

At IAS Part 37 of the Supreme Court of the State of New York, County of New York, at the courthouse located at 90 Centre New York City, New York, on the 22 day of April, 2016.

Present:
HON. ENOCHRON

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

In the Matter of

the Application of

Maria T. Vullo, Acting Superintendent of
Financial Services of the State of New York,
for an order to take possession of the property of and
liquidate the business and affairs of

HEALTH REPUBLIC INSURANCE OF NEW YORK,
CORP.

Index No. 450500 /2016

ORDER TO SHOW CAUSE

Upon reading (i) the annexed Verified Petition of Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York (the "**Superintendent**"), duly verified on the 20th day of April, 2016 (the "**Petition**"),¹ which seeks entry of the Proposed Liquidation Order (as defined below) based upon (a) the consent of Health Republic Insurance of New York, Corp. ("**HRINY**") and (b) HRINY's insolvency; (ii) the exhibits attached to the Petition, and (iii) the Memorandum of Law in Support of the Petition; and it appearing that the requested relief should be granted;

NOW, on motion of Eric T. Schneiderman, Attorney General of the State of New York, attorney for the Superintendent, and after due deliberation having been had thereon;

¹ Capitalized terms not otherwise defined shall have the meanings ascribed to them in the Petition.

LET HRINY, or their counsel, appear and show cause before this Court at IAS Part 35 Room 430, thereof, at the Courthouse located at 60 Centre St in the County, City and State of New York, on the 10th day of May, 2016, at 9:30 o'clock a.m., or as soon thereafter as counsel can be heard (the "**Return Date**"), why an order should not be made, pursuant to Article 74 of the New York Insurance Law (the "**NYIL**"), substantially in the form attached to the Petition as **Exhibit A** (the "**Proposed Liquidation Order**"), (i) appointing the Superintendent and her successors in office as liquidator ("**Liquidator**") of HRINY; (ii) directing the Liquidator to take possession and/or control of the property and assets of HRINY and to liquidate the business and affairs thereof; and (iii) granting injunctive relief and other relief, as more thoroughly set forth in the Petition, its supporting papers and the Proposed Liquidation Order;

AND, sufficient cause having been shown therefor, let service of a copy of this order to show cause and the Petition and the other supporting papers on which it is granted be made by personal service upon Ronald J. Vance, Jr., Chief Restructuring Officer of HRINY, as designated agent for service of process, or any other officer, director, trustee, or managing agent of HRINY, on or before the 26th day of APRIL, 2016, ~~and~~ and such service shall be deemed good and sufficient service; and it is hereby

ORDERED, that answering papers, either in support of or opposition to the relief sought herein (the "**Answering Papers**"), shall be served on the Superintendent at the following addresses:

Office of the Attorney General
120 Broadway
New York, NY 10271
Attention: David Holgado

and

New York Liquidation Bureau
110 William Street, 15th Floor
New York, New York 10038
Attention: General Counsel

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attention: Gary T. Holtzer, Esq. and Joseph T. Verdesca, Esq.

at least seven (7) days before the Return Date, and that any Answering Papers, together with an affidavit of service, shall be filed with the Court on or before the Return Date; and it is further

ORDERED, that any person or entity that fails to serve Answering Papers as provided herein shall be deemed to have waived any objections to the relief sought in the Petition and shall be barred from raising objections in this or any other proceeding concerning matters set forth herein; and it is further

ORDERED, that any person or entity that has served Answering Papers as provided herein shall be deemed to have waived any objections that are not set forth in the Answering Papers; and it is further

ORDERED, that pending a hearing on the Petition ~~and entry of the Proposed~~
~~Liquidation Order or such other order of this Court;~~

1. All persons and entities are enjoined and restrained, except as authorized by the Superintendent or her designee in writing, from:
 - a. transacting HRINY's business;
 - b. disposing of HRINY's property; and
 - c. disclosing the name, address, or contact information of any person who was covered by an insurance policy issued by HRINY ("**Member**"), or any other information that is proprietary to HRINY or not in the public domain;

HON. ARTHUR F. ENGoron

HON. ARTHUR F. ENGoron

2. All persons and entities are enjoined and restrained from wasting or permitting to be done any act or thing that might waste HRINY's property;
3. Except for any investigation or enforcement action by any state or federal agency, all persons and entities are enjoined and restrained from (a) commencing, continuing, advancing, or otherwise prosecuting any action, claim, lawsuit, arbitration, alternative dispute resolution proceeding, or other formal legal or administrative proceeding (each, a "Proceeding") in any municipal, state, federal, or foreign court, administrative body, or other tribunal or (b) proceeding with any discovery or other litigation tasks or procedures, including serving any subpoenas or other third-party discovery requests in any pending or future action, against (i) HRINY; or (ii) the New York State Department of Financial Services ("NYDFS"), the Superintendent, or any of their respective officers, employees, attorneys, representatives, or agents, or any directors, officers, employees, attorneys, representatives, or agents of HRINY, in each case arising out of or related to HRINY or the commencement or continuation of this liquidation proceeding (the "Liquidation Proceeding");
4. All persons and entities are enjoined and restrained from asserting or obtaining any preferences, judgments, attachments or other liens, or taking any steps to transfer, foreclose, sell, assign, garnish, levy, encumber, attach, dispose of, exercise or enforce purported rights, in or against HRINY, any claimed interest in any property or assets of HRINY or any part thereof;
5. Any party that has contracted with HRINY (or any third-party beneficiary of such a contract) is prohibited from modifying or terminating such contract or the rights or obligations of HRINY thereunder, including by declaring an event of default under the existing contract on account of the insolvency of HRINY, commencement or continuation of this Liquidation Proceeding, non-payment or the financial condition of HRINY prior to this Liquidation Proceeding, or any action by the Superintendent with respect to HRINY;
6. In accordance with Section 4307(d) of the NYIL, no Member shall be liable to any provider of health care services ("Provider"), irrespective of whether the Provider participated in the HRINY network, for any services covered by HRINY, no Provider shall collect or attempt to collect from any Member sums owed by HRINY, and no Provider shall maintain any action against any Member to collect such sums; provided, however, that nothing in this paragraph shall affect a Member's liability for, or prohibit a

HON. ARTHUR F. ENGORON

Provider from collecting or attempting to collect from or maintaining an action against any Member to collect, coinsurance amounts, copayments, and deductibles owed by such Member;

7. HRINY and all persons and entities having any property, papers (including attorney work product and documents held by attorneys) and/or information, including but not limited to business records, insurance policies, underwriting data, reinsurance policies, claims files (electronic or paper), software programs, bank records, and/or any tangible or intangible items of value belonging to or relating to HRINY shall preserve such property and/or information; and
8. Any person or entity providing claims processing services, data processing services, electronic records retention services, or other information technology services to or on behalf of HRINY shall maintain and preserve all information in its possession relating in any way to HRINY and its rights and obligations, wherever located, including but not limited to all documents, data, electronic files and records, computer equipment (e.g., servers and printers), software programs, and software licenses owned or leased by HRINY.

ENTER

J. S. C.

HON. ARTHUR F. ENGORON

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

-----	X	
	:	
In the Matter of	:	
	:	
the Application of	:	Index No. _____/2016
	:	
Maria T. Vullo, Acting Superintendent of	:	
Financial Services of the State of New York,	:	<u>VERIFIED PETITION</u>
for an order to take possession of the property of and	:	
liquidate the business and affairs of	:	
	:	
HEALTH REPUBLIC INSURANCE OF NEW YORK,	:	
CORP.	:	
-----	X	

Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York (the “**Superintendent**”), respectfully submits this verified petition (the “**Verified Petition**”) to the Court for an order substantially in the form of **Exhibit A** annexed hereto (the “**Proposed Liquidation Order**”): (i) appointing the Superintendent and her successors in office as liquidator (the “**Liquidator**”) of Health Republic Insurance of New York, Corp. (“**HRINY**”); (ii) authorizing and directing the Liquidator to take possession and control of the property and assets of HRINY and to liquidate the business and affairs thereof in accordance with Article 74 of the New York Insurance Law (the “**NYIL**”); (iii) issuing certain injunctive relief pursuant to Section 7419 of the NYIL; and (iv) granting such other and further relief as specified below, in the Proposed Liquidation Order, and as the Court may deem just and proper.

Preliminary Statement

1. At least two independent statutory grounds exist to place HRINY into liquidation, either of which would provide a sufficient basis for entry of the Proposed Liquidation Order: (i) HRINY’s consent and (ii) HRINY’s insolvency. This Court is authorized under Section 7419 of the NYIL to grant the injunctive relief requested and described below in order to facilitate an orderly wind down of HRINY’s business and to minimize the potential harm to the general

public and disruption to the health insurance marketplace that could result from this liquidation proceeding (the “**Liquidation Proceeding**”) and the circumstances leading to this action.

Background

2. Pursuant to the Patient Protection and Affordable Care Act (“**ACA**”), signed into law on March 23, 2010, Congress directed the Secretary of the Department of Health and Human Services (“**HHS**”) to establish the Consumer Operated and Oriented Plan (“**CO-OP**”) Program (the “**Program**”), the purpose of which is to foster the creation of qualified nonprofit health insurance issuers to offer competitive health plans to the individual and small group markets. The Centers for Medicare & Medicaid Services (“**CMS**”), an operating division of HHS, oversees the Program.

3. Recognizing that the Program was new and that the nonprofit CO-OPs would have no private funding, as part of the Program, CMS provided certain low- or no-interest loans to qualified CO-OP applicants for the purpose of financing start-up costs and insurance reserves. In addition, again recognizing the difficulties in starting a new health care program with no private source of capital, under the Program initially devised by Congress and HHS, CO-OPs were entitled to receive funding from three premium stabilization programs established by the ACA, known as the “3Rs” – Risk Corridors, Risk Adjustment, and Reinsurance. These programs were designed to mitigate losses over a period of years and address the uncertainty related to the implementation of the ACA. The Risk Corridors Program, in particular, was designed to protect insurers from pricing uncertainties and to limit losses and gains beyond an allowable range. Under the Risk Corridors Program, HHS collects funds from insurers with lower-than-expected claims and makes payments to insurers with higher-than-expected claims.

