

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Michael Wise, as Director of the South
Carolina Department of Insurance,

C.A. No. 2016-CP-40-00034

Petitioner,

**LIQUIDATOR’S APPLICATION
FOR APPROVAL OF PAYMENT OF
FINAL EXPENSES AND FOR FINAL
DISTRIBUTION OF ASSETS, FOR
TERMINATION OF LIQUIDATION
PROCEEDINGS AND FOR
DISCHARGE AND OTHER
NECESSARY RELIEF**

vs.

Consumers’ Choice Health Insurance
Company,

Respondent.

Michael Wise, as Liquidator of Consumers’ Choice Health Insurance Company (“Consumers’ Choice”), by and through the undersigned counsel, hereby files his application for an order authorizing him to make final distributions of assets, terminating the liquidation proceedings, providing for the discharge and release of the Liquidator, the Special Deputy Liquidator and the Special Referee, as well as others who have provided services in this proceeding, and granting further relief as specified herein. This Application is made pursuant to the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.* (the “Act”), including S.C. Code Ann. § 38-27-650(a) (2015), which directs that the Liquidator shall apply to the Court for termination of the liquidation proceedings and for discharge when all assets justifying the expense of collection and distribution have been collected and distributed. In support of his Application, the Liquidator would show the Court the following:

HISTORY OF THE LIQUIDATION

1. On March 28, 2016, the Court entered an Order Commencing Liquidation Proceedings & Granting an Injunction & Automatic Stay of Proceedings (“Liquidation Order”) against Consumers’ Choice.

2. Pursuant to the Liquidation Order and the Act, the Liquidator took possession of the assets of Consumers’ Choice and administered them under the supervision of the Court. In particular, and without limitation:

a. The Liquidator gave or caused to be given notice of the Liquidation Order pursuant to S.C. Code Ann. § 38-27-410 (2015). The notice required all claimants to file their claims with the Liquidator, together with proper proofs thereof pursuant to S.C. Code Ann. § 38-27-550(a) (2015), not later than 5:00 p.m., Eastern Time, on December 31, 2016.

b. The Liquidator has identified, collected and liquidated all assets of Consumers’ Choice which in the Liquidator’s judgment justified the expense of collection and liquidation. In the unlikely event additional assets are remitted following the closing, such amount(s) will be delivered to the South Carolina Life and Accident and Health Insurance Guaranty Association.

c. The Liquidator established a claims procedure meeting the requirements of the Act, including S.C. Code Ann. §§ 38-27-540 & -550 (2015), and adjudicated and classified all claims filed thereunder.

d. Disputed claims were submitted to the Court in accordance with under S.C. Code Ann § 38-27-580 (2015) and the Court’s Procedures Governing Referee’s Participation in Claim Administration throughout the liquidation proceedings. All previously disputed and undisputed claims have been finally adjudicated pursuant to order of this Court

e. The Liquidator has paid the administrative costs and expenses of Consumers' Choice's (Class 1 claims) in the ordinary course of its operations. He has now arranged for the finalization of necessary administrative costs to close and final distribution of all assets, subject to this Court's approval herein.

3. To prevent prejudice to the proceedings or the waste of assets, and to ensure the orderly administration and timely closing of the estate, the Court executed an Order on March 12, 2022, providing that any claim filed after March 12, 2022, is deemed denied and is forever barred.

PRO FORMA CLOSING ACCOUNTING

4. Pursuant to S.C. Code Ann. § 38-27-370(E) (2015), the Liquidator has filed semi-annual financial reports for Consumers' Choice, starting with a financial statement as of March 31, 2016, and ending with financial statements for the year ended December 31, 2021, and the six months ended June 30, 2022, and has received Court approval for each such filing.

5. The Liquidator has prepared a pro forma closing accounting for Consumers' Choice for the period ending on February 28, 2023, which, subject to this Court's approval, the Liquidator has set as the effective date of the termination of these liquidation proceedings. A true and correct copy of the pro forma closing accounting is attached hereto as Exhibit A and incorporated herein by reference.

6. An Actual Closing Accounting (Closing Accounting) will be filed with the Court as soon as practicable following final distributions and completion of necessary post-termination matters, including completion and filing of 2022 federal income tax return and the final 2023 federal income tax return, delivery of records and deposit of unclaimed property.

