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August 12, 2011

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VIA HAND DELIVERY

William McGraw, Esquire, Clerk
Merrimack Superior Court
163 North Main Street
P.O. Box 2880
Concord, NH 03302-2880

**Re: In The Matter of the Liquidation of
Patriot Health Insurance Company, Inc.
Docket No. 07-E-0517**

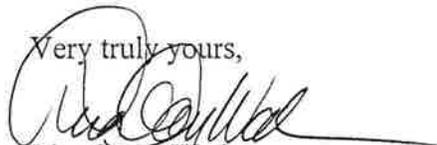
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Dear Mr. McGraw:

Enclosed is the Surreply Of NHLHIGA To Liquidator's Motion For Approval Of Distribution Of Assets, Disposal Of Records And Termination Of Proceeding for filing with the Court in the above-referenced matter.

Please feel free to contact me if you have any questions.

Very truly yours,



Lisa Snow Wade

LSW/gvb
Enclosure

Lawrence A. Kelly
(Of Counsel)

cc w/enclosure:

Roger A. Sevigny
Alex Feldvebel
Peter Bengelsdorf
J. David Leslie, Esq.
Eric Smith, Esq.
Stephen J. Lauwers, Esq.
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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.

**SURREPLY OF NHLHIGA TO LIQUIDATOR'S MOTION FOR APPROVAL
OF DISTRIBUTION OF ASSETS, DISPOSAL OF RECORDS AND
TERMINATION OF PROCEEDING**

NOW COMES the New Hampshire Life and Health Insurance Guaranty Association ("Association") and surreplies briefly to three points raised by the Liquidator in his Reply to NHLHIGA's Objection to Motion for Approval of Distribution of Assets, Disposal of Records and Termination of Proceeding. The Association further states:

1. First, the Liquidator justifies the relief requested by his Motion by claiming that for this small liquidation estate the closure process he proposes is more efficient than the one envisioned by the legislature in RSA 402-C:48, I. The Association is not suggesting that the Liquidator should be required to make filings not otherwise required by the statutory scheme governing this liquidation; it is merely seeking to uphold the integrity of that scheme by questioning a process that deviates from it.

2. The New Hampshire Supreme Court has stated that while the Liquidator has broad authority under RSA 402-C to administer liquidation proceedings, "the court oversees the entire process." *In the Matter of the Liquidation of the Home Insurance Company*, 154 N.H. 472, 482 (2006). The Court continued that "[s]ince the liquidator's actions are closely supervised by the court, there is little risk that the priority provisions of RSA 402-C:44 will be violated." *Id.* Thus, it appears that the legislature created a

mechanism that may be “inefficient” at least for small estates in order to assure creditors that the process will be fair. The appropriate way to address that inefficiency is legislative; this Court should not be asked to deviate from the statutory scheme.

3. Second, in the Liquidator’s reply, he asserts that all liabilities of the estate have been determined to justify why it is appropriate for him to obtain now a self-executing order closing the estate at an undetermined date in the future. *See, e.g.*, Reply at ¶1. In the Motion, however, he admits that there is an undetermined federal liability and undetermined administrative expenses, albeit he claims that the undetermined administrative expenses are for only his expenses. If all the liabilities truly were resolved, the Liquidator would not need to seek relief that deviates from the statutory scheme; he would be seeking closure as envisioned by the statutory scheme.

4. Third, the Liquidator challenges in its reply the Association’s ability to claim additional administrative expenses on two grounds. First he asserts that there was a deadline to assert such claims which has passed. Second, he claims that the expenses claimed by the Association do not qualify as administrative expenses under RSA 402-C.

5. The Liquidator’s timing argument misses the mark for several reasons. First, the Liquidator maintains that only claims asserted by the filing deadline of July 18, 2008 can be approved. The Association did file a proof of claim prior to this deadline for both administrative claims and for the funding of policyholder claims, listing the amount as “Unknown.” *See* Exhibit A. By the very nature of its role as a safety net for policyholders, the Association’s expenses and payment of policyholder claims cannot be mathematically determined until a liquidation has run its course. Just as the Liquidator’s administrative

expenses were not carved in stone as of July 18, 2008, neither were the Association's expenses of assisting in the administration of this estate finalized by that date.

