

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,
Office of Financial & Insurance Services
P.O. Box 30754
Lansing, Michigan 48909
Telephone: (517) 373-1160

David K. Tillman (P37592)
Tillman & Tillman, P.C.
Attorneys for Respondent Ultimed
HMO of Michigan, Inc.
3400 Russell Street
Suite 205
Detroit, MI 48207-2018
Telephone: (313) 832-6000

CORRECTED
ORDER FOR LIQUIDATING RECEIVERSHIP AND
DECLARATION OF INSOLVENCY OF
ULTIMED HMO OF MICHIGAN, INC.

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the
10th day of April, 2006

PRESENT: HONORABLE _____
Circuit Court Judge

MIKE BRYANTON
CLERK OF THE 30TH
JUDICIAL CIRCUIT COURT
INGHAM COUNTY CLERK

2006 APR 10 P 2:13

FILED

The Court has reviewed and considered the Petition for Conversion to Liquidating Receivership and Declaration of Insolvency of Ultimed HMO of Michigan, Inc. (the "Liquidation Petition") filed by the Commissioner of the Office of Financial and Insurance Services (the "Commissioner"). The Court is also fully informed of the circumstances involving Ultimed, in part because Ultimed is subject to an ongoing rehabilitation proceeding currently pending before the Court.

Based upon the Liquidation Petition and the hearing conducted thereon, the Court finds that Ultimed HMO of Michigan, Inc. ("Ultimed" or "the Company") fails to meet the financial requirements of the Michigan Insurance Code of 1956, MCL 500.100 *et seq.* (the "Insurance Code"); that Ultimed has an insufficient membership base, due primarily to poor claims payment history, to meet its current overhead expenses, pay medical claims as they become due, and generate sufficient profitability to satisfy past-due obligations; and that Ultimed satisfies the definition of "insolvency" provided by MCL 500.8103(i). The Court additionally finds that further attempts to rehabilitate Ultimed would be futile and would substantially increase the risk of loss to creditors, policyholders, and the public.

ACCORDINGLY, THE COURT HEREBY DECLARES AND ORDERS THAT:

1. Pursuant to MCL 500.8116 - 500.8118, the Commissioner's Petition for Conversion to Liquidating Receivership and Declaration of Insolvency of Ultimed HMO of Michigan, Inc. is GRANTED, and Ultimed is placed into Liquidation pursuant to MCL 500.8101 - 500.8159.

2. Pursuant to MCL 500.8118(1), Linda A. Watters, Commissioner of the Michigan Department of Labor and Economic Growth, Office of Financial and Insurance Services ("OFIS") is appointed Liquidator of Ultimed. The Commissioner shall be referred to hereinafter as the "Liquidator."

3. The powers of the Liquidator shall include all of the powers set forth in Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159, together with such additional powers as this Court shall grant from time to time upon petition of the Liquidator.

4. As authorized by MCL 500.8121(1)(a), the Liquidator appoints James Gerber and Janice Sylvertooth as Special Deputy Liquidators of Ultimed. The Special Deputy Liquidators shall have all the powers of the Liquidator granted under Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159, and shall serve at the pleasure of the Liquidator. Mr. Gerber shall be compensated as a salaried employee of OFIS and if the Liquidator so elects, she may allocate to Ultimed the pro rata portion of Mr. Gerber's salary, at the rate of \$54.43 an hour, attributable to the performance of his duties as Special Deputy Liquidator, which compensation shall be paid pursuant to MCL 500.8121(d). Any costs and expenses incurred in connection with Mr. Gerber's appointment as Special Deputy Liquidator shall be paid pursuant to MCL 500.8121(d). Ms. Sylvertooth shall be compensated at the rate of \$75 an hour, pursuant to the terms of her Retainer Agreement. Ms. Sylvertooth's compensation and any costs and expenses that she incurs in connection with her appointment as Special Deputy Liquidator shall be paid pursuant to MCL 500.8121(d) consistent with the terms of her Retainer Agreement.

5. The Liquidator is directed to take immediate possession of Ultimed's assets and to administer them under the Court's general supervision. MCL 500.8118(1). The Liquidator is vested by operation of law with the title to all of Ultimed's assets, including but not limited to the Company's property, bank accounts, contracts, rights of action, and all books and records, wherever located, as of the date that this Liquidation Order is entered. *Id.* The filing or recording of this Liquidation Order with the clerk of the circuit court and the register of deeds of the county in which Ultimed's principal office or place of business is located or, in the case of real estate, with the register of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded which the register of deeds would have imparted. *Id.*

6. Not later than 120 days after entry of this Liquidation Order, the Liquidator shall prepare in duplicate a list of Ultimed's assets, which list shall be amended or supplemented from time to time as the Liquidator deems appropriate. MCL 500.8125. With respect to the asset list and any amendments and supplements thereto, the Liquidator shall file one copy with the Clerk of this Court and shall retain one copy for her files. *Id.* Thereafter, the Liquidator shall account to this Court no less than annually, pursuant to MCL 500.8118(5).

7. All insurance policies issued by Ultimed in effect at the time of entry of this Liquidation Order are terminated as of the earliest of the following dates:

- a. Thirty (30) days after the date this Liquidation Order is entered;
- b. The date the policy coverage expires pursuant to the policy's terms;
- c. The date that the insured replaces the policy's insurance coverage with equivalent insurance in another insurer or otherwise terminates the policy; or
- d. The date that the Liquidator effects a transfer of the policy obligation pursuant to MCL 500.8121(1)(h) or allocates members to other HMOs pursuant to MCL 500.3563.

8. Except as provided in MCL 500.8119, MCL 500.8137, and this Liquidation Order, the rights and liabilities of Ultimed and of its creditors, policyholders, shareholders, members, and all other persons interested in Ultimed's estate shall become fixed as of the date the Liquidation Order is entered. MCL 500.8118(2).

9. Pursuant to MCL 500.8106(1) and (2), all officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, and affiliates of Ultimed, or any other persons or entities having authority over or in charge of any segment of Ultimed's affairs, including but not limited to Harley Brown, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc., shall fully cooperate with the Liquidator and Special Deputy Liquidators. As used in this Paragraph, "person" shall include a person who exercises control directly or indirectly over the activities of

Ultimed through a holding company or other affiliate. Among other things, full cooperation requires:

- a. Prompt replies to any inquiry by the Liquidator or Special Deputy Liquidators, including a written reply when requested;
- b. Providing the Liquidator and Special Deputy Liquidators with immediate, full, and complete possession, control, access to, and use of all books, accounts, documents, and other records, information, or property of or pertaining to Ultimed in his, her, or its possession, custody, or control;
- c. Providing the Liquidator and Special Deputy Liquidators with full and complete access to and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Ultimed; and
- d. Providing the Liquidator and Special Deputy Liquidators with full and complete access to all legal opinions, memoranda, letters, documents, information, correspondence, legal advice, and any other attorney-client privileged and/or attorney work product materials relating to Ultimed or the operation of Ultimed and its business, provided to or from Ultimed's in-house or outside counsel by or to Ultimed, its officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, or affiliates.
- e. Not obstructing or interfering with the Liquidator or Special Deputy Liquidators in the conduct of this Liquidation proceeding or any investigation incidental thereto. MCL 500.8106(2).

10. As provided by MCL 500.8106(4), any person or entity that fails to cooperate with the Liquidator or Special Deputy Liquidators, obstructs or interferes with the Liquidator or Special Deputy Liquidators in the conduct of this Liquidation proceeding or any investigation incidental thereto, or violates any order of the Commissioner validly entered under Chapter 81 of the Insurance Code, may:

- a. Be sentenced to pay a fine not exceeding \$10,000.00, or imprisoned for a term of not more than one year, or both; and
- b. After a hearing, be subject to the imposition by the Commissioner of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Commissioner, or both.

11. Pursuant to MCL 500.8105(1)(b), (c), (d), (e), and (k), during the pendency of this Liquidation proceeding and unless the Court, after notice, orders otherwise: (a) Ultimed; (b) its owner, Harley Brown; and (c) its affiliates, Advance Medical Enterprises, Inc., Advance Medical Security, Inc., Ulticare, Inc., Community Health Care Providers, Inc. d/b/a United Community Hospital, Community Care Partners, Inc. and Community Coordinated Care Plan, Inc., are enjoined from:

- a. Transferring any property, including but not limited to any data, books, records, information, accounts, moneys, real property, personal property, or other assets, belonging or owed to Ultimed;
- b. Interfering with the Liquidator, Special Deputy Liquidators, or this Liquidation proceeding;
- c. Wasting any assets belonging or owed to Ultimed;
- d. Dissipating or transferring any bank accounts belonging to or containing funds owed to Ultimed; and
- e. Taking any other action that might lessen the value of Ultimed's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of this Liquidation proceeding.

12. In addition to the individual and entities named in Paragraph 10 above, pursuant to MCL 500.8105(1), any other person or entity with possession, custody, or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Ultimed shall immediately:

- a. Provide the Liquidator or Special Deputy Liquidators with notice that such assets, documents, data, accounts, moneys, books, records, information, or property are in his, her, or its possession, custody or control, together with a description of the assets, documents, data, accounts, moneys, books, records, information, or property in his, her, or its possession, custody or control;
- b. Tender possession, custody, and control of such assets, documents, data, accounts, moneys, books, records, information, or property to the Liquidator or Special Deputy Liquidators; and

- c. Take all necessary steps to safeguard, preserve, and retain such assets, documents, data, accounts, moneys, books, records, information, or property.

13. Pursuant to MCL 500.8157, during the pendency of this Liquidation proceeding, an action or proceeding in the nature of an attachment, garnishment, or levy of execution shall not be commenced or maintained in this State against Ultimed or its assets. Furthermore, pursuant to MCL 8105(1)(k) and effective immediately, all persons and entities are expressly enjoined from filing an action or proceeding in the nature of an attachment, garnishment, or levy of execution in this State against Ultimed or its assets.

14. Pursuant to MCL 500.8124(1), upon entry of this Liquidation Order, an action at law or equity shall not be brought against Ultimed, the Liquidator, or Special Deputy Liquidators, whether in this State or elsewhere, and any such existing action shall not be maintained or further presented after entry of this Liquidation Order. Furthermore, pursuant to MCL 8105(1)(k) and effective immediately, all persons and entities are expressly enjoined from filing an action at law or equity or maintaining or further presenting any such existing action against Ultimed, the Liquidator, or Special Deputy Liquidators, whether in this State or elsewhere.

15. Pursuant to MCL 500.8105(1)(g) and (k) and MCL 500.3529(3), all non-contracted and contracted medical care providers are enjoined from pursuing collection against, obtaining judgments against, and/or balance billing of Ultimed's subscribers, enrollees or members for medical goods provided or services rendered prior to the date that this Liquidation Order is entered. All non-contracted and contracted medical care providers that provided such goods or rendered such services prior to the entry date of this Liquidation Order shall seek payment solely from Ultimed as an Ultimed Creditor, as defined by MCL 500.8103(b). The

foregoing prohibition does not apply to any applicable co-payments, deductibles or fees for medical goods or services that are not covered by Ultimed's insurance policies.

16. Any person who violates an injunction contained in this Liquidation Order shall be liable to the Liquidator or subscriber, member, or enrollee for the reasonable costs and attorney fees incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

17. Pursuant to MCL 500.8136(4), any judgment or order against Ultimed or an Ultimed insured entered after the date the Liquidation Petition was filed, and any judgment or order against Ultimed or an Ultimed insured entered at any time by default or by collusion, need not be considered as evidence of liability or of quantum of damages. Similarly, any judgment or order against Ultimed or an Ultimed insured entered within four (4) months before the filing of the Liquidation Petition need not be considered as evidence of liability or of the quantum of damages. *Id.*

18. Pursuant to MCL 500.8118(4), and the Court having found that that proper notice and hearing have been provided, the Court declares that Ultimed is insolvent.

19. All claims by Creditors, as defined by MCL 500.8103(b), against the assets of Ultimed must be made by filing claims in this Liquidation proceeding. All Creditor claims against Ultimed are within the jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court. The deadline for the filing of claims shall be six (6) months after the date that this Liquidation Order is entered, unless the Liquidator specifies a different claims-filing deadline in the Notice provided pursuant to MCL 500.8122(2). Notwithstanding the claims-filing deadline provided in this Order or the Liquidator's Notice, for any claim to be approved, it must be filed

not later than any applicable deadline imposed by contract between the Creditor and Ultimed; the claims-filing deadline provided in this Order or the Liquidator's Notice does not extend any applicable contractual limitation upon the period within which claims must be filed.

20. All claims made under Ultimed's Platinum Health policies shall be adjudicated in accordance with the Certificate of Coverage approved by OFIS on April 18, 2002 (the "Certificate of Coverage"). However, any out-of-state subscribers, members, or enrollees of Ultimed's Platinum Health policies for whom employers or employer groups paid premiums shall be considered eligible for coverage under the Certificate of Coverage. With the exception of the foregoing, all other terms, conditions, and requirements contained in the Platinum Health Certificate of Coverage shall apply.

21. The Liquidator and Special Deputy Liquidators shall provide notice of this Liquidation Order in accordance with MCL 500.8122.

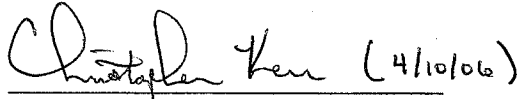
22. The Court reserves jurisdiction to amend this Liquidation Order and issue such further orders as it deems just, necessary and appropriate.

IT IS SO ORDERED.



Honorable William E. Collette
Circuit Court Judge

Stipulated and agreed:



Christopher L. Kerr (P57131)
Attorney for Petitioner



David K. Tillman (P37592)
Attorney for Respondent

not later than any applicable deadline imposed by contract between the Creditor and Ultimed; the claims-filing deadline provided in this Order or the Liquidator's Notice does not extend any applicable contractual limitation upon the period within which claims must be filed.

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21. The Liquidator and Special Deputy Liquidators shall provide notice of this Liquidation Order in accordance with MCL 500.8122.


22. The Court reserves jurisdiction to amend this Liquidation Order and issue such further orders as it deems just, necessary and appropriate.

IT IS SO ORDERED.

Honorable William E. Collette
Circuit Court Judge

Stipulated and agreed:

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Attorney for Petitioner



David K. Tillman (P37592)
Attorney for Respondent

10 April 2006