

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF NEW YORK - CIVIL TERM - PART: 35
 -----X

3 In the Matter of the Application of
 4 MARIA T. VULLO, Acting Superintendent of
 5 Financial Services of the State of New York,
 6 for an order to take possession of and liquidate
 7 the business affairs of

8 HEALTH REPUBLIC INSURANCE OF NEW YORK, CORP.
 -----X
 9 Ind. No.: 450500-16 60 Centre Street
 10 New York, New York
 11 July 28, 2004

12 Before:
 13 HON. CAROL EDMEAD,
 14 Justice

15 A P P E A R A N C E S:

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 18 New York, New York 10153
 19 BY: GARY T. HOLTZER, ESQ.
 20 and
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34
 35 Michael Barfield
 Official Court Reporter

1 THE COURT: Yes.

2 MR. HOLTZER: Good afternoon, Your Honor.

3 Gary Holtzer, Weil, Gotshal & Manges, for the
4 estate of Health Republic.

5 We are here, Your Honor, at our request for a
6 status conference. The last time we were here, I
7 think, was on May 15th. We thought we would update
8 Your Honor.

9 There are two aspects to the proceeding. One
10 aspect is to collect and monetize any --

11 THE COURT: What's that second word you said?

12 MR. HOLTZER: Collect and --

13 THE COURT: Monetize? How would you spell it
14 for me? Monetize? Sounds like something American.

15 MR. HOLTZER: M-O-N-E-T-I-Z-E. To turn into
16 value anything on the asset side of the balance sheet.

17 THE COURT: Off the record.

18 (Whereupon, a discussion is held off the
19 record.)

20 THE COURT: Back on the record.

21 MR. HOLTZER: The other half of this, Your
22 Honor, is identifying and adjudicating the claims
23 against Health Republic. The liability side of the
24 balance sheet.

25 So we are here today to give you an update on

1 the collection --

2 THE COURT: Both sides.

3 MR. HOLTZER: The collection and adjudication
4 of the claims. We will update you at a future hearing
5 on where we are on the asset side of the balance sheet.

6 With respect to the claims process, the next
7 step in the proceeding is for us to submit for approval
8 a procedure for adjudicating policy claims against
9 Health Republic.

10 We wanted to move by way of Order to Show
11 Cause for that relief. We will be submitting that in
12 relatively short order. We will send out a very plain
13 English notice to all the policy claimants explaining
14 the procedure and court process.

15 Before we did that we thought we would have
16 the status conference with Your Honor to get
17 preliminary views from you so that before we send out
18 notice broadly we capture any of your comments or make
19 it easier going forward to any hearings.

20 So let's turn, if you will, Your Honor, to
21 give you a short briefing on what we intend to do.

22 THE COURT: Yes, go ahead.

23 MR. HOLTZER: So let's give a little
24 background on the submission of policy claims, just the
25 background.

1 As background, hundreds of thousands of
2 claims were submitted. The vast majority of the claims
3 filed against Health Republic are claims for payment
4 under Health Public's insurance policies. In
5 connection with health care services provided to Health
6 Republic members we refer to these claims as policy
7 claims.

8 Again, by way of background, when a member
9 saw a health care provider in Health Public's network
10 the provider was responsible for submitting the policy
11 claim to POMCO. P-O-M-C-O. That's a third-party
12 administrator.

13 When a member saw a health care provider
14 outside the Health Public's network the member, as
15 compared to the provider, was responsible for
16 submitting the policy claim to POMCO.

17 As we said at the last session, the last
18 hearing, the outside date for providers and members to
19 submit policy claims to Health Republic under the terms
20 of their contracts and their policies was on or before
21 March 31, 2016.

22 Some of the policy claims were in fact due
23 prior to that date depending on what their policies and
24 contracts said.

25 The liquidation order that Your Honor signed

1 directed providers to submit policy claims in
2 accordance with their existing deadlines and procedures
3 in their contracts and didn't extend the deadlines.

4 Similarly, the liquidation order directed the
5 members to submit policy claims for out-of-network
6 services in accordance with the procedures -- the
7 existing procedures and deadlines in their insurance
8 policies.

9 Additionally, Your Honor, the liquidator
10 identified a handful of member claims -- ready for
11 this? -- such as gym memberships, reimbursement for
12 that. That may be covered by Health Republic policies
13 but not related to medical costs and therefore weren't
14 captured in the claim submission process. But they
15 still may be entitled to payment. So what the
16 liquidator did was the liquidator reached out through
17 its agents to those members on an individual basis to
18 facilitate submission of those claims.

19 Now, the liquidator has added what I will
20 call claims look-up tools for members and providers on
21 the website that you heard about at the last hearing.
22 Those tools provide members and providers with a secure
23 platform to look up their claims and confirm receipt by
24 Health Republic so that everybody knows that their
25 claim got submitted.

1 The look-up tools will be updated during the
2 proceeding to reflect the outcome of the claims
3 adjudication process so that providers and members can
4 have a secure platform to track the process.

5 That's the background on that, Your Honor.

6 Let's talk about the submission of other
7 claims. Right? First we talked about policy
8 claimants, now we will talk about all the other claims.

9 The liquidator's proposed claims adjudication
10 procedure, which again we would file and detail in an
11 Order to Show Cause and set up for a hearing with Your
12 Honor to get approval of it, that proposed adjudication
13 procedure only addresses policy claims.

14 The reason for that is because we believe --

15 THE COURT: You said let me talk about other
16 than non-policy claims.

17 MR. HOLTZER: Correct.

18 So what I am about to say, Your Honor, is the
19 proposed claims adjudication procedure is only going to
20 address policy claims because it is highly unlikely
21 that Health Republic will have sufficient assets to pay
22 any claims against it other than claims for
23 administrative expenses, which are different than
24 policy claims. Those are the cost of the
25 administration of the proceeding, and then separately,

1 right, some percentage of each allowed policy claim.

2 So importantly, Your Honor, the liquidator
3 believes it would be a waste of estate resources to
4 establish procedures for claims other than policy
5 claims.

