

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of
the Liquidation of

ATLANTIS HEALTH PLAN, INC.
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Index No.: 450297/2019

(Hon. Arthur F. Engoron)

AFFIRMATION

Melissa A. Pisapia, an attorney at law, duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I am an attorney with the New York Liquidation Bureau (“NYLB”), which serves as the staff of Shirin Emami, Acting Superintendent of Financial Services of the State of New York (“Superintendent”) in her capacity as liquidator (“Liquidator”) of Atlantis Health Plan, Inc. (“Atlantis”). I submit this affirmation, upon information and belief based on my review of the Atlantis files maintained by the NYLB and the conversations I have had with employees of the Liquidator, in support of the Liquidator’s application for an order substantially in the form as the proposed order annexed hereto as Exhibit “1” approving the Liquidator’s report on the status of the Atlantis liquidation proceeding (“Liquidation Proceeding”) and the financial transactions detailed in the report (“Report”). A copy of the Report is annexed hereto as Exhibit “2”.

Background and the Commencement of the Liquidation Proceeding

2. On April 17, 1995, Atlantis was incorporated in the State of New York, and obtained a certificate of authority, effective May 17, 2000, from the Department of Health to operate as a health maintenance organization pursuant to article 44 of the New York Public Health Law. Atlantis offered plans providing Medicare Advantage and Medicare Advantage Part D prescription drug coverage and healthcare to Medicare beneficiaries through a network of hospitals and other

healthcare service providers. Atlantis also provided non-government sponsored coverage to individuals and companies.

3. On April 19, 2019, this Court granted the Superintendent's application placing Atlantis into liquidation under Article 74 of the New York Insurance Law ("Insurance Law") and, among other things, appointing the Superintendent and her successors in office as Liquidator of Atlantis.

4. A bar date of October 11, 2019, was established for the submission of all claims and evidence supporting those claims, against Atlantis or its insureds, via an electronic web portal (www.nylbpoc.org) (the "Bar Date"). The Bar Date applies to all claims other than the Liquidator's claim for administrative expenses.

5. The Liquidator now submits her Report on the status of the Atlantis Liquidation Proceeding and requests authority to distribute assets.

Activities in Furtherance of Winding Down the Atlantis Estate

6. During the pendency of the Liquidation Proceeding, the Liquidator has (a) taken possession of Atlantis' business and assets, (b) transferred all electronic data to the Liquidator's control, (c) reviewed all of Atlantis's executory contracts; (d) reviewed claims asserted against Atlantis policies; (e) reviewed Atlantis's liabilities; (f) collected monies owed to Atlantis; (g) established Court-approved procedures for the judicial review of the Liquidator's recommended classification and adjudication of disputed claims; and (h) taken other steps necessary to wind down Atlantis' affairs.

7. All claims have been classified in accordance with the priorities set forth in Insurance Law Section 7434. Fifteen (15) claims were filed in the Liquidation Proceeding on or before the

Bar Date, of which one (1) was a Class two claim; three (3) were Class three claims; six (6) were Class five claims; one (1) was a Class six claim; and four (4) were Class nine claims.

8. Of the fifteen (15) claims submitted, the one (1) Class two claim was allowed by this Court in the amount of \$400,000 (NYSCEF Doc. No. 36), and the remaining claims have not been adjudicated by the Liquidator. Because there is sufficient moines to pay holders of allowed Class two claims in full, and assets to pay, at least in part, holders of allowed Class three claims, the Liquidator will adjudicate Class three claims and make recommendations to the Court to allow or disallow Class three claims.

9. This application seeks an order: (a) approving the Liquidator's Report and the financial transactions detailed therein; (b) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Atlantis Liquidation Proceeding; and (c) authorizing the Liquidator to distribute Atlantis' assets to claimants with allowed claims to the extent that, in the Liquidator's discretion, sufficient funds are available, and as consistent with this Court's orders and in the order of priority set forth in Insurance Law 7434.

