

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
MICHIGAN DEPARTMENT OF LABOR AND
ECONOMIC GROWTH, OFFICE OF FINANCIAL
AND INSURANCE SERVICES

Petitioner,

Case No. 05-1472-CR

Hon. William E. Collette

v.

ULTIMED HMO OF MICHIGAN, INC.,
a Michigan health maintenance organization,

Respondent.

E. John Blanchard (P28881)
Christopher L. Kerr (P57131)
Assistant Attorneys General
**Michigan Department of Attorney General
Insurance & Banking Division**
Attorneys for Petitioner,
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**LIQUIDATOR'S RESPONSE IN OPPOSITION TO
RESPONDENT'S DIRECTORS' MOTION FOR
SETTLEMENT OF PROPOSED ORDER**

Linda A. Watters, Commissioner of the Michigan Department of Labor and Economic Growth, Office of Financial and Insurance Services, and Court-appointed Liquidator for Ultimed HMO of Michigan, Inc.(the "Liquidator"), by and through her attorneys, Michael A. Cox, Attorney General of the State of Michigan, and Christopher L. Kerr, Assistant Attorney General, states the following objections to the Motion for Settlement of Proposed Order submitted by Ultimed's former Directors (the "Directors") seeking payment of certain legal expenses from Ultimed's liquidation estate. The following objections are in addition to the substantive

objections the Liquidator has previously raised against any present payment being made to the Directors from liquidation estate assets, namely, that justice does not require such payment to be made when: (1) the limited assets remaining in the estate are overwhelmed by nearly \$14 million of potential claims, making it unlikely that Ultimed's legitimate, non-insider creditors will receive any payment as a result of the liquidation; (2) Ultimed's liquidation was caused by the malfeasance and mismanagement of the Directors who now seek payment of their defense expenses; (3) the defense expenses incurred by the Directors were not reasonably necessary to defend against the Liquidation Petition; (4) there is a strong likelihood that the beneficiary of any ordered payment (the Directors' counsel, David Tillman) will owe the liquidation estate money as a result of preference or similar claims; and (5) notice of a potential claim for defense costs has been provided to Ultimed's Errors and Omissions insurance carrier, and any amount ordered to be paid should be payable from the proceeds of this insurance policy. *See* Response in Opposition to Motion for Approval of Payment and Response in Opposition to Motion for Reconsideration.

In addition to the foregoing objections to any payment, the Liquidator specifically objects to the Directors' Motion for Settlement of Proposed Order for the following reasons:

1. Pursuant to MCL 500.8116(1), the Directors may only seek payment from the liquidation estate for those costs and other defense expenses that were reasonably necessary to defend against the Liquidation Petition. Accordingly, the only legal expenses for which the Directors would be entitled to payment would include those relating to: (a) reviewing the Liquidation Petition; (2) drafting and filing a response to the Liquidation Petition; and (c) attending the hearing on the Liquidation Petition. The Court granted the Liquidation Petition at the hearing conducted on April 5, 2006. According to Mr. Tillman's invoices, the total amount of legal expenses billed to the Directors for the period from the filing of the Liquidation Petition through April 5, 2006 was **\$4,102.90**. This figure therefore represents the maximum amount that

the Directors would be entitled to be paid consistent with the statute. Conversely, the additional \$4,328.02 in legal expenses incurred after April 5, 2006 represents the Directors' and Mr. Tillman's efforts to "run up their bill" at the expense of the liquidation estate and Ultimed's legitimate creditors, and MCL 500.8116(1) does not authorize the payment of these legal expenses from estate assets. Because no legal expenses incurred *after* the Court granted the Liquidation Petition could be "reasonably necessary" to *defend against* the Liquidation Petition, the Court should deny payment of all the Directors' requested legal expenses incurred after April 5, 2006.

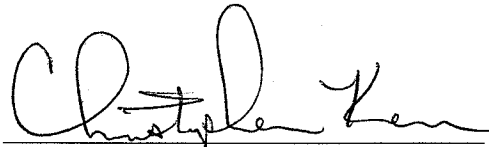
2. The Liquidator further objects to two pre-April 5, 2006 time entries that are unrelated to the Liquidation Petition and therefore cannot be paid consistent with MCL 500.8116(1). The first is the March 28, 2006 entry for one (1) billable hour spent reviewing the Liquidator's claim notice / demand letter submitted to Ultimed's Directors and Officers Liability insurance carrier. The second is the March 30, 2006 entry for one (1) billable hour spent at a "[l]uncheon meeting with Mr. Brown re strategies for surviving rehabilitation." These activities have nothing to do with the Directors' efforts to defend against the Liquidation Petition; consequently, they cannot be paid from Ultimed's liquidation estate. Subtracting the \$400 billed for these activities from \$4,102.90 (the total amount billed for the period from the filing of the Liquidation Petition to the date the Petition was granted), the maximum amount that the Directors may be paid from the liquidation estate is \$3,702.90.

WHEREFORE, for the reasons stated above and in the Liquidator's previously-filed Response in Opposition to Motion for Approval of Payment and Response in Opposition to Motion for Reconsideration, the Liquidator respectfully requests that the Court deny Respondent's Directors' Motion for Settlement of Proposed Order and deny any payment to the Directors for their Liquidation Petition defense costs and expenses. To the extent that the Court orders any such payment to the Directors from the limited assets of the liquidation estate, the

Liquidator respectfully requests that the Court enforce the plain language of MCL 500.8116(1) by limiting the Directors' payment to those legal expenses incurred defending against the Liquidation Petition, which at most total \$3,702.90.

Respectfully submitted

Michael A. Cox
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Kerr", written over a horizontal line.

E. John Blanchard (P28881)
Christopher L. Kerr (P57131)
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Dated: July 13, 2006

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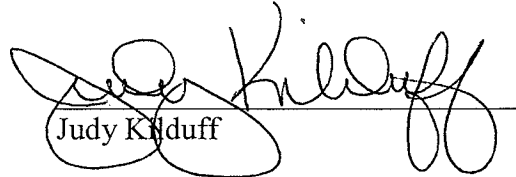
Respondent.

PROOF OF SERVICE

State of Michigan)
) ss
County of Ingham)

The undersigned certifies that on July 13, 2006 she served a copy of *Liquidator's Response in Opposition to Respondent's Directors' Motion for Settlement of Proposed Order* upon counsel for Respondent by depositing same in a United States Postal Depository in the city of Lansing, Michigan, enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

David K. Tillman, Esq.
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Detroit, MI 48207-2018


Judy Kilduff