

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Petitioner,

vs.

Consumers' Choice Health Insurance
Company,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-40-00034

**ORDER APPROVING LIQUIDATOR'S
APPLICATION FOR PAYMENT OF
INTERIM DISTRIBUTION AND
ASSIGNMENT OF RIGHTS**

This matter comes before me on the application of Petitioner Raymond G. Farmer, as Liquidator of Consumers' Choice Health Insurance Company ("Consumers' Choice"), for an Order authorizing him to pay an interim distribution to the South Carolina Department of Insurance (the "Department") and the South Carolina Life and Accident and Health Insurance Guaranty Association ("SCLAHIGA") and to approve his assignment of certain rights under an Early Access Agreement (the "Agreement") entered into by the Liquidator and SCLAHIGA. In conjunction with this assignment, SCLAHIGA will also be assigning to the Department its right against the liquidation estate for payment on its subrogation claim arising out of its coverage of policyholder claims against Consumers' Choice.

The purpose of these transactions is to facilitate payment of statutory compensation to the State for services rendered by the Liquidator in the amount of five percent of the total assets of the insurer coming into his possession, as well as to replace tax revenue lost by the State as a result of the triggering of guaranty association coverage by the insolvency of Consumers' Choice and the ensuing assessment of association members to cover losses. Because SCLAHIGA's assessed

insurers have previously claimed offsets against tax liability in accordance with S.C. Code Ann. § 38-29-160 (2015), but would now be eligible for a refund of their assessment, SCLAHIGA must pay to the Department sums acquired by such refund to the State pursuant to S.C. Code Ann. § 38-29-160(3) (2015), for deposit with the State Treasurer for credit to the General Fund of this State.

The Court, having reviewed the Application and the Affidavit of the Special Deputy Liquidator attached as an exhibit thereto, finds that the Application is well-founded and that the distribution as proposed will not prejudice the rights of any person with an interest in the liquidation estate and is otherwise consistent with the best interests of the estate and its policyholders, its creditors and the public. The assets of the liquidation estate are more than adequate to support the proposed distributions without impairing the rights of any policyholder or creditor and the claims are of a high priority class as set forth in S.C. Code Ann. § 38-27-610 (2015). The distribution as proposed is appropriate under S.C. Code Ann. § 38-27-630 (2015) in that it assures the proper recognition of priorities, as well as a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims.

IT IS THEREFORE ORDERED THAT:

1. The Department's Class 1 claim (administrative expenses) in the amount of approximately \$5,800,000 pursuant to S.C. Code Ann. § 38-27-610(1)(b) (2015) which provides for "compensation for services rendered by the receiver in the amount of five percent of the total assets of the insurer coming into the possession of the receiver," is APPROVED, and the Liquidator is authorized to distribute from the liquidation estate's general assets 100% of the amount prescribed by statute;
2. The proceeds of the distribution to the Department in payment of its Class 1 claim

pursuant to Section 38-27-610(1)(b) shall be deposited with the State Treasurer for credit to the General Fund of this State;

3. All other Class 1 claims, as defined by S.C. Code Ann. § 38-27-610(1) (2015), shall continue to be paid as they are incurred as necessary for the administration of the liquidation estate or upon final adjudication or closure of the estate;

4. SCLAHIGA's Class 2 subrogation claim (claims on policies) in the current amount of \$35,958,576 in accordance with S.C. Code Ann. §§ 38-27-610(2) & 38-29-70 (2015) is APPROVED;

5. The assignment by SCLAHIGA of its Class 2 claim in the amount of \$35,958,576 to the Department is APPROVED, subject to the Liquidator's approval of the form of the written assignment agreement and his filing with the Court a copy of that agreement once it is fully executed;

6. Upon satisfaction of the conditions set forth in paragraph 5 above, the Liquidator shall distribute to the Department of \$30,833,313 from the general assets of the liquidation estate;

7. The Liquidator's assignment to the Department of the liquidation estate's rights under the Agreement to payment by SCLAHIGA of \$5,125,263 upon request of the Liquidator is APPROVED, subject to the Liquidator's filing of a copy of the written assignment agreement once it is fully executed;

8. Upon presentation of a copy of the executed agreement assigning to the Department the liquidation estate's rights to payment by SCLAHIGA of \$5,125,263, SCLAHIGA shall promptly transfer that amount to the Department; and

9. Upon receipt of the sum of \$35,958,576 from the Liquidator and SCLAHIGA, the

Department shall deposit it with the State Treasurer pursuant to Section 38-29-160(3) for credit to the General Fund of this State.

