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OFFICE OF SOLVENCY REG

COUNSEL FOR PLAINTIFF

RICHARD J. BADOLATO,
and his successors in Office, Acting
Commissioner, State of New Jersey Department
of Banking and Insurance,

Plaintiff,

v.

AMERICAN PREFERRED PROVIDER PLAN,
INC., et al.

Defendants.

**IN THE SUPERIOR COURT OF
NEW JERSEY
MERCER COUNTY
CHANCERY DIVISION**

Docket No.: C-119-98

NOTICE OF MOTION

TO: See attached Certification of Service

TAKE NOTICE that the undersigned attorneys for Richard J. Badolato, Acting Commissioner of the State of New Jersey Department of Banking and Insurance, in his capacity as Liquidator of American Preferred Provider Plan, Inc., will move before the Honorable Paul Innes, P.J. Ch., at the Superior Court of New Jersey, Mercer County, Chancery Division, Mercer County Civil Courts Building, 175 South Broad Street, Trenton, New Jersey 08650-0068, on December 4, 2015, at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order approving the determination of claims, confirming the final distribution of assets, authorizing the elimination of records, and closing of the estate of American Preferred Provider Plan, Inc. in Liquidation.

In support of the application, the undersigned will rely on the attached Certification of Michelina A. Lombardo and the exhibits attached thereto.

Pursuant to R. 1:6-2(d), oral argument is waived unless an objection is filed.

A proposed form of Order is attached.

Date: November 13, 2015

By: *Evan Barenbaum*
Evan Barenbaum, Esq.

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PROPOSED

ORDER

THIS MATTER having been opened to the Court by Stern & Eisenberg, PC, counsel for Plaintiff Richard J. Badolato, Acting Commissioner of the State of New Jersey Department of Banking and Insurance, in his capacity as Liquidator of American Preferred Provider Plan, Inc., upon notice to all parties requiring notice, for an Order approving the determination of claims, confirming the final distribution of assets, authorizing the elimination of records, and closing of the estate of American Preferred Provider Plan, Inc. in Liquidation (“*APPP*” or “*Estate*”), and the Court having considered the moving papers and any opposition papers thereto, if any, and for good cause shown:

IT IS on the _____ day of _____,

_____, **ORDERED** as follows:

1. Plaintiff's Motion is **GRANTED**.
2. The October 31, 2015 American Preferred Plan in Liquidation Proposed Final Distribution Formula attached as Exhibit "I" to the Certification of Michelina A. Lombardo is approved. The Liquidator shall make the following distributions:
 - A. \$2,950,375.08 to Class One claimant, the New Jersey Insolvent Health Maintenance Organization Assistance Association;
 - B. \$571,453.22 to Class Three claimant, the New Jersey Insolvent Health Maintenance Organization Assistance Association; and
 - C. \$5,203.02 to Class Three Government claimant, the Internal Revenue Service. (The Government has two allowed claims – one claim of \$5,149.86 and a second claim of \$53.16).
3. The Liquidator has established a reserve account in the amount of \$123,632.48 for remaining administrative and operating expenses necessary to complete the remainder of the liquidation proceeding for APPP (the "*Reserve*"). Included in the Reserve are costs specific to applicable archival offsite storage fees (and eventual destruction) of certain records, as required.
4. If any surplus Reserve remains or any assets are recovered by the Liquidator after the date of final distribution, if economic and practical, distributions shall be paid after deduction for any associated administrative expenses of the Liquidator, *pro rata*, to all allowed claimants that have not been satisfied. If the Liquidator determines that the distribution of such assets would be uneconomic or otherwise impractical, the Liquidator shall escheat such assets to the State of New Jersey Department of the Treasury, Unclaimed Property Administration (the "*Treasury*"), after adjustment for any associated administrative expenses of the Estate.

5. Payment by the Liquidator to any claimant shall be complete upon the mailing of the funds to the claimant at claimant's last known address. If a payment is returned and, after reasonable inquiry, the whereabouts of the claimant remain unknown to the Liquidator, the Liquidator shall escheat the funds to the Treasury. The Liquidator's mailing of the funds to the Treasury shall satisfy and release the Liquidator's payment obligation to the claimant.

