

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 07-E-0517

**In the Matter of the Liquidation of
Patriot Health Insurance Company, Inc.**

**MOTION FOR APPROVAL OF DISTRIBUTION OF ASSETS,
DISPOSAL OF RECORDS AND TERMINATION OF PROCEEDING**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire (“Commissioner”), as Liquidator (“Liquidator”) of Patriot Health Insurance Company, Inc. (“Patriot”), hereby moves that the Court enter an order (a) approving the distribution of Patriot’s assets to claimants with allowed Class II claims, subject to receipt of a waiver from the United States, (b) approving the disposal of records of Patriot, and (c) upon the filing of a certificate by the Liquidator that the assets have been distributed and records disposed of, discharging the Liquidator and terminating this proceeding. As reasons therefor, the Liquidator states as follows:

1. Patriot is a New Hampshire corporation and a New Hampshire-domiciled insurance company subject to regulation by the New Hampshire Insurance Department. On January 18, 2008, the Court entered an Order of Liquidation placing Patriot in liquidation and appointing the Commissioner as Liquidator. By order dated October 6, 2008, the Court approved a plan providing a framework for the eventual closure of the Patriot liquidation (the “Closure Plan”). Since that time, the liquidation has been proceeding under the supervision of the Court and in accordance with the New Hampshire Insurers Rehabilitation and Liquidation Act, RSA 402-C (“Act”). Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Distribution of Assets, Disposal of Records and Termination of Proceeding. (“Bengelsdorf Aff.”) ¶ 2.

2. The claims against Patriot have been determined and the assets of Patriot have been collected. The Liquidator accordingly seeks approval of the process set forth below to distribute assets, dispose of records, discharge the Liquidator, and terminate the proceeding in accordance with the Act and the Closure Plan. In light of potential claims of the United States and the federal priority statute, 31 U.S.C. § 3713, these final steps will be subject to receipt of a waiver of claims from the United States. The Liquidator will best be able to close this proceeding as promptly and efficiently as possible by obtaining approval for the closure process now, handling the few administrative matters and requesting the waiver, and then holding the matter in “suspense” pending resolution of the waiver issue and final distribution to creditors. Bengelsdorf Aff. ¶ 3.

Status of the Proceeding

3. Claim administration and funding. After Patriot was placed in liquidation on January 18, 2008, the Court approved a Claim Administration and Funding Agreement between the Liquidator, the New Hampshire Life and Health Insurance Guaranty Association (“NHLHIGA”), Comprehensive Benefits Administrator d/b/a EBPA (“EBPA”), and MVP Health Insurance Company of New Hampshire (“MVP”) (the “Agreement”) on February 12, 2008. Pursuant to that Agreement, EBPA has adjusted claims incurred under Patriot health insurance policies prior to 11:59 PM on December 31, 2007.¹ EBPA has determined any amounts properly payable under Patriot health insurance policies, and provided Explanation of Benefits (“EOBs”) to the provider or subscriber. EBPA has advised NHLHIGA of the amounts properly payable on claims under Patriot health insurance policies. Where the total payable

¹ Claims incurred after that time are the responsibility of MVP. After the Commissioner was appointed as Rehabilitator of Patriot on December 12, 2007, the Rehabilitator entered an Assumption Agreement with MVP, which was approved by the Court December 12, 2007. The agreement provided for the transfer of Patriot health insurance policies to MVP effective January 1, 2008. The responsibility for claims incurred under Patriot health insurance policies prior to January 1, 2008 remained with Patriot.

amounts on any individual life are less than the \$100,000 per life cap on NHLHIGA payments under RSA 408-B, the amounts have been paid to the claimant by or on behalf of the NHLHIGA. There are two subscribers as to whom claims exceed NHLHIGA's statutory individual life cap of \$100,000. Bengelsdorf Aff. ¶ 4.

4. Proofs of claim. The claim filing deadline in the Patriot liquidation was July 18, 2008. Patriot subscribers or members, or healthcare providers submitting claims on behalf of members or subscribers, were not required to submit proofs of claims unless they were not able to submit the claim in the normal course to EBPA by the claim filing deadline. Producers, attorneys, vendors and other general creditors were required to file proofs of claim. The Liquidator received a total of 98 proofs of claim, including a proof of claim from NHLHIGA. Most proofs of claim were for unpaid medical costs, and the Liquidator forwarded copies of all supporting material to EBPA for it to adjust the claims. Bengelsdorf Aff. ¶ 5.