4. HRINY, originally formed under the name Freelancers Health Service Corporation (“**Freelancers**”),¹ was incorporated in the State of New York as a not-for-profit corporation on October 4, 2011. HRINY was formed for the purposes of obtaining a license to issue health service indemnity coverage pursuant to Article 43 of the NYIL and to operate as a CO-OP under the Program. HRINY’s principal office is located at 30 Broad Street, New York, New York 10004.

5. On February 17, 2012, CMS approved HRINY’s application for participation in the Program as a qualified nonprofit health insurance issuer under Section 1322 of the ACA and to obtain start-up and solvency funding from CMS. More specifically, pursuant to a loan agreement, dated February 17, 2012, between HRINY and CMS (the “**CMS Loan Agreement**”), CMS agreed to loan to HRINY (i) an amount not to exceed \$23,767,000.00 to fund all required development activities and costs associated with establishing a CO-OP (the “**Start-Up Loan**”) and (ii) \$150,678,000.00 to fund state solvency and reserve requirements (the “**Solvency Loan**”). Pursuant to the CMS Loan Agreement, the Start-Up Loan and the Solvency Loan are general obligations of HRINY that are subordinate to (i) claims payments, (ii) the ordinary and necessary expenses incurred by HRINY in carrying out its day-to-day activities, and (iii) maintenance of required reserve funds.

6. In May 2013, the CMS Loan Agreement was amended for the purpose of complying with the Superintendent’s requirements for acknowledging the Solvency Loan as a surplus note and accepting the proceeds of the Solvency Loan as an asset for regulatory capital and reserve purposes under Section 1307 of the NYIL. In September 2014, the Solvency Loan was amended to increase the total funding available to HRINY from \$150,678,000.00 to

¹ On October 21, 2014, the NYDFS (as defined below) approved Freelancers’ application to change its name to HRINY. All references to HRINY shall refer to Freelancers if the time period at issue is before October 21, 2014.

\$241,366,000.00. Proceeds of the Solvency Loan were distributed to HRINY in December 2013, August 2014, and in February, May, and June 2015.

7. Presently, HRINY's reported liability for draw-downs on the Start-Up Loan is \$23,280,400.00. HRINY has drawn down on the Solvency Loan in its entirety, and no further federal loan funding is available. However, HRINY takes the position that it is still eligible to participate in the 3Rs Program.

8. On July 22, 2013, HRINY became licensed under Article 43 of the NYIL to offer health service indemnity coverage to enrollees covered by insurance policies issued by HRINY (the "**Members**"). N.Y. Ins. Law § 4301 *et seq.*

9. Starting on January 1, 2014, and continuing through September 25, 2015, HRINY issued individual and small group health insurance policies to New Yorkers both on and off the New York State of Health, The Official Health Plan Marketplace (the "**Marketplace**"), as well as through private brokers. HRINY also issued one large group health insurance policy to its employees. In its first year of operation, HRINY offered health insurance in 55 of the 62 counties in New York State. HRINY's policies covered health care and pharmaceutical services provided to Members pursuant to certain health benefit and prescription drug plans underwritten by HRINY. By October 2015, HRINY had approximately 215,000 enrollees – (i) 72,000 individual enrollees on the Marketplace; (ii) 34,000 individual enrollees off the Marketplace; (iii) 5,700 small group enrollees on the Marketplace; (iv) 87,000 small group enrollees off the Marketplace; and (v) 16,000 private exchange enrollees.

Events Leading to Commencement of the Liquidation Proceeding

10. During its first year of operations, HRINY's enrollment surpassed projections and HRINY experienced losses that were significantly greater than it had projected.

11. In June 2015, CMS and the New York State Department of Financial Services ("**NYDFS**") received an independent audit report (the "**Audit**"), prepared by BDO USA, LLP, concerning HRINY's 2014 annual report. The Audit reported certain financial and other reporting errors in the financial statements prepared by HRINY that were included in the annual report. After receiving the Audit, CMS and the NYDFS required HRINY to submit a revised annual report and corrected financial statements for 2014, as well as a corrected quarterly financial statement for the period ending March 31, 2015. After their review of such financial reports and taking certain other investigative actions, CMS and the NYDFS determined that, as of December 31, 2015, HRINY's total admitted assets would be less than the aggregate amount of its liabilities and required surplus as of that date. As a result, CMS and the NYDFS concluded that HRINY was unable to profitably manage its business without a further infusion of capital.

12. Accordingly, on September 25, 2015, (i) the NYDFS directed HRINY to cease writing new health insurance policies and to commence an orderly wind-down process; (ii) the Marketplace announced that HRINY would not be certified to sell insurance products on the Marketplace in 2016; and (iii) CMS terminated the CMS Loan Agreement as of December 31, 2015.

13. On October 1, 2015, HRINY's financial condition worsened even further when HHS publicly reported that HRINY would receive less funding than it had expected under the federal Risk Corridors Program. As part of this October 1 announcement, HHS reported that Risk Corridors collections for 2014 were insufficient to make full Risk Corridors payments for that year, and that the payments to insurers like HRINY would be reduced to a proration rate of

12.6 percent. Thus, HRINY would receive only 12.6 percent of what it was due under the Risk Corridors Program, which was \$18.8 million of \$149.3 million. To date, HRINY has received approximately only \$18.1 million of Risk Corridors payments for 2014, a small fraction of the amount that was intended to protect insurers like HRINY from higher-than-expected losses during the first few years after the passage of the ACA. The failure to receive these expected funds caused further deterioration of HRINY's financial condition.

14. Based on this additional information, on October 30, 2015, CMS, the NYDFS, and the Marketplace announced that HRINY's financial condition was substantially worse than HRINY had previously reported to the NYDFS. On the same day, the NYDFS directed HRINY to terminate all insurance policies as of November 30, 2015 and to assist in the orderly transition of Members to other insurance carriers, as the NYDFS had determined that it was in the best interest of the public to accelerate the wind-down of HRINY's business.

15. On October 31, 2015, the NYDFS and the Marketplace notified all Members that their insurance plans with HRINY would terminate as of November 30, 2015 and that they would be required to transition to alternative insurance carriers to obtain new coverage effective December 1, 2015. The NYDFS worked diligently with the Marketplace to facilitate the transition of Members to alternative insurance carriers.

16. On October 27, 2015, HRINY's board of directors (the "**Board**") unanimously consented to the entry of an Order of Rehabilitation or Liquidation pursuant to Article 74 of the NYIL, as evidenced by a certified copy of the resolutions of the Board attached as **Exhibit B** (the "**Consent Resolutions**").

17. On November 9, 2015, the NYDFS issued an order pursuant to Section 1311 of the NYIL (the "**1311 Order**") directing HRINY to immediately suspend the payment of any and all claims as of that date and otherwise operate only in the ordinary course of business, except as

the Superintendent may otherwise expressly approve. A copy of the 1311 Order is attached hereto as **Exhibit C**.

18. HRINY's new management team, HRINY's advisors, the NYDFS, and the New York Liquidation Bureau (the "**NYLB**") have worked collaboratively to prepare for and effectuate an orderly wind down and liquidation of HRINY's health insurance business, the primary goal of which has been to minimize harm to Members and providers and disruption to the health care and insurance marketplaces.

19. Based on her review of financial statements and other information provided by HRINY, the Superintendent has determined that HRINY's required reserves and other liabilities exceed its admitted assets. Thus, the Superintendent has found that HRINY is unable to pay its outstanding obligations as they mature in the regular course of business, and is therefore insolvent under Section 1309 of the NYIL.

Grounds for Commencement of the Liquidation Proceeding

20. Pursuant to Section 4313(b) of the NYIL, HRINY is subject to Article 74 of the NYIL. N.Y. Ins. Law § 4313(b). At least two separate grounds exist to place HRINY into liquidation under Section 7402 of the NYIL, each of which constitutes an independent and sufficient ground for entry of the Proposed Liquidation Order: (i) HRINY's consent to the Liquidation Proceeding and (ii) HRINY's insolvency. *Id.* §§ 7402(a), (l).

HRINY's Consent to Liquidate

21. Section 7402(l) of the NYIL provides that a domestic insurer may be placed into liquidation if the majority of its directors, shareholders, or members consents to liquidation. *Id.* § 7402(l). As evidenced by the Consent Resolutions, the Board unanimously consented to the entry of an order of liquidation and the commencement of this Liquidation Proceeding. This

consent alone constitutes sufficient basis for entry of the Proposed Liquidation Order. *See id.* Accordingly, HRINY should be placed into liquidation pursuant to Article 74 of the NYIL.

HRINY's Insolvency

22. Section 7402(a) of the NYIL provides that an insurer may be placed into liquidation if, among other grounds, it is insolvent within the meaning of Section 1309 of the NYIL. *Id.* § 7402(a). Section 1309 provides, in relevant part, that

[w]hensoever the superintendent finds from a financial statement or report on examination that an authorized insurer is unable to pay its outstanding lawful obligations as they mature in the regular course of business, as shown by an excess of required reserves and other liabilities over admitted assets, . . . such insurer shall be deemed insolvent and the superintendent may proceed against it pursuant to the provisions of article seventy-four of this chapter.

Id. § 1309(a).

