and/or advice of a non-party.” The Court, therefore, directed that affirmant either: (1) move to intervene in the Liquidation proceeding on the ground that affirmant, a federal taxpayer, has a jurisdictional basis to participate in the Health Republic proceeding in that Health Republic was a not-for-profit insurer capitalized solely with federal tax moneys; or (2) “consider taking a formal ‘amicus’ posture.” Ex. 4.

15. Meanwhile, counsel for the Liquidator had moved by order to show cause for an order approving a claim adjudication procedure for Health Republic. That application was returnable on Tuesday, October 11th.

16. On October 9th, affirmant responded to the Court’s October 3rd email with an email advising I would “appear in Part 35 on October 11th and file a notice of appearance as a

friend of the Court.” Affirmant also stated that I “would take any additional steps required to satisfy the Court’s amicus requirements.” Ex. 5.

17. The following day, Columbus Day, counsel for the Liquidator responded with an email to the Court objecting to affirmant’s appearing as a friend of the court for various reasons set forth in counsel’s email. A copy of the email from Richard Slack, Esq., dated October 10, 2016, is attached as Ex. 6.

18. Affirmant responded to Mr. Slack’s email brief/objection the following morning and before the hearing on the Liquidator’s proposed order to show cause. Ex. 7. I raised in my e-mail reply that, among many other gaps and omissions in the contracts and claims expense summary posted on the Health Republic website, no balance sheet of assets and liabilities had, to my knowledge, been produced and that the last public accounting of Health Republic’s assets and liabilities appeared to be the company’s Second Quarter Financial Statement prepared as of June 30, 2015.

19. I attended the October 11th hearing on the Liquidator’s order to show cause why the Liquidator’s proposed claims adjudication procedures should not be approved.

20. During the October 11th hearing, Your Honor declined to accept my notice of appearance, Ex. 8, and directed that I move for leave to appear as a friend of the court. October 11, 2016 Trans., pp. 2-4.

21. Your Honor did allow affirmant to speak with respect to the lack of a balance sheet for the Health Republic estate and the Court directed that counsel prepare a balance and post it online. October 11, 2016 Trans., pp. 41-46. Ex. 9.

22. With respect to Supreme Court approval of expenses incurred by an insurer liquidated pursuant to N.Y. INS. L. Article 74, I attach as Ex. 10 a copy of the following slip

opinion. In Re Union Indemnity, Index No. 41292/85, Memorandum Decision and Order entered on February 23, 2009, Slip op., pp. 24-28).

23. With respect to the last statement filed by Health Republic pursuant to statutory accounting standards, I attach as Ex. 11 a copy of Health Republic's Quarterly Statement as of June 30, 2015.

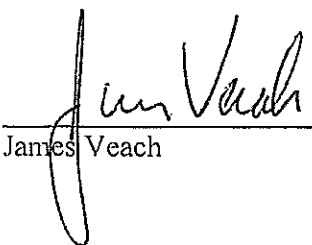
24. With respect to public interest in Health Republic, the amount of public moneys loaned to Health Republic, and the regulatory oversight that preceded Health Republic's failure, see M. Waldholz, The short and chaotic life of an Obamacare darling, Crain's New York (April 19, 2016) a copy of which is attached as Ex. 12.

25. With respect to the public interest in Health Republic's liquidation, see legislation enacted as part of the New York State budget for 2016-17. Ex. 13.

26. For the reasons set forth in my accompanying memorandum of law, movant satisfies the criteria set out in Kruger and movant can bring to this Court's attention law or arguments that not otherwise be raised and would "otherwise be of special assistance" to this Court.

WHEREFORE, I respectfully move by order to show cause for leave to appear in this proceeding as a friend of the court and, with this Court's permission, to submit the accompanying memorandum of law to submit other friend of the court briefs and correspondence addressing issues raised during Health Republic's liquidation.

Dated: New York, New York  
November 3, 2016

  
James Veach