5. Determination of claims. As described in the Liquidator's various reports, the claim determination process has now concluded. In accordance with the Closure Plan, the Liquidator has resolved the claims for healthcare services with respect to members/subscribers within the \$100,000 per life cap on NHLHIGA coverage by denying those claims, which have been adjusted by EBPA and satisfied by NHLHIGA. The Liquidator resolved the claims with respect to members/subscribers that exceed the NHLHIGA cap by allowing them as Class II claims in the appropriate amounts as determined by EBPA. As provided in the Closure Plan, NHLHIGA's claim for amounts it has paid with respect to claims for services within the cap has been allowed as a Class II claim, and its claim for administrative expenses allowed as a Class I claim. Also as provided in the Closure Plan, other claims were assigned to Class V priority and indefinitely deferred. Bengelsdorf Aff. ¶ 6.

6. The Court has approved these determinations. The Liquidator has filed four reports of claims and recommendations. The second of these, the report as of April 14, 2009, addressed at least 1,415 Class II (policy related claims) submissions to EBPA that were deemed proof of claims and resolved by EBPA claim recommendations. The Court has issued orders approving the claim reports and establishing allowed amounts and priorities for all of the claims. One claimant objected to a claim determination, and the Court overruled the objection on May 19, 2009. In total, the Liquidator presented and the Court has approved claims recommendations with a total allowed amount of \$1,976,679.12 consisting of \$150,502 in Class I (for NHLHIGA administration costs) and \$1,826,177 in Class II (which includes both \$493,614 of direct claims and \$1,332,562 for amounts paid by NHLHIGA under Patriot health insurance policies). However, there is overlap in the two categories of Class II claims because NHLHIGA paid \$129,289.80 in claims after the Liquidator had issued NODs to the direct claimants. Accordingly, the Liquidator will net those payments from the approved amounts. The NHLHIGA NOD included those amounts, so the total Class II claims eligible for distribution is \$1,696,887.32. As all proofs of claim have been determined, Patriot's liabilities have now been finalized. Bengelsdorf Aff. ¶ 7.

7. Collection of assets/financial reports. The Liquidator believes that all Patriot assets justifying the expense of collection have been collected. See RSA 402-C:48. In light of the Assumption Agreement with MVP, Patriot's sole asset at the beginning of the liquidation was cash held at TD North Bank and Centrix Bank. The Liquidator has collected small amounts of reinsurance and subrogation. The only remaining issue is approximately \$3,700 in outstanding subrogation claims being handled by a collection agency. The Liquidator expects about \$2,700 of this amount to be collected in the next few months. To the extent these amounts

are not recovered by the time the distribution is calculated, the Liquidator will assign them to NHLHIGA in accordance with the Closure Plan. The unaudited March 31, 2011 financial statements for Patriot are attached as Exhibit 1 to the Bengelsdorf Affidavit.² The March 31, 2011 Patriot statements reflected \$641,504 in assets under the Liquidator's direct control. As of June 17, 2011, the assets of Patriot totaled \$649,413. Administrative expenses paid since March 31, 2011 have totaled \$822. Bengelsdorf Aff. ¶ 8.

The Closure Process

8. Now that the liabilities of Patriot have been determined, the Closure Plan provides that the Liquidator is to seek approval to distribute the assets to allowed claims in accordance with the statutory priorities (after paying or reserving for administrative expenses and NHLHIGA's Class I claim). See RSA 402-C:46 ("Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims."). For the reasons described below, however, the distribution will be subject to a waiver from the United States. Accordingly, in order to minimize judicial proceedings and administrative expense, the Liquidator has determined to address other issues that need to be resolved together with the distribution issue and bring all matters concerning closure of the estate before the Court at the same time. These issues include disposal of records (RSA 402-C:50), dissolution of the company (RSA 402-C:23), handling of unclaimed funds (RSA 402-C:47), and discharge of the liquidator and termination of the proceedings (RSA 402-C:48). Bengelsdorf Aff. ¶ 9.

² Annual and quarterly statements for prior periods have been submitted as exhibits to previous Liquidator's Reports.

Distribution and United States Waiver

9. Distribution on allowed claims. All claims other than administrative expenses have been assigned to Class II (the policy related claims class) or Class V (the residual class) in the amounts set forth in the schedules to the Liquidator's reports of claims and recommendations approved by the Court. See RSA 402-C:44. Administrative expenses including NHLHIGA's administration cost claim have been paid on an ongoing basis during the liquidation. The Liquidator accordingly proposes to make a distribution of all assets after payment of any remaining administrative expenses (and withholding a small reserve not to exceed \$17,000 for post-distribution expenses) to pay a first and final dividend to Class II creditors based on the amounts of their respective allowed claims minus the \$50 deductible required by RSA 402-C:44.³ Bengelsdorf Aff. ¶ 10.

