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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 35

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

Index Number
450500/2016

X
60 Centre Street
New York, New York

October 11, 2016

B E F O R E :

HONORABLE CAROL R. EDMEAD, Justice

A P P E A R A N C E S :

Attorneys for Plaintiff:

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Attorneys for Northwell:

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New York, New York
By: TIMOTHY BUTLER, ESQ.

Also Present:

MOUND COTTON WOLLAN & GREENGRASS LLP
One New York Plaza
New York, New York 10004
BY: JAMES VEACH, ESQ.

DENISE WILLIAMS, RPR
Official Court Reporter

1 -Proceedings-

2 THE COURT: On the record.

3 This Notice of Appearance and Application by
4 Motion who is that? Is that yours?

5 MR. VEACH: Yes, it is, Your Honor.

6 THE COURT: I think my email made it pretty clear
7 how to move. It said either seek a motion to intervene or
8 an amicus status, but as friend of the Court, the Court
9 declines friend of the Court. Okay. That is not something
10 I'm inclined to entertain. I want it to be made formally
11 with opportunity for opposition.

12 Does everybody understand that?

13 MR. HOLTZER: Yes.

14 THE COURT: That's what I put in my email.

15 That's --

16 MR. VEACH: I understand.

17 THE COURT: I don't understand. Please come to
18 the table.

19 MR. HOLTZER: Is Mr. Holtzer.

20 THE COURT: I don't understand why you think this
21 is the appropriate mechanism. You won't be staying. Don't
22 sit.

23 MR. VEACH: I filed a Notice of Appearance --

24 THE COURT: A Notice of Appearance as what?

25 MR. VEACH: As a friend of the Court.

26 THE COURT: I decline a friend of the court. If

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2 you want to get in this case, get in this case not on
3 behalf of the court but independently, independently.

4 MR. VEACH: May I move for --

5 THE COURT: That's what I put in the email. I
6 said in the email make an application on notice where
7 everyone has an opportunity to oppose and then there will
8 be a decision on the law. But not just a voluntary "I'm
9 your friend, here I am." The Court declines your
10 invitation and I made it abundantly clear in my email. You
11 have to make a formal move. Do you understand?

12 MR. VEACH: I apologize, Your Honor.

13 THE COURT: No problem. This is a decline to
14 sign. The application is a decline to sign because it has
15 to be with everyone have an ability to respond, not just
16 here I am, I'm showing up, I'm working.

17 MR. VEACH: Your Honor, Mr. Slack did respond
18 this morning I responded.

19 THE COURT: He responded this morning?

20 MR. VEACH: Yes, he did in an email. He --

21 THE COURT: An email.

22 MR. VEACH: To the Court and to me.

23 THE COURT: I'm a definitely non-paper person and
24 I love when people communicate through email and any other
25 means other than paper, but that's why I put a very
26 specific email instruction. So I should not have been

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2 receiving this application. First of all, this is an
3 application. Is it an Order to Show Cause or its not even
4 an Order to Show Cause, its just on I'm here and I'm a
5 friend of the court.

6 MR. VEACH: Its an yes request.

7 THE COURT: Not the way it works, not the way it
8 works at all and I do prefer email but I -- that's why my
9 email said what you had to do in order to do this --

10 MR. VEACH: Thank you.

11 THE COURT: -- with respect to -- and believe me
12 I read and I made comments and notes, but I want to be
13 clear the gist of what I sought in your papers was a
14 concern about how the lawyers or the parties running the
15 liquidation were selected, how they are getting paid, how
16 they are spending money. The first -- the primary concern
17 for this Court is the claims people and making sure their
18 claims get a handled expeditiously and fairly. The issue
19 of lawyers and who gets paid and how they were selected and
20 how they gave out contracts is secondary to this Court and
21 can easily and will probably be dealt with after, way
22 after -- not way after, but after all the claims issues,
23 which are primary, are addressed and there is nothing that
24 prevents the Court after that's all been done, which is
25 when it will get done, if it appears that there's been a
26 problem to do a claw back that's what -- claw back,

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2 everybody know as claw back. That's what its for but it
3 won't be this Court's primary interest. The primary
4 interests are the claim holders and but I did upload --
5 require that everything you submitted be uploaded so all of
6 those involved at this juncture, meaning all of those who
7 are properly before the Court, have an understanding of
8 what you are raising and if they wish to do something,
9 fine, but I'm back to the email. That's the forum and that
10 is how I will address it with response, and I thank you.

11 MR. VEACH: Thank you.

12 THE COURT: Decline to sign. Off the record.

13 (Whereupon, a discussion was held off the
14 record.)

15 * * *

16 THE COURT: On the record.

17 Yes?

18 MR. HOLTZER: Good morning, Your Honor. Gary
19 Holtzer for Health Republic. Here at the table with me is
20 Debora Hoehne from my firm and Richard Slack from our firm.
21 We also have Counsel for Northwell who can introduce
22 himself, Your Honor.

23 MR. BUTLER: Timothy Butler for Northwell Health
24 System.

25 THE COURT: Thank you.

26 MR. HOLTZER: Your Honor, there are two items we

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2 wanted to discuss with the Court, one is to give the Court
3 a status from the last time we were before Your Honor, and
4 the second is we are here on our request for the Court to
5 approve our claims procedures, and I will do that second.

6 So, if its okay with Your Honor, I will start
7 with the update.

8 THE COURT: Yes.

9 MR. HOLTZER: Your Honor mentioned a few minutes
10 ago that we have been posting materials to the website in
11 accordance with a number of the hearings that we've had
12 before Your Honor where Your Honor has indicated and
13 directed Counsel to make postings to the Health Republic
14 Website for the benefit of everybody involved in the
15 matter, and so the latest status of that, Your Honor, is
16 that in accordance with your directives from the July
17 status conference, the Liquidator has posted to the Health
18 Republic Website the requested information about the
19 Liquidator's engagement of service providers and the
20 payment of administrative expenses in the proceeding to
21 date. Specifically on the website you will find a
22 transcript from the status conference along with the
23 Spanish translation and the contracts for the vendors
24 providing ongoing services to the estate during the
25 liquidation proceeding and the administrative expense
26 payments that have been paid since the liquidation order

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2 was entered on May 11, 2016. The Liquidator intends to
3 update the information on a monthly basis, typically around
4 the 15th of each calendar month, and so we are current now
5 and will continue to update, Your Honor, but that is the
6 status and we think we have now complied with, to date, the
7 directives of the Court.

