

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of

Index No.: 450500/16

the Liquidation of

(Hon. Carol R. Edmead)

HEALTH REPUBLIC INSURANCE OF
NEW YORK, CORP.

AFFIRMATION

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David Axinn, an attorney at law duly admitted to practice before the courts of the State of New York, affirms the following:

1. I am the Special Deputy Superintendent of the New York Liquidation Bureau (“NYLB”), and an agent of Adrienne A. Harris, Acting Superintendent of Financial Services of the State of New York (“Superintendent”) in her capacity as Liquidator (“Liquidator”) of Health Republic Insurance of New York, Corp. (“Health Republic”). The NYLB serves as the staff for the Liquidator in the Health Republic proceeding being supervised by this Court. I make this affirmation based on my personal involvement in this case, my review of the files maintained by the Liquidator, and conversations I have had with NYLB employees in the ordinary course of business, in support of the Liquidator’s application for (i) an order, substantially in the form of the proposed order annexed hereto as Exhibit A, approving adjudication procedures (the “Procedure”) for the determination of claims against Health Republic other than claims for administrative expenses (“Administrative Expense Claims”) under Class One as set forth in Insurance Law Section 7434(a)(1)(i) and claims under policies (“Policy Claims”) under Class Two as set forth in Insurance Law Section 7434(a)(1)(ii) (collectively, “Non-Class Two Claims”), and (ii) appointing the Honorable Anthony Carpinello as Referee to hear and report on objections raised by the Liquidator’s determination of Non-Class Two Claims.

**The Court's Allowance of Class Two Policy Claims
And Setting of a Bar Date for Non-Class Two Claims**

2. On May 11, 2016, this Court entered an order placing Health Republic into liquidation (“Liquidation Order”). NYSCEF 12. Because it then appeared that the assets of the company were insufficient to pay claims other than Administrative Expense Claims in Class One and Policy Claims in Class Two in accordance with the priority scheme of Insurance Law Section 7434, the Liquidation Order provided that the deadline for asserting Non-Class Two Claims would be deferred until further order of the Court:

[w]ith respect to all claims other than Policy Claims referenced in Paragraph 18, the deadline set forth in Section 7432(b) of the [Insurance Law] for all persons who may have claims against [Health Republic] to present such claims to the Liquidator shall be deferred until further order of the Court. . . .

Liquidation Order, Paragraph 19, NYSCEF 12.

3. During the course of the liquidation proceeding, the Liquidator received, reviewed and determined 881,903 Policy Claims. The Class Two Policy Claims determinations were batched into 190,369 Explanation of Benefits forms (“EOBs”). Anticipating litigation on the Liquidator’s Policy Claims determinations, the Liquidator sought, and this Court issued, an order dated May 26, 2017, approving adjudication procedures for Policy Claims and appointing two referees to hear and report on any claims disputes.¹ NYSCEF 112.

4. As it turned out, and as previously reported to the Court, all appeals of the EOBs were resolved without resort to litigation. No disputes were referred to either of the Court-appointed referees.

¹ The Court-appointed referees were the Honorable Anthony J. Carpinello and Alberto Torres, Esq. NYSECF 112.

5. On March 29, 2019, the Court entered an order allowing the Policy Claims set forth in the 190,369 EOBs as Class Two claims in the liquidation, pursuant to Section 7434 of the Insurance Law, in the total amount of \$217,955,319.63. NYSECF 150.

6. While the administration of Policy Claims was in progress, the Liquidator, on September 1, 2017, commenced a lawsuit, *Maria T. Vullo (in her capacity as Liquidator of Health Republic Insurance of New York, Corp.) v. United States of America*, No. 17-1185C, in the Federal Court of Claims (the “Federal Lawsuit”). By Order dated April 9, 2021, this Court approved a Stipulation For Entry of Final Judgment between the Liquidator and the federal government, in which the parties agreed to the resolution of the Federal Lawsuit that resulted in the payment of \$220,838,583.33 to the Liquidator. NYSECF 172.

7. With money coming into the estate from the Federal Lawsuit resolution, it became apparent that Health Republic would have assets sufficient to pay allowed Class Two Policy Claims in full, with potential remaining assets to make distributions on allowed Non-Class Two Claims. To that end, the order approving the Federal Lawsuit stipulation also established a deadline by which claimants were permitted to submit Non-Class Two Claims to the Liquidator for a period of four months from the date of entry of the order, or August 9, 2021 (the “Non-Class Two Claims Bar Date”), and thereafter barring all claims against Health Republic.² NYSECF 179. Based on its books and records and new claims received prior to the Non-Class Two Claims Bar Date, the Liquidator has a total of 132 Non-Class Two Claims to determine in the proceeding.

