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December 13, 2016

By Hand and E-mail

Hon. Carol R. Edmead
60 Centre Street, Room 532
New York, New York 10007

Re: In the Matter of the Liquidation of Health Republic Insurance of New York, Inc.
Index No. 450500/2016
December 12, 2016 letter from Deputy Superintendent David Axinn concerning
engagement of Truven Health Analytics as claims auditor

Dear Justice Edmead:

I write with respect to yesterday's letter from Deputy Superintendent David Axinn (Axinn Letter) in his role as an agent for Health Republic Liquidator Maria T. Vullo.

Mr. Axinn's letter advises that the Liquidator intends to engage Truven Health Analytics (Truven) to "review all unpaid [Health Republic] Policy Claims for the period January 1, 2014 through November 30, 2015, that were previously examined and recommended for allowance or disallowance by Health Republic's claims administrator." Axinn letter, p. 1. The proposed Truven audit would determine whether the "claims administrator's claims determinations were in compliance with," among other things, "benefits, exclusions and eligibility requirements" Axinn Letter, p. 2.

As permitted under your Honor's November 21, 2016 order, I write to point out that Deputy Superintendent Axinn's letter raises many issues and concerns that need be addressed before the Liquidator hires Truven.

1. How many claims are there? The Axinn letter states that Health Republic now has 700,000 claims. The Liquidator's counsel previously stated that Health Republic had 650,000 claims. October 11, Trans. p. 28. Are the additional 50,000 claims coming from Health

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Republic policyholders who, having heard nothing from the Liquidator, resubmitted their claims? Or was the initial 650,000 claims estimate wrong?

2. Does Truven's Audit Duplicate POMCO's Work? According to the Axinn letter, Truven originally bid \$79,500 (with a \$2,500 charge for each additional plan reviewed). The Truven bid is now \$102,000. A review of 700,000 claims for a cost of \$102,000 would mean that each claim's review would cost about 15 cents.

According to the Axinn Letter, Health Republic's claims from January 1, 2014 through 30, 2015 were "previously examined and recommended for allowance or disallowance by Health Republic's claims administrator." Axinn letter at p. 2. (It would be helpful if in future communications those writing for the Department of Financial Services or the Liquidator would identify the entities or persons referred to rather than using general descriptions or pronouns or terms like "administrator.")

Is Mr. Axinn referring to POMCO, Inc.? If so, the agreement with POMCO that the Liquidator posted on the Health Republic website requires that POMCO perform "Run-Out Services" consisting primarily of "Claims Centric Adjudication Services" (Services) This peculiar phrase means, among other things, receiving, capturing, reviewing, adjudicating, finalizing, re-opening (if necessary), and adjusting Health Republic claims. POMCO Agreement, Attachment A - Fees and Run-Out Services, pp. 11-12. (The POMCO agreement also provides for a review of up to 12,000 claims transaction per month for claims received after March 2016.)

The POMCO agreement calls for a payment of \$4 million for services that POMCO performed from December 1, 2015 through and including January 31, 2016 as further "consideration" for POMCO's signing the 2016 agreement that now appears online. POMCO Agreement, Section 5, Compensation of POMCO, p. 4. Was this \$4 million paid?

In addition, the POMCO agreement calls for POMCO to be paid \$181,818 per month for the Initial Run-Out term, which runs from March 2016 through December 31, 2016. POMCO Agreement Attachment A., p. 12. The Claims Expense Summary currently posted on the Health Republic website shows that the Liquidator paid POMCO \$181,000 in May, June, July, August, and September, the amount called for in the Pomco Agreement, Attachment A, pp. 11.

This would mean that pursuant to the terms of the current POMCO agreement, the Liquidator has already paid POMCO \$909,090 -- without Court approval. And the Superintendent also apparently paid POMCO \$181,818 a month from March 2016 through April 2016. In addition, the POMCO contract provides for the Superintendent to pay POMCO \$4 million in additional consideration for entering into the POMCO agreement. This would mean that POMCO has now been paid \$5,629,000 during the period from March through September 2016. What is Truven doing that POMCO couldn't or shouldn't have done?