6 THE COURT: How is the administrative costs
7 determined? It should have been set by now.

8 The administrative costs? How are they
9 captured?

10 MR. HOLTZER: The administrative costs are
11 the costs of attorneys and advisors to Health Public's
12 estate.

13 THE COURT: Already in place.

14 MR. HOLTZER: There are arrangements by
15 contract already in place for the professionals and
16 advisors.

17 THE COURT: Are those contracts somewhere
18 transparent?

19 MR. HOLTZER: They can be.

20 THE COURT: That's what I would like. I
21 would like that. And I would like the administrative
22 costs and the related agreements to those
23 administrative costs posted so people -- interested
24 parties can see, since you say the likelihood of
25 reaching beyond the policy claims in conjunction with

1 the administrative costs would leave very little, if
2 anything, left.

3 I think everything that's being covered or
4 spent should be transparent. So the administrative
5 costs, and to whom those costs are going, I would like
6 that transparent. I would like that posted. If it is
7 contract, if it is -- however it is.

8 MS. HOEHNE: I believe that there is a
9 requirement to submit periodic reports to the Court.
10 In those reports --

11 THE COURT: That's a different -- periodic
12 reports to the Court are two different things. Not
13 what I am saying.

14 MR. HOLTZER: You want the underlying
15 contracts.

16 THE COURT: I want the transparency posted on
17 the site.

18 I want the identity -- I want administrative
19 costs posted that I can link into it and see who is
20 getting what. Who is it and what are they getting.

21 Okay? Is that kind of clear?

22 MR. HOLTZER: Yes.

23 THE COURT: Good.

24 So that those who may be left out will
25 understand where the money went. And if there is an

1 issue with respect to exorbitant administrative costs
2 someone will bring it to the Court's attention if they
3 feel that's what's going on.

4 And it may be that you get applauded for
5 doing such a great job. We will see.

6 MR. HOLTZER: Okay.

7 THE COURT: So that he is 1.

8 MR. HOLTZER: So, Your Honor, the point of
9 talking about claims other than policy claims is that
10 we are not going to have a claims adjudication process
11 for those claims. We will have administrative claims
12 and the policy claims.

13 THE COURT: Right.

14 Going parallel. Administrative claims.
15 Parallel claims will be running parallel.

16 In other words, addressed simultaneously.

17 MS. HOEHNE: The administrative claims.

18 THE COURT: Are always being addressed. They
19 are running. The policy claims is what we are talking
20 about setting up through the Order to Show Cause.

21 MS. HOEHNE: Correct.

22 THE COURT: Both will be able to be tracked
23 on line.

24 MS. HOEHNE: Right. Because the liquidation
25 order authorized the liquidator to pay administrative

1 expenses in the ordinary course.

2 THE COURT: I understand. But that's a nice
3 little umbrella.

4 MS. HOEHNE: In the ordinary course.

5 This procedure will address just the policy
6 claims.

7 THE COURT: Except as I have just said. You
8 will put up and have -- able to be linked -- I keep
9 going like your fingers are linking, but you know what
10 I am saying.

11 You can link in and see what's going on on an
12 ongoing basis.

13 MR. HOLTZER: We will make sure, Your Honor.

14 Turning to the claims adjudication procedure,
15 though, for the policy claims, we wanted to talk with
16 you in a little bit of detail about what that Order to
17 Show Cause will ask for in terms of relief. So again,
18 if there are any preliminary observations like Your
19 Honor is giving, I am sure you will let us know.

20 So as an initial step in the claims
21 administration process, right now the liquidator is
22 finalizing agreements with the third-party
23 administrator to audit the current policy claims
24 inventory for the purpose of initially eliminating
25 duplicative claims and assessing the accuracy of some

1 of the proposed claims determinations. The audit will
2 take about 3 to 4 months in our estimation. And again,
3 we reference hundreds of thousands of claims have been
4 filed.

5 Based on the audit, Your Honor, and again in
6 the spirit of making sure we are very transparent,
7 there will be two documents, two forms of documents
8 that initially go out. The first one is an EOB,
9 explanation of benefits, that will be issued to
10 members. The second document we call EOP, explanation
11 of payment. Right? That will be issued to providers.

12 Each of them will receive those in connection
13 with their policy claims.

14 THE COURT: Explanation of benefits and
15 explanation of payment.

16 MR. HOLTZER: Correct.

17 THE COURT: Now, the payment would be the
18 explanation to the provider?

19 MR. HOLTZER: Correct.

20 THE COURT: That's explanation of payment.

21 MR. HOLTZER: Correct.

22 THE COURT: Clarify for me explanation of
23 benefit. What is the -- explanation of benefit is for
24 the member?

25 MR. HOLTZER: Correct.

1 THE COURT: To understand what his or her
2 benefits are.

3 MR. HOLTZER: Correct.

4 THE COURT: Under whatever -- under the
5 policies.

6 MR. HOLTZER: Correct.

7 THE COURT: But the payment is with respect
8 to the providers who put in claims.

9 MR. HOLTZER: Correct.

10 THE COURT: What about -- so these are --

11 MR. HOLTZER: Those are the two --

12 THE COURT: Policyholders.

13 MR. HOLTZER: Correct. There are only two
14 categories. They will each get a piece of paper
15 explaining what the view is of their particular
16 submission, whether it is a member or a provider.

17 So the EOB, I will call it, and EOP, will
18 indicate the portion of the services covered by Health
19 Republic and the portion that is the member's
20 responsibility. That way each submitting party will
21 know what our view is.

22 THE COURT: Okay.

23 The portion covered by Health Republic.

24 MR. HOLTZER: Correct.

25 THE COURT: And the portion covered by --

1 MR. HOLTZER: The member.

2 THE COURT: And that's going to be a
3 available where?

4 MR. HOLTZER: I will explain in just a
5 moment.

6 So the EOB and EOP, they will also serve as
7 notice of the determination of the amount of the
8 provider or member's claim against Health Republic. So
9 when they get that piece of paper it will have an
10 explanation of the coverage and what their claim is in
11 our view.

12 THE COURT: Let me back up then.

13 So in 3 to 4 months this is information --
14 notice of the determination and the amount.

15 MR. HOLTZER: Yes.

16 THE COURT: How -- the determination of the
17 amount is being set by the audit?

18 MR. HOLTZER: I will go through it.

19 THE COURT: Again.

20 MR. HOLTZER: Let me get it out.

21 THE COURT: My thing is I want to know where
22 is the due process.

23 MR. HOLTZER: Exactly.

24 THE COURT: I am going way too fast.

25 Off the record.

1 (Whereupon, a discussion is held off the
2 record.)