23. As set forth above, HRINY's liabilities and required surplus exceed its admitted assets. Thus, the Superintendent has found that HRINY is unable to pay its outstanding obligations as they mature in the regular course of business, and is therefore insolvent within the meaning of Section 1309 of the NYIL. Under Section 7402(a) of the NYIL, this alone constitutes sufficient basis for entry of the Proposed Liquidation Order. Accordingly, HRINY should be placed into liquidation pursuant to Article 74 of the NYIL.

Relief Requested

24. In light of the foregoing, the Superintendent respectfully requests that the Court issue the Proposed Liquidation Order, which would, among other things, (i) declare that there are sufficient grounds to place HRINY into liquidation; (ii) appoint the Superintendent and her successors in office as the Liquidator of HRINY and vest the Liquidator with all powers and authority that either are expressed or implied under Article 74 of the NYIL or otherwise are set forth in the Proposed Liquidation Order; (iii) authorize and direct the Liquidator to take

possession and/or control of HRINY's property and assets and to liquidate HRINY's business and affairs in accordance with Article 74 of the NYIL; (iv) order that the Liquidator may deal with the property and business of HRINY in HRINY's name or in the name of the Liquidator, including, without limitation, to continue, commence, advance, defend, or prosecute any action, claim, lawsuit, arbitration, alternative dispute resolution proceeding, or other formal legal or administrative proceedings in any municipal, state, federal, or foreign court, administrative body, or other tribunal; (v) vest the Liquidator with title to HRINY's property, contracts, rights of action, and all of its books and records, wherever located; (vi) vest the Liquidator with all rights in HRINY's contracts and agreements, however described, and permit the Liquidator, in her discretion, to reject any executory contracts to which HRINY is a party; (vii) authorize the Liquidator to pay the actual and necessary expenses incurred by the Liquidator in the administration of the Liquidation Proceeding; (viii) require that all claims for payment under insurance policies issued by HRINY (collectively, "**Policy Claims**") be submitted in accordance with existing contractual deadlines and procedures; and (ix) with respect to all claims other than Policy Claims, defer the establishment of the deadline by which all persons and entities having claims against HRINY must file or present such claims to the Liquidator until further order of the Court.

25. The Superintendent further respectfully requests that the Court grant, pursuant to Section 7419 of the NYIL, the injunctive relief set forth in paragraphs 8 through 13 of the Proposed Liquidation Order and paragraphs 1 through 6 of the order to show cause filed contemporaneously herewith (the "**Order to Show Cause**"). Section 7419(a) provides that, "[u]pon application by the superintendent for an order to show cause under this article or at any time thereafter, the court . . . may without notice issue an injunction restraining the insurer, its officers, directors, shareholders, members, trustees, agents, servants, employees, policyholders,

attorneys, managers, and all other persons from the transaction of its business or the waste or disposition of its property.” N.Y. Ins. Law § 7419(a). Section 7419(b) provides that the Court may “at any time during a proceeding under this article issue such other injunctions or orders as it deems necessary to prevent interference with the superintendent or the proceeding, or waste of assets of the insurer, or the commencement or prosecution of any actions, the obtaining of preferences, judgments or other liens, or the making of any levy against the insurer, its assets or any part thereof.” *Id.* § 7419(b).

26. The injunctive relief set forth in the Proposed Liquidation Order and the Order to Show Cause is necessary to enable the Superintendent to fulfill her statutory mandate to “take possession of the property of [the] insurer and to liquidate the business of the same” in accordance with Article 74 of the NYIL. *Id.* § 7405(b). In addition, the injunctive relief includes certain specific provisions tailored to the unique circumstances of an insolvent health insurance CO-OP like HRINY. Paragraph 6 of the Order to Show Cause and paragraph 13 of the Proposed Liquidation Order prohibit providers from collecting or attempting to collect from any Member sums owed by HRINY related to services covered by HRINY other than coinsurance amounts, copayments, and deductibles owed by such Member. This prohibition on “balance billing” is mandated by applicable law and is necessary to minimize any harm caused to individual Members by the financial deterioration of HRINY. Additionally, paragraph 5 of the Order to Show Cause and paragraph 12 of the Proposed Liquidation Order prohibit all persons and entities from modifying, including by declaring a default under or terminating, any existing contract on account of any contractual provisions based on HRINY’s financial condition or insolvency, the commencement or continuation of the Liquidation Proceeding, HRINY’s non-payment prior to the Liquidation Proceeding, or any action by the Liquidator with respect to HRINY. Prohibiting all persons and entities from exercising rights under these types of

contractual *ipso facto* provisions is necessary to ensure an orderly, fair, and equitable wind-down of HRINY.

27. The Superintendent further respectfully requests that the Court confirm that there is no liability on the part of the Liquidator, the NYLB, or any of their respective employees, attorneys, representatives, or agents when acting in good faith, in accordance with the orders of this Court, and/or, in the case of the Liquidator and the NYLB, in the performance of their duties pursuant to Article 74 of the NYIL. The Liquidator acts in a private capacity under the supervision of this Court pursuant to Article 74 of the NYIL. Accordingly, the recognition of judicial immunity for the Liquidator and her agents and employees is appropriate.

28. In accordance with Section 7417 of the NYIL, this Liquidation Proceeding is being commenced by order to show cause.

Notice


29. Pursuant to Section 7418 of the NYIL, notice of the Order to Show Cause has been served upon Ronald J. Vance, Jr., the Chief Restructuring Officer of HRINY. The Superintendent respectfully represents that no other or further notice of the Order to Show Cause need be provided.

Conclusion

30. There has been no previous application for the relief requested herein.

WHEREFORE, the Superintendent respectfully requests that this Verified Petition be granted, that the Court enter the Proposed Liquidation Order substantially in the form of that attached hereto as **Exhibit A**, and that the Court grant the Superintendent such other and further relief as is just and proper.

Dated: New York, New York
April 20, 2016



Maria T. Vullo
Acting Superintendent of Financial Services
of the State of New York

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Maria T. Vullo, being duly sworn, deposes and says:

That she is the Acting Superintendent of Financial Services of the State of New York and that she executed the foregoing petition; that she is acquainted with the facts therein stated; that she knows the contents of the petition and that the same is true to her own knowledge, and information and belief, the sources of which are the records maintained by the New York State Department of Financial Services.



Maria T. Vullo
Acting Superintendent of Financial Services
of the State of New York

Sworn to before me this
20th day of April, 2016



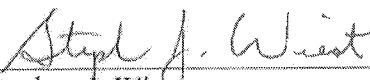
Notary Public

MARTHA A. LEES
Notary Public, State of New York
No. 02LE6129105
Qualified in Kings County
Commission Expires 06/20 17

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

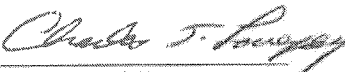
Stephen J. Wiest, being duly sworn, deposes and says:

That he is the Deputy Bureau Chief of the Health Bureau of the New York State Department of Financial Services (the "NYDFS") and that he reviewed the foregoing petition; that he is acquainted with the facts therein stated; that he knows the contents of paragraphs 2 through 6, 8 through 12, 14 through 15, 17, 19, 23, and 30 of the petition and that the same is true to his own knowledge, and information and belief, the sources of which are the records maintained by the NYDFS.



Stephen J. Wiest
Deputy Bureau Chief, Health Bureau
New York State Department of Financial Services

Sworn to before me this
20th day of April, 2016



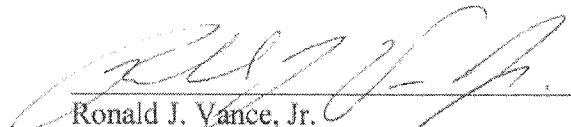
Notary Public

Charles T. Lovejoy
Notary Public, State of New York
No. 01LO4798952
Qualified in New York County
Commission Expires 1-26-18

Maryland
STATE OF ~~NEW YORK~~)
) ss.:
COUNTY OF ~~NEW YORK~~)
Montgomery

Ronald J. Vance, Jr., being duly sworn, deposes and says:

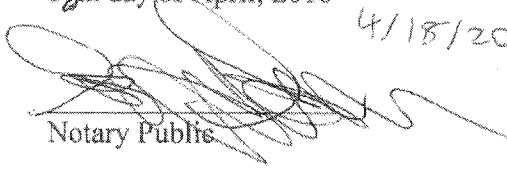
That he is the Chief Restructuring Officer of Health Republic Insurance of New York, Corp. ("HRINY") and a Managing Director of the Healthcare Industry Group at Alvarez & Marsal, and that he reviewed the foregoing petition; that he is acquainted with the facts therein stated; that he knows the contents of paragraphs 7, 13, 16, 18, 21, and 29 of the petition and that the same is true to his own knowledge, and information and belief, the sources of which are the records maintained by HRINY.



Ronald J. Vance, Jr.
Chief Restructuring Officer
Health Republic Insurance of New York, Corp.

BB Sworn to before me this
19th day of April, 2016

4/18/2016



Notary Public

NOTARY SEAL
Brendan R. Blee, Notary Public
Montgomery County, Bethesda, Maryland
My Commission Expires Aug. 21, 2016

Exhibit A

Proposed Liquidation Order

At IAS Part ____ of the Supreme Court of the State of New York, County of New York, at the courthouse located at _____, New York City, New York, on the ____ day of _____, 2016.

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

-----	X	
	:	
In the Matter of	:	
	:	Index No. _____/2016
the Application of	:	
	:	
Maria T. Vullo, Acting Superintendent of	:	<u>ORDER OF LIQUIDATION</u>
Financial Services of the State of New York,	:	
for an order to take possession of the property of and	:	
liquidate the business and affairs of	:	
	:	
HEALTH REPUBLIC INSURANCE OF NEW YORK,	:	
CORP.	:	
-----	X	

Petitioner Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York (the “**Superintendent**”), having moved this Court for an order placing Health Republic Insurance of New York, Corp. (“**HRINY**”) into liquidation, and upon reading and filing the Order to Show Cause dated April __, 2016, the verified petition of the Superintendent, duly verified on the 20th day of April, 2016 (the “**Petition**”),¹ the exhibits attached to the Petition, and the Memorandum of Law in Support of the Petition, and the Court having held a full hearing to consider the requested relief, this Court finds that:

- a. HRINY was originally incorporated as the Freelancers Health Services Corporation on October 4, 2011, and on October 21, 2014 changed its name to Health Republic Insurance of New York, Corp.;

¹ Capitalized terms not otherwise defined shall have the meanings ascribed to them in the Petition.