8 THE COURT: All right. The contracts have been
9 uploaded. Right?

10 MR. HOLTZER: Yes.

11 THE COURT: And the payments have been uploaded.
12 Right?

13 MR. HOLTZER: Yes.

14 THE COURT: Excellent. And those are the things
15 that I was primarily concerned with with respect to the I'm
16 just going to say liquidation team.

17 MR. HOLTZER: Yes.

18 THE COURT: And as I mentioned earlier the
19 Court's ability to go back and go through that in detail
20 remains and will be done after the Court has addressed the
21 claims issues which, as I said, I take as primary.

22 MR. HOLTZER: Yes. Thank you, Your Honor.

23 THE COURT: Go ahead.

24 MR. HOLTZER: We can move to the second item,
25 Your Honor.

26 We are before the Court today on the Liquidator's

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2 motion to approve procedures for the allowance and
3 disallowance of policy claims in the proceeding. I will
4 start at the outset by saying, Your Honor, there was one
5 written objection filed, and that objection has been
6 resolved.

7 THE COURT: Who is it from?

8 MR. HOLTZER: From Northwell.

9 THE COURT: I want to know what it was and how it
10 was resolved.

11 MR. BUTLER: The objection was that we were not
12 clear that the procedures set forth covered both in-network
13 providers and out-of-network providers and we wanted to
14 make sure that the process was going to give an equal
15 opportunity for out-of-network providers from our service
16 and health public members to file their claims and be
17 informed of the status of their claims to EOBs so that if
18 there is a dispute they will have to be entitled to
19 participate in the claim dispute process.

20 THE COURT: How is it resolved?

21 MR. BUTLER: By defining a claimant as well as
22 either an in-network or out-of-network provider.

23 THE COURT: So, are you now satisfied that that
24 question and that issue has been addressed?

25 MR. BUTLER: I am.

26 THE COURT: And that the ability to cover that is

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2 sufficiently going to be a part of the process to your
3 satisfaction?

4 MR. BUTLER: It is.

5 THE COURT: Excellent. And that was the only
6 objection?

7 MR. HOLTZER: Yes, Your Honor.

8 MR. BUTLER: There was one other, but we are
9 reserving it. There was another objection. The objection
10 we had is that we want to make sure at the time that the
11 funds are dispersed that --

12 THE COURT: Funds are dispersed to?

13 MR. BUTLER: We want to be dispersed to the
14 providers provided the services and we understand that
15 talking with Counsel the issue of who the payments are
16 going to be made and the manner has not yet been addressed
17 and that so we will address that issue at the appropriate
18 time.

19 THE COURT: Let me be clear, the second issue
20 which you are holding which you are reserving is that the
21 payments be made or should be made to the providers?

22 MR. BUTLER: Correct.

23 THE COURT: And that has not yet been mapped out?

24 MR. HOLTZER: Correct, Your Honor.

25 THE COURT: And, but, you are satisfied it will
26 be mapped out and the question I have is when?

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2 MR. HOLTZER: So, Your Honor, just two things.
3 First, the form of resolution of the first part of the
4 objection takes place in the current order before Your
5 Honor which we have a black-line of because to address
6 Counsel's first objection we accepted Counsel's language
7 that he just described into the formal order and we can
8 show Your Honor a black-line. That's the actual technical
9 way his objection was resolved on the substance of it by
10 adding language that he proposed.

11 THE COURT: Excellent.

12 MR. HOLTZER: With respect to the second part,
13 the way the claims process works today is that a procedure
14 will be put in place by Your Honor and we made the changes
15 that Your Honor guided us to when we previewed this before
16 the Court at the last session. Right. That process calls
17 for a process where the claims come in, right, and the
18 amount of the claim is resolved amongst Health Republic and
19 the claimant.

20 The second part of the process which is what
21 Counsel is referring to has to do with when the estate has
22 available proceeds to distribute to claimants whose claims
23 are allowed which claimant will actually receive the
24 distribution. Counsel has commented that at that point in
25 time he believes that, at least in certain circumstances, a
26 provider ought to receive the distribution as opposed to a

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2 member.

3 THE COURT: And that has yet to be detailed.

4 MR. HOLTZER: That has yet to be proposed.

5 THE COURT: Which is very important and critical
6 and needs to be very specific posted, comments before its
7 decided on.

8 MR. HOLTZER: Correct, Your Honor, and the way --

9 THE COURT: Again posted in both English and
10 Spanish.

11 MR. HOLTZER: Yes. And the way that we would
12 typically do it is we will bring on a motion in front of
13 Your Honor for an approval of a plan, right, that would
14 distribute the proceeds that the estate has ultimately and
15 in that plan it will define who receives the payments on
16 account of proceeds of Health Republic's estate and at that
17 point all Counselor is saying he will have an opportunity
18 to be before Your Honor, he will get a chance to look at
19 the plan and if it doesn't define it the way he intends it
20 to then we will have that discussion.

21 THE COURT: This is my concern, I would rather
22 not at the time that the plan is circulated and then
23 commented on and determined, but that the plan be
24 circulated before its presented to the Court so feedback
25 can be obtained from anyone with an interest before the
26 Court sees it. Do you follow what I'm saying?

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2 MR. HOLTZER: Yes, Your Honor.

3 THE COURT: I don't want it to be that -- and I
4 call you all the liquidators, the liquidators create the
5 plan and the procedure and then submit it to the Court and
6 then comment comes in and then the Court reviews and
7 responds. My -- what I'm directing instead is that the
8 proposal be posted and have a comment period and then you
9 take -- and then you address the comments with respect to
10 what you accept, reject and then you come in and I will
11 hear from those who have objections and comments before its
12 even finalized. You see.

13 MR. HOLTZER: Yes. We will do it that way.

14 THE COURT: I prefer it that way.

15 MR. HOLTZER: Perfect. Easy to do.

16 THE COURT: But the other -- that's about how
17 payments will be made.

18 MR. HOLTZER: Correct, Your Honor.

19 THE COURT: An aside, when claims come in can a
20 claim have both a claimant who is not a provider and a
21 provider? In other words, can a claimant be a member even
22 though the provider is claiming amount due?