3 THE COURT: Back on.

4 MR. HOLTZER: So, Your Honor, as part of the
5 claims adjudication procedure we are going to seek
6 approval. We will do this in steps and you will see
7 the due process as we move through it this.

8 The punchline of this is intended to make
9 sure there is A, plenty of due process, and B, we try
10 to lessen as much as possible what winds up on the
11 court docket and not clog the court with the claims
12 process if we can help it.

13 THE COURT: Off the record.

14 (Whereupon, a discussion is held off the
15 record.)

16 THE COURT: Back on the record.

17 MR. HOLTZER: Again, Your Honor, as part of
18 the claims adjudication procedure that we are going to
19 seek Court approval of, right, we are going to seek
20 approval of the form of EOB and EOP so that everyone
21 knows as a transparency matter that they are getting a
22 court authorized form. We would say that form will
23 substantially list what members and providers received
24 prior from Health Republic. We made some small
25 modifications to it because of our procedure, but it is

1 very normal looking to the provider and the member
2 relative to the history of what they were used to. But
3 we want approval of the form so there is no dispute
4 that we are all using one that was court sanctioned.

5 THE COURT: The form is to show what? The
6 form is to do what?

7 MR. HOLTZER: It is the EOB. It will tell
8 them after they submit their claims what is our answer
9 to their claim, effectively, and how much ultimately
10 their claim is for in our view. That's step 1.

11 THE COURT: Right.

12 MR. HOLTZER: Turning to the due process,
13 which I will call the appeals part.

14 Here is how we think about the adjudication
15 procedure. We want -- we are going to propose an
16 appeals process that effectively mirrors the existing
17 process. Right? It is going to provide both internal
18 and external review of the claims.

19 So if a member or a provider agrees with the
20 EOB or EOP that they receive, no further action is
21 required:

22 If the member or the provider disagrees with
23 the EOP or EOB they can appeal the determination set
24 forth in the EOB or EOP.

25 Members and providers will have 60 days from

1 the date of the mailing of the EOB or EOP to submit an
2 appeal. Importantly, Your Honor, via Health Public's
3 website.

4 Now, we know this is an important part.

5 We will also have an option to submit an
6 appeal in hard copy if a member or provider doesn't
7 have access to a computer. So you can do it either
8 way.

9 THE COURT: But you said mailing by posting.
10 To me that's a contradiction.

11 They can post objection --

12 MR. HOLTZER: On the website. Or they have
13 the option to submit the appeal in hard copy.

14 THE COURT: Okay.

15 MR. HOLTZER: Either way.

16 As part of their appeal, Your Honor, the
17 member or provider has to submit claims documentation
18 and any additional information that they want the
19 liquidator to consider in the appeal, which is very
20 normal.

21 THE COURT: The information on the
22 determination will sound like what?

23 MR. HOLTZER: It will say what the claim was,
24 what our view of the coverage is.

25 THE COURT: Our view of the coverage will be

1 in words how? How expressed? In other words,
2 paragraph or a word "declined. Total amount X"?

3 In other words, to what degree is there an
4 explanation of the determination in the notice on the
5 claim? To what degree does one have notice --
6 explanation of the determination to know what needs to
7 be submitted?

8 In other words, you say when you can appeal
9 and submit. But how does one know what to submit
10 unless one has enough detail as to the bases for the
11 determination? In other words, what went into the
12 finding?

13 MR. HOLTZER: I think that the EOB or EOP
14 will state whether or not in our view it is covered by
15 the policy that that provider or that member is
16 submitting the claim for.

17 There will be a line that says "Not provided
18 in the coverage".

19 THE COURT: How will someone understand
20 before one puts in an appeal why or what that means,
21 not covered? In other words, how would one know?

22 MS. HOEHNE: There are reason codes in there.
23 There is a chart that has numbers and amounts. And --

24 THE COURT: As one would normally get.

25 MS. HOEHNE: As they normally would have

1 gotten before.

2 MR. HOLTZER: This will be no different than
3 an explanation of benefits they would have received
4 before.

5 So we could do it online or you can do it by
6 hard copy.

7 We said that if you want to appeal in 60 days
8 you have to submit the claim documentation and anything
9 else you want us to consider in connection with your
10 appeal.

11 Importantly, the providers or members will be
12 required to appeal the determinations in the EOB or EOP
13 they dispute by the deadline. And if they don't,
14 right, then they will be prevented from disputing them
15 further. So they have their 60 days. If they miss the
16 60 days we are going to ask the Court to say -- because
17 we do need in our process to reach finality on the
18 claims pool.

19 THE COURT: I understand. But there has to
20 be a -- there has to be a --

21 MR. HOLTZER: Safety valve.

22 THE COURT: That for someone -- reasons in
23 life can occur that would cause someone to miss the
24 deadline. So there has to be a fallback. There has to
25 be another -- there has to be an application to vacate.

1 A meritorious -- a reasonable excuse.

2 MR. HOLTZER: For cause.

3 THE COURT: Thank you.

4 MR. HOLTZER: Right. Okay. We will make
5 sure.

6 THE COURT: That has to be in there. They
7 need to have a for cause ability to enlarge the time.

8 MR. HOLTZER: Your Honor, we can do this
9 however you want. But at least initially our view
10 would be if that's going to be in there the burden
11 should be on the party moving.

12 Do you want them to be directed in the first
13 instance to come to us for relief from that and in our
14 judgment we can give it and if not it will wind up
15 before Your Honor?

16 THE COURT: That's right.

17 MR. HOLTZER: So we will write that into the
18 procedure.

19 THE COURT: So just fill in a for cause
20 option to extend the time. If you determine it is an
21 acceptable reason to enlarge the time, you will. If
22 you don't, they then should have the ability to have an
23 outside entity look at that.