Other Relief Sought.

1. The Liquidator proposes that notice be given through posting the Order to Show Cause and its supporting papers on the NYLB web page at <http://www.nylb.org> at least fifteen (15) days before the Return Date.

2. No previous application for the relief sought herein has been made to this or any other court of judge thereof.

WHEREFORE, it is respectfully requested that the Court grant an order substantially in the form as the proposed order annexed hereto as Exhibit "1" to the Report: (a) approving the

Liquidator's Report and the financial transactions detailed therein; (b) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Atlantis Liquidation Proceeding; and (c) authorizing the Liquidator to distribute Atlantis' assets to claimants with allowed claims to the extent that, in the Liquidator's discretion, sufficient funds are available, and as consistent with this Court's orders and in the order of priority set forth in Insurance Law 7434, and (d) granting the Liquidator such other and further relief as is just and proper.

Dated: New York, New York
September 7, 2021

Melissa A. Pisapia

Melissa A. Pisapia

L30775/Report

At IAS Part 37 of the Supreme Court of the State of New York, County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the ___ day of _____, 2021.

P R E S E N T:

HON. ARTHUR F. ENGORON, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of

Index No.: 450297/2019

the Liquidation of

ORDER

ATLANTIS HEALTH PLAN, INC.

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Upon the motion of the Superintendent of Financial Services of the State of New York, as liquidator (“Liquidator”) of Atlantis Health Plan, Inc. (“Atlantis”) for an order, *inter alia*: (a) approving the Liquidator’s report on the status of the Atlantis liquidation proceeding and the financial transactions detailed in the report (the “Report”), a copy of which is annexed as Exhibit “2” to the affirmation of Melissa A. Pisapia; (b) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Atlantis liquidation proceeding; (c) authorizing the Liquidator to distribute Atlantis’ assets to claimants with allowed claims to the extent that, in the Liquidator’s discretion, sufficient funds are available, and as consistent with this Court’s orders and in the order of priority set forth in Insurance Law 7434; and (d) granting the Liquidator such other and further relief as is just and proper.

NOW, on the motion of the Liquidator, and no opposition having been filed with the Court, it is;

ORDERED, that the application is granted; and it is further

ORDERED, that the Report and the financial transactions detailed in such report are approved; and it is further

ORDERED, that continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Atlantis liquidation proceeding is authorized; and it is further

ORDERED, that the distribution of Atlantis' assets to claimants with allowed claims to the extent that, in the Liquidator's discretion, sufficient funds are available and as consistent with this Court's orders and in the order of priority set forth in New York Insurance Law Section 7434, is authorized.

E N T E R

J.S.C.

L30775/Order/

EXHIBIT 2

**REPORT ON THE STATUS OF THE ATLANTIS HEALTH PLAN, INC.
LIQUIDATION PROCEEDING AND REQUEST FOR
AUTHORITY TO DISBURSE ASSETS**

Shirin Emami, Acting Superintendent of Financial Services of the State of New York (“Superintendent”) as liquidator (“Liquidator”) of Atlantis Health Plan Inc. (“Atlantis”) submits this report (“Report”) on the status of the Atlantis liquidation proceeding (“Liquidation Proceeding”) in support of the Liquidator’s motion for an order: (i) approving the Liquidator’s Report and the financial transactions detailed therein; (ii) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Atlantis Liquidation Proceeding; (iii) authorizing the Liquidator to distribute Atlantis’ assets to claimants with allowed claims to the extent that, in the Liquidator’s discretion, sufficient funds are available, and as consistent with this Court’s orders and in the order of priority set forth in Insurance Law 7434; and (iv) granting the Liquidator such other and further relief as is just and proper.

**BACKGROUND AND
COMMENCEMENT OF THE LIQUIDATION PROCEEDING**

On April 17, 1995, Atlantis was incorporated in the State of New York, and it obtained a certificate of authority, effective May 17, 2000, from the Department of Health to operate as a health maintenance organization pursuant to article 44 of the New York Public Health Law. Atlantis offered plans providing Medicare Advantage and Medicare Advantage Part D prescription drug coverage and healthcare to Medicare beneficiaries through a network of hospitals and other healthcare service providers (“Plans”). Atlantis also provided non-government sponsored coverage to individuals and companies.

On April 19, 2019, this Court granted the Superintendent’s application placing Atlantis into liquidation under Article 74 of the New York Insurance Law (“Insurance Law”) and, among

other things, appointing the Superintendent and her successors in office as Liquidator of Atlantis (“Liquidation Order”). To date, the Liquidator has (i) taken possession of Atlantis’ business and assets; (ii) transferred all electronic data to the Liquidator’s control; (iii) reviewed all of Atlantis’ executory contracts; (iv) reviewed and resolved N.Y. Ins. Law § 7434 Class 2 claims; (v) reviewed Atlantis’ liabilities; (vi) collected monies owed to Atlantis; (vii) applied and obtained a Court-order establishing judicial procedures to review the Liquidator’s recommended classification and adjudication of disputed claims; and (viii) taken other steps necessary to liquidate Atlantis.

THE LIQUIDATOR’S WINDING UP OF ATLANTIS’ AFFAIRS

A. Atlantis’ Insurance Policies Were Cancelled or Non-Renewed in Runoff

By February 1, 2016, Atlantis stopped providing non-government sponsored coverage and all Plans were terminated. Therefore, when Atlantis was placed into liquidation on April 19, 2019, no Atlantis insurance policies were in effect.

B. Establishment of a Bar Date

The Liquidation Order established October 11, 2019, as the bar date for submission to the Liquidator of all claims, and evidence supporting those claims, against Atlantis or its insureds, via an electronic web portal (www.nylbpoc.org) (the “Bar Date”). The Bar Date applies to all claims other than the Liquidator’s claim for administrative expenses. The Bar Date has enabled the Liquidator to determine the amount and classification of claims asserted against Atlantis.

C. The Liquidator’s Review of Financial Records

The Liquidator provided notice of the order to Atlantis’ creditors, claimants and policyholders in the manner ordered by the Supervising Court in the Liquidation Order. The Liquidator also took possession of Atlantis’ property, including all bank accounts, offices and equipment, and all claims records and files, both electronic and paper. The Liquidator transferred

Atlantis' bank accounts and other assets to the Liquidator's control, prepared an opening balance sheet, and reviewed Atlantis' records for potential recoveries and causes of action Atlantis might have against other persons or entities.

D. Marshaling of Assets

To date, marshaled assets consist of investment income and collection of monies owed to the estate.

E. Adjudication Procedures

By order, filed December 23, 2019, this Court approved a procedure for the judicial review of the adjudication of claims against the Atlantis estate. Under this adjudication procedure claims were classified under the priority scheme set forth in Insurance Law Section 7434 and recommended for either allowance or disallowance by the Liquidator. Claimants who objected to the Liquidator's recommendations were entitled to a hearing before the Court or a court-appointed referee. Any referee determination was subject to judicial review by the Court.

F. Class Two Claims Have Been Adjudicated and the Liquidator is Currently Adjudicating Class Three Claims

To date, all claims have been classified in accordance with the priorities set forth in Insurance Law Section 7434. The Liquidator has reviewed the only Class two claim, which was submitted by Mount Sinai Health Systems. The Court has issued an order approving the Liquidator's recommendation to allow this Class two claim. (NYSCEF Doc. No. 36). Because Atlantis has sufficient assets to pay all holders of allowed Class two claims in full, the Liquidator is now reviewing Class three claims and will make recommendations to allow or disallow those claims. The Liquidator does not intend to adjudicate claims below Class three unless there are sufficient assets to pay at least a portion of those claims. The Liquidator does not believe it is in

the best interests of the estate to expend resources adjudicating claims for which no assets will remain for distribution.

G. Distribution of Assets

Claims that are allowed by the Court are paid in accordance with the classification scheme set forth in Insurance Law Section 7434. No claims in a lower class can be paid until claims holding a higher classification has been paid in full:

Upon the recommendation of the Superintendent, and under the direction of the court, distribution payments shall be made 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.... No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

Insurance Law Section 7434(a)(1).

The classes of claims in Insurance Law Section 7434 are as follows:

- (i) Class one. Claims with respect to the actual and necessary expenses of administration incurred by a liquidator or rehabilitator.
- (ii) Class two. All claims under policies, including claims of federal, state or local government for losses incurred, third party claims, claims for unearned premiums, and all claims of security funds or guaranty associations, but excluding claims under reinsurance contracts.
- (iii) Class three. Claims of the federal government, except those under Class two.
- (iv) Class four. Claims for wages owing to employees of an insurer against whom an Article 74 proceeding is commenced and claims for unemployment insurance contributions required by Article 18 of the New York Labor Law.
- (v) Class five. Claims of state and local governments, except those under Class two.
- (vi) Class six. Claims of general creditors, including but not limited to claims arising under reinsurance contracts.

- (vii) Class seven. Claims filed late or any other claims other than claims stated in Class eight or Class nine below.
- (viii) Class eight. Claims for advanced or borrowed funds made pursuant to Insurance Law Section 1307.
- (ix) Class nine. Claims of shareholders or other owners in their capacity as shareholders.

Since the start of the Liquidation Proceeding, the Liquidator has been paying Class one administrative expenses incurred by the estate.

CURRENT STATUS OF CLAIMS PRESENTED

Fifteen (15) claims were filed in the Liquidation Proceeding on or before the Bar Date, of which: one (1) was a Class two claim, three (3) were Class three claims, six (6) were Class five claims, one (1) was a Class six claim; and four (4) were Class nine claims. Of the fifteen (15) claims submitted, the one (1) Class two claim was allowed by this Court in the amount of \$400,000 (NYSCEF Doc. No. 36), and the remaining thirteen (13) claims have not been adjudicated by the Liquidator. The Liquidator will adjudicate Class three claims because it appears the estate will have sufficient assets to pay, at least in part, allowed Class three claims. The Class three claims were asserted by the U.S. Department of Health and Human Services.

FINANCIAL CONDITION OF ATLANTIS

The estate's financial books and records were determined as of June 30, 2021 (the "Reference Date"). Atlantis' comparative statement of assets, the statement of liabilities and the statement of changes in cash and invested assets for the period between the date of the Liquidation Order and the Reference Date are annexed hereto as Exhibit "A." As of the Reference Date, Atlantis had total assets of \$2,944,081, and total liabilities of \$11,318,722.

1. Assets

Atlantis had total assets of \$2,944,081 as of the Reference Date, which consisted of \$364,140 in cash and \$2,567,802 in investments in bonds. Subsequent to the Reference Date, Atlantis' assets may be adjusted, upward or downward, based on incoming receipts or payment of administrative expenses, and cannot be determined with finality at this time.

2. Collection of Assets

As of the Reference Date, the Liquidator had collected assets in the amount of \$121,715, which consisted of \$94,846 in investment income, and \$26,869 in miscellaneous receipts recovered from the New York State Abandoned Property Division.

3. Distribution of Assets as of the Reference Date

As of the Reference Date, the Liquidator distributed a total of \$59,973, consisting of \$23,934 in salaries of the Liquidator's staff; \$2,982 in employee relations and welfare; \$1,492 in general and administrative expenses (*e.g.*, IT services and general office maintenance); \$25,756 in professional fees (*e.g.*, accountants and other consultants); and \$5,809 for other miscellaneous expenses (*e.g.*, insurance and bank fees).

4. Projected Distributions of Assets as of the Reference Date

The Liquidator believes the Atlantis estate will have sufficient funds to pay all Class one and Class two claims in full as well as a portion of Class three claims. The Liquidator does not believe there will be sufficient assets to pay claimants holding claims below Class three. *See* Exhibit A.

RELIEF SOUGHT

The Liquidator submits this Report to describe to the Court the status of the Atlantis Liquidation Proceeding and request authorization to make distributions of Atlantis' assets at such

time as the Liquidator determines, in her discretion, that sufficient assets are available. In support of the Liquidator's recommendations herein, the Liquidator has submitted the Affirmation of Melissa A. Pisapia. Based on the facts set forth in the Affirmation and in this Report, the Liquidator respectfully requests that the Court issue an order:

1. approving the Liquidator's Report and the financial transactions detailed therein;
2. authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator, if any, including such expenses pertaining to the closing of the Atlantis Liquidation Proceeding; and
3. authorizing the Liquidator to distribute Atlantis' assets to claimants with allowed claims to the extent that, in the Liquidator's discretion, sufficient funds are available, and as consistent with this Court's orders and in the order of priority set forth in Insurance Law 7434.

Dated: New York, New York
September 7, 2021

David Axinn

David Axinn
Special Deputy Superintendent and Agent of
Shirin Emami, Acting Superintendent of
Financial Services of the State of New York
as Liquidator of Atlantis Health Plan, Inc.

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EXHIBIT A

STATEMENT OF ASSETS

| | <u>June 30, 2021</u> | <u>April 19, 2019 Liquidation Date</u> |
|---------------------------------------|----------------------|--|
| Unrestricted Assets: | | |
| Cash | \$ 364,140 | \$ 2,847,825 |
| Bonds | 2,567,802 | - |
| Total Cash and Invested Assets | <u>2,931,942</u> | <u>2,847,825</u> |
| | | |
| Accrued Investment Income | 12,139 | - |
| | | |
| Total Unrestricted Assets | <u>2,944,081</u> | <u>2,847,825</u> |
| | | |
| Total Assets | <u>\$ 2,944,081</u> | <u>\$ 2,847,825</u> |

STATEMENT OF LIABILITIES

| | <u>June 30, 2021</u> | <u>April 19, 2019 Liquidation Date</u> |
|---|----------------------|--|
| Class I - Administrative Claims: | \$ 14,678 | \$ - |
| Class II - Claims and Related Costs: | 400,000 | - |
| Class III - Federal Government Claims: | 7,627,354 | 7,627,354 |
| Class V - State and Local Government Claims: | 2,892,344 | 2,646,609 |
| Class IV - Employee Claims: | - | - |
| Class VI - General Creditors: | 384,346 | 384,346 |
| | | |
| Total Liabilities | <u>11,318,722</u> | <u>10,658,309</u> |
| | | |
| Deficit | (8,374,641) | (7,810,484) |
| | | |
| Total Liabilities and Liquidator's Deficit | <u>\$ 2,944,081</u> | <u>\$ 2,847,825</u> |

STATEMENT OF CHANGES IN CASH AND INVESTED ASSETS

| | <u>Inception to June 30, 2021</u> |
|---|---------------------------------------|
| Receipts: | |
| Investment Income Received | \$ 94,846 |
| Miscellaneous | 26,869 |
| Total Receipts | 121,715 |
| Disbursements: | |
| Salaries | 23,934 |
| Employee Relations and Welfare | 2,982 |
| Professional Fees | 25,756 |
| General and Administrative Expenses | 1,492 |
| Micellaneous Expenses | 5,809 |
| Total Disbursements | 59,973 |
| Net Increase of Receipts Over Disbursements | 61,742 |
| Cash and Invested Assets (Unrestricted) as of Liquidation date February 10 | 2,847,825 |
| Realized Loss on Investments | 22,375 |
| Cash as of November 18, 2020 | \$ 2,931,942 |