UNCLAIMED FUNDS

7. The Liquidator is holding unclaimed funds which are property of persons or entities who are unknown or cannot be located, in the amount of \$117,925 as evidenced in Exhibit A. Pursuant to S.C. Code Ann. § 38-27-640 (2015), the Liquidator will deposit all unclaimed funds with the State Treasurer for disposition pursuant to S.C. Code Ann. § 27-19-220.

**APPLICATION FOR APPROVAL OF PAYMENT OF FINAL FEES
AND EXPENSES AND FINAL CLAIM DISTRIBUTIONS**

8. Before closing of these proceedings, the Liquidator must pay the final fees and expenses incurred and to be incurred in terminating the liquidation, including fees and expenses which are already incurred and those which relate to matters which will be incurred after the liquidation proceedings are closed. These final fees and expenses are set forth in Exhibit B and are recorded in the Liquidator's pro forma closing accounting (Exhibit A). These expenses, unpaid at December 31, 2022, are estimated to be \$328,380.

9. Included in the final fees and expenses are occupancy and overhead expenses, tax return preparation, record storage costs, and the final fees and expenses of service providers engaged by the Liquidator, including the Special Deputy Liquidator.

a. The Liquidator intends to make lump sum final payments to each vendor, for those amounts projected and for those accrued amounts yet to be paid in 2023.

b. In consideration of these nonrefundable payments, each vendor will render all required future services to Consumers' Choice, regardless of whether the amounts which would otherwise be due to them under their current compensation arrangements are more or less than the nonrefundable amount paid. The lump sum payments have been determined based on amounts previously paid to the service providers and the assumption that post-termination services will be required for an uncertain period following the termination of these proceedings.

10. As part of the final fees and costs, provision has been made for costs related to the preparation of the 2022 and 2023 federal and state income tax returns in the amount of \$7,790. The Liquidator does not expect any taxes due. Pursuant to S.C. Code Ann. § 38-27-630 (2015), the Liquidator may pay distributions under the direction of the Court in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.

11. With prior approval of the Court, the Liquidator has now made distributions of assets to policyholders and creditors, paying all claims in Classes 2 through 8 at 100%. Following the payment of closing administrative expenses as described herein and in Exhibit A hereto, residual assets will be distributed to the sole Class 9 claimant, the United States Government.

12. The Liquidator hereby applies to the Court's for approval to now pay all unpaid Class 1 pro forma administrative costs and the Class 9 distribution as set forth in the pro-forma accounting as of December 31, 2022 and in the following approximate amounts¹:

- a) Class 1: \$328,380
- b) Class 9: \$54,724,533

APPLICATION FOR DISCHARGE AND RELEASE

13. The Liquidator hereby applies to the Court for the discharge and release of the Liquidator, Special Deputy Liquidator, and the employees, contractors, agents, assistants, clerks, attorneys, accountants, and representatives providing services in the liquidation of Consumers' Choice ("discharged persons"), effective upon approval of the Closing Accounting with the Court.

¹ The accrual for the Special Deputy Liquidator (F&C) at 12-31-22 amounted to \$77,979. In January 2023 F&C received \$54,218 of this \$77,979 for services rendered in October and November 2022. All final amounts paid will be reflected in the Closing Accounting.

The discharged persons shall be released from all liability to Consumers' Choice, its creditors, claimants, shareholders, and members. Until filing of the Closing Accounting, the Liquidator shall to the extent of any remaining assets, retain the fiduciary and statutory obligation to escheat items, pay final administrative costs and make the final distribution, as described above, and shall retain the fiduciary and statutory obligation to complete all post-closing tasks necessary to complete the liquidation of Consumers' Choice.

14. The Liquidator also hereby requests that the Court leave in place the injunction imposed in the Liquidation Order against all persons from commencing or prosecuting, without leave of this Court, any action or proceeding against Liquidator or his discharged persons in connection with or arising out of their service to the Court in these liquidation proceedings, with the Court retaining jurisdiction for the purpose of enforcing its injunction.

15. All matters subject to the services of the Special Referee have been resolved. Therefore, the Liquidator hereby applies for the immediate discharge of Michael M. Beal as the court-appointed Special Referee herein, and for the release of the Special Referee from any and all liability to Consumers' Choice, its creditors, claimants, and members, and that any and all persons be enjoined from commencing or prosecuting, without leave of this Court, any action or proceeding against him in connection with or arising out of his service to the Court in these proceedings, such being an extension of the original injunction contained in the Liquidation Order, with this Court retaining jurisdiction for the purpose of enforcing its injunction.

APPLICATION FOR DISPOSITION OF BOOKS AND RECORDS

16. Consumers' Choice ceased to accept new health insurance members, effective January 1, 2016, and commenced preserving electronic records and critical hard copy files on that date.

17. The Liquidator does not anticipate that he will have any further use for the remaining books and records of Consumers' Choice following the post-closing tasks necessary to complete the liquidation, including final distributions, the filing of the final tax return, and the filing of the Closing Accounting.

18. Accordingly, in accordance with S.C. Code Ann 38-27-670 (2015), the Liquidator hereby applies for approval from this Court to dispose of the insurer's records, except member records, paid provider claims and financial records. These records will be retained by the South Carolina Department of Insurance for a period of five (5) years from the date of this Court's order approving the Final Accounting.

WHEREFORE, the Liquidator respectfully prays this Court for an Order permitting final distributions, terminating Consumers' Choice's liquidation proceedings, providing for the post-closing tasks described herein, for discharge and for further relief as specified herein.

Respectfully submitted,

January 19, 2023

s/Geoffrey R. Bonham
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One of the Attorneys for the Liquidator of
Consumers' Choice Health Insurance
Company in Liquidation

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FOR THE FIFTH JUDICIAL CIRCUIT

Michael Wise, as Director of the South
Carolina Department of Insurance,

C.A. No. 2016-CP-40-00034

Petitioner,

**ORDER APPROVING PRO-FORMA
CLOSING FINAL ACCOUNTING,
ADMINISTRATIVE EXPENSES, FINAL
DISPOSITION OF CLAIMS,
DISTRIBUTION OF ASSETS,
DESTRUCTION OF RECORDS,
DISCHARGE OF SPECIAL REFEREE,
DISCHARGE OF LIQUIDATOR AND
CLOSING OF LIQUIDATION ESTATE**

vs.

Consumers' Choice Health Insurance
Company,

Respondent.

This matter comes before the Court pursuant to the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.*. Petitioner has filed an Application seeking an order approving the pro forma closing accounting, which was filed with the Application and which includes the payment of administrative expenses and the proposed distribution of the remaining assets to claimants pursuant to S.C. Code Ann. § 38-27-610 (2015). Pursuant to S.C. Code Ann. § 38-27-650(a) (2015), Petitioner also seeks his discharge as Liquidator as well as the discharge of the Special Deputy Liquidator and the Special Referee for claims appointed in this matter by previous order of this Court. Finally, Petitioner seeks an order closing the estate of Consumers' Choice Health Insurance Company (Consumers' Choice) and providing for the destruction and maintenance of records and termination of these proceedings pursuant to S.C. Code Ann. §§ 38-27-650 and -670 (2015). Based upon the pleadings, filings, orders and other submissions in the file, including the Application and exhibits thereto, I find the following:

1. Consumers' Choice was placed in liquidation by Order of the supervising court

(Liquidation Order) on March 28, 2016. On that same date, the supervising court approved the appointment by the Director of the South Carolina Department of Insurance, acting in his capacity as Liquidator for Consumers' Choice, of Michael J. FitzGibbons as Special Deputy Liquidator pursuant to S.C. Code Ann. § 38-27-400 (2015), with all the powers of the Liquidator granted by and set forth in that Code section.

2. Consistent with the Liquidation Order, the deadline for filing claims was set for December 31, 2016; and, pursuant to S.C. Code Ann. § 38-27-580(a) (2015), all claims received have been adjudicated and each claimant has been given notice by first class mail of the action taken and notice of the time period to object to the Special Deputy Liquidator's determination of the claim.

3. All claim determinations by the Special Deputy Liquidator have been accepted by the parties or adjudicated by the court-appointed Special Referee whose report and recommendation was approved by the supervising court, except that if the Special Referee's report and recommendation was subject to an objection, either the supervising court upheld the Special Referee's recommendation, with the time for appeal now expired, or the claim was subject to a subsequent settlement approved by the supervising court.