24 MR. HOLTZER: Perfect.

25 So again, in a world where there are hundreds

1 of thousands of claims our judgment is that the
2 liquidator's agents, all the folks helping the
3 liquidator in this matter, the New York Liquidation
4 Bureau, other professionals and parties working with
5 Health Republic, in the first instance they will
6 conduct the first level of appeal. This is akin to --

7 THE COURT: When you say they, how do
8 determine which entity is the level?

9 In other words, the levels, how do you
10 determine who is at what level?

11 MR. HOLTZER: I will give you a few examples.

12 Again, it is going to depend in part upon
13 what the claim dispute is and the magnitude of it.
14 There may be very small claims which may be dealt with
15 efficiently. Very quickly. There may be larger ones
16 subject to different kinds of review. I am going to
17 give you a few examples.

18 The liquidator will use her judgment in
19 deciding how to deploy the resources most efficiently
20 within the procedure.

21 Let me give you some examples and then you
22 will see.

23 THE COURT: Yes.

24 MR. HOLTZER: And just to give you one bit of
25 background. This particular part of the process is

1 akin to the internal review Health Republic would have
2 performed before the liquidation proceeding in
3 connection with claim disputes. This is not a new
4 process. It happens all the time in this kind of a
5 business.

6 So the next thing to think about is they
7 would use, for example, a health care qualified claims
8 examiner in if fact the appeal is related to the
9 particular services and there was a dispute about
10 whether or not those services were covered and you had
11 to understand the actual nature of the services. So
12 there will be different sorts of professionals
13 depending on exactly what the dispute involves. But
14 that's one example.

15 I don't know, Debora, you want to give any
16 other ones.

17 MS. HOEHNE: The first level is -- outside of
18 this proceeding if you disputed your determination you
19 would have called up your insurer and said, "I appealed
20 this." If you didn't resolve it, then you go to
21 another external level. I think at this level the
22 liquidator's agents will be using all the appropriate
23 resources to conduct that internal review.

24 THE COURT: How does one determine where
25 these agents are coming from?

1 What's their experience? Who are these
2 agents?

3 MR. HOLTZER: So, for example, the New York
4 Liquidation Bureau, which is in the business of doing
5 liquidation proceedings and review claims, they will be
6 involved in some of them.

7 Health Republic, who is working with them, is
8 another set of consultants in the health care business.
9 They have experience in doing this.

10 There may be other specialists like health
11 care examiners that actually are in the business of
12 understanding what the claim is, what services were
13 provided and whether or not it should or shouldn't be
14 covered.

15 This is a process that goes on in Health
16 Republic.

17 THE COURT: I understand.

18 But one of the things that needs to be --
19 well, we will see. If there is a dispute on a
20 determination the dispute can be beyond "I think it is
21 miscalculated or it should be a covered expense".

22 If it got to the Court it would include when
23 we have reviews such as Article 78 whether the
24 determination was made by -- whether the arbiter made a
25 qualified -- whether the decision was one that that

1 person was able to make or made in a fair way or was it
2 analogous to arbitrary and capricious.

3 MR. HOLTZER: We agree, Your Honor.

4 THE COURT: You see what I am saying.

5 MR. HOLTZER: So that's why, Your Honor, the
6 next part of the process is that the claims
7 adjudication procedure, we are going to require that
8 the liquidator through her agents make determination on
9 any submitted appeal no later than 60 days after
10 receipt of the appeal.

11 THE COURT: That was my note. What is the
12 timeline?

13 MR. HOLTZER: So they have 60, we have 60.
14 Okay? So that we know how the process will run.

15 So it will be 60 days after receipt of the
16 appeal, and we will either deny the appeal or we will
17 issue a revised EOB and EOP, and they can appeal again
18 and we may just settle or resolve it.

19 If the liquidator denies the appeal we will
20 provide our member a reason for denial of the appeal.

21 THE COURT: The reasons again. Would it be
22 just that code or something more than that? Because
23 the code is just a phrase.

24 MS. HOEHNE: It will be a letter explaining
25 the reason. So if it was -- if we felt it was priced

1 inappropriately, that would be communicated. If it
2 wasn't medically necessary, that would be communicated,
3 and why. So there would be a complete explanation.

4 THE COURT: And again, after this process
5 they still have the option to come back to court.

6 MR. HOLTZER: We are getting there.

7 THE COURT: Not that I am looking to invite a
8 lot of people, but people should have the option
9 outside of a closed process.

10 MR. HOLTZER: So, Your Honor, if a member or
11 provider disagrees with the liquidator's determination
12 of the appeal then the claims adjudication procedure
13 would allow the member or the provider to file
14 objection. And the review of the objection is going to
15 be akin to the external process that Health Republic
16 had prior to this process. It will go through a review
17 process of exactly what happened and we will file no
18 later than 30 days.

19 MS. HOEHNE: The objections --

20 MR. HOLTZER: 30 days.

21 So it is 60, 60, and then 30.

22 Now, the liquidator has the authority to
23 resolve the objections through mediation, through
24 mutual agreement, through anything that the parties
25 will agree to in order to get it resolved.

1 THE COURT: What if they don't agree?

2 MR. HOLTZER: If they don't agree then they
3 will be back here.

4 THE COURT: So it is not mandatory and
5 binding in that regard.

6 MR. HOLTZER: They have to agree.

7 THE COURT: In order to articulate -- in
8 laying out the procedure, the procedures have to be
9 clear on what the steps are and that what is and is not
10 -- nothing so far is binding.

11 MR. HOLTZER: Correct.

12 THE COURT: Meaning not reviewable yet.
13 Everything at this point is still reviewable.

14 MR. HOLTZER: Correct.

15 THE COURT: Same for both categories.

16 MR. HOLTZER: Treated identically.

17 THE COURT: I am getting to the big question,
18 too.

19 My big question is how are you organizing
20 what -- who is on first?

21 MR. HOLTZER: Meaning?

22 THE COURT: Who goes first? How are you
23 determining what to address first in these claims? How
24 are you organizing the addressing of the claims?

25 Okay, I am not clear.

1 You have these policy claims. You have
2 claims that are coming through POMCO by third-party --
3 if it was in network it is going to come to you through
4 POMCO, right?

5 MR. HOLTZER: They all go to POMCO.

6 THE COURT: But let's say New York
7 Presbyterian, hypothetically. And they have got \$5
8 billion in claims. And then you have Mary Smith. How
9 are you determining whose claims go in what order?
10 What gets addressed while you still have a pot? As the
11 pot shrinks how are you determining what gets addressed
12 first?

