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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 Health Republic's Proposed Timeline

Dear Justice Edmead:

I write concerning Special Deputy Superintendent David Axinn's January 25, 2017 letter to the Court (Axinn Letter).

During the most recent status conference, Your Honor directed that the Liquidator provide a time line with respect to completing Health Republic's liquidation. Mr. Axinn's letter presumably responds to that direction, although his letter does not refer to it.

Having *any* time line is better than none. At least policyholders and other interested parties, such as the Chairs of the New York Senate Committees on Health and Insurance, have something to start measuring against, but I point out the following in order of importance.

1. Hearings on Expenses v. "Initial Court Report." The Special Deputy's time line lacks an entry for hearings on the estate's expenses. Instead, the time line refers to an "Initial Court Report" to be submitted eighteen months after the Liquidator stepped in (Axinn Letter , p. 3) or "the fourth quarter of 2017" or almost two years after Health Republic's Board consented to liquidation. We respectfully submit that the Liquidation Bureau should honor the Court's repeated requests for a prompt and full hearing on the more than \$5 million in expenses that have been paid thus far in this proceeding.

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In July, this Court directed that “administrative costs and the related agreements [be] posted . . .” July 28, 2016 Trans., p. 7. The Court distinguished between whatever “periodic reports” the Liquidator might choose to submit and a full disclosure and review of moneys that the Liquidator has already spent to administer the estate. As this court has previously pointed out, “[p]eriodic reports to the Court [and hearings on expenses] are two different things.” July 28 Trans., p. 8.

It is important to provide some context on the need for hearings. In October, the Court explored how the Liquidator and the Liquidation Bureau had “vetted” a company to audit the work of another third-party administrator. October 11, 2016 Transcript, pp. 23-24. The Court characterized the Bureau’s having considered only “a group of folks that regularly do this sort of work” for the Department of Financial Services as a “little problematic.” *Id.* The Court directed that a request for proposals be prepared and posted. October 11 Trans. pp.24-25. The Court also directed that a balance sheet for the estate be prepared and posted. October 11 Trans., pp. 45-46.

In November, this Court advised counsel for the Liquidator that “in the early months of 2017” the Court would do “separate hearings and reviews of expenditures of Weil Gotshal and related entities.” November 21 Trans., p. 8. The Court announced that the Court would “hold independent sessions, reviews, and hearings to assess the breakdown of expenses.” *Id.* These early 2017 hearings would “look at somebody’s records of expenditures and say, now give me ever[y] backup document . . . Bring them in - I want to know . . .” Nov. 21 Trans. , p. 10.

The Court also told the Liquidator’s counsel in November that the Court would “be stepping in early, not late, . . . [t]o look at how the expenditures were made . . .” Nov. 21 Trans., p. 16. The Court announced that the Court would “make sure the pot is not being dissipated improperly to the detriment of the policyholders.” Nov. 21 Trans., p. 34. For that reason, the Court asked the Liquidator’s counsel “remind [the Court] . . . around MLK Day in January that the Court said it would start setting up and looking at expenditures. I do want to do that.” Nov. 21 Trans., p. 44.

At that point, the Liquidator’s counsel sought to conflate a hearing on expenses with a report from the Liquidator that might not be posted until a year or 18 months after the liquidation began. Nov. 21 Trans. p. 45. The Court, however, distinguished clearly between hearings on expenses and any reports that the liquidator chose to post. “When you say a year and 18 months – you are talking a year and 18 months from the time the Court intervenes, it will be much sooner than that.” Nov. 21 Trans. 45

In short, the issue of transparency with respect to estate’s expenses and costs has come up repeatedly during arguments of motions and in status conferences. This Court made clear at the last conference, for example, that the Court intended to approve any additional contract that the Liquidation might enter with POMCO, Inc. January 11, 2017 Trans., p. 26. “I don’t care if they are not getting paid. * * * Make it clear. Unless it’s approved, don’t look to get paid.” Jan. 11 Trans., p. 27. “I don’t want things to just move along and then, way after the fact, I have to try to unring a bell. It’s not good.” Jan. 11 Trans. p. 28.