IT IS FURTHER ORDERED that if any additional factors hereafter come to the attention of the Liquidator or his Special Deputy that may require modification, the Liquidator shall promptly file an application to modify those claims.

IT IS SO ORDERED.

Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

November ____, 2020
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

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge
for 2020

STATE OF SOUTH CAROLINA

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Raymond G. Farmer, as Director of the South
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**LIQUIDATOR'S APPLICATION FOR
APPROVAL OF PAYMENT OF
INTERIM DISTRIBUTION AND
ASSIGNMENT OF RIGHTS**

Comes now Petitioner Raymond G. Farmer, as Liquidator of Consumers' Choice Health Insurance Company (Consumers' Choice), by and through the undersigned counsel, and hereby applies to the Court for an Order authorizing the Liquidator to pay an interim distribution to certain claimants and to approve the assignment of certain rights under an Early Access Agreement (the "Agreement") entered into by the Liquidator and the South Carolina Life and Accident and Health Insurance Guaranty Association ("SCLAHIGA"). In support of this Application, the Liquidator would respectfully show the following:

1. This Application is made pursuant to the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.*, specifically, S.C. Code Ann. § 38-27-630 (2015), which allows the Liquidator to 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.

2. On March 28, 2016, the Court entered an Order commencing the instant liquidation proceedings and appointing the Director of the South Carolina Department of Insurance (the "Department") and his successors in office as Liquidator and Michael J. FitzGibbons of FitzGibbons

and Company as Special Deputy Liquidator. Under authority of that Order, the Liquidator and Special Deputy Liquidator have been charged with marshalling assets, paying claims and otherwise winding down the business affairs of Consumers' Choice.

3. In accordance with S.C. Code Ann. § 38-29-10 *et seq* (2015), the entry of the March 26, 2016 liquidation order and the finding of insolvency therein triggered coverage by SCLAHIGA.

4. Claims covered and paid by SCLAHIGA under policies issued by Consumers' Choice were in excess of \$35 million.

5. Pursuant to S.C. Code Ann. § 38-29-70 (2015), SCLAHIGA is subrogated to the rights of policyholders against the assets of any impaired insurer in the amount paid by it, and the subrogation rights of SCLAHIGA have the same priority against the assets as the person asserting a claim on policies, for a total priority Class 2 claim of \$35,958,576.

6. To assist SCLAHIGA in the timely payment of claims, the Special Deputy Liquidator entered into the Agreement with the SCLAHIGA pursuant to S.C. Code Ann. § 38-27-530 (2015), which was approved by the Court by Order entered on May 16, 2018.

7. In accordance with the Agreement, the Special Deputy Liquidator transferred to SCLAHIGA \$5 million in assets from the Consumers' Choice estate along with the statutory deposit posted by Consumers' Choice with the South Carolina Department of Insurance in the amount of \$125,263.

8. The Agreement provides for the repayment by SCLAHIGA of \$5,125,263 upon request by the Liquidator.

9. To further enable it to pay claims on policies, SCLAHIGA assessed South Carolina insurers with life and accident and health insurance authority (member insurers) pursuant to S.C. Code Ann. § 38-29-80 (2015).

10. Pursuant to S.C. Code Ann. § 38-29-160 (2015), each assessed insurer had the right to offset its contribution against its premium or income tax liability to this State accrued with respect to business transacted, resulting in lost revenue to the State.

11. Pursuant to S.C. Code Ann. § 38-29-80(6) (2015), SCLAHIGA may refund to member insurers the amount by which assets in the relevant account exceed the amount it finds is necessary to carry out during the coming year its obligations; and, pursuant to S.C. Code Ann. § 38-29-160(3) (2015), any sums acquired by such refund which have previously been written off by contributing insurers and offset against premium or income taxes must be paid by SCLAHIGA to the Department to be deposited with the State Treasurer for credit to the General Fund of this State.

12. In order to comply with the provisions of the Agreement and Section 38-29-160(3), SCLAHIGA has offered to assign its Class 2 claim in the amount of \$35,958,576 to the Department.

13. Pursuant to this assignment, the Consumers' Choice estate would distribute to the Department \$30,833,313 from the assets of the estate.

14. In addition, and in conjunction with the assignment by SCLAHIGA, the Liquidator proposes to assign to the Department the estate's rights under the Agreement to payment by SCLAHIGA of \$5,125,263 upon request of the Liquidator, with the Department depositing the sum of \$35,958,576 with the State Treasurer pursuant to Section 38-29-160(3) for credit to the General Fund of this State.

15. Having marshaled the assets of the liquidation estate, the Special Deputy Liquidator has determined that there are sufficient assets to pay covered Class 1 through 8 claims in full once all claims have been adjudicated and approved and that no policyholder or creditor would be prejudiced by an interim distribution.

16. A claim by the United States Government has been assigned priority Class 9, with no other claims with the same or lower priority class in existence, and this claimant will not be prejudiced by payment in full of any claims with a higher priority.

17. To facilitate the proposed payment by SCLAHIGA to the Department to be deposited with the State Treasurer for credit to the General Fund pursuant to S.C. Code Ann. § 38-29-160(3) (2015), the Liquidator recommends and seeks approval of a 100% distribution to certain approved Class 2 claims as defined by S.C. Code Ann. § 38-27-610 (2015).

18. Specifically, the Liquidator recommends and seeks Court approval of SCLAHIGA's Class 2 subrogation claim in the current amount of \$35,958,576 in accordance with S.C. Code Ann. § 38-27-610(2) (2015) and authorization to distribute from the liquidation estate's general assets 100% of that amount.

19. In conjunction with such approval and authorization, the Liquidator further recommends and seeks approval of the assignment by SCLAHIGA of its Class 2 claim in the amount of \$35,958,576 to the Department and, following such assignment, and in payment of that amount:

- a. Distribution to the Department of \$30,833,313 from the general assets of the estate;
and
- b. Assignment by the Liquidator to the Department of the liquidation estate's rights under the Agreement to payment by SCLAHIGA of \$5,125,263 upon request of the Liquidator, with the Department depositing the sum of \$35,958,576 with the State Treasurer pursuant to Section 38-29-160(3) for credit to the General Fund of this State.

20. Finally, the Liquidator recommends and seeks approval of a full distribution from the general assets of the liquidation estate to the Department in payment of its Class 1 claim in the

amount of approximately \$5,800,000 as prescribed by S.C. Code Ann. § 38-27-610(1)(b) (2015) (providing for compensation for services rendered by the receiver in the amount of five percent of the total assets of the insurer coming into the possession of the receiver).

21. All other Class 1 claims, as defined by S.C. Code Ann. § 38-27-610(1) (2015) will continue to be paid as they are incurred as necessary for the administration of the liquidation estate or upon final adjudication or closure of the estate.

22. The proceeds of the distribution to the Department in payment of its Class 1 claim will also be deposited with the State Treasurer for credit to the General Fund of this State.

WHEREFORE, the Liquidator prays the Court an Order approving his Application and authorizing the interim distributions and assignment of rights as described herein. In support of this Application, the Liquidator relies on the papers, pleadings and other filings in this matter, and a supporting Affidavit of Michael J. FitzGibbons, Special Deputy Liquidator, attached hereto and incorporated by reference herein as Exhibit A.

Respectfully submitted,

November 2, 2020

s/ Geoffrey R. Bonham
Associate General Counsel
South Carolina Department of Insurance
P.O. Box 100105
Columbia, South Carolina 29202

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Telephone: 803-737-6200
Fax: 803-737-6229
Email: gbonham@doi.sc.gov

One of the Attorneys for the Liquidator of
Consumers' Choice Health Insurance
Company in Liquidation

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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

Civil Action No. 2016-CP-40-00034

Petitioner,

**AFFIDAVIT OF MICHAEL J.
FITZGIBBONS**

vs.

**IN SUPPORT OF LIQUIDATOR'S
APPLICATION FOR APPROVAL
OF PAYMENT OF INTERIM
DISTRIBUTION AND
ASSIGNMENT OF RIGHTS**

Consumers' Choice Health Insurance
Company,

Respondent.

Michael J. FitzGibbons, being first duly sworn, deposes and says as follows:

1. I am the Special Deputy Liquidator of Consumers' Choice Health Insurance Company, in Liquidation ("Consumers' Choice"). I was appointed to that position by the Liquidator, Raymond G. Farmer, Director of the South Carolina Department of Insurance.

2. I am over 21 years of age and suffer no legal disability.

3. I submit this affidavit in support of the Liquidator's Application for Approval of Payment of Interim Distribution and Assignment of Rights.

4. By virtue of my appointment as Special Deputy Liquidator, I have been actively and personally involved in the liquidation of Consumers' Choice at all times since it was placed into liquidation, including the matters addressed in this Affidavit. My responsibilities in my role as the Special Deputy Liquidator include supervision and oversight of the liquidation process. I am familiar with the process of marshalling assets, as well as the claims process and the claims that have been filed. Therefore, I have personal knowledge of the matters addressed in this Affidavit.

5. On March 28, 2016, the Court entered an Order commencing the instant liquidation proceedings and approving my appointment as Special Deputy Liquidator of Consumers' Choice.

6. Since that time, I have been marshalling the assets of the liquidation estate in order to pay claims, as well as administering the process for filing and adjudicating claims in advance of distribution of assets, all in the manner prescribed by the South Carolina Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. § 38-27-10 *et seq.*

7. The claims process has included the following components, each and every one of which has been followed:

- a. Notice of Consumers' Choice's liquidation was given in accordance with S.C. Code Ann. § 38-27-410(a) (2015).
- b. In accordance with S.C. Code Ann. § 38-27-410(b) (2015), this notice specified that the last date to file a timely proof of claim with the Liquidator was December 31, 2016, with timely proofs of claim to be postmarked no later than 5:00 P.M. Eastern Time on such date.
- c. The Liquidator formulated Proof of Claim forms in compliance with S.C. Code Ann. § 38-27-550(a) (2015) and provided notice thereof in accordance with S.C. Code Ann. § 38-27-410(b) (2015).
- d. Nearly all claims on policies have been adjudicated and paid by the South Carolina Life and Health Insurance Guaranty Association ("SCLAHIGA") in accordance with South Carolina Life and Accident and Health Insurance Guaranty Association Act, S. Code Ann. § 38-29-10 *et seq.*, except for amounts on such claims in excess of

the statutory limit on SCLAHIGA coverage, contested claims or those claims subordinate to priority Class 2 (policyholder claims).

- e. Pursuant to S.C. Code Ann. § 38-29-70 (2015), SCLAHIGA is subrogated to the rights of policyholders against the assets of any impaired insurer in the amount paid by it, and the subrogation rights of SCLAHIGA have the same priority against the assets as the person asserting a claim on policies, for a total Class 2 claim of \$35,958,576.
 - f. At this time the remaining estimated liability of the estate for claims on policies, including those claims that are contested, approximates \$951,000.
 - g. The total estate liability for claims by creditors (claims other than claims on policies) approximates \$3,711,000.
 - h. Total unpaid claims against the liquidation estate of Consumers' Choice, other than subrogation claims of SCLAHIGA, approximates \$4,662,000.
8. As a result of the settlement of litigation initiated by the Liquidator against the United States Government for funds owed the liquidation estate under the Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 ("ACA"), the liquidation estate has recovered \$91,152,845.67 in unpaid "risk corridor" payments provided for under the ACA.
9. With the proceeds from this settlement, as well as other marshalled assets, the liquidation estate easily has sufficient assets to pay all approved priority Class 1 through 8 claims.
10. With the exception of a priority Class 9 claim in the amount of \$68.9 million by the United States Government, no claims with a priority class of lower than Class 8 have been made against the liquidation estate.
11. The rights of policyholders and creditors would not be prejudiced by an interim

distribution in payment of approved Class 1 (administration) and Class 2 (claims on policies) claims.