13 MR. HOLTZER: When you say the pot shrinks?

14 THE COURT: The money.

15 MR. HOLTZER: We are not going to make any
16 distributions until the claims are all resolved.

17 THE COURT: So you are going to resolve all
18 the claims first, no distributions, and then what?

19 MR. HOLTZER: Once the claims are either all
20 or substantially all fixed, in a dollar amount, and
21 then when we get the asset side of the balance sheet,
22 the cash comes in, then it is just math. Everybody
23 will get their --

24 THE COURT: Proportion.

25 MR. HOLTZER: -- amount. So that's why it is

1 important now to get the claims process in and working.

2 THE COURT: When you say everyone gets his
3 proportionate share. Just based on whatever the pot
4 is?

5 MR. HOLTZER: Exactly.

6 THE COURT: That is an actual definite
7 number, and then it is a percentage of that that shares
8 among all the --

9 MR. HOLTZER: All the policy claims.

10 THE COURT: Got it.

11 MR. HOLTZER: That's why in the steps of the
12 proceeding we want to make sure the policy claims get
13 analyzed and get reduced to fixed allowed amounts so
14 that when the ultimate value is ready for distribution
15 we will know what the body of claims is and what the
16 amount of dollars is and then there will be some math.
17 Right?

18 THE COURT: Good. Okay.

19 MR. HOLTZER: So we were getting to the
20 point, though, where if we exhaust, if you will, the
21 non-mandatory way of doing this, right, then the
22 parties ultimately are going to be able to come before
23 Your Honor and Your Honor will resolve it.

24 THE COURT: But you have a time frame in
25 there as well, right?

1 In other words, if you have an objection to
2 the final determination you have to then seek judicial
3 review within -- it has to be a firm period.

4 MR. HOLTZER: Yes.

5 MS. HOEHNE: Yes, there is a step.

6 I mean, I think once a member has or provider
7 has 30 days to object to that denial of their appeal,
8 they want to take it further, and then at that point
9 the liquidator has some tools. She can try to resolve
10 it consensually or by mediation. It can go in front of
11 -- we were also proposing to have a referee or health
12 care qualified claims examiner that could give a second
13 opinion trying to resolve the claim.

14 THE COURT: Only coming in at the point of
15 what?

16 MR. HOLTZER: The appeal.

17 MS. HOEHNE: No, after the objection is
18 raised.

19 THE COURT: At the objection phase you still
20 have -- the objection phase seems premature to bring in
21 that extra person. It seems the extra person shouldn't
22 be needed at that point. You still have the liquidator
23 who can override everything, right?

24 MR. HOLTZER: I think what Debora is saying
25 is if the parties are still -- it is really the

1 claimant really still wants to try to get it resolved.

2 THE COURT: At what stage?

3 MR. HOLTZER: After the objection is filed.

4 THE COURT: Which objection?

5 MR. HOLTZER: Thirty-day objection.

6 THE COURT: But they wouldn't come here until
7 after you say the liquidator has the ability to -- will
8 look at them where there is a problem, right?

9 MR. HOLTZER: Correct.

10 THE COURT: So that's still after that point.

11 MR. HOLTZER: Correct. That's the last stop
12 before you.

13 THE COURT: After the liquidator is here.

14 So my question is, where are you talking
15 about then? The mediator or referee?

16 MS. HOEHNE: It is between that point --

17 THE COURT: Which point? "That point".

18 What that point?

19 MS. HOEHNE: Sorry. I will rephrase.

20 After a member or provider gets the
21 determination from the liquidator on what I will call
22 the internal appeal, the appeal of their EOB or EOP,
23 they have 30 days to object to that. They could agree
24 and nothing further is needed. They continue to
25 object, they have 30 days to object.

1 At that point in time the liquidator could
2 choose to try to resolve that claim consensually or
3 through mediation or the liquidator, or the claim could
4 go to -- we would propose a referee process.

5 THE COURT: After the liquidator?

6 MR. HOLTZER: Either or.

7 MS. HOEHNE: It could be there is no
8 consensual resolution. If the claims are not able to
9 be resolved consensually then the last stop on the
10 train before Your Honor is a referee that could, if the
11 parties consent, come to a final determination.

12 THE COURT: This is the thing. The option to
13 go to a referee has to be optional.

14 MR. HOLTZER: It is.

15 THE COURT: The individual can choose either
16 to go to the referee or to go directly to court.

17 MR. HOLTZER: Sure.

18 THE COURT: They should not have to go to
19 another level after the liquidator and the provider or
20 whoever -- after they do not agree it should be
21 optional that you can either go directly to court or
22 you can go to non-binding. But then you are just
23 putting in another layer, by the way. Or you can go to
24 non-binding. Because are you saying binding or
25 non-binding.

1 MS. HOEHNE: It is only binding if both
2 parties consent.

3 THE COURT: Well, you can imagine it is not.
4 So it is another level, but the provider or the member
5 should be able to opt out of that.

6 MR. HOLTZER: Sure.

7 THE COURT: That's on opt in and opt out.
8 You can opt in, but you don't have to, or you can opt
9 out. But all you are doing is creating another level
10 or layer, by the way. It is just one more layer.

11 MR. HOLTZER: It is.

12 MS. HOEHNE: I think the only reason --
13 historically there have been referees appointed in
14 these types of liquidation processes just because there
15 are a large volume of claims that have been submitted.
16 Just to help the Court's docket.

17 THE COURT: Where does this referee come
18 from? Who determines who this is?

19 MS. HOEHNE: We would make an application to
20 the Court at a later point in time.

21 THE COURT: For?

22 MR. HOLTZER: A list.

23 MS. HOEHNE: With the proposed persons to be
24 appointed as referees.

25 Some of those might be, again, health care

1 qualified claims experts that have that medical
2 training that could review certain types of claims.

3 For example, those claims that involve
4 determinations of medical necessity. Somebody who is
5 qualified in the medical field to look at those.

6 THE COURT: The question I have then is who
7 is identifying all these people? The liquidator?

8 The only concern I have is that the interest
9 of those who are not in your network might feel that
10 everybody in that group is looking to make it work in
11 conjunction with the liquidator kind of thing.

