

DOCKET NO. HHD-CV16-6072516-S	:	SUPERIOR COURT
	:	
IN THE MATTER OF HEALTHYCT, INC.,	:	JUDICIAL DISTRICT OF
IN LIQUIDATION	:	HARTFORD
	:	
	:	SEPTEMBER 4, 2020

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

Andrew N. Mais, Insurance Commissioner of the State of Connecticut, as statutory Liquidator of HealthyCT, Inc., submits the Twelfth 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 Eleventh Accounting and Status Report.

On January 31, 2020, the Special Deputy filed his Eleventh Accounting and Status Report of the Liquidation Proceedings (the "Eleventh Status Report"). On February 20, 2020, the Court entered an order approving the Eleventh Status Report. Since January 31, 2020, the Special Deputy reports the following:

- a) **CLHIGA/Service Agreement/Claim Processing and Payment.** In HealthyCT's liquidation, the Connecticut Life and Health Insurance Guaranty Association ("CLHIGA") funded claim payments to healthcare providers totaling \$17,525,761 through December 31, 2017 and had total approved administrative expenses of \$376,309 through September 4, 2019. One hundred percent of CLHIGA's claim payments and administrative expenses were previously reimbursed through asset distributions approved by the Court. CLHIGA and HealthyCT expenditures and reimbursements regarding claims, premium and administrative expenses are

set out in Exhibit A to the report and Exhibit B in the Supplemental filing. No HealthyCT insured had claims in liquidation which exceeded CLHIGA's \$500,000/person statutory limit.

Since January 1, 2018, 100% of allowed Class 3 claims and claim appeals have been paid directly from HealthyCT estate assets rather than through funding from CLHIGA. The CLHIGA bank account through which claim payments were funded and paid has been reconciled and closed.

On June 3, 2020, CLHIGA reported Class 1 Administrative Expenses of \$10,165.48 for the period from September 4, 2019 through May 30, 2020. These expenses have been reviewed and approved by the Liquidator for which the Court's acceptance and approval is requested. A copy of CLHIGA's Third Amended Proof of Claim regarding its Administrative Expenses is included in the Supplemental Filing.

- b) **Claim Bar Date/Proofs of Claim.** The Special Deputy researched, evaluated and issued notices of determination with respect to all timely submitted Proofs of Claim ("POC") except a claim submitted by the United States and the claim submitted by HealthyCT's landlord for unpaid amounts under the HealthyCT office lease. Issues with the United States government and its claim are discussed in Section 2 of this report.

The landlord's claim under the office lease has not been finally determined as it has declined over time due to rents paid by HealthyCT for its reduced space; and the claim amount has declined further due to rents collected from new

tenants who leased a large portion of HealthyCT's prior space prior to the expiration of HealthyCT's lease. The landlord's claim is estimated to be approximately \$450,000, a reduction of over \$250,000 from the amount filed in its original POC. Now that the lease has expired, the exact claim amount can be determined and allowed as Class 6 unsecured creditor claim. This claim will be addressed in a future status report once finally determined.

No objections to the Special Deputy's determination notices in all other claims have been received and, pursuant to Conn. Gen. Stat. § 38a-941(a), those determinations are now deemed to be final.

Two significant creditor claims have been allowed in the HealthyCT liquidation: unpaid broker commission claims totaling \$1.3 million (Class 6 claims); and premium tax and other fees owed the State of Connecticut, totaling \$3,317,522 (Class 7 claims). No distribution of HealthyCT assets could occur until litigation with the federal government was resolved. As discussed in Section 2, that litigation has now concluded and the Liquidator will submit to the Court for its approval a plan of distribution of estate assets to creditors on their claims.

- c) **Services and Operational Expenses.** The Special Deputy has continued to pay for services necessary in the HealthyCT liquidation. Expenses paid by category for the necessary services and operational costs of the Liquidation are summarized in Exhibit B. The operational expenditures are set out by Accounting/Status Report period, with December 31, 2019 through May 31, 2020 being the current period. Expenses paid during this period total \$249,997.