12. For the foregoing reasons, I am recommending that the estate make a full distribution to the South Carolina Department of Insurance (the “Department”) in payment of its Class 1 claim in the amount of approximately \$5,800,000 as prescribed by S.C. Code Ann. § 38-27-610(1)(b) (2015) (providing for compensation for services rendered by the receiver in the amount of five percent of the total assets of the insurer coming into the possession of the receiver).

13. I recommend that all other Class 1 claims, as defined by S.C. Code Ann. § 38-27-610(1) (2015) continue to be paid as they are incurred as necessary for the administration of the liquidation estate or upon final adjudication or closure of the estate.

14. As Special Deputy Liquidator, I entered into an Early Access Agreement (the “Agreement”) with SCLAHIGA in accordance with S.C. Code Ann. § 38-27-530 (2015), which was approved by the Court by Order entered on May 16, 2018.

15. Pursuant to the Agreement, I transferred \$5 million in assets from the Consumers’ Choice estate along with the Statutory Deposit posted with the South Carolina Department of Insurance in the amount of \$125,263 to the SCLAHIGA for the payment of approved claims.

16. The Agreement provides for the repayment by SCLAHIGA of \$5,125,263 upon request by the Liquidator.

17. To further enable it to pay claims on policies, SCLAHIGA assessed South Carolina insurers with life and accident and health insurance authority (member insurers) pursuant to S.C. Code Ann. § 38-29-80 (2015).

18. Pursuant to S.C. Code Ann. § 38-29-160 (2015), each assessed insurer had the right to offset its contribution against its premium or income tax liability to this State accrued with respect to business transacted, resulting in lost revenue to the State.

19. Pursuant to S.C. Code Ann. § 38-29-80(6) (2015), SCLAHIGA may refund to member insurers the amount by which assets in the relevant account exceed the amount it finds is necessary to carry out during the coming year its obligations; and, pursuant to S.C. Code Ann. § 38-29-160(3) (2015), any sums acquired by such refund which have previously been written off by contributing insurers and offset against premium or income taxes must be paid by SCLAHIGA to the Department to be deposited with the State Treasurer for credit to the General Fund of this State.

20. In order to comply with the provisions of the Agreement and Section 38-29-160(3), SCLAHIGA has offered to assign its Class 2 claim in the amount of \$35,958,576 to the Department.

21. Pursuant to this assignment, the Consumers' Choice estate would (a) distribute to the Department \$30,833,313 from the assets of the estate and (b) assign to the Department its rights under the Agreement to payment by SCLAHIGA of \$5,125,263 upon request of the Liquidator, with the Department depositing the sum with the State Treasurer pursuant to Section 38-29-160(3).

22. To facilitate the proposed payment to the Department to be deposited with the State Treasurer for credit to the General Fund, I recommend a 100% distribution to approved Class 2 Policyholder Claimants as defined by S.C. Code Ann. § 38-27-610(2) (2015), including SCLAHIGA's claim in the amount of \$35,958,576 in accordance with the requirements set forth in S.C. Code Ann. § 38-29-160(3) (2015).

23. In my professional judgment, estate assets are now sufficient to allow these interim distributions without prejudice to any policyholder or creditor, with sufficient funds to address the remaining administrative and operational costs associated with final claim adjudications and closing of the receivership estate.

24. The liquid assets of the Consumers' Choice estate are presently held in receivership

accounts at US Bank. Upon entry of an order approving this interim distribution and the assignments described herein, I will transfer the funds to the South Carolina Department of Insurance for deposit in the General Fund in accordance with the requirements of this Court's order.

25. To the best of my knowledge and belief, the claims covered by this affidavit and Application are true and not subject to modification. If any additional factors hereafter come to my attention which may require any modification, such as third-party payments or releases of any such claims, I will immediately notify the Liquidator, and he and/or I will promptly bring those matters to the Court's attention in an application to modify such claims.

FURTHER AFFIANT SAYETH NOT.



Michael J. FitzGibbons
Special Deputy Liquidator

SWORN to before me this 2nd day of November 2020

Sarah E. Alexander
Notary Public for the State of Arizona
My Commission Expires: 9-15-2022



SARAH E. ALEXANDER
Notary Public - Arizona
Maricopa Co. / #551135
Expires 09/15/2022