12 You know what I mean?

13 MR. HOLTZER: So let me --

14 THE COURT: Let me make up a hypothetical
15 insurance company; GIA.

16 Everybody who works for GIA is making sure
17 that GIA's bottom line number stays as low as possible.

18 We don't want that kind of situation where
19 everybody's function is to make sure you keep the
20 number down.

21 I am sure this is not the case, but where it
22 is deny first and see what happens second.

23 MR. HOLTZER: So what we were proposing is to
24 give you a list of referees that you can vet and that
25 will demonstrate to you that they have experience in

1 this.

2 One of the reasons that it may make sense --

3 THE COURT: The other thing is the option to
4 propose referees should be made available outside of
5 your network.

6 In other words, somewhere somebody should be
7 able to say let me give you some names of people who
8 should be considered.

9 MR. HOLTZER: Sure.

10 THE COURT: So that it is not just coming
11 from in-house as the source.

12 MR. HOLTZER: Both sides would have to agree
13 to the referee in order to mediate.

14 One of the things we wanted to mention to you
15 was the idea that the claims demographic may be
16 substantial. That's why we are proposing some
17 flexibility.

18 So you can see a claim for a thousand dollars
19 and you can see a claim for a hundred thousand dollars.
20 So the idea that there may be different sizes of
21 different claims before it is liquidated, some
22 flexibility to make sure that one size won't fit all
23 and we can use our judgment a little bit.

24 So your next question I am anticipating is at
25 what point can I say I want out of the process and I

1 want to go see the Judge.

2 THE COURT: Opting out.

3 MR. HOLTZER: Right now we have it so that
4 there is sixty-day period in which they have to submit
5 something in response to our EOB or EOP. We have 60
6 days to then issue our response. Then they have 30
7 days to object.

8 The question is after that objection, after
9 that objection period how long do we want to give
10 somebody before they say I have had enough of your
11 process, I am going to go see the Judge.

12 THE COURT: Well, the objection, does that
13 objection include the final, last clear chance sort of
14 with the liquidator? Or is that subsequent?

15 In other words, we have X number of days or
16 the objection. And then does that objection time frame
17 include the liquidator's final ability to look at it?
18 Or is that subsequent? I am trying to get --

19 MS. HOEHNE: That's subsequent. That
20 thirty-day period is for the member to decide whether
21 they want to object further. So they will take that 30
22 days to decide whether it is -- probably for them it is
23 a decision of whether it is worth their time and
24 expense to continue to devote resources to it
25 contesting that.

1 THE COURT: This process and all of the
2 avenues out need to be charted. Not in words but in
3 little boxes for people and then they can look at it
4 online.

5 Do you see what I am saying? Where they can
6 see that you can keep going on this way or you can go
7 here from there or --

8 MS. HOEHNE: A flow chart.

9 THE COURT: Do you see? This and that makes
10 it easier to understand where the various opt-out steps
11 occur.

12 MR. HOLTZER: We will include that in our
13 submission to Your Honor so you can see it.

14 THE COURT: Good.

15 MR. HOLTZER: So we are back to the question
16 of at what point will Your Honor be comfortable that we
17 have balanced the need for somebody to opt out but also
18 not necessarily cost more than what would be right to
19 wind up in court.

20 THE COURT: The thing is at the final
21 objection then you can choose to go see -- I am trying
22 to -- at the objection stage what do you have the
23 options to do? Come to court, maybe, one. One is go
24 to a referee? One is go -- you see what I am saying?
25 What are the options at objection?

1 MR. HOLTZER: Go ahead.

2 MS. HOEHNE: Yeah. The liquidator could
3 decide that she wants to try to mediate that claim or
4 resolve it consensually.

5 MR. HOLTZER: At the 30 days.

6 THE COURT: Moving off. If you were to draw
7 arrows from an objection, one arrow could be -- one
8 path you take is for the liquidator to decide in her
9 discretion that she wants to try to get this claim into
10 mediation and resolve it consensually.

11 When you decide at his discretion that -- we
12 will come to a time on that.

13 Then the other option is what?

14 MS. HOEHNE: The other option is if there is
15 a determination that there is not a way to consensually
16 resolve that then send --

17 THE COURT: I am talking at the objection
18 level.

19 MS. HOEHNE: Another path to take after
20 objection --

21 THE COURT: Would be referee. And then, of
22 course, another path is court.

23 MS. HOEHNE: Right. That wasn't originally
24 in our proposal, but after speaking to Your Honor today
25 we could have that as the opt-out option.

1 THE COURT: Where did you have "court" in
2 your proposal.

3 MS. HOEHNE: The court would be if after the
4 referee phase the parties didn't consent to final
5 determination by the referee, the referee would issue a
6 report and recommendation to the Court.

7 THE COURT: The point is this. You are
8 making a couple of things almost mandatory before the
9 court option.

10 The question is when you have done all your
11 objections and you say, well, the liquidator can take
12 another look. That's the liquidator's option. I am
13 concerned not with the liquidator's option but the
14 option of the providers and the members as to what they
15 can do.

16 So it should be that they either choose to go
17 to a referee or they choose to go to a court. You see
18 what I mean? As opposed to anybody else saying you
19 have to go first to referee before you go to court.
20 Because they may choose not to.

21 MR. HOLTZER: They may.

22 But the reason we suggested what we suggested
23 is because there are hundreds of thousands of claims.
24 The question is how far into the process will we let
25 them wind up in front of Your Honor.

1 That's why we are suggesting at the objection
2 stage before we get to opt-out we try the referee
3 first. If somebody is really insistent. Otherwise, we
4 are fearful, Your Honor, that there will be a lot of
5 claims in your court that in the normal health care
6 claims process -- we haven't altered that. This is
7 normal for how you would process an objection to a
8 dispute over whether or not you should be entitled to
9 receive payment on your claim.

10 If we want to do something short of that, our
11 fear was that we would wind up with many claims in the
12 court.

13 THE COURT: So your suggestion is objection,
14 mandatory referee, and then --

15 MR. HOLTZER: Non-binding.

16 THE COURT: Not binding.

17 MS. HOEHNE: Unless the parties consent.

18 THE COURT: Mandatory. I am just --
19 mandatory. And then if need be.

20 MR. HOLTZER: Right.

21 THE COURT: Then you have another arrow over
22 there.

23 When does it go to the liquidator taking the
24 last look if he or she chooses to?

25 MS. HOEHNE: I don't know that I would call

1 the mediation phase taking a last look.