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For that reason, the Court directed that the Liquidator provide some “time frames” for the proposed POMCO, Inc. contract. Jan. 11 Trans., p. 37. The Court then asked for a “rolling time line” for the completion of the Health Republic liquidation (Jan. 11 Trans. 40). Finally, the Court observed that [w]e should have a number of what’s in the pot.” Jan. 11 Trans. p. 41.

Special Deputy Axinn’s time line ignores the Court’s direction that hearings on expenses be held “sooner rather than later.” Apparently anticipating an objection to delaying a report on expenses until the Fall 2017, the Special Deputy suggests that this delay is warranted because the Liquidator may at that point, the Fall 2017, ask the Court to approve “distributions on allowed claims”

Approving an initial distribution to the owners of approved claim -- and these payments would necessarily only be only partial pennies-on-the-dollar distributions -- has little, if any, connection with this Court’s reviewing the more than \$5 million spent since May 11, 2016 and determining if these expenditures were, in fact, “actual and necessary.”

New York Insurance Law requires that this Court approve all of the estate’s expenses and approve all contracts entered into. Consolidated Edison Company of New York, v. Insurance Department of the State of New York, 140 Misc. 2d 186 (Sup. Ct., N.Y. County 1988). It’s puzzling and frustrating that the Liquidation Bureau ignores this clear authority, even when confronted with directions from this Court for hearings on the moneys that are flowing out of the estate every day.

We respectfully request that the time line be revised to call for immediate hearings on expenses incurred and moneys spent by the Liquidator.

2. Begin at the beginning. Mr. Axinn’s time line begins with the May 11, 2016 entry of this Court liquidation order, but Health Republic ceased underwriting on September 25, 2015. The Health Republic Board stepped down and unanimously consented to the entry of an order of liquidation on October 27, 2015. The Special Deputy claims under the heading “Intake and Establishment of Claims Procedures” that “the first six-to-twelve months of a new liquidation are generally the most intensive as the Liquidator’s staff takes possess of the company’s property, finances and claims handling processes from prior management.”

But the “process” of liquidating Health Republic could have begun on *October 28, 2015*. Had that been done, this or another Supreme Court would have been involved in the negotiation of contracts entered during the period from October 28, 2016 and May 11, 2016, including contracts with POMCO, Inc., Alvarez & Marsal, the Garden City Group, and Weil, Gotshal & Manges.

By starting his time line at May 11, 2016, the Special Deputy Superintendent gives the Liquidation Bureau and third-party administrators credit for actions taken months *before* Health Republic’s liquidation began. The Special Deputy thus obscures or, at the very least, fails to

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address the actions taken and the money spent during the six months from October 27, 2015 to May 10, 2016.

3. Claims Adjudication. The Special Deputy correctly notes that outside counsel proposed a claims adjudication procedure that this Court approved on October 11, 2016, but this procedure is just that: a structure or shell for processing claims.

The truth here is that it took the acting Superintendent, first wearing his/her regulator hat and then her liquidator hat, a full year to devise a mechanism for adjudicating claims, but not one claim has been adjudicated and approved for release as an Explanation of Benefits (EOB). These EOB's will not even reach some of the policyholders until, according to the time line, June 2017 or almost two years after Health Republic stopped writing.

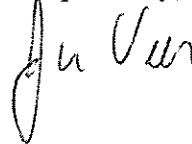
4. No end in sight. The Special Deputy's time line has no target for completing the liquidation. The "time line" instead concludes with a long list of steps the completion of which is "to be determined." These "to be determined" steps include what the Liquidator intends to do about the federal government's having placed a hold on moneys that may be due the estate. Axinn Letter, p. 4.

5. Staying up to date. Finally, the Health Republic Balance Sheet, as of September 30, 2016, has not been updated since posted. The Claims Expense Summary now runs through the end of November 2016, but the summary has footnotes that reveal that the summary only reflects moneys out-the-door and not expenses incurred, but not paid.

On the basis of moneys actually taken from the estate and dispersed without Court approval, the Liquidator has - since May 11, 2016 - spent \$5,400,000. And that's without a single claim having been sufficiently audited to allow a single EOB to be sent to a single policyholder.

I urge that the Court convene a conference before the February 17th return date on the pending order-to-show-cause in order to address the Court's direction that the estate's expenses be reviewed in a hearing that allows policyholders and other to see how this estate's meager assets are being spent down.

Respectfully,



cc: David Axinn, Esq.
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