10. The available assets are \$649,413 as of June 17, 2011 (any interest earned or other cash received before the distribution will be added). The Liquidator projects that the administrative expenses from June 17, 2011 to closure of the estate, including incurred but unpaid amounts and the reserve for post-distribution expenses, will be approximately \$37,000. As described above, the Class II allowed claims after netting of later payments by NHLHIGA total \$1,696,887.32. The Liquidator accordingly estimates that the distribution will represent a payment of approximately 36.1% on each of the Class II creditor's remaining allowed claims. This estimate assumes that there will be no unexpected expenses or developments in closing the estate, that the process of obtaining the waiver is not prolonged, and that investment return on the

³ The statute provides that the deductible does not apply to NHLHIGA. RSA 402-C:44.

Patriot assets does not decline. These factors individually or combined could result in a change in the distribution percentage. Bengelsdorf Aff. ¶ 11.⁴

11. Waiver from the United States. Making a distribution is complicated by the federal priority statute, 31 U.S.C. § 3713. That statute provides that claims of the United States Government “shall be paid first” in an insolvency proceeding such as a receivership, and that a representative of an estate, such as a liquidator, who pays any part of a debt of the insolvent before paying a claim of the Government may be personally liable to the extent of the payment. 31 U.S.C. § 3713(a)(1), (b). The Supreme Court has construed the federal priority statute with the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-12, and held that administration costs and policyholder claims may be paid before non-policyholder federal claims. United States Dep’t of Treasury v. Fabe, 508 U.S. 491, 493, 508-09 (1993). However, the First Circuit has held that the federal priority statute overrides claim-filing deadlines in insurer liquidations. Ruthardt v. United States, 303 U.S. 375,384-86 (1st Cir. 2002), cert. denied, 538 U.S. 1031 (2003). See Bengelsdorf Aff. ¶ 12.

12. As a result of the Ruthardt decision, the United States can – subject to any applicable statutes of limitation – assert claims at any time, regardless of claim-filing deadlines under state insurer liquidation statutes. Moreover, these decisions leave open the possibility that, if a liquidator distributed all the assets of the estate, the United States might file a late claim and contend that the estate’s inability to pay the claim makes the liquidator personally liable for the claim under the federal priority statute. The Liquidator is not aware of any liability of Patriot to the United States Government or of any United States’ claim against Patriot. However, in view of the uncertainties created by the federal priority statute and the decisions, it is prudent for the Liquidator to raise these issues with the United States before making a distribution. The United

⁴ As Class II claims will not be paid in full, lower priority claims will receive no distribution. See RSA 402-C:44.

States Department of Justice has provided waivers of federal priority claims to permit distributions in other liquidations, including waivers to permit early access distributions in the liquidation of The Home Insurance Company. Bengelsdorf Aff. ¶ 12.

13. It is unknown how long it may take to obtain such a waiver from the United States. In order to move this matter forward, the Liquidator accordingly plans to resolve the other outstanding issues by this motion and then request a waiver from the United States. The proceeding will essentially be in “suspense” while the waiver issue is pending so as to minimize administrative expense. The process as described above is provided for in the proposed form of order submitted herewith. Bengelsdorf Aff. ¶ 13.

Other Steps

14. Disposal of records. With the approval of the Court, the Liquidator may dispose of records of an insurer in liquidation that are no longer useful. See RSA 402-C:50 (“Whenever it appears to the commissioner that the records of any insurer in process of liquidation or completely liquidated are no longer useful, he or she may recommend to the court what records should be retained for future reference and what should be disposed of. Until further order of the court, the commissioner shall keep all records the court orders preserved and shall destroy the remainder whether or not the records have been photographed or otherwise reproduced.”) Patriot’s records concerning policies effective after December 31, 2007 and any related claims were transferred to MVP in connection with the Assumption Agreement, and many records concerning other claims have been transferred to NHLHIGA. (In either case, most of the records are held by EBPA, which is adjusting all claims.) Bengelsdorf Aff. ¶ 14.

15. Now that the claims have been determined and the assets collected, the records of Patriot are generally no longer useful. The only exceptions are financial, tax, and corporate

records supporting the Patriot tax returns; the investment records necessary to administer Patriot's assets until distribution; and the records of the allowed claims necessary for making the distribution. Accordingly, the Liquidator recommends pursuant to RSA 402-C:50 that the Court authorize the Liquidator to dispose of all remaining paper records of Patriot except documents in those three categories. Documents that the Liquidator identifies as confidential or commercially sensitive will be shredded. The Liquidator will offer the remaining records to NHLHIGA before destroying them or directing EBPA to destroy them. The Liquidator proposes to retain records in the three categories and imaged records until the distribution has been made, at which point the Liquidator recommends that all these remaining Patriot records be disposed of or deleted except for (1) the imaged records of the filings and orders in the liquidation proceeding itself, which will be retained on the website of the New Hampshire Insurance Department ("NHID"), (2) a record of the allowed claims, which will be retained at the NHID in the event it is needed by the state treasurer to address unclaimed funds as set forth in paragraph 17 below, and (3) Patriot's tax records, which will be turned over to the NHID. Bengelsdorf Aff. ¶ 14.

