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COUNSEL FOR PLAINTIFF

RICHARD J. BADOLATO,
and his successors in Office, Acting
Commissioner, State of New Jersey Department
of Banking and Insurance,

Plaintiff,

v.

AMERICAN PREFERRED PROVIDER PLAN,
INC., et al.

Defendants.

**IN THE SUPERIOR COURT OF
NEW JERSEY
MERCER COUNTY
CHANCERY DIVISION**

Docket No.: C-119-98

REVISED NOTICE OF MOTION

TO: See attached Certification of Service

TAKE NOTICE that the undersigned attorneys for Richard J. Badolato, Acting Commissioner of the State of New Jersey Department of Banking and Insurance, in his capacity as Liquidator of American Preferred Provider Plan, Inc., will move before the Honorable Paul Innes, P.J. Ch., at the Superior Court of New Jersey, Mercer County, Chancery Division, Mercer County Civil Courts Building, 175 South Broad Street, Trenton, New Jersey 08650-0068, on May 27, 2016, at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order approving the determination of claims, confirming the final distribution of assets, authorizing the elimination of records, and closing of the estate of American Preferred Provider Plan, Inc. in Liquidation.

In support of the application, the undersigned will rely on the attached Certification of Michelina A. Lombardo, Supplemental Certification of Michelina A. Lombardo, and the exhibits attached thereto.

Pursuant to R. 1:6-2(d), oral argument is waived unless an objection is filed.

A proposed form of Order is attached.

Date: May 5, 2016

By: 
Evan Barenbaum, Esq.



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May 5, 2016

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VIA FEDERAL EXPRESS

The Honorable Paul Innes
Superior Court of New Jersey
Mercer County Civil Division
175 South Broad Street, 3rd Floor
Trenton, NJ 08650-0068

Re:*Richard J. Badolato v. American Preferred Provider Plan, Inc.,*
NJ Super., Mercer Cty., Chancery Div., No. C-119-98
Notice of Motion for Final Distribution

Dear Judge Innes:

We represent Plaintiff Richard J. Badolato and his successors in Office, Acting Commissioner, State of New Jersey Department of Banking and Insurance (the "**Commissioner**"). Kindly accept this letter brief in lieu of a more formal pleading in support of the Commissioner's November 16, 2015 Notice of Motion for an Order approving the determination of claims, confirming the final distribution of assets, authorizing the elimination of records, and closing of the estate of American Preferred Provider Plan, Inc. in Liquidation (the "**Motion**"). This matter was removed to the United States District Court for the District of New Jersey, and is now partially remanded by virtue of an Agreed Order for Partial Remand, as more fully discussed below.

The Commissioner filed a Motion for distribution of the Estate on November 16, 2015. As a component of the relief sought in the Motion, the Commissioner requested approval to distribute \$5,203.02 to the Internal Revenue Service ("**IRS**"), a Class Three claimant. The ultimate distribution to the IRS was calculated as a function of its "allowed claims" of \$121,398.89. On November 30, 2015, the IRS filed a Notice of Removal to the United States District Court for the District of New Jersey disputing its distribution as deficient. Removal was premised upon its theory that the district court may maintain jurisdiction based on the existence of a Federal Question, namely whether the New Jersey insolvency provisions are preempted by federal law. *See* Notice of Removal, attached as Exhibit "A" to the Supplemental Certification of Michelina Lombardo ("**Lombardo Cert.**") The IRS claims that federal law determines the quantum of its claim, and that it is entitled to priority over other Class Three claims and the full amount of the allowed claims; the Commissioner disagreed.



Prior to the Commissioner's filing of a substantive response to the IRS' Notice of Removal, the parties resolved the IRS claim and entered into a conditional settlement, for a total of \$60,699.45. *See* February 16, 2016 Conditional Settlement Agreement, attached as Exhibit "B" to the Lombardo Cert. As a component of the conditional settlement, the parties entered into an Agreed Order for Partial Remand (the "*Order*"), attached as Exhibit "C" to the Lombardo Cert. By virtue of the Order, the federal action is stayed and partially remanded to this Court for consideration of the conditional settlement and disposition of the Motion. In the event the settlement is not approved and/or the Motion is denied, the parties stipulated that the federal court will maintain jurisdiction over the issue of whether the Federal Insolvency Statute, 31 U.S.C. § 3713, preempts the portion of the New Jersey's Life and Health Insurers Rehabilitation and Liquidation Act. Jurisdiction of the federal court will be relinquished if this Court approves the conditional settlement and disposes of the Motion. A revised form of order, recalculating the overall distribution in consideration of the proposed IRS settlement, accompanies this submission.¹

The Commissioner has determined that the settlement with the IRS provides the best present opportunity to reduce the costs of litigation and minimize exposure to the Estate for the benefit of the distributees of the Estate. The settlement with the IRS is consistent with the statutory fiduciary duties of the Liquidator, and will enable the Liquidator to bring the Estate to closure without further delay or undue expense. It is the Liquidator's position that the settlement with the IRS is in the best interest of the Estate, its distributees, and the public.

Wherefore, the Commissioner respectfully requests that this Honorable Court enter an order in the form proposed.

Respectfully,

A handwritten signature in black ink that reads 'Evan Barenbaum'. The signature is written in a cursive, flowing style.

Evan Barenbaum

Enclosures

¹ Since the filing of the IRS' Notice of Removal, total assets of the estate of APPP available for distribution have reduced by approximately \$44,123.49 on account of the regular and ongoing costs and expenses incurred in managing its liquidation. Consequently, the schedule of distributions has been adjusted, as is detailed in the Supplemental Certification of Michelina A. Lombardo, and reflected in the revised, proposed Order that accompany this filing. The total \$60,699.45 proposed settlement payment to the IRS is characterized as a \$4,295.99 Class Three distribution, plus \$56,403.46 out of the estate's reserve. *See* Supplemental Certification of Michelina A. Lombardo.



cc: Richard J. Badolato, Acting Commissioner of the State of New Jersey Department of Banking and Insurance (w/encl.)

Steve Kerner, Acting Assistant Commissioner o/b/o Richard J. Badolato, Acting Commissioner of the State of New Jersey Department of Banking and Insurance (w/encl.)

William B. Puskas Jr., Deputy Attorney General, State of New Jersey, Department of Law & Public Safety, Banking and Insurance Section (w/encl.)

Christopher Brennan, Esquire, Legal Specialist, State of New Jersey, Department of Banking and Insurance, Office of Solvency Regulation (w/encl.)

Michalina A. Lombardo, Deputy Liquidator of the Estate of American Preferred Provider Plan, