

DOCKET NO. HHD-CV16-6072516-S	:	SUPERIOR COURT
	:	
IN THE MATTER OF HEALTHYCT, INC.,	:	JUDICIAL DISTRICT OF
IN LIQUIDATION	:	HARTFORD
	:	
	:	JUNE 28, 2017

**SECOND ACCOUNTING AND STATUS REPORT
OF THE LIQUIDATION PROCEEDING**

Katharine L. Wade, Insurance Commissioner of the State of Connecticut, as Liquidator of HealthyCT, Inc., submits the Second Accounting and Status Report of Daniel L. Watkins, Special Deputy Liquidator regarding the affairs of HealthyCT, Inc. in Liquidation ("HealthyCT") as follows:

1. Update from First Accounting and Status Report.

On February 17, 2017, the Special Deputy filed his First Accounting and Status Report of the Liquidation. Since that date, the Special Deputy reports the following:

a) CLHIGA/Service Agreement/Claim Processing. The Connecticut Life and Health Insurance Guaranty Association ("CLHIGA") assessed its members to fund the payment of HealthyCT insureds' covered claims and retained HealthyCT as its servicing agent to administer policies and process claims. CLHIGA-funded payments to healthcare providers began February 22, 2017. Through May 31, 2017, CLHIGA has funded claim payments to healthcare providers totaling \$16,208,037. No HealthyCT insured has claims which will exceed CLHIGA's \$500,000/person statutory limit.

January 2017 premiums to which CLHIGA is entitled totaled \$1,388,802. The projected total of remaining healthcare claims to be funded by CLHIGA is approximately \$4 million. The estimated CLHIGA policyholder claim payment total, including pharmacy claims and unearned premium refunds, net of

January premium, is projected to be near \$20 million. CLHIGA will also have an administrative expense claim with the estate.

b) 2016 Claims and Enrollment and other Data Submissions to CMS. HCT submitted final reports on 2016 claims and enrollment data to the Centers for Medicare and Medicaid Services (“CMS”) on May 1 (Edge Server submission). This data is utilized to calculate 2016 Transitional Reinsurance (“TR”) and Risk Adjustment (“RA”) payments and/or charges under two of the Affordable Care Act’s (“ACA”) premium stabilization programs. CMS is expected to release a report at the end of June setting out 2016 TR and RA amounts each insurer with ACA plans will receive or owe.

HealthyCT submitted Cost Share Reduction (“CSR”) reconciliation data to CMS on June 2 to determine adjustments to CSR payments received for 2016 coverages based on the difference between advance payments received and actual claim experience. A report on the CSR submission indicates HealthyCT will owe CMS approximately \$1.8 million.

Data submission on 2016 Risk Corridor (“RC”) calculations is due July 31.

Future Accountings and Status Reports will detail HealthyCT’s 2016 results for the ACA TR, RA and RC premium stabilization programs, known as the 3R programs. Current data indicates HealthyCT will be owed close to \$6 million for 2016 TR and approximately \$20 million for 2016 RC.

HealthyCT is projected to owe approximately \$7.25 million for 2016 RA.

CMS currently owes HealthyCT \$16,165,020 for RC for the 2014 and 2015 benefit years. CMS has not disputed the RC amounts owed for 2014 and 2015 but claims it can only pay amounts that are “presently due,” and

that the RC program must be revenue-neutral, that is, only funds received by CMS from insurers who made money on their ACA business are available for payments to insurers who lost money on ACA business. Because few ACA plans made money, CMS has received relatively little to distribute to insurers who lost money on ACA business. Over \$8 billion is currently owed ACA insurers for 2014 -2015 Risk Corridors. It is not anticipated that 2016 RC payments to CMS from profitable plans will provide much in the way of revenue toward amounts still owed for 2014 RC, let alone for 2015 and 2016 RC amounts. CMS has repeatedly said the RC amounts for 2014-16 will be due and owing in late 2017 when the three year program calculations are finalized. To date, Congress has not passed appropriations for CMS to pay the large shortfall of RC amounts owed ACA insurers. There are numerous actions being litigated by ACA insurers against CMS in the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit seeking payment of RC amounts owed.

A discussion of RC litigation and the HealthyCT estate follows in paragraph 4 and in the motion and affidavit in support filed contemporaneously with this report which seeks the Court's approval of an agreement regarding HealthyCT's RC claims.

- c) Services and Operational Costs.** The Liquidator has continued to pay for services necessary to operate HealthyCT in Liquidation and to process claims pursuant to the Service Agreement with CLHIGA. Expenses paid by category for necessary services and operational costs from January 1 through February 10 (First Accounting) and from February 11 through April 30, 2017

(Second Accounting) pursuant to paragraph 6 of the Liquidation Order are summarized in Exhibit A. Expenses for the Second Accounting period total \$1,942,422. A more detailed spreadsheet on those expenditures and documentation supporting them is contained in a supplemental filing to this report (the “Supplemental Filing”). The fee and expenses statements of the Special Deputy for February through April have been reviewed and approved by the Liquidator as reasonable and necessary. Morgan Lewis and Bockius fees and expenses for January through April have been reviewed and approved by the Special Deputy and the Liquidator as reasonable and necessary, but had not been paid as of April 30. Summaries of the Special Deputy’s and Morgan Lewis’ time and expenses through April are included in the Supplemental Filing.

d) Cash on Hand. After \$1,942,422 was expended for operations and claim services from February 11 through April 30, 2017, and \$3,944,896 in commercial reinsurance and provider reimbursements were recovered, HealthyCT had \$13,639,344 cash on hand at April 30. This amount is net of January premium to which CLHIGA is entitled, since expenditures for pharmacy claims and unearned premium refunds exceeded CLHIGA’s January premium by \$764,018. Commercial reinsurance, provider and pharmacy rebate recoveries are ongoing.

2. Set-Off.

In February, the Liquidator and Special Deputy effectuated a set-off of amounts owing to CMS and the U.S. Treasury for 2016 Risk Adjustment charges and ACA fees and 2015 over-payments on premium tax credits (“APTC”) and CSR **against** amounts

owing by CMS to HealthyCT for 2014 and 2015 Risk Corridors. (See Exhibit C of the First Accounting and Status Report of the Liquidation). On May 17, the Court approved the Liquidator's First Accounting and Status Report and actions taken by the Liquidator, including the set-off effectuated with CMS.

The United States Department of Health and Human Services, CMS and the Department of Justice (collectively the "Federal Government") were provided with notice of the set-off and the motion seeking Court approval. An affidavit of the Special Deputy filed with the Court details the notices. Additional notices are being sent to the Federal Government regarding the Court's approval of the set off effectuated by the Liquidator and of the proposed transaction discussed herein and motion for its approval. An affidavit detailing those notices will be filed with the Court. The Federal Government has not entered an appearance in the Liquidation proceeding but is on notice regarding the set-off action and is being notified of the proposed transaction discussed herein.

3. Employees/Office Space.

At June 1, 2017, six HealthyCT employees remain full-time on the payroll, with seven employees on reduced time of one, two or three days/week as needed. The staff is assisting the Special Deputy in managing the wind-down operations in 2017, including: management of claims processing, company finances, IT platform, and customer service functions; handling medical management authorizations and appeals; responding to complaints of insureds and provider disputes; recovering provider and reinsurance receivables; complying with CMS data submission requirements; managing financial records and banking activity; and coordinating funding of claim payments with CLHIGA. Transition to smaller working quarters is scheduled in July along with further employee reductions.