² Holders of Non-Class Two Claims that were previously submitted claims and on the books and records of Health Republic were not required to resubmit claims during this time period.

The Liquidator Requests That the Court Adopt Adjudication Procedures For the Determination of Non-Class Two Claims and Appoint the Honorable Anthony J. Carpinello to Serve as Referee and Hear and Report on Any Claim Dispute Brought Before the Referee

8. This application seeks an order adopting the Procedure for the Liquidator's determinations of Non-Class Two Claims. The Procedure provides a process for claimants to have their claims heard in a fair and efficient manner.

9. In addition, the Liquidator requests that the Honorable Anthony J. Carpinello be appointed to hear and report on any dispute concerning a Non-Class Two Claim that cannot otherwise be resolved by the Liquidator. While the Court previously appointed two referees to hear objections to Policy Claims (NYSCEF 112), the Liquidator anticipates few objections to the determinations of Non-Class Two Claims. Accordingly, the Liquidator requests the appointment of only one referee.

10. Judge Carpinello is qualified to hear what might involve complex commercial matters unresolved by the parties. Judge Carpinello served as Judge on the Supreme Court, Appellate Division, Third Department for twelve and a half years and has been a mediator with JAMS since 2009. A copy of Judge Carpinello's background and qualifications is attached hereto as Exhibit B. His current fee is \$450 per hour, which is a reasonable and customary rate.

11. The Liquidator respectfully requests that the Court appoint Judge Carpinello as Referee to hear and report on any Non-Class Two Claim dispute.

NOTICE OF THE ORDER TO SHOW CAUSE

12. The annexed Order to Show Cause provides that notice of the relief sought shall be provided by filing the Order to Show Cause and supporting papers on the Health Republic website, www.healthrepublicny.org as well as the website maintained by the New York Liquidation

Bureau, www.nylb.org at least 15-days before the return date of the Order to Show Cause. The Liquidator respectfully submits that same provides fair and adequate notice to all claimants.

13. There has been no previous application for the relief requested herein.

WHEREFORE, it is respectfully requested that this Court enter an order, substantially in the form of the proposed order annexed hereto: (i) approving the Procedure; (ii) appointing the Honorable Anthony Carpinello as Referee to hear and report on objections to the Liquidator's determinations of Non-Class Two Claims for a fee of \$450 per hour charged as an administrative expense to the estate; and (iii) granting the Liquidator such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 25, 2021



David Axinn

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Index No. 450500/2016

In the Matter of

the Liquidation of

HEALTH REPUBLIC INSURANCE OF
NEW YORK, CORP.

**ORDER APPROVING THE
PROCEDURE FOR
THE LIQUIDATOR’S
ADJUDICATION OF
NON-CLASS TWO CLAIMS**

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Upon the October 25, 2021 affirmation of David Axinn (“Axinn Aff”), Special Deputy Superintendent and agent of Adrienne A. Harris, Acting Superintendent of Financial Services of the State of New York, in her capacity as liquidator (“Liquidator”) of Health Republic Insurance of New York, Corp. (“Health Republic”) for an order approving a procedure (the “Procedure”) for the determination of claims other than claims for administrative expenses under Class One as set forth in Insurance Law Section 7434(a)(1)(i) and claims under policies under Class Two as set forth in Insurance Law Section 7434(a)(1)(ii) (collectively, “Non-Class Two Claims”), and it appearing from the Axinn Aff that the Procedure will best serve the interests of Health Republic, the holders of Non-Class Two Claims, and all other interested persons, and that it should be approved and implemented;

NOW, based upon the application of the Liquidator, it is hereby ordered that:

1. The Procedure for the determination of Non-Class Two Claims is approved.
2. The Court finds that the Procedure is required for the orderly administration of the Health Republic estate. The Procedure will enable the Liquidator to seek allowance or disallowance of Non-Class Two Claims while offering due process to claimants who object to her recommendations.
3. The Procedure is as follows:

- a. The Procedure shall apply to claims for payment against Health Republic other than claims for administrative expenses under Class One as set forth in Insurance Law Section 7434(a)(1)(i) and claims under policies under Class Two as set forth in Insurance Law Section 7434(a)(1)(ii) (“Non-Class Two Claims”).
- b. To the extent anything contained in the Procedure is inconsistent with any contract or document governing Non-Class Two Claims, the Procedure shall govern.
- c. The Liquidator shall review all claims on its books and records or filed on or before August 9, 2021, the deadline by which claimants were permitted to submit Non-Class Two Claims to the Liquidator, and issue a Notice of Determination (“NOD”), for each Non-Class Two Claim. The NOD shall be transmitted by email or first-class mail pursuant to paragraph “d” below. The NOD shall advise each claimant that:
 - i. The Liquidator has examined the claim and has recommended that the claim be allowed, in whole or in part, and the amount of the recommended allowance, or that the claim be disallowed and the reason therefor.
 - ii. No further action is required by the claimant if the claimant accepts the Liquidator’s recommendation.
 - iii. The claimant may object to the NOD by serving a written objection on the Liquidator within forty-five (45) days after the date of mailing of the NOD. All such objections must be submitted via the online portal located at www.healthrepublicny.org.
 - iv. If the claimant makes a timely written objection, the claimant will be entitled to have a court-appointed referee hear and report on the validity of the claimant’s objection.
 - v. Either the claimant or the Liquidator may move the court overseeing the Health Republic liquidation, on notice, for an order confirming or denying the Referee’s report.
 - vi. Unless the claimant submits a timely objection under this Procedure, the Liquidator’s recommendation in the NOD will be presented to this Court for approval, and the claimant’s right to share in a distribution of assets, if any, pursuant to Insurance Law Section 7434, will be fully and finally determined.
- d. NODs and all other correspondence pursuant to this Order shall be made to the email or physical address as reflected in the proof of claim filed by the claimant or, if a books and records claim, the email or physical address as reflected in Health Republic’s books and records.
- e. Unless the claimant submits a timely objection under this Procedure, the Liquidator’s recommendation in the NOD will be presented to this Court for approval, and the claimant’s right to share in a distribution of assets, if any, pursuant to Insurance Law Section 7434, will be fully and finally determined.

- f. The claimant may object to the NOD by serving a written objection on the Liquidator within forty-five (45) days after the date of mailing of the NOD. All such objections must be submitted via the online portal located at www.healthrepublicny.org.
- g. Any objection to an NOD that is not resolved by the parties will be referred to a referee appointed by this Court. Such referral must be made within forty-five (45) days after the Liquidator's receipt of the claimant's objection to the NOD. The deadlines referenced in this subparagraph may be extended by mutual written agreement of the Liquidator and the claimant.
- h. The referee will hear and report on the validity of the claimant's objection. Prior to the hearing, the referee shall hold a prehearing conference and set a schedule for the hearing and submission of supporting papers. If the claimant fails to appear at a scheduled conference or hearing or does not comply with the deadlines established by the referee, and has not requested or received an adjournment, then the claimant's objection to the NOD shall be deemed forfeited and the NOD accepted.
- i. Either the claimant or the Liquidator may move the Court supervising the Health Republic liquidation, on notice, for an order either confirming or denying the referee's report. If neither party has so moved within sixty (60) days of the referee's report, the Liquidator shall move, *ex parte*, for an order approving the referee's report.
- j. The Liquidator may settle objections in her sole discretion, at any time, without the necessity of receiving a report from the Referee, or seek alternative dispute resolution; however, the settlement is subject to approval by this Court.
- k. Anthony J. Carpinello, Esq. is appointed as referee to hear and report on the validity of any unresolved objections to the Liquidator's determination of Non-Class Two Claims, and he shall be paid a fee based on an hourly rate of \$450 as an administrative expense of Health Republic.

ENTER

J.S.C.

EXHIBIT B

(Anthony J. Carpinello)

**Hon. Anthony J. Carpinello (Ret.)
3 Huntswood Lane
East Greenbush, New York 12061**

March 14, 2017

To: Superintendent of Financial Services of the State of New York
as Liquidator of Health Republic Insurance of New York, Corp.
110 William Street, 15th Floor
New York, New York 10038
Attn: General Counsel
Independent Health Claims Review

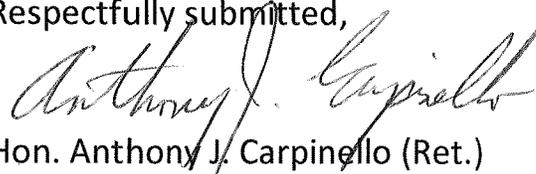
Re: Referees Appointment

Dear Sir,

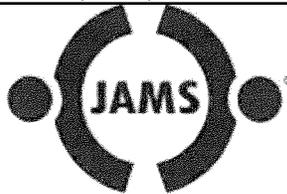
I write in response to your invitation for appointment as a Referee in the Matter of the Liquidation of Health Republic Insurance of New York, Corp. As my resume reflects, I served as an Associate Justice of the New York State Appellate Division, Third Department for twelve and a half years. The caseload of the Court regularly included hundreds of appeals involving issues of insurance coverage. Also, since joining JAMS (Judicial Arbitration and Mediation Services) as an arbitrator and mediator in 2009, I have been involved in a number of cases implicating insurance coverage issues. A brief summary of some of those cases is attached. Lastly, I have handled a number of matters for the Liquidation Bureau involving Frontier Insurance Company. A copy of a report I rendered as a Referee in one of these cases is also enclosed to give you a sense of the quality of my work product.