2 THE COURT: I am.

3 You said the liquidator could after the
4 objection review. Where does that fit in the scheme?

5 MR. HOLTZER: After the thirty-day period if
6 the objection comes in, because they are -- because the
7 party isn't agreeing to the final result, then at that
8 point in time the liquidator could look at it.

9 THE COURT: The liquidator. That's a choice
10 of the liquidator.

11 In that period what's happening from the
12 point of view of the provider or the member?

13 COURT ATTORNEY: They are probably deciding
14 whether they want to go to the referee, according to
15 the chart.

16 THE COURT: After the objection what's the
17 time frame?

18 MR. HOLTZER: That's really what the Court
19 wants to know. I don't know that we have a set time
20 frame yet.

21 MS. HOEHNE: We don't have one yet.

22 We hadn't put one in because at this point we
23 don't know what the volume of the appeals is.

24 THE COURT: But when you lay it out it has to
25 be there. And it has to be sanctioned by the Court,

1 not at the discretion of the liquidator or anyone else.

2 MR. HOLTZER: We understand, Your Honor.

3 Let us consult with folks.

4 As we submitted to Your Honor, we will be
5 prepared to tell you what number of days we chose for
6 that period.

7 THE COURT: That period?

8 MR. HOLTZER: For the period between the
9 objection, 30 days, and when somebody can opt out of
10 these processes and come to Your Honor.

11 THE COURT: The objection, the referee, which
12 is mandatory, and the Court, those phases, and where is
13 opt out in that. And where and how does the liquidator
14 make a determination to take a look at this one but not
15 that one and what time frame is that in?

16 MR. HOLTZER: We will come back with that.

17 THE COURT: Do you see?

18 MR. HOLTZER: We will come back to you in the
19 application.

20 THE COURT: Because I understand that this is
21 not a --

22 MS. HOEHNE: Direct route to court.

23 THE COURT: This option is not optimum, to go
24 from objection directly to court. That's unrealistic.
25 So we won't look at that arrow.

1 But if you have objection then you have down
2 to the referee, which is mandatory. Then you have down
3 from there to the Court.

4 Somewhere in here is opt out. And/or then
5 you have over here the liquidator having the last clear
6 chance if the liquidator chooses to. But how does that
7 work in the time frame of what's going on in here?

8 MR. HOLTZER: We will give you --

9 THE COURT: You see?

10 COURT ATTORNEY: There is no opt out if it is
11 a mandatory referee.

12 THE COURT: That's what I am saying. If
13 that's the case then I need to know where opt-out fits
14 in? You see? That's what I am saying.

15 MR. HOLTZER: Let me see if I can be heard on
16 that point.

17 What we were going to suggest is if the
18 referee doesn't issue a decision that resolves it then
19 the referee would issue a report and findings and at
20 that point the opt-out would occur and the party --

21 THE COURT: If they chose not to opt out,
22 what else is there? If there is no opt out at that
23 point that's it. If the referee issues a report --

24 MR. HOLTZER: Non-binding.

25 MS. HOEHNE: They are here in front of Your

1 Honor.

2 THE COURT: That's not really an opt-out.
3 That's called next step. It is not opt-out because
4 there is something else going on and you opt out.

5 Opt out means I am coming off the track. But
6 there is no coming off the track. We are at the last
7 stop.

8 MR. HOLTZER: The liquidator always has the
9 ability to step in and resolve it at any point.

10 THE COURT: But that is not been called opt
11 out because it is the end of the process. It is not
12 really opting out. Opt out would be somewhere up in
13 here you could say I don't want to do it anymore. And
14 that's not what's being proposed.

15 MS. HOEHNE: You mean a party could decide
16 they don't want to pursue any further internal review?

17 THE COURT: That's what I am calling opt out.

18 MS. HOEHNE: At any point in time a member or
19 provider could say that they are not going to pursue
20 further review of their claim.

21 THE COURT: And do what?

22 MS. HOEHNE: And that the point in time the
23 determination that the liquidator made would be the
24 one.

25 THE COURT: That's not what is meant by opt

1 out.

2 Are you new to opt out? I mean, this is not
3 a unique concept. It just means you have 10 steps in a
4 process and somewhere, maybe step 4, step 6, step 7,
5 you have areas where you can say, "I don't want to
6 finish this anymore. I want to opt out and go to
7 court." That's what I am saying.

8 This may not be an opt-out process. But if
9 it is, I want to know where opting out fits in.

10 But not at the end of that.

11 MR. HOLTZER: Our review, Your Honor, is that
12 we don't go through the referee process then you are
13 going to potentially increase your --

14 THE COURT: I understand the reasonableness
15 of the referee process. I understand the
16 reasonableness of the referee process. But then what
17 you are proposing is not an opt-out at all because the
18 process doesn't have a step where you can come out of
19 it and just go directly to court.

20 Which I understand. It is reasonable. I
21 understand.

22 In my first analysis it was over here where
23 you could take the objection and skip the referee and
24 skip the liquidator and come directly to Court. That
25 would be opting out. But you are saying with the

1 volume that that shouldn't be there.

2 MR. HOLTZER: That shouldn't be there.

3 The only opt-out, to use your word, is
4 somebody could simply say we don't want to go to a
5 referee. We would like the liquidator to consider this
6 and see if you resolve it.

7 THE COURT: That's really just an alternative
8 from here to here. You see? That arrow. That's
9 saying -- then it becomes here.

10 So after the objection you can either go to
11 the referee or you can ask for the liquidator to review
12 it. But after either one of those -- neither one is
13 binding.

14 MR. HOLTZER: Correct.

15 THE COURT: And after either one of those
16 determinations -- if you say you don't want to go to
17 the referee and you want the liquidator to try to
18 resolve it, at that point can you still say, well, she
19 didn't get it done, can I now still go to the referee?
20 So then you have an arrow going this way.

21 MR. HOLTZER: I think we want it to go to the
22 referee.

23 THE COURT: You understand you have multiple
24 mechanisms of moving around.

25 MR. HOLTZER: We do, Your Honor.

1 THE COURT: Because if you come from
2 objection, you can go either from objection to referee
3 or you can go from objection to liquidator. But if you
4 go from objection to liquidator and you don't like it,
5 you can still go to liquidator to referee.