16. Dissolution of the company. The Act authorizes dissolution of the corporate existence of the insurer in liquidation by order at any time during the liquidation or, by operation of law, upon discharge of the liquidator. RSA 402-C:23. The Liquidator recommends that Patriot's corporate existence be dissolved at the time the Liquidator is discharged. A provision to that effect is included in the proposed form of order submitted herewith. Bengelsdorf Aff. ¶ 15.

17. Handling of unclaimed funds. The Act provides that unclaimed funds remaining at the time the Liquidator is ready to apply for discharge shall be deposited with the state treasurer. RSA 402-C:47, I. The Liquidator proposes that funds not collected within 120 days

after the distribution checks are mailed to claimants be turned over to the state treasurer. Since the claimants are for the most part medical service providers or other corporate entities, not individual claimants, this should not cause any hardship. Bengelsdorf Aff. ¶ 16.

18. Discharge of Liquidator and termination of proceeding. The Act provides for the discharge of the Liquidator and termination of the proceeding when assets have been collected and distributed. See RSA 402-C:48 (“When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for a discharge. The court may grant the discharge and make any other orders deemed appropriate, including an order to transfer to the state treasury for the credit of the insurance department any remaining funds that are uneconomic to distribute.”). In order to minimize administrative expense, the Liquidator is proceeding with this closure motion to address all issues at one time. Bengelsdorf Aff. ¶ 17.

19. The Liquidator proposes that the Court enter an order that has two parts. First, it authorizes the distribution, subject to obtaining the waiver, and the other remaining steps in the closure process. Second, it provides for the subsequent discharge of the Liquidator and termination of the proceeding upon the Liquidator’s filing of a certificate of compliance after the remaining steps have been completed. This will minimize administrative expense and judicial proceedings by allowing the Liquidator to move forward with the closure process and proceed as far as possible now. The proceeding will then be placed in suspense until the United States acts on the request for waiver. Since there will be no activity other than monitoring the investments, the Liquidator’s reports should be limited to a description of progress with the federal government and unaudited statements of expenses and assets showing changes since the March 31, 2011 financial statement. When the waiver is received, the distribution will go

forward.⁵ Once it is completed, the Liquidator will file the certificate to obtain discharge and terminate the proceeding. A form of the certificate is attached to the proposed form of order. Bengelsdorf Aff. ¶ 17.

20. The Liquidator submits that the process described above for distributing assets, disposing of records, and terminating the liquidation proceeding for Patriot is reasonable, prudent and in the best interest of the creditors of Patriot. Bengelsdorf Aff. ¶ 18.

WHEREFORE, the Liquidator respectfully requests that this Court enter an order in the form submitted herewith:

- A. Granting this motion;
- B. Authorizing the distribution of Patriot's assets, after payment of administrative expenses and a reserve not to exceed \$17,000 for post-distribution administration expenses, to claimants with allowed Class II claims in the Patriot estate previously approved by the Court, subject to receipt of a waiver from the United States;
- C. Authorizing the disposal of Patriot's records, with those records identified by the Liquidator as confidential or commercially sensitive being shredded;
- D. Providing for the dissolution of Patriot's corporate existence;
- E. Providing for the discharge of the Liquidator and termination of this proceeding upon the Liquidator's filing a certificate of compliance concerning the distribution of assets and disposal of records; and
- F. Granting such other and further relief as justice may require.

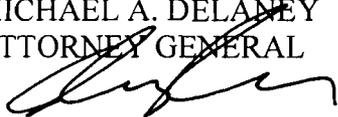
⁵ The Liquidator does not anticipate receiving any additional assets, but if any assets are received prior to the calculation of the dividend payments, they will be added to the distribution. As noted above, if any of the small outstanding subrogation recoveries remain outstanding at the time of distribution, they will be assigned to NHLHIGA. If assets are subsequently received that are uneconomic to distribute, they will be transferred to the state treasury pursuant to RSA 402-C:48, I. The unexpected receipt of material assets would be cause to petition to reopen the proceeding under RSA 402-C:49.

Respectfully submitted,

ROGER A. SEVIGNY, INSURANCE
COMMISSIONER OF THE STATE OF NEW
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HEALTH INSURANCE COMPANY, INC.

By his attorneys,
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By:



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July 15, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Approval of Distribution of Assets, Disposal of Records and Termination of Proceeding, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent, this 15th day of July, 2011, by first class mail, postage prepaid to all persons on the attached service list.



Glenn A. Perlow

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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 07-E-0517

In the Matter of the Rehabilitation of
Patriot Health Insurance Company, Inc.

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