6. As this Court is aware, the Association has worked cooperatively with the Liquidator pursuant to the court-approved Claims Administration and Funding Agreement. *See, e.g.*, Liquidator's Twelfth Report dated 2/22/11 at ¶¶2-3. It has undisputedly incurred administrative expenses as part of this process. *See* Affidavit of Laura Condon at ¶¶3-5.

7. Significantly, the Report of Claims submitted to the Court for approval in June 2010 clearly indicated that the payment of administrative expenses to the Association only covered the period through 1/29/10. *See* Exhibit B. The Liquidator never advised the Association that it would not be permitted to seek reimbursement for administrative expenses incurred after this date, Affidavit of Laura Condon at ¶5.

8. In December 2010, the Special Deputy Liquidator approached the Association with a novel clawback proposal for distributing the estate's assets: he proposed that all available assets be distributed to the Class I and Class II claimants immediately. Affidavit of Laura Condon at ¶6. If the federal government asserted a claim, the Association would agree to payback into the estate 100% of what the government claimed. *Id.*

9. In essence, the Liquidator was asking the Association to cooperate in a distribution scheme that benefited the Liquidator and other Class II creditors. The Association has participated in a multitude of liquidations around the country, and had never been asked to agree to such a distribution scheme. *Id.* at ¶¶2, 7. While this would clearly be in the estate's interests for efficiently distributing assets at no risk to itself, the Association could not reasonably be expected to agree to it without assessing the potential

legal ramifications. *Id.* at ¶8. Accordingly, the Association incurred expenses to assess the proposal. *Id.* Its legal counsel responded on its behalf to the Liquidator, indicating ultimately that the Association felt compelled to reject the proposal. *Id.* at ¶9.

10. The Association had not submitted its claim for these administrative expenses prior to the filing of the Motion because, despite the close cooperation between the parties throughout the liquidation, the Liquidator did not inform the Association that it intended to file the Motion at this time. *Id.* at ¶10. In keeping with other liquidations in which the Association has been involved, the Association assumed that the Liquidator’s representatives would advise the Association as to when the Liquidator planned to wrap up the estate so that final administrative expenses could be submitted and/or carved out of the distribution just as the Liquidator is asking for a carve out for its own anticipated administrative expenses. *Id.*

11. The Liquidator also challenges the nature of the claimed administrative expenses. RSA 402-C:44, I explicitly allows administrative expenses including “reasonable attorney’s fees” incurred post-liquidation in furtherance of the administration of the estate. *See In the Matter of the Liquidation of the Home Insurance Company*, 158 N.H. 396, 399 (2009).

12. There should be no question that the fees incurred here were in furtherance of the administration of the estate. The Liquidator’s proposed distribution and guaranty arrangement was novel, and required legal analysis. These fees would not have been incurred but for this request by the Special Deputy Liquidator. Affidavit of Laura Condon at ¶8. Accordingly, it qualifies as a Class I administrative expense and should be allowed. *See* 402-C:44, I.

WHEREFORE, the Association respectfully requests that this Court:

- A. Deny the Motion;
- B. Schedule a hearing to address the Association's unpaid administrative expenses unless the Liquidator indicates within 10 days of the Court's order that it has paid those expenses; and
- C. Grant such other and further relief as justice may require.

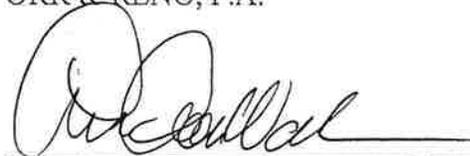
Respectfully submitted,

NEW HAMPSHIRE LIFE AND
HEALTH INSURANCE GUARANTY
ASSOCIATION

By its Attorneys,
ORR & RENO, P.A.

Dated: August 12, 2011

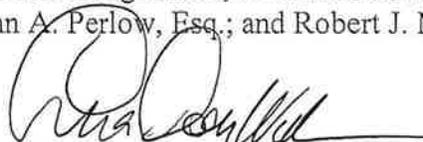
By:



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CERTIFICATE OF SERVICE

I, hereby certify that on this date a copy of the foregoing has been sent by first class mail to Roger A. Sevigny; Alex Feldvebel; Peter Bengelsdorf; J. David Leslie, Esq.; Eric Smith, Esq.; Stephen J. Lauwers, Esq.; Glenn A. Perlow, Esq.; and Robert J. Moses, Esq.



Lisa Snow Wade