

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 Gist Benjamin
Chief Administrative Judge
Fifth Judicial Circuit

_____, 2023
Columbia, South Carolina



Richland Common Pleas

Case Caption: Raymond G Farmer , plaintiff, et al vs Consumers Choice Health Insurance Company

Case Number: 2016CP4000034

Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161