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F I L E D

APR 9 1999

JUDGE JACK L. LINTNER

By: Josh Lichtblau
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY
DOCKET NO. C-275-98

JAYNEE LAVECCHIA,
Commissioner of the
Department of Banking and
Insurance, and LEN FISHMAN,
Commissioner of the
Department of Health and
Senior Services,

Plaintiffs,

v.

HIP OF NEW JERSEY, INC.,
d/b/a HIP HEALTH PLAN OF NEW
JERSEY, PHP HEALTHCARE
CORPORATION, and PINNACLE
HEALTH ENTERPRISES, L.L.C.,
Defendants.

ORDER OF LIQUIDATION

This matter having been opened to the Court by Peter Verniero, Attorney General of New Jersey, by Josh Lichtblau, Deputy Attorney General, Attorney for plaintiffs, Jaynee LaVecchia, Commissioner of the Department of Banking and Insurance of the State of New Jersey and Len Fishman, Commissioner of the Department

of Health and Senior Services, and the Court having considered the papers submitted, the arguments of counsel on March 5, 1999, and having issued a written decision on this matter on March 5, 1999, the Court hereby finds the following:

1. The Commissioner of Banking and Insurance of the State of New Jersey ("Commissioner") as Rehabilitator of HIP Health Plan of New Jersey ("HIP") has attempted to rehabilitate HIP since her appointment as Rehabilitator on November 20, 1998.

2. Pursuant to the provisions of N.J.S.A. 17B:32-45, the Commissioner has deemed that further efforts to rehabilitate HIP would be futile and has applied to this Court for entry of an Order of Liquidation.

3. This Court finds that further efforts to rehabilitate HIP would be futile.

4. This Court has previously adjudicated HIP to be insolvent.

5. HIP continues to be insolvent now and for the foreseeable future notwithstanding the rehabilitation plan submitted by HIP Health Plan of Greater New York ("HIPNY") for the rehabilitation of HIP and therefore grounds for liquidation have been established pursuant to N.J.S.A. 17B:32-46.

IT IS therefore on this 9th day of April 1999;

ORDERED as follows:

1. The rehabilitation phase of the within delinquency proceeding as set forth in the Order of Rehabilitation entered on December 2, effective November 20, 1998, is hereby terminated.
2. Jaynee LaVecchia, Commissioner of the Department of Banking and Insurance of the State of New Jersey and her successors in office are hereby appointed Liquidator of HIP and are vested, in addition to the powers set forth herein, with all the powers, obligations and authority, expressed or implied under the provisions of N.J.S.A. 17B:32-31 et seq. Pursuant to N.J.S.A. 17B:32-50b, the enumeration of the Liquidator's powers and authority set forth at N.J.S.A. 17B:32-50 shall not be construed as a limitation upon her, nor shall it exclude in any manner her right to do such other acts not specifically enumerated therein as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.
3. Until further order of the Court, pursuant to N.J.S.A. 17B:32-47 and 17B:32-50a(8)(b), all persons, corporations, partnerships, associations and all other persons and entities, including but not limited to HIPNY, wherever located, are hereby enjoined and restrained from interfering in any manner with the Liquidator's possession, title and rights to the assets and

property of HIP, including taking any actions which would affect the pension, retirement or other right of current or past HIP employees, and from interfering in any manner with the conduct of the liquidation of HIP. Said persons, corporations, partnerships, associations and all other entities are hereby enjoined and restrained from wasting, transferring, selling, concealing, destroying, disbursing, disposing of, or assigning any assets, contracts, causes of action, funds, or other property of any nature of HIP.

4. Pursuant to N.J.S.A. 17B:32-47 and 17B:32-50a(8)(b), all secured creditors or parties, pledges, lien holders, collateral holders or other persons claiming secured, priority or preferred interests in any property or assets of HIP, and any governmental entity, are hereby enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of or exercise purported rights in or against any property or assets of HIP.

5. Pursuant to the authority provided by N.J.S.A. 17B:32-50a(8)(b), N.J.S.A. 17B:32-53, N.J.A.C. 8:38-12.1(b), and the equitable powers conferred upon this Court, all officers, directors, trustees, shareholders, members, subscribers, enrollees, agents and employees of HIP and all other persons or entities of any nature, including but not limited to HIPNY, claimants,

plaintiffs, petitioners, providers, hospitals or other medical or health care providers and any governmental agencies having claims of any nature against HIP including crossclaims, counterclaims and third party claims, are hereby enjoined and restrained from (a) conducting any portion or phase of the business of HIP unless so authorized by the Liquidator; (b) instituting, maintaining or further prosecuting any action at law, suit in equity, special, or other proceeding against HIP, its estate in liquidation or against the Commissioner and her successors in office, as Liquidator thereof, or against the Deputy Liquidator; (c) making or executing any levy upon the property or estate of HIP; (d) threatening, instituting, maintaining or further presenting any suit at law, suit in equity, or any collection activity, or any other proceeding of any nature against any member, subscriber, enrollee or insured of HIP resulting from HIP's insolvency, or the failure of HIP, PHP Healthcare Corporation, Pinnacle Health Enterprises, L.L.C. or any third party administrator, to pay any medical or hospital bill or to meet any of HIP's contractual obligations due to its insolvency, except for those circumstances where such action is permitted as outlined in the Plan for Open Enrollment and Liquidation of HIP dated February 19, 1999; (e) interfering in any way with the Commissioner, or any successors in office, in her possession of or

