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January 10, 2017

Via Electronic Filing/Serve by ECF

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
Status Conference Concerning Contract with Truven Health Analytics

Dear Justice Edmead:

Thank you for your email yesterday directing that a “brief in-court conference be arranged before Truven Health Analytics is engaged.” Deputy Superintendent Axinn emailed me yesterday evening to advise that a conference had been scheduled for tomorrow, January 11, 2017 at 10:30 A.M.

With Your Honor’s permission, I bring the following items to the Court’s attention.

1. Senators’ Concerns. In a December 13th joint letter from the Chairs of the New York State Senate Insurance and Health Committees, Senators Seward and Hannon wrote to Department of Financial Services Superintendent Maria T. Vullo asking for a status update on Health Republic’s liquidation. Please find attached as Tab 1 a copy of their joint letter.

The Senators noted that this Court’s requiring that contracts and expense summaries be posted on the Health Republic website has been helpful. The Senators pointed out, however, that it would also be helpful if the Liquidator provided the Legislature with an update on what has been accomplished thus far with respect to liquidating Health Republic and “what is to be expected in the coming months.”

The Senators noted that Health Republic’s balance sheet reported that as of September 30, 2015, Health Republic had total assets of just under \$100 million, but had more than \$465

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million in liabilities and that these figures had not been updated. With respect to expenses, the Senators observed that as of September 30, 2016, the estate had paid more than \$3.9 million in consulting, legal, professional, and administrative fees (these fees now total \$4.8 million) and that many of these services had been traditionally provided by “the Liquidation Bureau in other complicated insolvencies.” Joint Letter at p. 1.

Accordingly, the Senators asked the Superintendent to estimate the total costs of these outside vendors for the life of the liquidation, “in order to ensure what little assets remain are not unnecessarily spent.” I do not know if the Superintendent has responded to the Senators’ letter, but, if so, may a copy be shared with us at the conference?

2. Federal claims. Although we have heard references to actions that may be brought against the federal government with respect to loss corridor or other moneys allegedly due Health Republic, nothing more has been said about where the Federal government stands in this proceeding, even though more than a half-dozen actions have been brought by receivers or by surviving CO-OPs against the federal government in District Courts and the Federal Court of Claims.

The federal government, in moving to dismiss these actions against it, has asserted rights of set-off and super-priority. For example, in an action commenced by Iowa Commissioner Nick Gerhart in his capacity as the Liquidator of CoOpportunity Health, Inc., Liquidator Gerhart challenged the government’s right to offset and net amounts due the CoOpportunity estate against risk adjustment payments, overpayments, and loans owed the United States. Gerhart, in his capacity as Liquidator of CoOpportunity Health, Inc. v. U.S. Department of Health and Human Services, Case No 4:16-CV-00151 (S. D. Iowa), United States’ Brief in Support of its Motion to Dismiss, at pp. 2, 13-14. The federal government in its brief, pp. 24, 28, even cites New York case law in support of its claimed right to off-set and net any moneys due CoOpportunity against loans, risk adjustment payments, or overpayments owed the federal government.

The Government argues in its brief: “The Liquidation Order cannot render the United States’ lawful exercise of set-off unlawful.” Brief, p. 27. If this is right, does the Health Republic estate really have \$99 million in assets?

Certainly by now, the Liquidator must have discussed these issues with the federal government. Surely articulating the parties’ positions with respect to offset would not infringe on any attorney-client or work product privileges. All of this is relevant for tomorrow’s conference, particularly in light of expenses paid or to be paid to blue-chip service providers, such as Truven.

3. Balance Sheet. The balance sheet posted on the Health Republic website remains as of September 30, 2016. When will the balance sheet be updated?

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4. Claims Expense Summary. Counsel stated during his appearance on October 11, 2016 that the summary of claims expenses would be updated “ on a monthly basis, typically around the 15th of each calendar month” October 11 Trans., pp. 6-7. When I wrote on December 13th, claims expenses were posted as of September 30, 2016. The current claim expense summary has since been updated to October 30, 2016, but the summary is still running almost two months behind schedule.

Again, thank you for allowing me to bring these matters to your attention before tomorrow’s conference.

Respectfully,



cc: David Axinn, Esq.
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Senator James L. Seward (via e-mail to assistant)
Senator Kemp Hannon (via e-mail to assistant)