23 MR. BUTLER: Yes.

24 MS. HOEHNE: We think that would be -- could be a
25 circumstance, although I think in most instances money will
26 either be owed to the member because they paid the provider

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2 out-of-pocket and are seeking reimbursement or the payment
3 will be owed to the provider that gave the services.

4 THE COURT: This is my question, how are you
5 mapping the category of people who fall into claimant and
6 provider seeking the same res, same money? In other words,
7 how are you determining claims where there's a member and a
8 provider seeking the same money?

9 MR. HOLTZER: So, Your Honor --

10 THE COURT: You see what I'm saying?

11 MR. HOLTZER: Yes.

12 THE COURT: Sounds like a tech thing to me.

13 MR. HOLTZER: Let me try. It gets to the claims
14 process and the way the claims process works is the first
15 step is outlined is that Health Public and its advisers
16 will conduct an audit of the claims. That's to ensure that
17 no duplicate claims are paid and no claims that are
18 improper because they don't fall within the insurance
19 coverage or other applicable guidelines that Health
20 Republic had prior to this proceeding. That would include
21 whether or not a provider and a member are competing for a
22 dual payment and the actual governing documents will guide
23 that, and in the claims process that will be sorted out
24 before we get to payment process.

25 THE COURT: What I would like you to maintain, I
26 would like you to create its own grid of those claims. We

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2 set out a process about resolution.

3 MR. HOLTZER: Yes.

4 THE COURT: That's been set up, but I would like
5 a chart, a grid, that shows that its an independent, you
6 know, drop box or you know what I mean. Its a chart, old-
7 fashioned chart where all of those things that fall into
8 that category can be looked at so that when, even if
9 there's a resolution, if there's still a dispute because it
10 eventually could come to the Court, remember, that that's a
11 separate pullout that can be looked at and evaluated.

12 MR. HOLTZER: Sure, Your Honor.

13 THE COURT: So, I want you to make a separate
14 grid for those -- that category of claims. It may be a
15 small thing, but it needs to have its own subcategory so we
16 can see it on its own.

17 MR. HOLTZER: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. HOLTZER: Yes.

20 MR. BUTLER: Your Honor, in that vane it would be
21 helpful because the normal process is that if a member gets
22 a claim and provider gets a claim often both will send a
23 claim to insurance company to make sure it gets paid, so
24 there may be duplicate claims. The hospital system
25 normally if they have been paid by the member directly
26 don't submit a claim because they have already been paid,

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2 but I'm sure that there will be a subset.

3 If the providers in question can be provided with
4 that information, then we will have an opportunity to check
5 and double check whether or not we actually received the
6 money.

7 THE COURT: Well, the idea is that if there is a
8 competing claim for a specific amount that then should
9 trigger another process of review, in that review other
10 than the liquidators whose looking at it.

11 MR. HOLTZER: It will be -- in the audit process
12 and in the sendoff the EOBs out follow the audit process
13 which is what defines for the member or the provider
14 whether Health Republic believes they have a valid claim
15 will be allowed the EOB will say what we are say. We will
16 also add to our website system a chart as Your Honor
17 described. You will recall that you directed that we add
18 charts on the website that showed the flow of the claims
19 process so you could see it pictorially. We have done that
20 already. That's an exhibit to the pleading we filed with
21 Your Honor, but that is on the website.

22 By the way, the website has had thousands of hits
23 already so --

24 THE COURT: In both the English and Spanish? You
25 don't determine -- I know I required a lot of things to be
26 made because you have a lot of non-English speaking

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members.

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MR. HOLTZER: Exactly. Thousands of hits. The translators are being used. So the website is functioning and testimony to that is we had only one objection to a widely noticed request on the claims process. So we will add another flow chart to describe, yes, putting response to Counsel's question the EOB that goes out will say what Health Republic's position is with respect to a claim such as you are talking about.

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MR. BUTLER: If I inquire, will it indicate that there's a duplicate claim by the member and by the provider on the EOB?

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MR. HOLTZER: We can do that if its helpful.

THE COURT: First I want the sub-chart to show that and where that exists I want it posted. I want that chart posted.

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MR. HOLTZER: We can do that.

THE COURT: You see, so that regardless when they get in a letter or correspondence one should be able to go to a full chart and see something that's identified this as duplicate claims, very clear, very simple, duplicate claims so that anyone can look at it.

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MS. HOEHNE: I think we have to be careful with personal --

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THE COURT: The thing is you have to figure out

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2 how you can identify. We have to figure that out.

3 MS. HOEHNE: I think the short answer is the way
4 it worked before is the way the Liquidators intending to
5 keep it so I think in those instances the member received
6 an informational EOB even if the claim was really the
7 provider receiving the EOB. The Liquidator's not intending
8 to change the way the process works.

9 THE COURT: My only concern is about the chart
10 with respect to how we can identify -- put the chart up
11 that doesn't violate HIPAA.

12 MR. HOLTZER: Are you asking, Your Honor, for the
13 chart to reflect individual claim names or just the
14 process?

15 THE COURT: No, beyond the process. I have
16 something different I'm suggesting. I'm suggesting that
17 subset chart which shows duplicate claims be able to be
18 uploaded, but how do we do that with respect to identifying
19 the duplicate claims so that the two claimants are able to
20 identify themselves?

21 MS. HOEHNE: Alternatively we do have a claim
22 lookup on the website if somebody wanted to see what the
23 status of their claim is --

24 THE COURT: Why are you not hearing me. I think
25 I'm pretty clear. What I say is -- what I'm saying is I
26 want a chart that is just identified as duplicate claims,

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2 so that if someone is concerned there's a way to see that
3 there are duplicate -- maybe claim numbers. If the claim
4 number -- well, the claim number will be one number
5 attributed to someone whose a member who sends it in and
6 another claim number is given if -- it's for that same
7 service but it's from a provider so there are possibly two
8 different claim numbers on the name res? I'm asking.

9 MR. HOLTZER: I think, Your Honor, if you are
10 asking whether or not John Smith sitting out there can go
11 on the website and look and see whether the claim of John
12 Smith also has a duplicate for the provider by name, right,
13 its going to be -- absent being able to let them access on
14 a private basis, which is what the claim lookup tool does,
15 John Smith shouldn't be able to see that Joan Jones also
16 has one. Does that make sense?