Detailed spreadsheets on this period's expenditures and documentation supporting them are in Exhibit B Detail and Exhibit B(1) in the supplemental filing to this report (the "Supplemental Filing").

The fee and expense statements of the Special Deputy and Morgan, Lewis & Bockius LLP ("Morgan Lewis") for January through May 2020 have been reviewed and approved by the Liquidator as reasonable and necessary. Summaries of the Special Deputy's and Morgan Lewis' fees and expenses are included in the Supplemental Filing

- d) **Cash on Hand/Projected Expenditures.** After expenditure of \$249,977 for operations, claims and services for the period of December 31, 2019 through May 31, 2020, HealthyCT had \$5,444,316 cash on hand at May 31, 2020. Average monthly expenditures have declined from \$654,516/month in 2017 to \$139,414/month in 2018, to \$64,783/month in 2019. Average expenses of approximately \$42,000/month are projected for the remainder of 2020.
- e) **Employees.** Three former HealthyCT employees remain in consulting roles on a much-reduced schedule and expense in 2020. The former Chief Financial Officer ("CFO") and Chief Operating Office ("COO") and one other employee, continue assisting HealthyCT to: handle HealthyCT financial matters; assist in manually addressing remaining claims and appeals; reconcile accounts; and respond to phone calls from former members and providers. Research and issue resolution work is also being performed for Form 1099 recipients and the IRS when questions and issues arise.

- f) **Data Access and Preservation.** HealthyCT utilizes an information technology vendor to manage and house HealthyCT data. Arrangements have been made both for continued support in 2020 and for storage and access to HealthyCT data required by CMS to be preserved for certain periods after HealthyCT wind-down operations are completed.
- g) **Claim Processing and Customer Service.** The claims processing agreement with HealthyCT's vendor ended December 31, 2017. HealthyCT paid \$5000/month for access to historic claim data through March 2020 to facilitate claim appeal work and address inquiries from providers and insureds. A final claim listing was compiled for purposes of access to claim history and reports and reviews necessary for the closure of the estate.
- Phone calls of providers, former insureds and others are routed directly to HealthyCT's answering system for response.
- h) **Tax Issues.** The Liquidator engaged an experienced tax consultant to review HealthyCT tax issues and file appropriate returns. It was determined that for taxable year 2016 and all subsequent tax years, HealthyCT did not satisfy all requirements of Section 501(c)(29) of the Internal Revenue Code of 1986 ("IRC") because HealthyCT was statutorily insolvent and not in compliance with loan agreements under the Affordable Care Act ("ACA") CoOp program. As a result, HealthyCT filed a form 1120-L Income Tax return (as a licensed health insurance issuer in Connecticut) for the taxable year 2016 as a replacement and substitute for the previously filed Form 990 return for a tax exempt organization under IRC

Section 501(c)(29). HealthyCT is now filing Form 1120-L returns for all subsequent taxable years.

2. Litigation.

The action filed by the Liquidator against the United States in the U.S. Court of Federal Claims in Washington, D.C. (the “Court of Claims Action”) for payment under the risk corridors and reinsurance provisions of the ACA has concluded. On April 27, 2020, the United States Supreme Court held that the federal government owes over \$12 billion in Risk Corridors payments to ACA insurers. Following the decision, the Liquidator and U.S. Department of Justice filed a Joint Status Report in the Court of Claims Action regarding a schedule and immediate next steps in the case. After an accounting of mutual debts and negotiations with the Department of Justice, the parties agreed on a stipulation to final judgment (the “Stipulation to Judgment”) to be entered against the United States in the Court of Claims Action. The Stipulation to Judgment was filed on July 10, 2020, and judgment was entered by the U.S. Court of Federal Claims on July 29, 2020 (the “Court of Claims Judgment”).