4. The priority of distribution of claims from an insolvent insurer's estate is set forth in S.C. Code Ann. § 38-27-610 (2015). This Code section requires that every claim in each class must be paid in full before members of the next class receive payment.

5. The financial statement and exhibits attached to the Application of the Liquidator reflect remaining unpaid Class I administrative expenses to the closing date of February 28, 2023 of \$328,380.

6. Estimated final Class I fees and expenses of the liquidation proceedings, including

fees and expenses to be incurred after the closing of those proceedings, are \$68,932.

7. All approved claims in priority classes 2 through 8 have now been paid in full.

8. The sole remaining unpaid claim below Class 1 is a Class 9 claim by the United States Government in the amount of \$68,868,408.

9. According to the pro forma accounting set forth in Exhibit A, after payment of all higher priority claims, including payment of final fees and expenses, there are sufficient remaining assets of the liquidation estate of Consumers' Choice to pay \$54,724,553 of the United States Government's claim representing approximately seventy-nine percent (79%) on the Class 9 claim.

10. The Liquidator is holding unclaimed funds which are property of persons or entities who are unknown or cannot be located in the amount of \$117,925 as evidenced in Exhibit A.

11. In light of the above findings and conclusions,

IT IS THEREFORE ORDERED THAT

1. The pro forma closing accounting and administrative expenses are approved and that all the claim determinations by the Special Deputy Liquidator, Special Referee and the supervising court are hereby confirmed and the proposed distribution of the remaining assets by the Liquidator/Special Deputy Liquidator as set forth in the Application and exhibits attached thereto is proper and is hereby approved.

2. The Special Deputy Liquidator is hereby authorized to distribute the remaining assets as set forth in the Special Deputy Liquidator's Application and attached exhibits.

3. Michael M. Beal as the claims Special Referee is hereby discharged and any and all liability whatsoever that he or his agents, successors and employees may have arising out of or in connection with this proceeding is forever terminated.

4. Following Final Distribution of Assets and filing of final tax returns, the Liquidator

shall dispose of the insurer's records, except that the insurer's member records, paid provider claims and financial records shall be retained by the South Carolina Department of Insurance for five (5) years from the date of the closing of the estate.

5. Pursuant to S.C. Code Ann. § 38-27-640 (2015), the Liquidator shall deposit with the State Treasurer unclaimed funds which are property of persons or entities who are unknown or cannot be located for disposition pursuant to S.C. Code Ann. § 27-19-220.

6. The Court recognizes that some of the costs set forth in Exhibit B are estimates and subject to change. The Liquidator shall file with this Court a Final Accounting which sets for the actual final administrative costs and actual distributions, together with all cash receipts and disbursements from the inception of the receivership to its termination at February 28, 2023.

7. The Court approves the delivery of any additional assets received by the Liquidator, following the closing at February 28, 2023, to the South Carolina Life and Accident and Health Insurance Guaranty Association.

8. Subject to the terms and conditions set forth in paragraph 10 below and the receipt of the Final Accounting as set forth in Paragraph 6 above, the Liquidator, Special Deputy Liquidator and their attorneys, accountants, assistants, representatives, contractors and agents are discharged from their responsibilities pursuant to these proceedings and any and all liability whatsoever on their part arising out of or in connection with this proceeding is forever terminated.

9. All persons shall continue to be enjoined from commencing or prosecuting, without leave of this Court, any action or proceeding against the discharged persons in connection with or arising out of their service to the Court in the liquidation proceedings, and the Court shall retain jurisdiction for the purpose of enforcing this injunction.

10. These proceedings and the Liquidation Estate shall be closed as of the date of the

filing of the Final Accounting and that date shall be the date of discharge of the Liquidator, Special Deputy Liquidator and their attorneys, accountants, assistants, representatives, contractors and agents.

AND IT IS SO ORDERED.

DeAndrea G. Benjamin
Chief Administrative Judge
Fifth Judicial Circuit

January __, 2023
Columbia. South Carolina

COPY

**STATE OF SOUTH CAROLINA
RICHLAND COUNTY**

**IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT**

Raymond G. Farmer, as Director of the South
Carolina Department of Insurance,

Civil Action No. 2016-CP-40-00034

Petitioner,

CERTIFICATE OF SERVICE

vs.