17 THE COURT: Is it possible that the chart -- that
18 where there are duplicate claims John Smith and a provider
19 that John Smith and the provider get a flag, its flagged?
20 They get an asterisk or flag that says so that they know
21 that that flag is this claim is a duplicate claim and then
22 they can go and look up and see what the problem is because
23 its just that person looking up his own thing. So when you
24 say you can then go back and search, does that then let you
25 go and find out what the issue is with your claim?

26 MR. HOLTZER: Right. The question, Your Honor,

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2 is whether or not just putting John Smith's name with an
3 asterisk on the website violates the privacy.

4 THE COURT: No. No. I'm just saying if I am a
5 person -- if this -- if I'm a claimant, a member, I'm a
6 member and I'm a provider and your process has recognized
7 that this member and this provider are looking at the same
8 claim that the information that you send out to that member
9 and that provider has a flag so that that member and that
10 provider then knows go check, that that flag at the bottom
11 the symbol will stand for duplicate claim. That person in
12 its own claim can then go to your -- what are you calling
13 it?

14 MR. HOLTZER: Lookup.

15 THE COURT: And see what the issue is with that
16 claim?

17 MR. HOLTZER: But where are you suggesting the
18 flag will be, on the EOB or somewhere on the website.

19 MS. HOEHNE: The EOB will say if its a duplicate
20 claim.

21 MR. BUTLER: The EOB will say if there's a claim.

22 THE COURT: That's fine.

23 MR. HOLTZER: It will be on the EOB.

24 THE COURT: Thank you, but its going to be a
25 flag.

26 MR. HOLTZER: Yes.

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2 THE COURT: So that the member and the provider
3 or whoever seeking the same res will be able to know this
4 symbol means duplicate and then go to the lookup.

5 MR. HOLTZER: Exactly. Then they will get the
6 details.

7 THE COURT: But, for the Court, I'm going to get
8 something that gives me a chart.

9 MR. HOLTZER: We can give that to you assuming it
10 doesn't violate --

11 THE COURT: Its going to come in-camera because
12 it has HIPAA information and it will come confidential for
13 in-camera and be marked as such and not be uploaded
14 anywhere. Okay.

15 MR. HOLTZER: Yes.

16 THE COURT: You had something else?

17 MR. BUTLER: No. That was it.

18 THE COURT: So back to -- I've gone off the
19 reservation. So now back to the motion.

20 MR. HOLTZER: Yes. We had submitted our request
21 to the Court on September 15 and as I mentioned Notice of
22 the Order to Show Cause and its return date was provided by
23 mail using the approved form of notice to members and
24 providers as well as posting it on the website. We have an
25 affidavit of service with us in court if Your Honor needs
26 that.

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2 THE COURT: Upload it please.

3 MR. HOLTZER: Okay. We will, Your Honor, and as
4 we mentioned only one objection was filed and we have a
5 black-line of the order that reflects the language that we
6 accepted from Counsel. We can hand that to Your Honor.

7 THE COURT: Did Counsel -- did you give it to the
8 one person who had an objection?

9 MR. BUTLER: Yes, Your Honor.

10 THE COURT: The black-line?

11 MR. BUTLER: Yes, I received it.

12 THE COURT: Okay. So now we have the modified
13 proposed order.

14 MR. HOLTZER: Yes, Your Honor.

15 THE COURT: And?

16 MR. HOLTZER: And we are ready to submit it, Your
17 Honor. We can take Your Honor through the order and let
18 Your Honor know where we have made changes that accord with
19 the Court's guidance as to the last hearing where Your
20 Honor made suggestions on our approach.

21 THE COURT: I would like you to do that.

22 Go off the record for a minute.

23 (Whereupon, a discussion was held off the
24 record.)

25 THE COURT: Back on. Let's go.

26 MR. HOLTZER: Okay, your Honor. Just to give

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2 Your Honor a little bit of a refresher where the claims
3 are, Health Republic is faced with roughly 650,000
4 outstanding policy claims. So in developing the claims
5 adjudicated procedure, which is what's before Your Honor,
6 the Liquidator wanted to balance a number of important
7 factors that include fair and equitable treatment of the
8 creditors, interest of due process and transparency which
9 we know are important to Your Honor, the large number of
10 claims involved and the need for efficiency in light of
11 Health Republic's limited resources. The adjudication
12 procedure is also designed to minimize the number of burden
13 on the claimants by incorporating to the greatest extent
14 possible Health Republic's existing processes for
15 adjudicating policy claims already set forth in providers
16 contracts and members insurance policies.

17 So, the first step, as I mentioned a few minutes
18 ago, is that the Liquidator intends to conduct an audit to
19 insure that no payments are made on duplicative or
20 otherwise invalid claims. We are finalizing an agreement
21 with the third-party administrator to perform this audit,
22 which is expected to take approximately four to five
23 months. We will post, Your Honor, a copy of the agreement
24 with the auditor on the website along with the other
25 contracts for vendors that Your Honor had directed that we
26 post.

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THE COURT: Okay. So, now you're going to hire a third-party administrator to conduct the audit. Right?

MR. HOLTZER: Yes, Your Honor.

THE COURT: And the agreement will be posted?

MR. HOLTZER: Yes, Your Honor.

THE COURT: But, my question before that is how or who -- has the audit the potential third-party audit administrator been identified?

MR. HOLTZER: We are still finalizing an agreement, but we have identified one that we can't make public yet, but we are close to signing the agreement and once we do we will post it. It is somebody with experience in this particular --

THE COURT: Let me just ask and I know you can't at this point you don't want to say who it is, but was there a vetting process or is a search process for the third-party administrator?

MR. HOLTZER: Yes, Your Honor.

THE COURT: Can you give me an idea of that process.

MR. HOLTZER: Sure.

MS. HOEHNE: Requests for proposals were sent out to a number of different vendors within this area of expertise that the Liquidators received. I think the Liquidators received at least four different proposals.

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2 THE COURT: Where did you post the request for
3 proposals?

4 MS. HOEHNE: That I will have to --

5 THE COURT: One second. Off the record.

6 (Whereupon, a discussion was held off the
7 record.)