- b. HRINY is licensed as a not-for-profit corporation under Article 43 of the New York Insurance Law (the “NYIL”);
- c. HRINY is operating as a Federal Consumer Operated and Oriented Plan under the Patient Protection and Affordable Care Act;
- d. HRINY’s statutory home office is located at 30 Broad Street, New York, New York 10004;
- e. HRINY is subject to the NYIL and, in particular, to Article 74 thereof;
- f. HRINY’s board of directors has consented to the entry of an order of liquidation pursuant to Article 74 of the NYIL by a unanimous board resolution;
- g. HRINY is insolvent within the meaning of Section 1309 of the NYIL;
- h. It is in the best interest of HRINY’s policyholders, creditors, and the general public that the Superintendent be directed to take possession of HRINY’s property and to liquidate its business and affairs; and
- i. Judicial immunity applies to the Liquidator (as defined below), the New York Liquidation Bureau (“NYLB”), and their respective employees, attorneys, representatives, and agents for any action taken by them when acting in good faith, in accordance with the orders of this Court, and/or, in the case of the Liquidator and the NYLB, in the performance of their duties pursuant to Article 74 of the NYIL.

NOW, on motion of Eric T. Schneiderman, Attorney General of the State of New York, attorney for the Superintendent, it is ORDERED as follows:

- 1. The relief requested in the Petition is granted;
- 2. The Superintendent and her successors in office are appointed liquidator (the “Liquidator”) of HRINY;
- 3. The Liquidator is authorized and directed to take possession and/or control of HRINY’s property and assets and to liquidate HRINY’s business and affairs in accordance with Article 74 of the NYIL;
- 4. The Liquidator is vested with all powers and authority expressed or implied under Article 74 of the NYIL, in addition to the powers and authority set forth in this Order and with title to and all rights in HRINY’s property, contracts and agreements however described, rights of action

and all of its books and records, wherever located, as of the date of entry of this Order;

5. The Liquidator may deal with the property and business of HRINY in HRINY's name or in the name of the Liquidator, including, without limitation, to continue, commence, advance, defend, or prosecute any action, claim, lawsuit, arbitration, alternative dispute resolution proceeding, or other formal legal or administrative proceeding (each, a "**Proceeding**") in any municipal, state, federal, or foreign court, administrative body, or other tribunal;
6. The Liquidator is authorized to, in her discretion, reject any executory contracts to which HRINY is a party, in which case all liability under such contracts or agreements shall cease and be fixed as of the date of rejection;
7. The Liquidator is authorized to pay, without further order of the Court, the actual and necessary expenses incurred by the Liquidator in the administration of this liquidation proceeding (the "**Liquidation Proceeding**") (collectively, "**Administrative Expenses**");
8. All persons and entities, other than the Liquidator, are permanently enjoined and restrained, except as authorized by the Liquidator or her designee in writing, from: (i) transacting HRINY's business; (ii) disposing of HRINY's property; (iii) interfering with the Liquidator's possession, control, or management of HRINY's property or the discharge of the Liquidator's duties with regard to HRINY or the Liquidation Proceeding; and (iv) disclosing the name, address, or contact information of any person who was covered by an insurance policy issued by HRINY ("**Member**"), or any information that is proprietary to HRINY or not in the public domain;
9. All persons and entities are permanently enjoined and restrained from wasting or permitting to be done any act or thing that might waste HRINY's property;
10. Except for any investigation or enforcement action by any state or federal agency, all persons and entities are enjoined and restrained from (a) commencing, continuing, advancing, or otherwise prosecuting any Proceeding, or (b) proceeding with any discovery or other litigation tasks or procedures, including serving any subpoenas or other third-party discovery requests in any pending or future action, against (i) HRINY; or (ii) the New York State Department of Financial Services ("**NYDFS**"), the Superintendent, the NYLB, or any of their respective officers, employees, attorneys, representatives, or agents, or any directors, officers, employees, attorneys, representatives, or agents of HRINY, in each case arising out of

or related to HRINY or the commencement or continuation of the Liquidation Proceeding;

11. All persons and entities are enjoined and restrained from asserting or obtaining any preferences, judgments, attachments or other liens, or taking any steps to transfer, foreclose, sell, assign, garnish, levy, encumber, attach, dispose of, exercise or enforce purported rights, in or against HRINY, any claimed interest in any property or assets of HRINY or any part thereof;
12. Any party that has contracted with HRINY (or any third-party beneficiary of such a contract) is prohibited from modifying or terminating such contract or the rights or obligations of HRINY thereunder, including by declaring an event of default under the existing contract on account of the insolvency of HRINY, the commencement or continuation of this Liquidation Proceeding, non-payment or the financial condition of HRINY prior to this Liquidation Proceeding, or any action by the Superintendent with respect to HRINY;
13. In accordance with Section 4307(d) of the NYIL, no Member shall be liable to any Provider, irrespective of whether the Provider participated in the HRINY network, for any services covered by HRINY, no Provider shall collect or attempt to collect from any Member sums owed by HRINY, and no Provider shall maintain any action against any Member to collect such sums; provided, however, that nothing in this paragraph shall affect a Member's liability for, or prohibit a Provider from collecting or attempting to collect from or maintaining an action against any Member to collect, coinsurance amounts, copayments, and deductibles owed by such Member;
14. HRINY and all persons and entities having any property, papers (including attorney work product and documents held by attorneys) and/or information, including but not limited to business records, insurance policies, underwriting data, reinsurance policies, claims files (electronic or paper), software programs, bank records, and/or any tangible or intangible items of value belonging to or relating to HRINY shall preserve such property and/or information and immediately, upon the Liquidator's request and at her direction, assign, transfer, turn over and deliver such information to the Liquidator;
15. Any person or entity providing claims processing services, data processing services, electronic records retention services, or other information technology services to or on behalf of HRINY shall continue providing such services to HRINY and shall maintain and preserve all information in its possession relating in any way to HRINY and its rights and obligations, wherever located, including but not limited to all documents, data,

electronic files and records, computer equipment (*e.g.*, servers and printers), software programs, and software licenses owned or leased by HRINY;

16. Any bank, savings and loan association, other financial institution, or any other entity or person, that has on deposit or in its possession, custody or control any of HRINY's funds, accounts (including escrow accounts) or assets shall immediately, upon the Liquidator's request and at her direction: (a) turn over custody and control of such funds, accounts or assets to the Liquidator; (b) transfer title of such funds, accounts or assets to the Liquidator; (c) change the name of such accounts to the name of the Liquidator; (d) transfer funds from such bank, savings and loan association or other financial institution; and/or (e) take any other action reasonably necessary for the proper conduct of the Liquidation Proceeding;
17. Judicial immunity applies to the Liquidator, the NYLB, and their respective employees, attorneys, representatives, and agents for any action taken by them when acting in good faith, in accordance with the orders of this Court, and/or, in the case of the Liquidator and the NYLB, in the performance of their duties pursuant to Article 74 of the NYIL, and all persons and entities are enjoined and restrained from seeking to impose liability upon the NYLB or any of its employees, attorneys, representatives, or agents relating to or arising out of the conduct of the business or affairs of HRINY or the Liquidation Proceeding;
18. All claims for payment under insurance policies issued by HRINY (collectively, "**Policy Claims**") must be submitted in accordance with the deadlines and procedures set forth in the contracts governing Providers' provision of services to Members (the "**Provider Contracts**") or the Members' insurance policies, as applicable. Policy Claims previously submitted in this manner need not be re-submitted. Entry of this Order does not extend any deadlines set forth in Provider Contracts or Members' insurance policies for the submission of Policy Claims.
19. With respect to all claims other than the Policy Claims referenced in paragraph 18, the deadline set forth in Section 7432(b) of the NYIL for all persons who may have claims against HRINY to present such claims to the Liquidator shall be deferred until further order of the Court. The Liquidator is authorized in her discretion to refrain from adjudicating claims other than Administrative Expense and Policy Claims;
20. Any person seeking modification of, or relief from, the injunctive relief set forth in this Order (an "**Objecting Party**") shall submit a written request to the Liquidator setting forth good cause for such modification or relief. If the Objecting Party and the Liquidator reach an agreement regarding

such modification or relief, the Liquidator shall submit a request to this Court seeking approval of such agreement. If the Objecting Party and the Liquidator fail to reach an agreement within 30 days of the Liquidator's receipt of such request, or such longer time as both the Liquidator and the Objecting Party agree, the Objecting Party may seek relief with this Court;

21. The Liquidator may at any time make further application to this Court for such further and different relief as she deems necessary and appropriate;
22. A copy of this Order shall be served forthwith by email and regular mail upon: Health Republic Insurance of New York, Corp., 30 Broad Street, New York, New York 10004 (Attention: Ronald J. Vance, Jr., Chief Restructuring Officer);
23. The Liquidator shall provide notice of this Order to all Providers, Members and other known creditors by (i) emailing such notice to all Providers, Members and other known creditors, where email addresses are known and, otherwise, sending such notice to such persons by first class mail; (ii) publishing such notice in any of the *New York Times*, the *Buffalo News*, the *Daily Freeman*, and/or the *Post-Journal/Observer* in the Liquidator's discretion; and (iii) posting such notice on the internet website maintained by the NYLB for the Liquidation Proceeding at www.HealthRepublicNY.org within 30 days after the entry of this Order;
24. Such notice in paragraphs 22 and 23 herein shall constitute sufficient notice to all persons interested in HRINY;
25. This Court shall have exclusive jurisdiction to interpret, implement, and enforce the provisions of this Order and to hear any and all matters relating to the Liquidation Proceeding; and
26. All further papers with respect to HRINY in this proceeding shall bear the caption:

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

-----X

In the Matter of the Liquidation of	:	Index No. _____/2016
HEALTH REPUBLIC INSURANCE OF	:	
NEW YORK, CORP.	:	

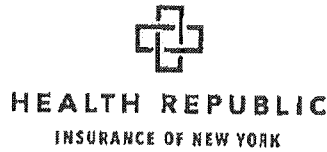
-----X

E N T E R

J. S. C.

Exhibit B

The Consent Resolutions



October 28, 2015

Hon. Anthony J. Albanese
Acting Superintendent of Financial Services
New York State Department of Financial Services
One State Street
New York, New York 10004

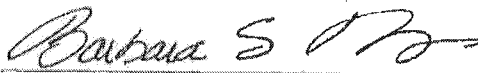
Dear Superintendent Albanese:

Pursuant to the authority vested in me by the board of directors of Health Republic Insurance of New York, Corp., I hereby confirm that the company consents to the entry of an order of rehabilitation or liquidation pursuant to Article 74 of the New York Insurance Law at such time as the Superintendent deems fit.

The company further consents to the Superintendent filing an application for such order in the Supreme Court of the State of New York, County of New York.

Attached hereto is a certified copy of the resolutions of the board of directors that authorized the undersigned to make this consent.

Health Republic Insurance of New York, Corp.

By: 
Barbara S. Davis, Chair of the Board

Attachment

Health Republic Insurance of New York, Corp.

Resolutions

Upon motion duly made, seconded, and carried, the following resolutions were adopted by the unanimous affirmative vote of the directors present at the time of the vote at a duly called meeting of the board, a quorum being present:

RESOLVED, that the company, by action of an appropriate officer, consents to the entry of an Order of Rehabilitation or Liquidation pursuant to Article 74 of the New York Insurance Law; and it is further

RESOLVED, that the company consents to said proceeding being brought in the Supreme Court of the State of New York, County of New York; and it is further

RESOLVED, that the Secretary is authorized to certify a copy of these resolutions as having been adopted by this board, and is hereby directed to affix a copy thereof to these minutes.

I have compared the foregoing with the resolutions adopted by the board of directors of Health Republic Insurance of New York, Corp. at a special meeting held at 30 Broad Street, New York, New York, a quorum being present, on the 27th day of October, 2015 as recorded in the minute book of said company, and I hereby certify that the same is a true, correct, and complete copy thereof, and that the same has not been rescinded.

Dated: 10/27/16

Name:

Title:



Name: Michael Horig
Title: Secretary

Exhibit C

The 1311 Order



ONE STATE STREET
NEW YORK, NY 10004

-----X
In the Matter of

**HEALTH REPUBLIC INSURANCE
OF NEW YORK, CORP.**

-----X

**ORDER PURSUANT TO
INSURANCE LAW § 1311**

WHEREAS, Health Republic Insurance of New York, Corp. ("Health Republic") is a domestic not-for-profit health service corporation licensed pursuant to Article 43 of the New York Insurance Law ("Insurance Law") and a Consumer Operated and Oriented Plan program under section 42 USC 18042; and

WHEREAS, pursuant to section 301 of the New York Financial Services Law, the Superintendent of Financial Services ("Superintendent") possesses the powers conferred upon him by the Financial Services Law, the Insurance Law, and any other applicable law of this state; and

WHEREAS, section 1311 of the Insurance Law provides that, whenever the Superintendent finds from a financial statement or report on examination that the total admitted assets of any domestic mutual insurer, domestic reciprocal insurer, or any other domestic insurer without capital stock required to maintain a required surplus are less than the aggregate amount of its liabilities and required surplus, the Superintendent shall determine the amount of the impairment and order the insurer or its attorney-in-fact to eliminate the impairment within such period as the Superintendent designates, not more than ninety days from service of the order, and may also order the insurer not to issue any new policies while the impairment exists; and

WHEREAS, Health Republic's own financial projections dated October 9, 2015 indicate that, as of December 31, 2015, its total admitted assets will be \$650 million, an amount that is less than the aggregate amount of its liabilities as of that date of \$581.5 million and required surplus as of that date of \$147.6 million; and

WHEREAS, Health Republic's financial projections thus indicate that it will be impaired by \$79.1 million; and

WHEREAS, by resolution dated September 25, 2015, Health Republic has agreed not to issue any new insurance policies or contracts (including renewal policies or contracts) while such projected impairment exists; and


WHEREAS, by resolution dated October 27, 2015, Health Republic has consented to the entry of an order of rehabilitation or liquidation;

NOW, THEREFORE, without limiting in any way the Superintendent's ability to seek such rehabilitation or liquidation of Health Republic at any time; it is hereby

ORDERED, that, until further order of the Superintendent, Health Republic shall suspend paying any and all claims and otherwise shall operate only in the ordinary course, except as the Superintendent may otherwise expressly approve.

Dated: New York, New York
November 9, 2015

ANTHONY J. ALBANESE
Acting Superintendent of Financial Services

By: 
Troy Qechsner
Acting Executive Deputy Superintendent
Insurance Division

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

----- X
:
In the Matter of :
:
the Application of : Index No. _____/2016
:
:
Maria T. Vullo, Acting Superintendent of :
Financial Services of the State of New York, :
for an order to take possession of the property of and :
liquidate the business and affairs of :
:
HEALTH REPUBLIC INSURANCE OF NEW YORK, :
CORP. :
----- X

**MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION OF THE ACTING
SUPERINTENDENT OF FINANCIAL SERVICES OF THE STATE OF NEW YORK**

ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for the Acting Superintendent of
Financial Services of the State of New York
120 Broadway, 24th Floor
New York, NY 10271
(212) 416-8610

David Holgado
Senior Enforcement Counsel

TABLE OF CONTENTS

	<u>Page</u>
I. THE SUPERINTENDENT IS ENTITLED TO BROAD DEFERENCE	6
II. HRINY SHOULD BE PLACED INTO LIQUIDATION	7
III. THE INJUNCTIVE RELIEF SHOULD BE GRANTED	9
A. The Injunctive Relief Generally Granted to Insurers in a Liquidation Proceeding is Warranted	9
B. The Injunctive Relief Specific to Insolvent Health Insurance CO- OPs is Necessary and Appropriate.....	12
IV. THE PROPOSED LIQUIDATION ORDER MAINTAINS EXISTING DEADLINES AND PROCEDURES FOR THE SUBMISSION OF POLICY CLAIMS	14
V. THE PROPOSED LIQUIDATION ORDER APPROPRIATELY RECOGNIZES THE LIQUIDATOR'S JUDICIAL IMMUNITY	15

Eric T. Schneiderman, Attorney General of the State of New York (the “Attorney General”), on behalf of Maria T. Vullo, Acting Superintendent of Financial Services of the State of New York (the “Superintendent”), respectfully submits this memorandum of law in support of the Superintendent’s accompanying verified petition (the “Petition”),¹ duly verified on the 20th day of April, 2016, in which the Superintendent seeks, pursuant to Article 74 of the New York Insurance Law (the “NYIL”), an order, substantially in the form annexed thereto as Exhibit A (the “Proposed Liquidation Order”): (i) appointing the Superintendent and her successors in office as liquidator (“Liquidator”) of Health Republic Insurance of New York, Corp. (“HRINY”); (ii) authorizing and directing the Liquidator to take possession and/or control of the property and assets of HRINY and to liquidate the business and affairs thereof in accordance with Article 74 of the NYIL; (iii) vesting the Liquidator with title to and all rights in all property, contracts and agreements however defined, rights of action and books and records of HRINY, wherever located; (iv) authorizing the Liquidator to deal with the property and business of HRINY in the name of HRINY or the Liquidator; (v) authorizing the Liquidator, in her discretion, to reject any executory contracts to which HRINY is a party; (vi) authorizing the Liquidator to pay, without further order of the Court, the actual and necessary expenses incurred by the Liquidator in the administration of this liquidation proceeding (the “Liquidation Proceeding”) (collectively, “Administrative Expenses”); (vii) pursuant to Section 7419 of the NYIL, issuing the injunctive relief set forth in the Proposed Liquidation Order and described further below; (viii) confirming the judicial immunity of the Liquidator and her employees, attorneys, representatives and agents; (ix) without extending any deadline already set forth in a contract or policy, providing for Policy Claims to be submitted in accordance with existing

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Petition.

procedures; (x) with respect to all claims other than Policy Claims, deferring until further order of the Court the deadline set forth in Section 7432(b) of the NYIL for all persons who may have claims against HRINY to present such claims to the Liquidator; (xi) granting the Liquidator the authority to refrain from adjudicating all claims other than Administrative Expenses and Policy Claims; and (xii) granting such other and further relief as specified below and as the Court may deem just and proper.

The Superintendent also requests that the Court enter the order to show cause filed contemporaneously herewith (the “Order to Show Cause”) and, pursuant to Section 7419 of the NYIL, grant the injunctive relief set forth therein and described further below pending a hearing on the Proposed Liquidation Order (the “Hearing”).²

PRELIMINARY STATEMENT

HRINY is a not-for-profit health insurance CO-OP (Consumer Operated and Oriented Plan) established under the federal Patient Protection and Affordable Care Act (the “ACA”). HRINY is licensed under Article 43 of the NYIL to provide health service indemnity coverage to persons covered by insurance policies issued by HRINY (the “Members”). As a new not-for-profit CO-OP with no private source of funding, HRINY was entitled to receive certain low- or no-interest loans from The Centers for Medicare & Medicaid Services (“CMS”), an operating division of the Department of Health and Human Services (“HHS”), for the purpose of financing start-up costs and insurance reserves. In addition, in recognition of the difficulties in starting up a new health care program with no private source of capital, under the CO-OP program initially devised by Congress and HHS, HRINY was entitled to receive funding from three premium stabilization programs established by the ACA, known as the “3Rs” – Risk

² The facts relevant to the relief requested are stated in the accompanying Petition, which is incorporated herein by reference.

Corridors, Risk Adjustment, and Reinsurance. These programs were designed to mitigate losses over a period of years and address the uncertainty related to the implementation of the ACA. The Risk Corridors Program, in particular, was designed to protect insurers from pricing uncertainties and to limit losses and gains beyond an allowable range. Under the Risk Corridors Program, HHS collects funds from insurers with lower-than-expected claims and makes payments to insurers with higher-than-expected claims.

Beginning on January 1, 2014 and continuing through September 25, 2015, HRINY issued individual and small group health insurance policies to New Yorkers both on and off the New York State of Health, The Official Health Plan Marketplace (the “Marketplace”). HRINY also issued one large group policy to its employees. HRINY’s policies covered health care and pharmaceutical services provided to Members pursuant to certain health benefit and prescription drug plans underwritten by HRINY. By October 2015, Health Republic had approximately 215,000 enrollees – (i) 72,000 individual enrollees on the Marketplace; (ii) 34,000 individual enrollees off the Marketplace; (iii) 5,700 small group enrollees on the Marketplace; (iv) 87,000 small group enrollees off the Marketplace; and (v) 16,000 private exchange enrollees.

In June 2015, CMS and the New York State Department of Financial Services (the “NYDFS”) received an independent audit report (the “Audit”), prepared by BDO USA, LLP, concerning HRINY’s 2014 annual report. The Audit reported certain financial and other reporting errors in the financial statements prepared by HRINY included in the annual report. After receiving the Audit, CMS and the NYDFS required HRINY to submit a revised annual report and corrected financial statements for 2014 as well as a corrected quarterly financial statement for the period ending March 31, 2015. After their review of such financial reports and taking certain other investigative actions, CMS and the NYDFS determined that, as of December

31, 2015, HRINY's total admitted assets would be less than the aggregate amount of its liabilities and required surplus as of that date. As a result, CMS and the NYDFS concluded that HRINY was unable to profitably manage its business without a further infusion of capital.

Accordingly, on September 25, 2015, (i) the NYDFS directed HRINY to cease writing new health insurance policies and to commence an orderly wind down process; (ii) the Marketplace announced that HRINY would not be certified to sell insurance products on the Marketplace in 2016; and (iii) CMS notified HRINY that it was terminating the loan agreement it had entered into with HRINY on February 17, 2012 as of December 31, 2015.

On October 1, 2015, HRINY's financial condition worsened even further when HHS publicly reported that HRINY would receive less funding than it had expected under the federal Risk Corridors Program. As part of this October 1 announcement, HHS reported that Risk Corridors collections for 2014 were insufficient to make full Risk Corridors payments for that year, and that the payments to insurers like HRINY would be reduced to a proration rate of 12.6 percent. Thus, HRINY would receive only 12.6 percent of what it was due under the Risk Corridors Program, which was \$18.8 million of \$149.3 million. To date, HRINY has received approximately only \$18.1 million of Risk Corridors payments for 2014, a small fraction of the amount that was intended to protect insurers like HRINY from higher-than-expected losses during the first few years after the passage of the ACA. The failure to receive these expected funds caused further deterioration of HRINY's financial condition.

Based on this additional information, on October 30, 2015, CMS, the NYDFS and the Marketplace announced that HRINY's financial condition was substantially worse than HRINY had previously reported to the NYDFS. On the same day, the NYDFS directed HRINY to terminate all insurance policies as of November 30, 2015 and to assist in the orderly transition

of Members to other insurance carriers, as the NYDFS had determined that it was in the best interest of the public to accelerate the wind down of HRINY's business. On October 31, 2015, the NYDFS and the Marketplace notified all Members that they were required to purchase alternative insurance policies, for new coverage effective as of December 1, 2015. The NYDFS worked diligently with the Marketplace to facilitate the transition of Members to alternative insurance carriers.

On November 9, 2015, the NYDFS issued an order pursuant to Section 1311 of the NYIL (the "**1311 Order**") directing HRINY to suspend paying any and all claims and otherwise operate only in the ordinary course, except as otherwise expressly approved by the Superintendent.³ Since that time, HRINY's new management team and HRINY's advisors have been working collaboratively with the NYDFS and the New York Liquidation Bureau (the "**NYLB**") to prepare for and effectuate an orderly wind down and liquidation of HRINY, in a manner that minimizes harm to Members and those health care professionals, providers and facilities that provided health care services to Members (the "**Providers**").

As a New York insurance company, HRINY is regulated by the Superintendent. Unlike other companies, insurance companies (including HRINY) cannot be debtors under federal bankruptcy law.⁴ Instead, HRINY may only be rehabilitated or liquidated pursuant to Article 74 of the NYIL. Article 74 authorizes the Superintendent to apply for an order directing her to liquidate a financially distressed insurance company. N.Y. Ins. Law. § 7404. An order to liquidate an insurer authorizes the Superintendent to take possession of the insurer's property and liquidate the business of the insurer. *Id.* § 7405(a).

³ A copy of the 1311 Order is attached to the Petition as Exhibit C.

⁴ Section 109 of title 11 of the United States Code (the "**Bankruptcy Code**") provides that a domestic insurance company cannot be a debtor under chapter 11.

The Superintendent submits that placing HRINY into liquidation and granting the relief requested in the Order to Show Cause and the Proposed Liquidation Order is in the best interests of HRINY's Members, Providers and other creditors as well as the public. Pursuant to relevant case law, the Superintendent's judgment in this regard is afforded broad deference.

At least two independent statutory grounds, each alone sufficient, support placing HRINY into liquidation: (i) HRINY's board of directors has unanimously consented to the Liquidation Proceeding; and (ii) HRINY is insolvent.

Further, the injunctive relief requested in the Order to Show Cause and the Proposed Liquidation Order (the "**Injunctive Relief**") falls squarely within the Court's broad authority granted by Section 7419 of the NYIL and is necessary and appropriate to ensure an orderly liquidation of HRINY. The Injunctive Relief includes the standard, general relief granted in New York liquidation proceedings, as well as more specific relief tailored to the unique circumstances of liquidating a CO-OP such as HRINY. The Proposed Liquidation Order also establishes an efficient process for the submission of Policy Claims and appropriately defers the claims submission deadline for, and the adjudication of, all claims other than Policy Claims. Finally, the provisions confirming the judicial immunity of the Liquidator, the NYLB, and each of their respective employees, attorneys, representatives, and agents, are consistent with public policy and well-established law.

ARGUMENT

I. THE SUPERINTENDENT IS ENTITLED TO BROAD DEFERENCE

The Superintendent's determinations that (i) HRINY should be placed into liquidation and (ii) the Injunctive Relief is necessary to enable the Superintendent to fulfill her duties as Liquidator are entitled to broad deference. The NYDFS has been monitoring HRINY – the only CO-OP in New York – since it began issuing policies in 2014. Since the summer of

2015, the NYDFS has been working closely with CMS and the New York State Department of Health to monitor the financial condition of HRINY. The Superintendent's determination that placing HRINY into liquidation is in the best interests of HRINY's Members, creditors, and the public is the result of this lengthy and deliberate process and is entitled to broad deference.⁵

Further, the Superintendent is uniquely qualified to determine what relief is necessary, in light of "the nature of the case and the interests of policyholders, creditors, shareholders, members, [and] the public" N.Y. Ins. Law. § 7417. Given the Superintendent's expertise and responsibilities in the area of insurance and the unique challenges presented by liquidating a CO-OP such as HRINY, the Court should defer to the Superintendent's determination that the relief requested in the Order to Show Cause and the Proposed Liquidation Order, including the Injunctive Relief, is necessary to enable the Superintendent to fulfill her duties as Liquidator.⁶

II. HRINY SHOULD BE PLACED INTO LIQUIDATION

Section 7402 of the NYIL enumerates fifteen different grounds that each, independently, warrants entry of an order directing the Superintendent to liquidate a New York

⁵ See, e.g., *In re N.Y. Title & Mortg. Co.*, 281 N.Y.S. 715, 729 (N.Y. Sup. Ct. 1935) (in considering the Superintendent's determination that "liquidation is desirable and necessary," the court held that "[o]nly the strongest showing to the contrary could justify the court's refusal to follow the recommendations of the administrative officer to whom the supervision of insurance companies has been entrusted by the legislature."); see also *Kentucky Cent. Life Ins. Co. v. Stephens*, 897 S.W.2d 583, 588 (Ky. 1995) (citing *N.Y. Title & Mortg. Co.* for the same proposition); *Minor v. Stephens*, 898 S.W.2d 71, 81 (Ky. 1995) (same).

⁶ See *Matter of Dinallo v. DiNapoli*, 9 N.Y.3d 94, 97 (2007) (As to his role as court-appointed receiver on behalf of distressed insurers, "the Legislature, by statutory enactment, bestowed upon the Superintendent broad fiduciary powers to manage the affairs of distressed domestic insurers and to marshal and disburse their assets."); *Mills v. Fla. Asset Financing Co.*, 31 A.D. 3d 849, 850 (3d Dep't 2006) ("The Legislature has granted [the Superintendent] plenary powers and broad discretion to manage, as a fiduciary, the affairs of an insolvent insurer.").

insurer.⁷ As set forth in the Petition, at least two of those grounds exist in the present case. First, Section 7402(d) of the NYIL provides that a New York insurer may be placed into liquidation if it “[h]as consented to such an order through a majority of its directors, shareholders, or members.” HRINY’s board of directors unanimously adopted resolutions consenting to the entry of an order of liquidation and the commencement of this Liquidation Proceeding, as evidenced by the certified copy of the resolutions of HRINY’s board of directors attached to the Petition as Exhibit B.