title to the property and assets of HIP or in the discharge of her duties as Liquidator thereof, pursuant to this Order; and (f) canceling, terminating, modifying or withholding any services or other amenity heretofore provided to HIP pursuant to any lease or sublease, including but not limited to any lease or sublease for office space or computer hardware or software, contract or agreement (whether written or oral), license or other arrangement that is necessary to the operation of the business of HIP or to the liquidation of the business, assets or property of HIP pursuant to the within Order. Except as otherwise provided by N.J.S.A. 17B:32-61, all persons or entities of any nature, other than the Liquidator, are hereby restrained from commencing, maintaining or further prosecuting any direct or indirect actions against any reinsurer of HIP for proceeds of reinsurance policies issued to and treaties or other agreements with HIP without notice to this Court.

6. The Board of Trustees of HIP is hereby disbanded and has no authority to take any action.

7. Pursuant to N.J.S.A. 17B:32-59, no bank, savings and loan association or other person or entity, including HIPNY, shall, without first obtaining permission of this Court, exercise any form of set-off, alleged set-off, lien, any other form of self-help whatsoever with respect to any funds owed to HIP or to any bank

account or other fund held by or on behalf of HIP or refuse to transfer funds or assets of HIP to the Liquidator's control.

8. The amounts recoverable by the Liquidator from any reinsurer of HIP shall not be reduced as a result of this liquidation proceeding, or by reason of any partial payment or distribution on a reinsured policy, contract or claim.

9. (a) Pursuant to N.J.S.A. 17B:32-50a(8), any agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid earned premiums, as shown on the records of HIP as of the date of entry of this Order.

(b) Pursuant to N.J.S.A. 17B:32-50a(8), all group and individual contract holders of HIP shall be obligated to pay any unpaid earned premium due to HIP at any time, as shown on the records of HIP. HIPNY and other parties to capitalization and other agreements with HIP shall pay HIP all amounts due under such contracts without set-off as required by paragraph 7 above.

10. Pursuant to the inherent powers of this Court, effective immediately, no policy or contract for the provision of health care services issued by HIP to any of its subscribers or members shall be renewed upon expiration of same. This prohibition shall be operative regardless of any specific provision in said

contracts regarding the ability to renew the coverage afforded by the contracts and of any statutory provisions pertaining to the renewal or cancellation of policies.

11. All contracts issued by HIP to its members and/or enrollees, in effect on the date of entry of this order, shall automatically terminate upon the earlier of:

(a) March 31, 1999;

(b) The expiration of the coverage pursuant to the terms of the policy or contract; or

(c) The date when the member has replaced the health care coverage with coverage from another carrier or otherwise terminated the policy or contract.

This paragraph shall not operate to terminate any other contracts of insurance to which HIP is a party, including but not limited to, the directors and officers liability insurance policy.

12. The Commissioner or her designee shall give or cause to be given notice of the entry of this Order and of the existence of the claims filing procedure set forth in greater detail below as soon as possible, but in no event later than 30 days from the date of entry of this Order, by first class mail to members, subscribers, contract holders, and creditors of HIP, to the extent that such are reasonably ascertainable, at their last known

address, as indicated by the records of HIP. The notice required herein shall advise of this Order of Liquidation, details of the claims filing process, and such other relevant information as the Liquidator deems appropriate. Notice shall also be given by publication on a single date to be established as soon as possible by the Commissioner or her designee in newspapers of general circulation in the counties in which HIP currently has its corporate and administrative offices as well as in the New Jersey Lawyer and the New Jersey Law Journal.

13. (a) The notice served under the preceding paragraph shall require that any person seeking to receive distributions in liquidation as a claimant shall file with the Liquidator or her designee a claim, as hereinafter specified, together with proper proof of loss, in the form set forth in paragraph 14 which form may be amended by the notice described in paragraph 12, within 120 days from the date of entry of this Order or such persons will forever be barred from filing a claim in this liquidation proceeding. The Liquidator's notice may contain such other rules, regulations and information as she may deem necessary for the purpose of this proceeding in fixing and determining all lawful claims and demands against HIP.

(b) The Liquidator shall in her notice require that such claimants make and submit any actual or potential claims which they may have with or against HIP, including both known claims and circumstances within the knowledge of such claimant which can reasonably be expected to give rise to claims.