8 THE COURT: Yes?

9 MR. HOLTZER: Your Honor, we are informed that
10 the request for proposals were sent to parties that the New
11 York Liquidation Bureau and the Liquidator are familiar
12 with in terms of doing these sort of projects given their
13 experience in insurance company liquidations and that's how
14 they sent their RFP out. I don't believe it was posted to
15 website or anywhere else. They went to a group of folks
16 that regularly do this sort of work for and DFF and they
17 got some proposals and they were negotiating with one in
18 order to get that one finalized.

19 THE COURT: My only concern is the limited --

20 MR. HOLTZER: Resources?

21 THE COURT: -- openness of the process of
22 selection, that's all.

23 MR. HOLTZER: Yes, I understand.

24 THE COURT: In other words, if you say we went to
25 the regular cast of characters is a little problematic. I
26 don't know who was excluded based on how you chose to send

-Proceedings-

1
2 it out. You see what I'm saying? I would have preferred
3 if it had just been posted as an RFP in wherever you
4 normally post this kind of thing and on the website, you
5 know, RFP for -- that would have been -- RFP for third-
6 party administrator. That would have made me more
7 comfortable, again, with what may have to be addressed down
8 the road.

9 MR. HOLTZER: We understand, Your Honor.

10 THE COURT: Do you understand?

11 MR. HOLTZER: Yes.

12 THE COURT: So, I have a concern. I want you to
13 repost and I want -- that's all. I want you to repost more
14 publicly.

15 MR. HOLTZER: Sure.

16 THE COURT: Then I want to know who responded.
17 You can let me know that in-camera if you need to.

18 MR. HOLTZER: Okay, Your Honor.

19 THE COURT: But I want a re-posting.

20 MR. HOLTZER: We will do that.

21 THE COURT: Go ahead.

22 MR. HOLTZER: How long would you like us to leave
23 it up.

24 THE COURT: How long did you leave it up before?

25 MS. HOEHNE: Process commenced before --

26 THE COURT: How long did you leave that posting

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1
2 up before?

3 MR. HOLTZER: I can't tell you with precision,
4 Your Honor.

5 THE COURT: Fifteen days, 30 days?

6 MR. HOLTZER: Yes, that sort of world.

7 THE COURT: Post it for 20 days.

8 MR. HOLTZER: We will submit it to you.

9 THE COURT: Thank you.

10 MR. HOLTZER: Following the audit the claims will
11 be processed, and then as Your Honor requested we have
12 included a flow chart of the proposed claims processed on
13 an exhibit and its been posted. If Your Honor needs a copy
14 of that, we can provide it to you, but I do have it. After
15 the audit is complete, Your Honor, as we mentioned before,
16 EOBs will be issued for members and providers for each
17 claim. The EOB will indicate the number of services
18 covered and the portions that the members responsibility.
19 Each EOB will also serve as notice of the determination of
20 the amount of the claim against Health Republic. That's
21 what the EOB is for. That's the first notification to a
22 member that their claim, in our view, is at a certain
23 level, Your Honor.

24 So, Your Honor, the EOB will look substantially
25 like the EOBs that the members and providers have received
26 in the past but we will add some language modify some

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1
2 language to conform to the proposed procedures before Your
3 Honor.

4 Your Honor, the form of the EOB that we are
5 proposing for members and provider was attached to the
6 order as Exhibit 1. A section of the EOB informs claimants
7 what steps they can take if they do not agree with the
8 determination set forth in the EOB. Those steps are
9 outlined in the process map that we attached and that will
10 be on the website.

11 THE COURT: This is the typical thing, I know I
12 require a little more than the typical, so this is the
13 typical flow. I've made it a little more complex but, I'm
14 sorry.

15 MR. HOLTZER: No, you actually made it more
16 transparent because you can look at the flow chart and not
17 look at the narrative.

18 THE COURT: That's exactly what I was aiming for.

19 MR. HOLTZER: So unless Your Honor has questions
20 on the EOB, we will turn to the appeal process which was
21 part of the -- our discussion when we previewed the program
22 initially with Your Honor.

23 The process is intended to substantially mirror
24 the appeals process that Health Republic had in place
25 before the liquidation with both an internal and external
26 review of claims. So, the members and providers will have

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2 60 days from the date of the EOB mailing to submit an
3 appeal on Health Republic's website. At Your Honor's
4 suggestion, the procedures now allow a way for claimants
5 who want to appeal the Liquidator's determination of their
6 claim to request from the Liquidator, upon a showing of
7 good cause, more time to file their appeal.

8 Should the claimant and the Liquidator be unable
9 to resolve the extension request successfully, the claimant
10 may apply directly to the Court for an extension of time to
11 file the appeal.

12 THE COURT: 650,000 claims.

13 MR. HOLTZER: 650,000, Your Honor.

14 THE COURT: Let's just hope a lot of people --

15 MR. HOLTZER: Be careful what you wish for. As
16 Your Honor suggested, the procedure now also allows members
17 and providers who don't have access to a computer to submit
18 their appeals in hard copy. The New York Liquidation
19 Bureau acting on behalf of the Liquidator will conduct the
20 first level of appeal. Its akin to the kind of internal
21 review that Health Republic performed on claims disputes
22 before this liquidation proceeding.

23 The Liquidation Bureau will review the
24 information submitted in the appeal and determine within 60
25 days whether to accept or deny the appeal. If the appeal
26 is denied, a letter will be sent informing the member and

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or the provider of the reasons for the denial. If the appeal --

THE COURT: One second.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Go ahead.

MR. HOLTZER: If the appeal is accepted a revised EOB will be issued. So either way notification will go to the claimant.

THE COURT: Letter will be sent. My concern is always with -- letter will be sent. These are the ways you have been reaching them anyway with the claim, so you will have the right -- we should have the right mailing?

MR. HOLTZER: Yes, Your Honor.

THE COURT: Because this is going to be after the claim has been submitted, so we should have proper mailing information.

MR. HOLTZER: Yes, Your Honor.

THE COURT: Go ahead.

MR. HOLTZER: They will also be able to look up their own situation on the website if they're computer savey and they prefer that route.

THE COURT: Okay. Great.