Consumers' Choice Health Insurance
Company,

Respondent.

I hereby certify that one copy each of the Liquidator's Application for Approval of Payment of Final Expenses and for Final Distribution of Assets, for Termination of Liquidation Proceedings and for Discharge and Other Necessary Relief and proposed Order has been served upon the following persons, by email and/or First Class U.S. Mail, postage prepaid, this 19th day of January 2023, addressed as follows:

Michael M. Beal, Esq.
Beal, LLC
PO Box 11277
Columbia, SC 29211

SC Department of Insurance
P.O. Box 100105
Columbia, SC 29202-3105

Consumers Choice Health Insurance Company
c/o FitzGibbons and Company, Inc.
8701 E. Vista Bonita Dr.
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Scottsdale, AZ 85255

Mr. Kevin G. Kendrick
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Terrance A. Mebane, Esq. Senior Trial Counsel
U.S. Department of Justice
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January 19, 2023

Respectfully submitted,

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One of the Attorneys for Petitioner

Consumers' Choice Health Insurance Company
Pro Forma Closing Accounting
Closing as of February 28, 2023

	Estimated Balance Sheet 12-31-22	Projections	Adjusted Balance Sheet 12-31-22	Class 1 - 8 Distributions	Remaining Net	Class 9 Distribution	Balance Sheet at February 28, 2023
Assets							
Cash & Equivalents	54,832,389		54,832,389	107,836	54,724,553	54,724,553	
Accrued Investment Income	166,098		166,098	166,098	-	-	
Projected Investment Income	-	243,863	243,863	243,863	-	-	
			-				
Total Assets	54,998,487	243,863	55,242,350	517,796	54,724,553	54,724,553	
Liabilities - Class 1 through 8							
Final Fees and Expenses							
Accrued Administrative Expenses	98,382	-	98,382	98,382	-	-	
Projected Administrative Expenses	-	151,833	151,833	151,833	-	-	
Accrued SC DOI	65,972	-	65,972	65,972	-	-	
Projected SC DOI	-	12,193	12,193	12,193	-	-	
Total Final Fees and Expenses	164,354	164,026	328,380	328,380	-	-	
Other							
Unclaimed funds	117,925		117,925	117,925	-	-	
Other Claims - POCs approved	71,491		71,491	71,491	-	-	
Other Claims - No POCs filed	451,878		451,878	-	451,878	-	451,878
Total Other	641,294	-	641,294	189,416	451,878	-	451,878
Total Liabilities	805,648	164,026	969,674	517,796	451,878	-	451,878
Capital							
Surplus Notes/Solvency Loans	68,868,408		68,868,408		68,868,408	54,724,553	14,143,855
Retained Earnings	(14,675,569)	79,836	(14,595,733)		(14,595,733)	-	(14,595,733)
Unassigned Funds	54,192,839	79,836	54,272,675	-	54,272,675	54,724,553	(451,878)
Total Liabilities, Capital and Surplus	54,998,487	243,863	55,242,350	517,796	54,724,553	54,724,553	(40)

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**Consumers' Choice Health Insurance Company
Final Fees and Expenses**

Description	Accrued	Projected		Total	Grand Total
	12-31-22	January & February Estimate	Post Closing 3-1-2023 to End		
FitzGibbons and Company billing	77,980	41,600	54,000	95,600	173,580
Overhead Allocations:				-	-
Salary Allocations	6,636	7,350	10,785	18,135	24,771
Rent and office	1,554	2,499	3,667	6,166	7,720
Professional fees - Tax	3,727	3,727	-	3,727	7,454
Storage	285	7,505	-	7,505	7,790
Banking fees	-	320	480	800	800
Investment Trust fees	8,200	8,200	-	8,200	16,400
Ledger access	-	1,260	-	1,260	1,260
Web hosting	-	1,356	-	1,356	1,356
SC DOI liquidation payable	65,972	12,193	-	12,193	78,165
Cyber Insurance		9,084		9,084	9,084
Total	164,354	95,094	68,932	164,026	328,380