(c) The Liquidator shall in her notice require that claimants who do not know, or have reason to know, of the existence of actual or potential claims against them nonetheless submit a claim in accordance with subparagraph (a) hereof, in order to preserve their right to assert actual or potential claims against HIP in the future. In the case of such claimants, the proof of loss requirement shall be deemed satisfied if the member states by way of proof that he intends to reserve his rights to assert all future claims against HIP.

14. The only means by which a potential claimant can assert a claim against HIP is by filing a proof of claim pursuant to the procedure set forth herein and in the notice to be issued by the Commissioner. All claims of any kind, including but not limited to provider or hospital charges for covered services provided to HIP members, must be filed with HIP in Rehabilitation at 1 HIP Plaza, New Brunswick, New Jersey, 08902 and must contain at least the following information: (a) claimant's name and address

and the name and address of the attorney representing the claimant, if any; (b) itemized amount of claim with any written support for such claim; (c) date of service; (d) any rights of priority asserted; and (e) a statement that the sum claimed is justly owing and that there is no set off, counterclaim or defense to the claim. The notice described above may establish additional filing requirements for claimants.

15. No claim need be considered or allowed if it does not contain all the information required by the Liquidator.

16. Notice given in accordance with Paragraph 12 above shall be considered actual notice to all prospective claimants and the ultimate distribution of the assets of HIP shall be conclusive with respect to all persons or entities whether or not they receive the notice described above. Subject to the terms of paragraph 17 below, failure to receive actual notice of the claims filing procedure set forth above shall not, in any way, provide a basis for a person or entity to challenge the distribution of assets in this liquidation.

17. Pursuant to N.J.S.A. 17B:32-54, within 120 days of the date of entry of this Order the Liquidator shall prepare a list of HIP's assets. The list shall be amended or supplemented from time to time as the Liquidator may determine.

18. Except as otherwise provided in N.J.S.A. 17B:32-64c, the Liquidator may in her discretion permit a claimant to file a late proof of claim, but late claims shall not share in the distribution of assets until all timely allowed claims have been paid in full.

19. Pursuant to N.J.S.A. 17B:32-65d, no judgment or order against a member of HIP or HIP entered after the date of filing of the petition for liquidation and no judgment or order against a member or HIP entered at any time by default or by collusion need be considered as evidence of liability or of quantum of damages. No judgment or order against an insured or the insurer entered within four months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

20. (a) For purposes of this Order the word "claim" is defined to include claims made by members, providers, trade creditors and other parties directly against HIP or its estate, and judgments against or settlements by members of HIP for which the member seeks reimbursement from HIP or the estate.

(b) The Liquidator shall report all claims to the Court along with her recommendations as to their resolution within six months of the date by which claims must be filed. The Court

shall then establish a date to hear objections to said recommendations and shall give such notice as the Court determines to be appropriate.

21. Pursuant to N.J.S.A. 17B:32-72, the Liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to this Court except where the Liquidator is required by law to accept claims by any person or organization.

~~22. Mutual debts or mutual credits between HIP and another person shall be set off and the balance only shall be allowed or paid, except as provided by N.J.S.A. 17B:32-59.~~ JLR

23. Pursuant to N.J.S.A. 17B:32-74, all unclaimed funds subject to distribution remaining in the Liquidator's hands when she is ready to apply to the Court for discharge, including those amounts distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the State Treasurer, and shall be disbursed pursuant to the terms of N.J.S.A. 46:30B-1, et seq.

24. Pursuant to N.J.S.A. 17B:32-75, when all assets justifying the expense of collection and distribution have been collected and distributed under this Order, the Liquidator shall apply to the Court for discharge of the Liquidator's obligations.

Such discharge shall not be applied against creditors of the HIP estate to deny payment of claims by any insurer or any other party that seeks to avoid the payment of any such claim. The Court may grant the discharge and make any other orders, including an order to transfer any remaining assets that are uneconomic to distribute, as may be deemed appropriate.

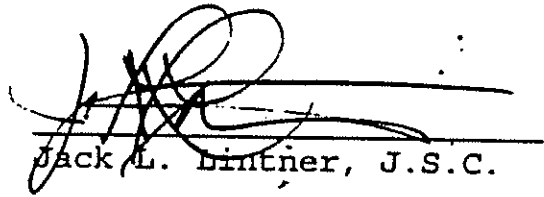
25. Pursuant to N.J.S.A. 17B:32-76, after the liquidation proceeding has been terminated and the Liquidator discharged, the Commissioner or other interested party may at any time petition this Court to reopen the proceedings for good cause, including the discovery of additional assets. If the Court is satisfied that there is justification for reopening, it shall so order.

26. Any person, corporation or other entity having notice of this Order who fails to abide by its terms shall be directed, upon personal notice by the Commissioner, to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.

27. The Commissioner may at any time make further application to this Court for such further and different relief as she sees fit.

28. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

29. If any provision of this Order or the application thereof is for any reason held to be invalid, the remainder of this Order and the application thereof to other persons or circumstances shall not be affected thereby.



Jack L. Dintner, J.S.C.

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