MR. HOLTZER: Any claimants disagreeing with the Liquidator's determination of an appeal can file an

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2 objection using Health Republic's website or the paper
3 process we previously described. Objections need to be
4 filed within 30 days after notice of denial is mailed to
5 the appealing claimant. The Liquidator in her sole
6 discretion can elect at any time to resolve objections
7 through mediation or mutual agreement of the parties. Any
8 objections not resolved in this manner would be referred to
9 a referee or a qualified healthcare claims examiner. This
10 external review process is very similar to that one
11 utilized in resolving disputed claims before this
12 liquidation proceeding was commenced.

13 THE COURT: I know I asked this before and I know
14 we have gone through this whole process discussion before
15 and I've asked this and I apologize, the selection of the
16 referees or the claims examiners how? Where do they come
17 from? I know I asked this before. I just don't remember.

18 MS. HOEHNE: Right. We will be making a separate
19 application to the Court for that and I think at the last
20 conference Your Honor asked us to come up with a way to
21 solicit some suggestions from other parties in interest as
22 to who might be appropriate to fill that role of referee or
23 qualified healthcare claims examiner.

24 MR. HOLTZER: Can I make a suggestion, Your
25 Honor. Similar to what you suggested before we filed the
26 procedures for payment why don't we post, before we file

1 -Proceedings-

2 with the Court, who we are going to select as referees and
3 let there be a comment period, then we will submit to the
4 Court based upon any additional suggestions we get?

5 THE COURT: Or what I would add as a precursor to
6 that is a sort of a notice of like a notice of solicitation
7 almost like an RFP but not we are at the stage of selecting
8 referees and claims examiners here's the criteria, if you
9 would like to apply or recommend a name please do so before
10 it comes to the Court.

11 MR. HOLTZER: Sure.

12 THE COURT: Again its like I don't want to see it
13 after the fact and then have to deal with objections. I
14 want people to have had an opportunity to have an input
15 before the list comes to the Court to say -- so we can --
16 it can be resolved possiblyly short of coming to the Court
17 if people feel they have had input.

18 MR. HOLTZER: We can post it to the website and
19 let the community who looks at the website make their
20 suggestions and there will be a way to do that.

21 THE COURT: Excellent.

22 MR. HOLTZER: Okay, Your Honor.

23 THE COURT: Level three at the referee and claims
24 people.

25 MR. HOLTZER: The procedure now specifies the
26 time period in which the Liquidator must determine whether

1 -Proceedings-

2 to mediate an unresolved objection or send the disputed
3 claim determination to a referee or a qualified healthcare
4 claims examiner. Your Honor had suggested that we insure
5 that claimant can't get lost in the process due to
6 non-defined time periods, so we have now defined how long
7 the Liquidator has to determine whether to mediate an
8 unresolved objection or send it as a dispute to a referee
9 or healthcare claims examiner.

10 THE COURT: Good. Time periods help. It gives
11 the Court a frame of reference when someone is outside of
12 the period to say, well, you had notice, this was the time
13 you had and you didn't do it or determine if there's any
14 further discretion or flexibility. Time periods help.

15 MR. HOLTZER: So determinations of whether to
16 direct a disputed appellate determination to mediation must
17 be made within 60 days after the Liquidator's receipt of
18 the objection to the denial of the appeal. The Liquidator
19 can, however, automatically extend that period for 15 more
20 days and may request further additional time from the
21 Court, if the circumstances necessitate it. This is all in
22 an effort to not have 650,000 claims in front of Your
23 Honor. The referral of the unresolved objections to a
24 referee or a qualified healthcare claims examiner must be
25 made within the later of 60 days after the Liquidator's
26 receipt of an objection to the denial or 30 days after

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2 completion of an unsuccessful mediation.

3 So, it may be the case, Your Honor, that the
4 Liquidator determines to try to mediate consensually the
5 resolution or asking a referee, which is unlikely, to make
6 a decision in the process. They will try consensually
7 first invariably. The Liquidator could extend these
8 periods for an additional 30 days without Court approval
9 but any further extension would require an allocation to
10 Your Honor.

11 THE COURT: The concern, of course, is the
12 claimants out there, the providers, the members out there
13 the claimants out there are saying, you know, they just
14 keep shuffling my claim. I want to get it done, so that's
15 why I have time periods. I know you wish you had gone to
16 some part other than Part 35, that's here. Go ahead. I'm
17 very big on transparency and due process as everyone
18 figured out from day one.

19 MR. HOLTZER: If the parties do not consent to a
20 final determination by the referee or qualified healthcare
21 claims examiner, then the referee will submit a report and
22 recommendation to the Court and the Liquidator will have 30
23 days to schedule a hearing before Your Honor on the
24 recommendation and Your Honor will decide.

25 THE COURT: And I will -- imagine that we will
26 have hearings. The Court will block out a specific period

1 -Proceedings-

2 of time so that there's no -- its not helter skelter. It
3 will be a specific period on the court calendar just to do
4 your hearings. So that everything is moving in a seamless,
5 as possible, manner.

6 MR. HOLTZER: Yes, Your Honor. We will arrange
7 that with your clerk.

8 MR. BUTLER: If you are finished with the
9 process.

10 MR. HOLTZER: One more. So, the last step is to
11 provide the Court with a list on a periodic basis of policy
12 claims that have been adjudicated pursuant to the claims
13 procedure or otherwise resolved by mutual consent so Your
14 Honor can see the progress.

15 THE COURT: If its been -- if claims have been
16 resolved by mutual agreement that's an easy flow. I work
17 well with charts, you know what I mean. You know, you can
18 say claim resolution, date, you know. Charts are good to
19 get a snapshot and understanding with how reading through a
20 lot of paper a chart is easy especially with resolved
21 amicably easy. When you say or through mediation that
22 would then be not necessarily amicably resolved.

23 MR. HOLTZER: Well, the mediation is consensual
24 non-binding and the referee is non-bonding.

25 THE COURT: If its at the end of non-binding
26 mediation and or -- its a hearing.

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MR. HOLTZER: Correct.

THE COURT: Got it. And again, flow charts.

MR. HOLTZER: Yes, Your Honor.

THE COURT: I rather flow charts than, you know, stacks of paper. This is really a paperless part and a flow chart I can pull up on the screens and its easier to work with. So I need charts.