6. Within ten (10) days of the date of this Order, the Liquidator shall provide the most recent monthly bank statement for the NJ Insolvent HMO Assistance Association account, active under the Wells Fargo Business Cash Manager Account, *redacted* account number xxxxxxxx40026 (the "*Account*"), to the Office of Financial Solvency, State of New Jersey, Department of Banking & Insurance. The Liquidator shall have no further obligation in connection with the Account other than requesting the Office of Financial Solvency to arrange for the Account mail address instructions to be changed to c/o New Jersey Department of Banking and Insurance, Office of Solvency Regulation, or its designee, and to reassign account access security levels.

7. Personal property and records of APPP within the Liquidator's possession, custody and/or control, and/or held on behalf of the New Jersey Insolvent Health Maintenance Organization Assistance Fund (the "*Fund*"), including, without limitation, accounting, administrative, financial and human resource records, as well as member medical records, can be eliminated. Doing so will not adversely affect any party's rights and will serve to aide in reducing expense, costs and increase Estate assets available for distribution.

8. Records relating to the liquidation, as proscribed in N.J.S.A. 17:3A-3a, may be destroyed, but no earlier than the expiration of one (1) year from the completion of the liquidation and making of the final distribution.

9. The Liquidator may immediately destroy the remainder of APPP's records within the Liquidator's possession, custody and/or control, and/or held on behalf of the Fund, including, without limitation, accounting, administrative, financial and human resource records, as well as member medical records.

10. The Liquidator may immediately destroy all of APPP's personal property within the Liquidator's possession, custody and/or control, and/or held on behalf of the Fund.

11. Once the Liquidator has made the final distribution of funds as set forth above, and subject to the filing of the final statement of accounting pursuant to N.J.S.A. 17B:32-75(a), the Court will be satisfied that the Liquidation is complete.

12. Upon compliance with this Order, and the filing with this Court of a final accounting, the New Jersey Commissioner of Banking and Insurance, the New Jersey Commissioner of Banking and Insurance, as Liquidator of American Preferred Provider Plan, Inc., the Deputy Liquidator, and their agents, attorneys, employees, successors, assigns, and other representatives and agents are forever discharged, released and held harmless from any and all liability arising out of the confidential administrative supervision, rehabilitation and liquidation of APPP, and this liquidation proceeding shall be terminated without need for any further order of Court. Notice of this Order shall be published on the State of New Jersey Department of Banking and Insurance website for no less than one hundred twenty (120) days.

13. The New Jersey Commissioner of Banking and Insurance and his successors may take any and all additional actions that he deems advisable for the administration and termination of the Estate, without need for further application to the Court.

14. Plaintiff shall, within seven (7) days after receipt of this Order by its counsel, serve a copy of this Order upon all parties who received notice of the Motion by First-Class Mail.

PAUL INNES, P.J.Ch.

Opposed

Unopposed

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CERTIFICATION OF
MICHELINA A. LOMBARDO

I, Michelina A. Lombardo, being of full age and authorized to make this statement hereby provide:

1. I am the Deputy Liquidator of the estate of American Preferred Provider Plan, Inc. in Liquidation ("*APPP*" or "*Estate*"). In my capacity as Deputy Liquidator, I have personal knowledge of the facts set forth herein. I submit this Certification in support of the Motion by Richard J. Badolato, Acting Commissioner of the State of New Jersey Department of Banking and Insurance, as Liquidator of American Preferred Provider Plan, Inc., for an Order in the form proposed approving the determination of claims, confirming the final distribution of assets, authorizing the elimination of records and personal property, and closing of the Estate.

Background - American Preferred Provider Plan, Inc.

2. APPP was a health maintenance organization (“***HMO***”), authorized to conduct business in the State of New Jersey and governed by the provisions of N.J.S.A. 26:2J-1 *et seq.*

3. From August 1995 through March 1998, APPP obtained certificates of authority to operate in thirteen (13) counties in the State of New Jersey, and contracted with the New Jersey Department of Human Services to provide health care services to Medicaid recipients and participants of the New Jersey KidCare program.

American Preferred Provider Plan, Inc. in Distress

4. Throughout the second and third quarters of 1998, significant financial and operational concerns were discovered in connection with the corporate governance of APPP, and in October 1998, the Commissioner of the State of New Jersey Department of Banking and Insurance (“***Commissioner***”) placed APPP under confidential administrative supervision and terminated its Medicaid enrollment.

5. Despite the Commissioner’s administrative supervision and efforts to stabilize APPP, it remained in hazardous financial condition and substantial indebtedness. Therefore, pursuant to New Jersey’s Life and Health Insurers Rehabilitation and Liquidation Act, N.J.S.A. 17B:32-31 *et seq.* (“***the Act***”), on December 10, 1998 APPP consented to be placed in Rehabilitation under the supervision of the Commissioner pursuant to N.J.S.A. 17B:32-41. A copy of the December 10, 1998 Consent Order of Rehabilitation is attached hereto as Exhibit “A”. Due to a non-substantive text omission in the December 10, 1998 Consent Order of Rehabilitation, the parties requested, and the Court entered, an Amended Consent Order of Rehabilitation (“***Order of Rehabilitation***”). A copy of the December 11, 1998 Amended Consent Order of Rehabilitation is attached hereto as Exhibit “B”.

6. During the Commissioner's efforts to rehabilitate APPP, it was determined that further attempts to do so would be futile and would substantially increase the risk of loss to creditors, policyholders and the public. *See* N.J.S.A. 17B:32-45. Therefore, the Commissioner filed a petition to liquidate APPP, which was granted on April 20, 1999 by virtue of an Order for Liquidation ("*Liquidation Order*"). A copy of the April 20, 1999 Order for Liquidation is attached hereto as Exhibit "C". The Liquidation Order named then-Commissioner (now a New Jersey Supreme Court Justice), Jaynee LaVecchia and her successors in office, as Liquidator of APPP ("*Liquidator*"). Pursuant to the Act, the Liquidator was vested with full powers and authority to take possession of, among other things, the assets of APPP and to administer them under the general supervision of the Liquidation Court. *See* N.J.S.A. 17B:32-47; *see also* N.J.S.A. 17B:32-50.

7. The Liquidation Order disbanded the APPP Board of Directors and dissolved APPP's corporate existence. Exhibit "C" at ¶ 6; *see also* N.J.S.A. 17B:32-49.

Appointment of the Liquidator

8. The Liquidator appointed me to serve as Deputy Liquidator on or about April 20, 1999 to oversee the liquidation process. *See* August 17, 2009 letter from Neil M. Jasey, Commissioner, to Michelina A. Lombardo, Deputy Liquidator, attached hereto as Exhibit "D". (The letter inadvertently cited N.J.S.A 17:30C-17, the Property & Casualty power of appointment provision, in lieu of the companion Life & Health statute, N.J.S.A. 17B:32-43). During my approximate seventeen year term as Deputy Liquidator, my appointment has never been recalled, limited, modified and/or rescinded.

9. Notice of the Liquidation, including the claims filing process and other pertinent information, was given to, without limitation, all members, subscribers, contract holders, providers, and creditors of APPP. Further, public notice of the Liquidation was published in The Star Ledger, the New Jersey Lawyer and the New Jersey Law Journal as directed by the Liquidation Order and in accordance with N.J.S.A. 17B:32-51. Exhibit "C" at ¶ 10.

10. On or about May 20, 1999, the Liquidator mailed approximately fifty-thousand (50,000) Proof of Claim forms to all potential claimants. Pursuant to the Liquidation Order, the bar date for filing claims was July 20, 1999. *Id.* at ¶ 11.

11. The Liquidator received two thousand three hundred ninety-one (2,391) completed Proof of Claims, inclusive of approximately five hundred twenty-thousand (520,000) medical invoices/billings, each of which was individually considered and systematically evaluated. The Proof of Claims submitted asserted a total sum of \$98,539,597.16, spread over Class One, Three, Four, Five, Six and Seven claims. *See* N.J.S.A. 17B:32-71. No Proof of Claims qualified as a Class Two or Class Eight claim. *See* American Preferred Provider Plan in Liquidation Overview of Filed Claims as of October 31, 2015, attached hereto as Exhibit "E".

12. The Liquidator's categorization and priority of distribution of all claims is in conformance with N.J.S.A. 17B:32-71.

13. The Liquidator reviewed each filed Proof of Claim to determine its allowance or disallowance as an "Eligible Claim" pursuant to N.J.S.A. 17B:32B-3.