4. Proposed Juris Capital Transaction.

The Special Deputy Liquidator has engaged in discussions over the past several months with Juris Capital, LLC (“Juris”), a litigation finance-fund, regarding HealthyCT’s RC claims which are projected to total over \$39 million. The numerous lawsuits filed in the United States Court of Federal Claims by ACA insurers seeking payment of RC involve legal issues of first impression and the Federal Claims Court decisions to date have been conflicting. The Federal Circuit is hearing appeals and the U.S. Supreme Court may ultimately decide the issues involved.

HealthyCT is planning to file an action in the Federal Claims Court to recover RC amounts it is owed. As with any litigation, there is risk involved and the Liquidator seeks to mitigate that risk through the transaction with Juris.

Juris desires to purchase an interest in the Liquidator’s potential recovery arising out of HealthyCT’s RC claims. Juris proposes to pay HealthyCT \$10.5 million for an interest in the claim. While Juris’ potential recovery could be substantial under terms of the Purchase Agreement, such a recovery is subject to a litigation outcome and the risk inherent in such an action which could take years to conclude.

The transaction with Juris would add \$10.5 million to HealthyCT assets available to pay its creditors. The Juris proceeds together with other projected HealthyCT assets available after all administrative expenses are paid would allow the estate to pay a substantial portion of the claims of HealthyCT’s highest priority creditor, CLHIGA. It is projected that with a Juris transaction and estate assets available after payment of administrative expenses, approximately 85% of CLHIGA’s total claims would be reimbursed. Without a Juris transaction and a possible adverse litigation outcome, only around 40% of CLHIGA’s claims could be reimbursed from estate assets. The lesser

reimbursement scenario would primarily impact the State of Connecticut and its taxpayers because the insurance companies which cover the cost of CLHIGA's claims and expenses through CLHIGA assessments, receive a dollar-for-dollar premium tax credit for the assessments they pay into CLHIGA which are not reimbursed. Funds paid to CLHIGA from a Juris transaction and other estate assets are projected to result in the refund of a significant portion of the assessments paid by CLHIGA member insurers, reducing tax credits which might be claimed by the CLHIGA member insurers if HealthyCT pursued the RC claim without a Juris transaction and was unsuccessful. The motion requesting approval of the Juris transaction also requests the Court's approval of an early access distribution to CLHIGA from the proceeds of the transaction in the amount of \$9,740,000. This distribution will partially reimburse CLHIGA for the expenses it has incurred in paying covered claims arising under HealthyCT insurance policies.

The Juris transaction would also provide funds for a potential future distribution to creditors with lower priority claims than CLHIGA, including insurance brokers whose commissions for the last quarter of 2016 were not paid. As proposed, \$760,000 would be available for distribution to creditors who otherwise might not receive distribution of any portion of their claims in the event of an adverse RC litigation outcome and no Juris transaction.

Litigation of the Risk Corridors claim could yield recovery of anywhere from \$0 to \$35 million. Assuring recovery now of \$10.5 million through the Juris transaction would, with other estate assets, allow reimbursement of a significant portion of CLHIGA's high priority claims and provide assets for a partial distribution to lower priority HealthyCT's general creditors.

The Motion seeking approval of the Juris transaction and the Special Deputy's affidavit in Support discusses the transaction and how creditors of HealthyCT would be affected in more detail.

The Liquidator is providing notice of the proposed transaction and motion to approve it to HealthyCT's creditors, including the Federal Government.

5. Summary.

The Liquidator requests the Court's acceptance of this report and approval of the acts and expenditures described in this accounting and report, its Exhibits and Supplemental Filing.

A Motion and draft Order to that effect has been submitted for the Court's consideration.

6. Request for Hearing.

A hearing with the Court is requested to address the motion for approval of the proposed Juris transaction.

Respectfully submitted,

Katharine L. Wade
Liquidator of HealthyCT, Inc.

A handwritten signature in black ink, appearing to read "Daniel L. Watkins", is written over a horizontal line.

Daniel L. Watkins, Special Deputy Liquidator
HealthyCT, Inc.