MR. HOLTZER: We will make sure, Your Honor. I think with respect to the claims adjudication process that's in front of Your Honor for approval that's it.

MR. BUTLER: What I was going to suggest is as part of the appeal process if there are competing claims by a member and provider that that would be a good opportunity to resolve that. So, as part of the appeal process either party can make a claim that they are the ones whose entitled to be paid and that would prevent having to have entirely different process start all over again once all the claims have been determined.

THE COURT: That makes sense. That is to say at the level of the appeals process why would we wait till then. What is before the appeal process?

MR. HOLTZER: Your Honor, when they receive an EOB that says there is a duplicate claim they can involve themselves in the process.

THE COURT: But, in the process at the mediation

1 -Proceedings-

2 before appeal, how are they involved where they can --

3 MR. BUTLER: They wouldn't know until they
4 receive the EOB.

5 THE COURT: After the EOB receipt?

6 MR. HOLTZER: Correct. What they would have to
7 do then is they would have to send in a response that says
8 we understand this is a duplicate claim. We believe we
9 should be the party receiving payment and we would like
10 that resolved as a part of the claims resolution process.

11 THE COURT: And I'm saying at whatever stage that
12 notice of where duplicate comes in what's the earlier stage
13 of duplicate claim notice would be made apparent?

14 MR. HOLTZER: Yes, Your Honor. Immediately after
15 the audit the EOBs will go out. That EOB that they will
16 receive in the normal course and this was the same before
17 the liquidation proceeding, will say we have just looked at
18 this claim and it will have a flag on it that says there is
19 a competing duplicate claim from the member and what he is
20 suggesting, which is a fine approach by us, is that if
21 resolution of who should receive payment on that claim, not
22 only the amount of the claim, but who should receive
23 payment he will know to send in something that says we
24 believe we should receive payment on that claim.

25 THE COURT: And when that comes in from the
26 member and the provider it comes in and what's the next

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MR. HOLTZER: The Liquidator will have to review the underlying documentation of entitlement that lives in the arrangements that existed pre-liquidation and say based upon this claim who is supposed to get paid.

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THE COURT: What you were suggesting was -- what they are saying is at all stages the review is of who is entitled to the claim.

10

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MR. BUTLER: Yes. We are saying don't have a separate process later to do that.

12

THE COURT: That's right.

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MR. BUTLER: Start it now.

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THE COURT: Thank you for clarifying. So that is what I'm directing, the identification of duplicate claims and the resolution and addressing of duplicate claims be made throughout the process, notice and potential resolution made throughout the process.

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MR. BUTLER: Your Honor, this brings up a separate issue because its the position of the providers as long as the member --

22

THE COURT: One second. Off the record.

23

(Whereupon, a discussion was held off the record.)

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MR. BUTLER: Its our position that if a member has made -- has paid money out-of-pocket that they are

1 -Proceedings-

2 entitled to reimbursement of those funds as long as they
3 paid the hospital or the provider for the services.

4 However, we do not believe that member should receive the
5 funds if a policy provides the funds go to the member
6 because --

7 THE COURT: Say that again. We do not believe
8 the member should receive the funds if the policy says the
9 funds should go to the member?

10 MR. BUTLER: Yes. This is why, because in normal
11 insurance circumstances sometimes policies say that there
12 can be no assignment of the benefits to the provider. The
13 money has to go to the member. Then the provider has to
14 get the money from the member. In this case because of the
15 law we are not permitted to pursue the member. So if the
16 member gets the funds, say the member got a service for
17 \$100 and then the fund pays the \$100 to the member, the
18 hospital is out the \$100 and has no recourse.

19 THE COURT: That's right. But this is allegedly,
20 my understanding, should be picked up at that first stage
21 of duplicate claim.

22 MR. BUTLER: Correct.

23 THE COURT: In other words -- but you see the way
24 you explained it if the member is also paid out-of-pocket
25 then you must be implying it hasn't been paid in full. If
26 its \$100 and the member is paid out-of-pocket that should

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2 go to the member.

3 MR. BUTLER: That's correct.

4 THE COURT: But, so that's not the scenario. The
5 scenario is the member has not paid out-of-pocket. I think
6 you didn't put the "not."

7 MR. BUTLER: Right.

8 THE COURT: And the provider -- and the member
9 puts in the claim even though the member has not paid
10 out-of-pocket and the provider puts in the claim it should
11 be picked up in the process.

12 MR. HOLTZER: It will be. Yes, Your Honor.

13 THE COURT: In those circumstances the
14 determination of who is properly entitled to the funds any
15 provision of a contract that says it has to go to the
16 claimant -- the member will have to be overridden by the
17 Court. Do you understand? Nobody got that.

18 MR. BUTLER: I got that.

19 THE COURT: You understand because you cannot be
20 limited to an agreement that permits a person to get double
21 payment to the detriment of or not double payment, to get
22 paid to the detriment of the -- the provider is saying I
23 shouldn't have to start a legal proceeding to get the fund.
24 This is what I need to know. I need independent of
25 liquidators somebody is in this whole scheme of people who
26 are getting paid. I need to know under what circumstances

1 -Proceedings-

2 the Court can override that cause.

3 MR. HOLTZER: Yes, Your Honor.

4 THE COURT: You understand, override a clause in
5 an insurance contract. Oh, your partner just took a deep
6 sigh like.

7 MR. HOLTZER: He is from the New York Liquidation
8 Bureau.

9 THE COURT: Even a deeper sigh. But I need to
10 know that on the law its permitted.

11 MR. HOLTZER: Yes, Your Honor.

12 THE COURT: Or if its not how I can get around it
13 to insure that the person whose had the outlay gets paid.

14 MR. HOLTZER: Yes, Your Honor. What I was going
15 to suggest is you will only need to decide this if its not
16 resolved in the process for determination whose the
17 appropriate party to receive payment.

18 THE COURT: It doesn't hurt in this whole team
19 aren't there some people who are lawyers who are just
20 working?

21 MR. HOLTZER: Yes, there are.

22 THE COURT: Other than my two law secretaries?

23 MR. HOLTZER: Yes.

24 THE COURT: Think about it. I'm trying to avoid
25 my people having to do this when there is a whole team of
26 yours.

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MR. HOLTZER: Yes.

THE COURT: That I'd like that as a memo.