14. In the State of New Jersey, prior to the year 2000, there was no statutorily mandated guaranty association for HMO's. Consequently, and in direct response to the insolvencies of both APPP and HIP Health Plan of NJ, Inc. ("*HIP*"), on April 6, 2000 the legislature enacted the New Jersey Insolvent Health Maintenance Organization Assistance Fund

Act of 2000, N.J.S.A. 17B:32B-1 *et seq.* (the “*HMO Act*”), to protect, subject to certain limitations, covered individuals and providers against the failure or inability of APPP and/or HIP to perform certain contractual obligations due to their insolvency. N.J.S.A. 17B:32B-2.

15. The HMO Act provided for the creation of a nonprofit legal entity known as the New Jersey Insolvent Health Maintenance Organization Assistance Association (the “*Association*”), *see* N.J.S.A. 17B:32B-5, whose members were representatives from HMO’s authorized to transact business in the State of New Jersey. The Association was directly supervised by the Commissioner.

16. Pursuant to the HMO Act, the Association was tasked with implementing the New Jersey Insolvent Health Maintenance Organization Assistance Fund (the “*Fund*”), from which payment of eligible unpaid contractual obligations of the insolvent organizations could be paid if the obligations were incurred prior to the date of insolvency. *See* N.J.S.A. 17B:32B-6. To receive interim payments from the Fund, claimants had to agree to forgive one-third of the unpaid (allowed) contractual obligation. *See* N.J.S.A. 17B:32B-2.

17. On June 30, 2003, the Liquidator served Notice of Claim Determinations to all parties that asserted a claim. Each Notice of Claim Determination referenced the filed amount of claim, the allowed amount of the claim, if any, the priority of distribution assigned to the claim, and notice that the claimant may file objections within sixty (60) days. Claimants were also notified that if they chose not to accept an interim or final distribution from the Fund, that they could elect to share in the remaining assets of the Estate, if any, at the time of discharge. The claimants’ bar date for filing a responsive objection to the Liquidator’s determination was August 30, 2003.

18. In response to the Notice of Claim Determinations served by the Liquidator, fifty-nine (59) objections were received, inclusive of one (1) untimely filed objection. Forty-three (43) of the fifty-nine (59) objections were accepted by the Liquidator and amicably resolved with the claimants absent court intervention. The remaining sixteen (16) objections were determined by the Liquidator to be invalid, and therefore denied. All objections were considered fully and finally resolved and discharged by way of payment, resolution, or exhaustion of remedies.

19. Between November 9, 2000 and August 31, 2006 the Fund authorized five (5) distributions to eligible Class Three claimants totaling \$13,652,542.19. *See* American Preferred Provider Plan in Liquidation HMO Association Funding Reconciliation as of October 31, 2015, attached hereto as Exhibit "F".

20. In accordance with the Liquidator's statutory obligations, he was vested with title to all of the property, contracts and rights of action, and all of the books and records of APPP. N.J.S.A. 17B:32-47(a). Commensurate with its statutory obligations, the Liquidator preserved, protected and sought out recoveries on behalf of the Estate, the results of which are set forth in the "Assets" section of the Statement of Financial Condition as of October 31, 2015, attached hereto as Exhibit "G".

21. Pursuant to the Liquidator's powers, he instituted several lawsuits and obtained multiple recoveries, including a \$2,000,000.00 judgment ("*Judgment*") against Magdy Elamir, M.D., APPP's sole stockholder and Chairman of the APPP Board of Directors.

22. The Liquidator's efforts to collect on the Judgment were not successful and the Judgment was deemed valueless by the Liquidator. The Liquidator determined that the cost of further pursuing the Judgment would far exceed any reasonable potential for recovery.

23. The Commissioner has determined that assignment of the Judgment to the Department of Banking and Insurance provides the best present opportunity to maximize the value of the Judgment for the potential benefit of the distributees of the Estate; assignment to the Commissioner is consistent with the statutory fiduciary duties of the Liquidator; assignment to the Commissioner will enable the Liquidator to bring the Estate to closure without further delay or undue expense; and assignment to the Commissioner is in the best interest of the Estate, its distributees, and the public. See October 24, 2014 Agreement attached hereto as Exhibit "H" at page 6.

Proposed Final Distribution

24. The Proposed Final Distribution Formula prepared by the Liquidator, attached hereto as Exhibit "I", requests the Court's approval to disburse \$3,527,031.32 to remaining allowed Class One and Class Three claimants, after having reserved for expenses associated with winding down the affairs of the receivership (both present and future), as follows:

A. Class One (100% distribution rate): claim of the Association having an allowed claim value of \$2,950,375.08;

B. Class Three (4.285889% ultimate distribution rate): claim of the Association having an allowed claim value of \$13,333,364.82, and two separate allowed Class Three claims of the Government, Internal Revenue Service, totaling \$120,158.56 (The Association has mutually exclusive Class One and Class Three allowed claims).