6 MS. HOEHNE: Correct.

7 THE COURT: It is called a triangle.

8 All right.

9 All that has to be detailed.

10 Off the record.

11 (Whereupon, a discussion is held off the
12 record.)

13 THE COURT: Back on the record.

14 This is for the benefit of the members as
15 well, right?

16 MR. HOLTZER: Yes, members and providers.

17 THE COURT: The members are the individuals
18 who happen to have been in the courtroom, some of them,
19 that day? That's why I am saying they need a graphic,
20 as well. Because everyone doesn't want to read a whole
21 lot of words, 20 pages of their insurance policy, to
22 figure it out. Okay?

23 So a chart that shows lines where you can go
24 from here to there. They should be able to visualize,
25 as well.

1 So you almost -- size doesn't matter because
2 it is all going to be prorated.

3 So no "I need to go first".

4 It is all going to get -- you are getting set
5 amounts and then it will be distributed.

6 Got it. Got it.

7 MR. HOLTZER: So, Your Honor, just to finish
8 up.

9 On a periodic basis the liquidator intends to
10 prepare for the Court a list of the policy claims that
11 have been examined or otherwise resolved by mutual
12 consent, just so that there is a list. And because the
13 policy claims contained sensitive personal information
14 like the claimant's name on the --

15 THE COURT: Under seal.

16 MR. HOLTZER: It will be under seal, Your
17 Honor.

18 We just wanted to make sure that didn't
19 surprise anybody when we put it in our application.

20 THE COURT: The list of the claims and the
21 claimants is under seal.

22 So no one knows who the other claimants are?

23 MR. HOLTZER: Right.

24 THE COURT: What is the reason the names of
25 the claimants can't be -- in other words, is that still

1 confidential, as well?

2 MS. HOEHNE: I believe it is.

3 MR. HOLTZER: Yes.

4 THE COURT: Is that HIPAA stuff?

5 MR. HOLTZER: I believe so, Your Honor.

6 But the members and the providers are going
7 to receive notice that their policy claims were
8 included on the policy claims list that was submitted
9 under seal. They will be able to securely review the
10 disposition of their policy claims on the look-up tools
11 on the website.

12 THE COURT: But no one will be able to look
13 up how much -- what about the numbers?

14 MR. HOLTZER: When you say the numbers?

15 THE COURT: The amounts of the claims without
16 the names?

17 MR. HOLTZER: No, no.

18 THE COURT: This is what I am saying. Not
19 the individual amounts of the claim but the amounts
20 that have been submitted for -- the value of the claims
21 that have been submitted. The amounts. Not the names,
22 not the people, but that that \$10 million has been
23 submitted in claims by providers and \$3 million has
24 been submitted in claims by members.

25 You see? I am just saying numbers.

1 MR. HOLTZER: At some point, Your Honor, we
2 will able to report to everybody where we are.

3 THE COURT: That's my thing.

4 Not at some point. I want set intervals
5 where postings are made of how much has been sought in
6 claims.

7 What I am saying is as of September 30, 2016,
8 we have received -- we have received \$10 million in
9 claims -- just an aggregate number -- from providers
10 and \$3 million in claims from members.

11 MR. HOLTZER: Easy to do.

12 THE COURT: I want people to be able to get
13 an understanding of how much is accumulating in amounts
14 sought in each category over time. I would like that
15 to be updated, I guess, every 30 or 45 days. It is not
16 that hard. It is just a number.

17 MR. HOLTZER: Sure.

18 Your Honor, that's really it in terms of our
19 proposal.

20 We intend to submit by Order to Show Cause.

21 THE COURT: Let me ask.

22 Does anyone who is here representing a
23 provider have an issue or concern that they want the
24 Court to consider in what's been presented?

25 No.

1 I just want to make sure people have -- if
2 anyone wants me to hear something. That's why it is an
3 open court as opposed to a conference.

4 Get the record because I don't want to have
5 to -- I want -- the things I have said I would like to
6 see. I want them to happen.

7 When will you be back?

8 MR. HOLTZER: I think we will file our motion
9 or Order to Show Cause within the next 2 to 3 weeks.

10 THE COURT: Okay.

11 COURT CLERK: Your name?

12 MR. LaGRASSA: Anthony LaGrassa. I am here
13 on behalf of two policyholders.

14 THE COURT: Yes?

15 MR. LaGRASSA: My question is I saw that
16 there are 3 to 4 months to complete the initial audit.

17 THE COURT: Yes.

18 MR. LaGRASSA: Do we have any idea of how
19 many more months after that it would be before there is
20 -- aside from objections, you know, when a first
21 internal distribution would be made?

22 THE COURT: You are looking at at least a
23 year in my view. At least a year to 18 months. This
24 is a very tedious process.

25 It is going to take at least -- I think a

1 year is optimistic. I think the earliest you could be
2 thinking in terms of is maybe 18 to 24 months.

3 But the important thing is to continue to see
4 online what's happening. That's why I want a lot of
5 posting, so people can see what's going on.

6 MR. LaGRASSA: In that posting you will be
7 able to see 30% have been resolved and there is still
8 70%?

9 THE COURT: I didn't get that far yet with
10 respect to posting results, which I will get to because
11 I think that's important, as well.

12 Not to say -- again, identities are all
13 protected. But in terms of how many have been agreed
14 to? Resolved? Absolutely.

15 But no one gets paid until the process of
16 valuation is complete.

17 But everyone will be able -- very
18 transparent. Everyone will be able to see what's
19 happening and how much is being sought. And believe
20 me, I will make sure there is a great deal of
21 transparency.

22 MR. LaGRASSA: Thank you.

23 THE COURT: All proceedings will be in open
24 court.

25 So I will see you with the Order to Show

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Cause, yes?

MR. HOLTZER: Yes.

THE COURT: All right.

Thank you all.

Transcript is so ordered.

I requested that the transcript before be posted, so post this transcript.

Can we post it in English and Spanish?

This is, again, about transparency. That's an expense worth having that this transcript is posted in both English and Spanish.

Thank you all.

July 29, 2016

The above is certified to be a true and accurate transcript of the proceedings.


MICHAEL BARFIELD