MR. HOLTZER: We can give it to Your Honor if you like but if its resolved otherwise it will never come before Your Honor.

THE COURT: But if I have it as a memo then everybody will be able to say this is what the Court is looking at as law that gives the ability to do X.

MR. HOLTZER: We can provide it to Your Honor.

THE COURT: Sometime seeing something will help resolve a dispute so no one shows up and says you can't do this, the policy says. That's what I avoid by having the memo in advance.

MR. HOLTZER: We can submit the memo.

MR. BUTLER: We will work with them on the memo.

THE COURT: Excellent. Go ahead.

MR. HOLTZER: That's the completion of the process, Your Honor.

THE COURT: I was going around. Any questions?

MR. BUTLER: That was my only one.

THE COURT: Did you have a question you would like me to entertain other than the ones about people getting paid.

MR. VEACH: My request would be for a balance sheet, statutory balance sheet.

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2 THE COURT: I think its premature at this point.
3 A statutory balance sheet?

4 MR. VEACH: If I may, Your Honor, the last time
5 anyone reported on the assets and liabilities of this
6 company was as of June 30, 2015. To my knowledge no
7 balance sheet has ever been produced since then and my
8 concern here is we are working a real elaborate system but
9 at the rate we are spending money I think there may not be
10 any money left to pay these policyholders. So, I would
11 like to see what are the assets and what are the
12 liabilities and where is the federal government in this.

13 THE COURT: You know what you have to do cross,
14 the street, go to 26 Federal Plaza and ask them. This
15 isn't a secret. If the feds want to join me, please,
16 another application, I will be glad to see them, all right,
17 but the only thing the issue or question raised what and
18 how and when is there a statutory balance sheet prepared if
19 ever?

20 MR. HOLTZER: Your Honor, what --

21 THE COURT: A balance sheet because to me it
22 sounds like you are asking what the status is as far as
23 assets and liabilities and I know that things are still
24 being assessed.

25 MR. VEACH: But it can be footnoted, Your Honor.
26 How much are we talking about. We have liabilities of

1 -Proceedings-

2 500 million --

3 THE COURT: That's what I'm saying. I thought at
4 this point I didn't know that is not yet known.

5 MR. HOLTZER: It is not known.

6 THE COURT: That's what I understand from the
7 last time, this is still being assessed. The Court will
8 get that. The question is when do I get it and when is
9 that kind of information able to be made available.

10 MR. HOLTZER: Your Honor, the answer to the
11 question is we are working on it now and will report to the
12 Court at the next session, but we don't have a sense of the
13 assets. The balance sheet yet which involves outbound
14 litigation to recover reimbursements from the federal
15 government.

16 THE COURT: Isn't that a category that you put as
17 its own category? In other words as of any day there's an
18 ability to know the assets and the liabilities, a snapshot,
19 able to be created as of today and this is not -- this is
20 just a flow number. It is not a firm number, do you see my
21 footnote, and its what you believe you have as assets as of
22 October 1, what you believe you have as liabilities as of
23 October 1 and a list of claims -- not claims, not policy
24 claims, but litigation claims, not where you -- where --
25 because this I remember, I know that what you do is say and
26 these are the litigations outstanding and the demand amount

1 -Proceedings-

2 which is a fictitious number, we all know that's not
3 necessarily a real number, but that's able to be done at
4 any point on any day and its a snapshot and you say this is
5 a snapshot of this day. That's not hard.

6 Is that what you are asking?

7 MR. VEACH: Yes, Your Honor.

8 THE COURT: You see that's not a hard thing to
9 do. Off the record.

10 (Whereupon, a discussion was held off the
11 record.)

12 THE COURT: Back on.

13 MR. HOLTZER: The issue is going to be that the
14 vast majority of the asset of this entity are going to come
15 from litigation against parties including the federal
16 government who oversees the list. The estimate of those
17 monies those funds is --

18 THE COURT: In other words, the assets
19 essentially as you say you believe they are basically from
20 litigation from people or entities who owe you are saying?

21 MR. HOLTZER: Basically the federal government
22 reimbursement application.

23 THE COURT: But that's able to be a number
24 that's -- it may not be a hard number but its a soft number
25 and its, you know, it could just be identified as you know
26 as a soft number. In other words \$10 million asterisk

-Proceedings-

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2 litigation A verses B.

3 MR. HOLTZER: You can, Your Honor. I would get
4 concerned that we would be providing to the public if you
5 suggested that we post it numbers that are pretty
6 speculative in terms of litigation right now.

7 THE COURT: If its speculative and its provided
8 tell me where its a down side. I need to understand.

9 MR. HOLTZER: For people to look at it and not
10 understand how speculative --

11 THE COURT: You can't stop people from
12 speculating. It is what it is.

13 MR. HOLTZER: Your Honor, we are happy to put
14 that.

15 THE COURT: What it matters is that those who
16 understand understand and those who don't understand if you
17 need understanding get in touch with those who understand.

18 MR. HOLTZER: No be problem, Your Honor.

19 THE COURT: Let's get that posted with numbers
20 and the asterisks and provisos as of 10-1.

21 MR. HOLTZER: We will do it, Your Honor.

22 THE COURT: Anybody else out there have anything
23 they want to ask? I'm done.

24 MR. HOLTZER: We have a formal order for Your
25 Honor.

26 MR. VEACH: Will this be posted?

1 -Proceedings-

2 THE COURT: Post the transcript. The transcript
3 is so ordered. The transcript as I requested will be
4 posted how?

5 MR. HOLTZER: On the website in English.

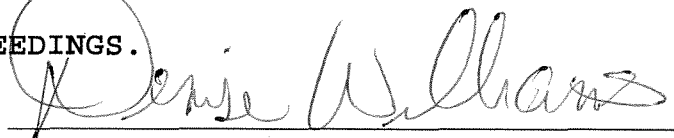
6 THE COURT: We only are posting it in English.
7 Right.

8 Off the record.

9 (Whereupon, a discussion was held off the
10 record.)

11 * * *

12 CERTIFIED THAT THE FOREGOING IS A TRUE AND
13 ACCURATE TRANSCRIPT OF THE STENOGRAPHIC MINUTES IN
14 THESE PROCEEDINGS.

15 

16 DENISE WILLIAMS, RPR

17 Official Court Reporter

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