I have no affiliation with the Liquidator, her agents, Health Republic, or any claimant or creditor in the Health Republic Liquidation. I look forward to the approval of my application to serve as a Referee in this liquidation proceeding. Should you require any further information about my background or experience, I remain available at your convenience to respond to any such inquiries.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Anthony J. Carpinello". The signature is written in a cursive style with a large, prominent initial "A".

Hon. Anthony J. Carpinello (Ret.)



Hon. Anthony J. Carpinello (Ret.)

T: 212-751-2700
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Case Manager

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Hon. Anthony J. Carpinello (Ret.) has earned a reputation for his ability to expeditiously and professionally resolve complex litigation. He is regarded by both counsel and parties alike as being knowledgeable, courteous, and totally committed to the settlement process. Prior to his 14 years of distinguished public service in the state judiciary on both the trial and the appellate levels, he was in private practice for 20 years where he concentrated on commercial litigation including all aspects of banking and business matters with particular emphasis on loan documentation and collection, real estate, negotiable instruments, enterprise sales and acquisitions, and general corporate advice.

ADR Experience and Qualifications

- As a trial judge, responsible for an Individual Assignment Part averaging 600+ pending cases, deciding motions and conducting trials (jury and non-jury); actively conferencing cases for settlement; and handled all aspects of civil cases, including common law negligence, Labor Law claims, medical and legal malpractice, fraud, breach of contract, corporate dissolutions, and all other categories of civil actions
- As an appellate judge, participated in adjudicating appeals in civil, criminal, family and Surrogate's Court cases from originating courts in the 28 counties surrounding the New York Capital District region
- As both a trial judge and as an appellate judge, mediated thousands of personal injury claims, business disputes, and actions pending in New York State Supreme Court such as:
 - Settled a multi-million dollar action between a public utility and a private power investor which alleged breach of contract over the sale and redevelopment of an historic hydro-electric facility which settlement required both Federal Energy Regulatory Commission and State Historic Preservation Commission approvals
 - Settled a multi-million dollar action between partners of a shopping center and apartment complex development company alleging fraud and breach of fiduciary duty involving allocation of construction profits and tax credits
- As an Associate Justice of the New York State Supreme Court, Appellate Division, Third Department, Justice Carpinello has participated in the adjudication of over 12,000 reported cases. These cases include medical malpractice, personal injury, breach of contract, fraud, challenges to administrative determinations, corporate dissolutions, and all other categories of civil, criminal, and matrimonial actions.

Representative Matters

Examples of significant appellate decisions authored by Justice Carpinello include the following:

- *Berry v. Lazaro* (250 AD2d 63). Prevented intervention by health insurers in a medical malpractice action brought by their own insureds
- *Cramer v. Englert* (262 AD2d 827). Reinstated legal malpractice claim arising out of lost security interest in bankruptcy
- *Gray v. Seaboard Securities* (14 AD3d 852). Found that a state consumer protection law providing a civil remedy for victims of deceptive business practices is not applicable to securities transactions
- *Western Land Services v. Dept. of Environmental Conservation* (26 AD3d 15). Construed state statute requiring a "just and reasonable" royalty to non-consenting owners of gas wells
- *Daimler Chrysler Corp. v. Spitzer* (26 AD3d 88). Determined that New Car Lemon Law

does not require existence of defect at time of arbitration hearing

- *Emigrant Bancorp v. Comm. of Taxation and Finance* (59 AD3d 30). Annulled State Tax Department methodology for calculating bank bad debt reserve balance for qualifying real property loans under Tax Law
- *Ayers v. O'Brien* (60 AD3d 27). Interpreted provision of Vehicle and Traffic Law insulating government emergency vehicle operators from negligent acts

Honors, Memberships, and Professional Activities

- Chair, New York State Continuing Legal Education Board, 2006-present
- Frequent lecturer in bar association programs and continuing legal education programs on creditor rights, mortgage foreclosures, lender liability, bankruptcy, and appellate practice
- Admitted to practice in New York State and before the U.S. Court of Appeals for the Second Circuit
- Member, New York State Bar Association, Supreme Court Justices Association, American Inns of Court

Background and Education

- Associate Justice New York State Supreme Court, Appellate Division, Third Department, 1996-2008
- New York State Supreme Court Justice, 3rd Judicial District, 1995-1996
- Private Practice, Hiscock & Barclay, specializing in commercial litigation, 1974-1994
- Law Clerk, New York State Supreme Court, Appellate Division, Third Department, 1973-1974
- J.D., Albany Law School, *cum laude*, Justinian Society, Law Review, 1973
- B.S., Union College, 1970

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