Second, Section 7402 (a) of the NYIL provides that the Superintendent may apply for an order to liquidate a New York insurer that is insolvent within the meaning of Section 1309 of the NYIL.⁸ Based on her review of financial statements provided by HRINY, the Superintendent has determined that HRINY’s required reserves and other liabilities exceed its admitted assets. Thus, the Superintendent has found that HRINY is unable to pay its outstanding obligations as they mature in the regular course of business, and is, therefore, insolvent within the meaning of Section 1309 of the NYIL.

Because each of these grounds is a sufficient basis for entry of the Proposed Liquidation Order, HRINY should be placed into liquidation.

⁷ See N.Y. Ins. Law. § 7404 (“The superintendent may apply under this article for an order directing the superintendent to liquidate the business of a domestic insurer . . . upon any of the grounds specified in subsections (a) through (o) of section [7402] of this article, whether or not there has been a prior order directing the superintendent to rehabilitate such insurer.”).

⁸ Section 1309 of the NYIL provides in pertinent part: “Whenever the superintendent finds from a financial statement or report on examination that an authorized insurer is unable to pay its outstanding lawful obligations as they mature in the regular course of business, as shown by an excess of required reserves and other liabilities over admitted assets . . . such insurer shall be deemed insolvent and the superintendent may proceed against it pursuant to the provisions of article seventy-four of this chapter.”

III. THE INJUNCTIVE RELIEF SHOULD BE GRANTED

The NYIL authorizes the granting of a broad spectrum of injunctive relief in insurer liquidation proceedings. Section 7419(a) of the NYIL provides that, “[u]pon application by the superintendent for an order to show cause under this article or at any time thereafter, the court . . . may without notice issue an injunction restraining the insurer, its officers, directors, shareholders, members, trustees, agents, servants, employees, policyholders, attorneys, managers, and all other persons from the transaction of its business or the waste or disposition of its property.” Section 7419(b) of the NYIL further provides that the Court may “at any time during a proceeding under this article issue such other injunctions or orders as it deems necessary to prevent interference with the superintendent or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, the obtaining of preferences, judgments or other liens, or the making of any levy against the insurer, its assets or any part thereof.” The Injunctive Relief requested here falls squarely within the Court’s broad authority pursuant to Section 7419 and is necessary for several reasons.

A. The Injunctive Relief Generally Granted to Insurers in a Liquidation Proceeding is Warranted

Most of the Injunctive Relief provided in the Order to Show Cause and the Proposed Liquidation Order is generally granted at the outset of New York liquidation proceedings and is necessary to enable the Superintendent to fulfill her statutory mandate to “take possession of the property of [the] insurer and to liquidate the business of the same” in a manner consistent with “the dominant purpose of [Article 74] . . . the preservation and enhancement of [the] company’s assets to the end that the interests of all its creditors, policyholders, stockholders and the public will be subserved.” *Knickerbocker Agency, Inc. v. Holz*, 4 N.Y.2d 245, 253 (1958). As set forth in paragraphs 1 through 4 of the Order to Show

Cause and paragraphs 8 through 11 of the Proposed Liquidation Order, this standard injunctive relief includes, among other things, enjoining and restraining all persons and entities from (i) transacting HRINY's business; (ii) wasting or disposing of HRINY's property; (iii) interfering with the Liquidator, the Liquidation Proceeding or the Liquidator's possession, control, or management of HRINY's property; (iv) disclosing any information that is proprietary to HRINY or not in the public domain; and (v) commencing, continuing, advancing, or otherwise prosecuting any actions, claims, lawsuits, arbitrations, alternative dispute resolution proceedings, or other formal legal or administrative proceedings, except for any investigation or enforcement action by any state or federal agency, against (a) HRINY or (b) the Liquidator, the NYDFS, the Superintendent, the NYLB, any of their respective officers, employees, attorneys, representatives, or agents (collectively, "**Representatives**") or any Representatives of HRINY, in each case as related to HRINY or the Liquidation Proceeding. New York courts routinely grant these standard injunctive provisions at the outset of insurance liquidation proceedings, and the Court should do so in this case.⁹ Given that HRINY's outstanding liabilities already exceed its available assets, the Superintendent's primary goal in commencing the Liquidation

⁹ See, e.g., *In re Drivers Ins. Co.*, Order of Liquidation, Index No. 700282/2015, ¶¶ 6, 7 (N.Y. Sup. Ct. Aug. 6, 2015) (the "**Drivers Liquidation Order**") available at: http://www.nylb.org/Documents/Drivers_Order_Liq.pdf; *In re Essence Healthcare of New York, Inc.*, Order of Liquidation, Index No. 452879/2014, ¶¶ 6, 7 (N.Y. Sup. Ct. Feb. 20, 2015) (the "**Essence Liquidation Order**") available at: http://www.nylb.org/Documents/Essence_Liquidation_Order_r1.pdf; *In re CignaHealthcare of New York, Inc.*, Order of Liquidation, Index No. 452836/2014 ¶¶ 6, 7 (N.Y. Sup. Ct. Jan. 30, 2015) (the "**Cigna Liquidation Order**") available at: http://www.nylb.org/Documents/Cigna_Liquidation_Order.pdf; *In re Eveready Ins. Co.*, Order of Liquidation, Index No. 160307/2014, ¶¶ 6, 7 (N.Y. Sup. Ct. Dec. 3, 2014) (the "**Eveready Liquidation Order**") available at: http://www.nylb.org/Documents/Eveready_Liquidation_Order.pdf; *In re Health Partners of New York*, Order of Liquidation, Index No. 402965/08, ¶ 14, 16 (N.Y. Sup. Ct. Dec. 22, 2008) (the "**HPNY Liquidation Order**"); *In re MDNY Healthcare, Inc.*, Order of Liquidation, Index No. 401811/08, ¶ 14, 16 (N.Y. Sup. Ct. July 31, 2008) (the "**MDNY Liquidation Order**"); see also *In re Fin. Guaranty Ins. Co.*, Order of Rehabilitation, ¶¶ 6-8, Index No. 401265/2012 (N.Y. Sup. Ct. June 28, 2012) (the "**FGIC Rehab. Order**") available at: http://www.fgic.com/policyholderinfocenter/rehabdocs/docs/FGIC_Order_of_Rehabilitation.pdf.

Proceeding is to protect and preserve the HRINY estate for the benefit of all Providers, Members and other claimants. The Injunctive Relief described above is necessary to ensure that the Liquidator is not forced to waste valuable estate resources defending against frivolous lawsuits or other attempts by individual Providers, Members or other claimants to interfere with the Liquidator's efforts to maximize recoveries for claimants as a whole, in accordance with the NYIL.

In addition, paragraphs 6 and 7 of the Proposed Liquidation Order vest the Liquidator with the authority to pay, without further order of the Court, Administrative Expenses and to reject any executory contracts to which HRINY is a party. This authority provides the Liquidator with the flexibility necessary to procure claims processing and other services that are essential to the orderly liquidation of HRINY and to rid the estate of any burdensome or unnecessary contractual obligations. In addition, paragraph 5 of the Liquidation Order vests the Liquidator with the authority to bring claims on behalf of HRINY. This authority provides the Liquidator with an important tool to pursue recoveries from third parties, including outstanding Risk Corridor amounts owed to HRINY, for the benefit of the HRINY estate. Like the Injunctive Relief described above, this authority is consistent with relief typically granted in New York liquidation proceedings and should be granted in this case.¹⁰

¹⁰ See, e.g., Drivers Liquidation Order ¶ 10; Essence Liquidation Order ¶¶ 8, 12; Eveready Liquidation Order ¶ 10; Cigna Liquidation Order ¶¶ 8, 12; see also *State of Iowa v. CoOpportunity Health*, Final Order of Liquidation, Equity No. EQCE077579, ¶¶ 11, 16, 18 (Iowa Dist. Ct. Mar. 2, 2015) (the "**Iowa CO-OP Liquidation Order**") available at: http://www.iid.state.ia.us/sites/default/files/press_release/2015/03/02/final_order_of_liquidation_pdf_17399.pdf; *State of Nev. v. Nev. Health CO-OP*, Permanent Injunction and Order Appointing Commission as Permanent Receiver of Nevada Health CO-OP, Case No. A-15-725244-C, ¶ 14(a), (h), (p) (Nev. Dist. Oct. 14, 2015) (the "**Nevada CO-OP Receivership Order**") available at: http://nevadahealthcoop.org/wp-content/uploads/Ordr_Perm_Injun_and_Ordr_Appt_Comm_as_Perm_Rec_of_Nev.pdf; see also FGIC Rehab. Order ¶4.

B. The Injunctive Relief Specific to Insolvent Health Insurance CO-OPs is Necessary and Appropriate

In addition to the injunctive relief described above, which is commonly granted at the outset of New York liquidation proceedings, the Order to Show Cause and the Proposed Liquidation Order include certain specific injunctive relief tailored to the unique circumstances of an insolvent health insurance CO-OP. To ensure an orderly liquidation, the Superintendent respectfully submits that the following Injunctive Relief is necessary and consistent with similar relief granted in other health insurance receiverships in New York and receivership proceedings for other CO-OPs in Iowa, Louisiana and Nevada.