25. Based on the remaining marshalled assets , the Estate’s final distribution is calculated, as follows:

A. Class One payment of \$2,950,375.08 to the New Jersey Insolvent HMO Assistance Association c/o New Jersey Department of Banking and Insurance, Office of Solvency Regulation;

B. Class Three payment of \$571,453.22 to the New Jersey Insolvent HMO Assistance Association c/o New Jersey Department of Banking and Insurance, Office of Solvency Regulation;

C. Class Three payments to the Government, Internal Revenue Service, totaling \$5,203.02.

Elimination of APPP Records and Personal Property

26. Pursuant to the Liquidation Act, “[w]henver it shall appear to the Commissioner that the records of any insurer in the process of liquidation or completely liquidated are no longer useful, he may recommend to the court and the court shall direct what records should be retained for future reference and what should be destroyed.” N.J.S.A. 17B:32-77; N.J.S.A. 17:3A-2.

27. The Liquidator seeks permission to eliminate certain APPP records within the Liquidator’s possession, custody and/or control, and/or held on behalf of the Association and/or the Fund, including, without limitation, administrative, financial, human resources, and reinsurance documents (collectively, the “*Records*”). Records do not include “records relating to the liquidation,” the destruction of which affords a different procedure, as addressed below. See N.J.S.A. 17:3A-2.

28. One thousand four hundred thirteen (1,413) boxes of Records are stored with a third-party vendor, Allstate Information Management, located in Paterson, New Jersey. The elimination of the Records will allow the Estate to immediately further reduce costs and preserve remaining assets.

29. Insofar as “records relating to the liquidation,” the Liquidator requests authorization to destroy such records, but no earlier than the expiration of one (1) year from the completion of the liquidation and making of the final distribution. N.J.S.A. 17:3A-3a.

30. To the extent that the Liquidator is in the possession of personal property of the Estate that, in the opinion of the Liquidator, has little or no value, the Liquidator requests authorization to dispose of the personal property how, if, and when the Liquidator sees fit. *See* N.J.S.A. 17B:32-47(a).

Unclaimed Assets & Future Receipt of Assets

31. The Liquidator requests authorization to escheat any unclaimed payments to the State of New Jersey, Department of the Treasury, Unclaimed Property Administration (the “*Treasury*”), pursuant to the New Jersey Uniform Unclaimed Property Act, N.J.S.A. 46:30B-1 *et seq.*

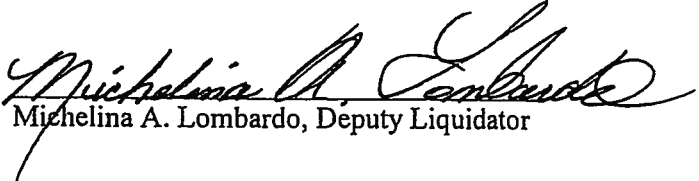
32. The Liquidator requests authorization to distribute any additional assets of APPP received after the entry of this Court’s Order to satisfy any Eligible Claims on a *pro rata* basis, including to the Estate or the Fund for payment of any administrative expenses incurred in making such distributions.

33. If any funds are recovered after the date of this Order, the Liquidator requests authorization to exercise discretion to establish a *de minimus* level of recovery, based on the circumstances at the time any such funds are received, to insure that the administrative costs associated with such a distribution(s) are minimized, while distributions to Eligible Claimants with the same priority level are maximized. If the Liquidator determines at that time that it is impractical or uneconomic to disburse any funds that may otherwise be paid to an Eligible Claimant, the Liquidator requests authorization to escheat such amounts to the Treasury. See N.J.S.A. 17B:32-75(a).

34. The Liquidator established a reserve in the amount of \$123,632.48 for future administrative fees and expenses which will be incurred to complete the remainder of the liquidation of APPP (the "*Reserve*").

35. I anticipate that the Estate will disburse any remaining Reserve and any additional assets received after the entry of the proposed Order within three (3) months after the Estate has finally concluded all remaining activity.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Michelina A. Lombardo, Deputy Liquidator