As set forth in HealthyCT’s complaint in the Court of Claims Action, the Centers for Medicare and Medicaid Services (“CMS”), which administers the ACA risk corridors and reinsurance programs under the ACA, owed HealthyCT approximately \$47.5 million (\$41 million under the ACA’s risk corridors provisions plus \$6.5 million under the ACA’s reinsurance provisions). HealthyCT owed certain amounts totaling approximately \$11 million to CMS, plus interest, which was offset against the risk corridors and reinsurance amounts owed to HealthyCT. The net amount payable by CMS to HealthyCT pursuant to the Court of Claims Judgment is \$35,404,687.74. On August 3, 2020, the Liquidator made the requisite submission

for payment of this amount to the federal Judgment Fund, which pays court judgments and settlements of lawsuits against the United States government. A wire transfer of \$35,404,687.74 was received by HealthyCT on August 28, 2020. Copies of the Stipulation to Judgment and the Court of Claims Judgment are attached as Exhibits C and D, respectively.

In 2017, the Liquidator entered into an agreement (the “Purchase Agreement”) with Juris Capital (“Juris”) under which Juris purchased an interest in HealthyCT’s claims against CMS for risk corridors and reinsurance payments owed to HealthyCT. Juris paid HealthyCT \$10.5 million for the interest in the claims. That non-recourse payment allowed HealthyCT to reimburse CLHIGA 100% of its administrative expenses and claim payments in the liquidation. The terms of the transaction are described in the Motion to Approve Purchase Agreement with Juris Capital, LLC and for Order Authorizing Distribution of Sale Proceeds, which was filed by the Liquidator on June 28, 2017 and granted by the Court on August 31, 2017. Dkt # 137.86. Under the terms of the Purchase Agreement, Juris is entitled to all of the proceeds from the Court of Claims Judgement. A motion and proposed order for the Court’s approval to distribute such proceeds to Juris are being filed with this Twelfth Accounting and Status Report. Subsequent actions necessary for eventual closure of the HealthyCT liquidation proceeding will be provided in a future status report.

### 3. Summary.

The Liquidator requests the Court’s acceptance of this Twelfth Accounting and Status Report and approval of the acts and expenditures described herein, and in the accompanying exhibits and Supplemental Filing.

Respectfully submitted,

Andrew N. Mais  
Liquidator of HealthyCT, Inc.

A handwritten signature in black ink, appearing to read "Daniel L. Watkins". The signature is written in a cursive, flowing style with a large initial "D".

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



## EXHIBIT A

**EXHIBIT A****Rx claims and Unearned Premium Refunds Funded by HealthyCT Estate Assets**

Month	Jan 2017 - May 2020
Pharmacy claims	\$ (1,581,683)
Member Premium Refunds Paid	(506,518)
Member claims funded by estate subsequent to GA settlement	(149,708)
CLHIGA administrative expenses:	(66,454)
SHOP January Premium Collected	70,915
LG / SG January 2017 Premium Collected	1,336,471
<b>Balance Funded from HCT Assets</b>	<b>\$ (896,978)</b>

**CLHIGA Funding Summary**

	Amount	
Total 2017 Medical Claim Payments (CLHIGA Funded)	\$ (17,525,761)	A
CLHIGA administrative expenses:	(309,855)	B
<b>2017 CLHIGA Funding</b>	<b>(17,835,617)</b>	<b>C = A + B</b>
Aggregate early access payments	17,835,617	D
<b>Aggregate CLHIGA Funded Deficit as of December 31, 2019</b>	<b>\$ 0</b>	<b>E = C + D</b>

**EXHIBIT B**

## EXHIBIT B

	12th Accounting Jan 1 - May 31, 2020	12th Accounting Oct 1 - Dec 31, 2019	10th Accounting Jan 1 - June 30, 2019	9th Accounting Oct 1 - Dec 31, 2018	8th Accounting July 1 - Sept 30, 2018	7th Accounting Apr 1 - June 30, 2018	6th Accounting Jan 1 - March 31, 2018	5th Accounting Oct 1 - Dec 31, 2017	4th Accounting Aug 1 - Sept 30, 2017	3rd Accounting May 1 - July 31, 2017	2nd Accounting Feb 11 - April 30, 2017	1st Accounting Jan 1 - Feb 10, 2017
Third Party Claims and Customer Service Vendors	\$ 20,000	\$ 35,000	\$ 25,000	\$ 15,000	\$ 15,000	\$ 43,468	\$ 23,901	\$ 318,298	\$ 567,049	\$ 509,659	\$ 872,198	\$ 1,164,248
Employee Payroll and Benefits	48,966	75,111	131,098	124,990	124,151	157,723	266,007	377,375	219,989	520,120	509,459	443,630
PTO accrued by employees in prior years	-	-	-	-	-	-	207,730	-	-	-	-	-
IT Services	40,057	103,495	77,891	50,133	48,360	45,920	53,877	96,599	83,984	201,694	150,450	58,488
Bank Fees	6,162	10,749	9,926	2,882	2,891	2,868	3,273	5,000	3,676	7,212	3,519	8,882
Special Deputy Liquidator	50,000	64,672	79,666	47,836	51,332	68,218	68,199	86,867	79,415	88,754	130,596	99,330
Legal Fees	23,267	14,746	15,622	8,862	20,642	6,004	13,288	90,620	12,872	175,725	-	-
Accounting Fees	16,071	25,200	19,678	11,700	11,700	14,605	29,312	48,553	29,500	48,455	33,039	40,395
Form 990 / Agreed Upon External Audit Procedures	20,895	15,741	-	7,508	-	-	4,799	24,166	-	25,000	-	-
Medical Management and Operations	7,213	16,591	15,364	9,013	15,787	27,370	29,417	25,495	48,984	179,373	186,750	77,805
Rent	17,346	20,816	20,816	10,532	10,750	10,750	7,167	13,838	28,694	50,583	56,411	50,448
<b>Total</b>	<b>\$ 249,977</b>	<b>\$ 382,120</b>	<b>\$ 395,062</b>	<b>\$ 288,455</b>	<b>\$ 300,613</b>	<b>\$ 376,926</b>	<b>\$ 706,971</b>	<b>\$ 1,086,813</b>	<b>\$ 1,074,162</b>	<b>\$ 1,807,574</b>	<b>\$ 1,942,422</b>	<b>\$ 1,943,226</b>
Pro-rated monthly cost (excludes accrued PTO and Med	\$ 50,216	\$ 63,339	\$ 66,575	\$ 96,152	\$ 100,204	\$ 127,038	\$ 170,153	\$ 362,271	\$ 543,049	\$ 602,525	\$ 755,386	\$ 1,473,613

## EXHIBIT C

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

HEALTHYCT, INC.,	:	
	:	Case No. 17-1233C
Plaintiff,	:	
	:	Judge Solomson
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

**STIPULATION FOR ENTRY OF JUDGMENT**

To resolve the claims of Plaintiff, HealthyCT, Inc. (“HealthyCT”), and the defenses of the United States, and to permit the entry of final judgment on those claims and defenses, it is stipulated between the Parties:

**BACKGROUND**

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”) created several interrelated programs under which the Parties’ respective claims and defenses arise.

2. The ACA created three interrelated risk mitigation programs. Specifically, section 1341 (42 U.S.C. § 18061) created the reinsurance program; section 1342 (42 U.S.C. § 18062) created the risk corridors program; and section 1343 (42 U.S.C. § 18063) created the risk adjustment program. Under these programs, HealthyCT either owes payment to or is owed payment from the United States.

3. Section 1412 of the ACA (42 U.S.C. § 18082) authorizes advance payment of premium tax credits (“APTCs”) to insurers. Section 1402 (42 U.S.C. § 18071) authorizes cost-sharing reductions (“CSRs”). And sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C. § 18031),

and 1321 (42 U.S.C. § 18041) authorize the United States to collect user fees for its operation of the risk adjustment program. HealthyCT owes the United States under the Risk Adjustment and Reinsurance programs, and for APTCs, CSRs, and user fees.

### **CLAIMS AND DEFENSES**

4. On September 12, 2017, HealthyCT filed the Complaint in this Court seeking damages under section 1342 of the ACA. The Complaint asserts six counts, each asserting a separate theory for risk corridors damages.

5. On October 13, 2017, the Court entered an order staying these proceedings.

6. On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA “created an obligation neither contingent on nor limited by the availability of appropriations or other funds,” that the obligation was not affected by subsequently enacted legislation, and that the “petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020).

7. The Parties agree that *Maine Community Health Options* entitles HealthyCT to payment under section 1342. The Parties further agree that amounts owed to the United States under the ACA shall be offset against payments made under section 1342 to HealthyCT.

### **DAMAGES**

8. The Parties stipulate that HealthyCT is entitled to payment from the United States under the risk corridors program in the amount of \$41,692,765.44.

9. The Parties further stipulate that the United States is entitled to payment from HealthyCT under the risk adjustment program in the amount of \$1,610,509.52; that the United States is entitled to payment under the reinsurance program in the amount of \$1,028,131.38; that the United States is entitled to payment of APTCs in the amount of \$488,184.57; that the United

States is entitled to payment of CSRs in the amount of \$1,708,240.24; that the United States is entitled to payment of risk adjustment user fees in the amount of \$46,118.16; and that the United States is entitled to interest on these amounts in the amount of \$1,406,893.83, as of June 15, 2020. The parties agree that no further offsets to this judgment for ACA-related debts, including but not limited to alleged amounts related to the solvency or start-up loans, will be taken by the United States. Nothing in this Stipulation shall otherwise affect the United States' right to offset or levy payments as required by 31 U.S.C. § 3716 or 26 U.S.C. § 6331, respectively.

10. Accordingly, the Parties jointly request that the Court enter judgment in favor of HealthyCT in in the amount of \$41,692,765.44, and judgment in favor of the United States in the amount of \$6,288,077.70. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to HealthyCT upon submission of the judgments to the Judgment Fund. The net amount payable by the United States to HealthyCT pursuant to this judgment is \$35,404,687.74.

11. The Parties further jointly request that the Court dismiss Counts II-VI with prejudice.

12. Upon entry of judgment, HealthyCT (HIOS No. 91069) releases the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that HealthyCT has asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, arising under or related to section 1342 of the ACA.



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*Counsel for the United States*

July 10, 2020

EXHIBIT D

**In the United States Court of Federal Claims**

No. 17-1233C

(Filed: July 29, 2020)

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HEALTHYCT, INC.,

*Plaintiff,*

v.

THE UNITED STATES,

*Defendant.*

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**ORDER**

On July 10, 2020, the parties filed a stipulation for entry of judgment in the above-captioned matter. ECF No. 17. Accordingly, the Clerk shall:

- enter judgment in favor of Plaintiff HealthyCT, Inc. ("HealthyCT"), in the amount of \$41,692,765.44 on Count I of the Complaint;
- enter judgment in favor of the United States in the amount of \$6,288,077.70.

The parties have agreed that "[t]he judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to HealthyCT upon submission of the judgments to the Judgment Fund" and that, accordingly, "[t]he net amount payable by the United States to HealthyCT pursuant to this judgment is \$35,404,687.74." ECF No. 17 at ¶ 10.

The Court further orders that, pursuant to the parties' joint request, Counts II-VI of the Complaint are **DISMISSED** *with prejudice*. Each side shall bear its own costs.

It is so **ORDERED**.

s/Matthew H. Solomson  
Matthew H. Solomson  
Judge

**In the United States Court of Federal Claims**

**No. 17-1233 C  
Filed: July 29, 2020**

**HEALTHYCT, INC.**

**JUDGMENT**

**v.**

**THE UNITED STATES**

Pursuant to the court's Order, filed July 29, 2020, and the parties' stipulation for entry of judgment, filed July 10, 2020,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff recover of and from the United States the amount of \$41,692,765.44 on Count I of the complaint, and the United States recover of and from the plaintiff the amount of \$6,288,077.70. The United States shall be paid through deduction from the amount owed to plaintiff upon submission of the judgment to the Judgment Fund, with the net amount payable to plaintiff being \$35,404,687.74. Counts II-VI of the complaint are dismissed with prejudice. Each side shall bear its own costs.

Lisa L. Reyes  
Clerk of Court

By: s/ Debra L. Samler

Deputy Clerk