Prohibition on Balance Billing. Paragraph 6 of the Order to Show Cause and paragraph 13 of the Proposed Liquidation Order prohibit a Provider, irrespective of whether the Provider participated in the HRINY network, from collecting or attempting to collect from any Member sums owed by HRINY related to services covered by HRINY other than coinsurance amounts, copayments, and deductibles owed by such Member. As set forth therein, this prohibition on “balance billing” is mandated by Section 4307(d) of the NYIL¹¹ and also reinforces applicable regulations requiring Providers to include “hold harmless” provisions in all agreements governing their provision of services to Members.¹² Prohibiting balance billing is

¹¹ Section 4307(d) of the NYIL provides that “In the event that . . . any . . . health service corporation is deemed insolvent, as provided in [Section 4310(c)] of this article, then no individual subscriber or enrollee of, or served by, the . . . health service corporation shall be liable to any provider of health care services for any covered services of the insolvent . . . health services corporation. No provider of health care services or any representative of such provider shall collect or attempt to collect from the individual subscriber or enrollee sums owed by a . . . health service corporation deemed insolvent, and no provider or representative of such provider may maintain any action at law against an individual subscriber or enrollee to collect sums owed to such provider by such . . . health service corporation.” Section 4310(c) of the NYIL provides that a health services corporation “shall be deemed insolvent whenever it is presently or prospectively unable to fulfill its outstanding contracts and other liabilities and reserves.”

¹² 11 CRR-NY 101.4 requires agreements with participating providers to include “a ‘hold harmless’ provision that prohibits a participating provider from collecting or attempting to collect from a subscriber any amounts owed to such participating provider for covered services, but excluding any amounts owed

necessary to minimize any harm caused to individual Members by the financial deterioration of HRINY and is consistent with relief granted in receivership proceedings for other New York health insurers¹³ and CO-OPs.¹⁴

Ipsa Facto Provisions. Paragraph 5 of the Order to Show Cause and paragraph 12 of the Proposed Liquidation Order prohibit all persons and entities from modifying, including by declaring a default under or terminating, any existing contract on account of any contractual provisions based on HRINY's financial condition or insolvency, the commencement or continuation of the Liquidation Proceeding, HRINY's non-payment prior to the Liquidation Proceeding, or any action by the Liquidator with respect to HRINY. Prohibiting all persons and entities from exercising rights under these types of contractual *ipso facto* provisions is necessary to ensure an orderly, fair, and equitable wind-down of HRINY, and is consistent with relief granted in other receivership proceedings for CO-OPs,¹⁵ Article 74 proceedings in New York,¹⁶ as well as federal bankruptcy¹⁷ and banking¹⁸ law.

by the subscriber to the provider pursuant to the subscriber's contract, it being understood that such a 'hold harmless' is in addition to the protections afforded to subscribers under Insurance Law section 4307(d)."

¹³ See, e.g., HPNY Liquidation Order ¶ 15; MDNY Liquidation Order ¶ 15.

¹⁴ See Nevada CO-OP Receivership Order ¶ 6(a), (c); *Donelon v. Louisiana Health CoOperative, Inc.*, Order of Rehabilitation and Injunctive Relief, Number 641 928, at 8 (La. Dist. Sept. 1, 2015) (the "**Louisiana CO-OP Rehab. Order**") available at: <http://www.ldi.la.gov/docs/default-source/documents/health/lahc-petition-and-court-order.pdf?sfvrsn=0>; *Donelon v. Louisiana Health CoOperative, Inc.*, Permanent Order of Rehabilitation and Injunctive Relief, Number 641 928, at 9 (La. Dist. Sept. 21, 2015) (the "**Permanent Louisiana CO-OP Rehab. Order**") available at: <http://www.ldi.la.gov/docs/default-source/documents/financialsolvency/receivership/Louisiana-Health-Cooperative/orderf6551b2a8b9e6b8a94f4ff0000585bf2.pdf?sfvrsn=0>.

¹⁵ Nevada CO-OP Receivership Order ¶ 7; Iowa CO-OP Liquidation Order ¶ 46.

¹⁶ FGIC Rehab. Order ¶¶12-14, 18.

¹⁷ Section 363(l) and 365(e)(1) of the Bankruptcy Code prohibit the enforcement of *ipso facto* clauses that may otherwise interfere with a debtor's right to use, sell or lease property, including by terminating or

IV. THE PROPOSED LIQUIDATION ORDER MAINTAINS EXISTING DEADLINES AND PROCEDURES FOR THE SUBMISSION OF POLICY CLAIMS

Based on her review of HRINY's existing claims submission process, the Superintendent has determined that HRINY has an efficient process in place for collecting Policy Claims. Accordingly, paragraph 18 of the Liquidation Order provides that Policy Claims must be submitted in accordance with existing requirements and deadlines. In addition, paragraph 18 of the Liquidation Order clarifies that entry of the Liquidation Order will not extend any deadlines for the submission of Policy Claims set forth in Providers' contracts or Members' policies. Maintaining existing deadlines and procedures for the submission of Policy Claims preserves Providers' and Members' contractual rights and facilitates the orderly and efficient submission, review and adjudication of Policy Claims.

With respect to all claims other than Policy Claims, the Proposed Liquidation Order defers the claims submission deadline set forth in Section 7432(b) of the NYIL¹⁹ until further order of the Court. Based on the information available to date, absent the receipt of substantial additional recoveries, it is unlikely that HRINY will have sufficient assets to satisfy claims against HRINY other than claims for Administrative Expenses and a portion of Policy

modifying a contract or lease with a debtor or any rights or obligations thereunder. 11 U.S.C. §§ 363(f), 365(e)(1).

¹⁸ In the context of a Federal Deposit Insurance Corporation ("**FDIC**") receivership, federal law provides that "the conservator or receiver may enforce any contract . . . notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment or exercise of rights or powers by a conservator or receiver." 12 U.S.C. § 1821(e)(13)(A). "In granting the FDIC this power, Congress codified the common law rule that ipso facto provisions are void as contrary to public policy." *Bank of N.Y. v. FDIC*, 453 F.Supp.2d 82, 96 (D.D.C. 2006), *aff'd*, 508 F.3d 1 (D.C. Cir. 2007).

¹⁹ Section 7432(b) of the NYIL provides that "all persons who may have claims against [an] insurer shall present the same to the liquidator . . . within four months from the date of entry of [the liquidation] order, or, if the superintendent shall certify that it is necessary, within such longer time as the court shall prescribe."

Claims. Accordingly, the Superintendent has determined that it would be a waste of estate resources to establish a claims submission process for claims other than Policy Claims at this time.

V. THE PROPOSED LIQUIDATION ORDER APPROPRIATELY RECOGNIZES THE LIQUIDATOR'S JUDICIAL IMMUNITY

The Proposed Liquidation Order confirms that the Liquidator, the NYLB, and their respective employees, attorneys, representatives, and agents are not subject to liability for any action taken (or omitted from being taken) with respect to the Liquidation Proceeding, or any events, acts, or omissions leading up to the commencement of the Liquidation Proceeding, when acting in good faith, in accordance with the orders of this Court, and/or, in the case of the Liquidator and the NYLB, in the performance of their duties pursuant to Article 74 of the NYIL. This Court has recognized that judicial immunity is appropriate under these circumstances,²⁰ and consistent with well-established common law rules that dictate that a court-appointed receiver is entitled to judicial immunity for actions performed within his or her official capacity and within his or her court-appointed authority.²¹

In this case, the Liquidator is not acting in her capacity as a governmental official. Instead, the Liquidator acts in a private capacity under the supervision of the Court pursuant to Article 74 of the NYIL.²² As such, the Liquidator and her agents are entitled to the judicial immunity typically accorded to court-appointed receivers.²³

²⁰ See *In re Liquidation of U.S. Capital Ins. Co.*, 948 N.Y.S.2d 549, 638 (N.Y. Sup. Ct. 2012) (“the Liquidator . . . operates as a statutory receiver and is entitled to judicial immunity for any acts or omissions when acting in good faith, in accordance with the liquidation order issued by the Court, or in the performance of his duties pursuant to Insurance Law Article 74.”).

²¹ See, e.g., *Copeland v. Salomon*, 56 N.Y. 2d 222 (N.Y. 1982); *Bankers Fed. Sav. FSB v. Off W. Broadway Developers*, 227 A.D.2d 306 (1st Dep’t 1996).

²² *Dinallo*, 9 N.Y. 3d at 103 (explaining that the Superintendent’s role as liquidator or rehabilitator of a distressed insurer is “judicial and private,” while “his role as regulator and supervisor is administrative

Under these circumstances, public policy recognizes that the Liquidator and her agents and employees are entitled to judicial immunity so that the Liquidator may perform her receivership function without fear or threat of litigation. Confirmation of this judicial immunity in the Proposed Liquidation Order is appropriate to provide notice to parties in interest and to forestall potential disputes, thereby promoting the efficient resolution of these proceedings.

CONCLUSION

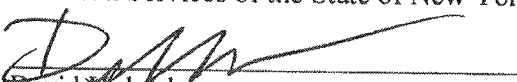
For the reasons set forth above, this Court should grant the relief requested in the Petition and grant such other and further relief as the Court deems just and proper.

Dated: April 22, 2016
New York, New York

Eric T. Schneiderman
Attorney General of the State of New York

Attorney for the Acting Superintendent of
Financial Services of the State of New York

By:


David Holgado
Senior Enforcement Counsel
120 Broadway, 24th Floor
New York, NY 10271
(212) 416-8610

and public.”).

²³ See, e.g., Drivers Liquidation Order ¶ 17; Eveready Liquidation Order ¶ 17; Cigna Liquidation Order ¶ 14; FGIC Rehab. Order ¶ 19; HPNY Liquidation Order ¶ 19; MDNY Liquidation Order ¶ 19.