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And is this the same POMCO referred to in a relatively recent Crain's New York Business investigative article: "In May 2015, after 17 months in operation, Health Republic hired Nakomis Health of Minneapolis to conduct a rigorous review of medical claims handled by POMCO. Nakomis found \$26 million in overpayments, according to a lawsuit the company filed against Health Republic in March seeking \$4.8 million in fees." M. Waldholz, The short and chaotic life of an Obamacare darling, Crain's New York Business (April 18, 2016). If so, it appears that Health Republic had already commissioned (and paid a healthy sum) for a review of POMCO-scrutinized claims. Is Truven performing yet another review of POMCO's work?

3. RFP/Bidding Process. In connection with the Liquidator's motion to approve a claims procedure, Your Honor asked if a third-party administrator had been identified. October 11, 2016 Trans., p. 23 (Oct. 11 Trans.). Counsel advised that the Liquidator was about to sign an agreement with an administrator, but the Court then asked about the "vetting" or "search process" for the administrator. Oct. 11 Trans., p. 23. Counsel advised that the Liquidator had sent a proposal to "parties that the New York Liquidation Bureau and the Liquidator are familiar with * * * They [the proposals] went to a group of folks that regularly do this sort of work" and from this group the Liquidator had selected a firm.

Was Truven among the "group of folks" who submitted proposals? Is there a reason that no other firms in the original group submitted a proposal? In other words, did the RFP posted on the Health Republic website significantly differ from the original RFP used by the Liquidator and Bureau?

4. Court Approval Required. Finally, does the Liquidator intend to execute an agreement with Truven without Court approval? Deputy Superintendent Axinn writes that the Liquidator "is currently drafting an engagement letter and working to migrate the claims data to Truven before the end of December to avoid incurring additional data transfer expenses." This sounds as if the Liquidator intends to finalize the agreement and move forward before allowing the Court to review the Truven contract or the expenses associated with it even though this Court advised counsel that the Court would begin a hearing and review of Health Republic expenditures as early as January 2017. November 21, 2016 Trans., pp. 8, 44.

As the Court in Consolidated Edison concluded in a case that the New York Liquidation Bureau frequently cites and relies upon, "[s]ections 7411, 7412, 7434 (of the New York Insurance Law), specifically preclude the Superintendent from disbursing any of the assets of the insolvent without court approval. That the Superintendent, as liquidator, is to be treated as a receiver of the assets of a private corporation rather than as a public official is demonstrated by the fact that the court may require [her] to post a bond (§ 7409). Clearly the Superintendent has no real authority to act independently of the court." Consolidated Edison v. Insurance Department of the State of New York, 140 Misc. 2d 969, 977, 532 N.Y.S.2d 186, 190 (Sup. Ct., N.Y. County 1988) (Parness, J.)

Your correspondent respectfully submits that the proposed Truven contract requires this Court's explicit approval, as does the moneys spent by the Liquidator from May 11, 2016 to

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date. (And, in your correspondent's opinion, the moneys spent by the Superintendent from on or about October 2015, when the Health Republic board stepped down, until May 11, 2016 needs investigation, and that would include the \$4 million payment to POMCO, if such payment was made.)

Expense Summary

This court directed that counsel post a summary of claims expenses. Counsel stated during his appearance on the October 11 return date that " the Liquidator intends to update the information [denominated on the website as the Paid Expenses summary] on a monthly basis, typically around the 15th of each calendar month, and so we are current now and will continue to update" October 11 Trans., pp. 6-7.

The Claims Expense Summary now posted on the Health Republic website runs through September 30, 2016. Unless I missed something on the Health Republic website, and I may have, it appears that the Liquidator is about three months overdue for an update of the Paid Expenses summary.

I appreciate Your Honor's allowing me to comment on and bring these matters to the Court's attention.

Respectfully,



cc: David Axinn, Esq.
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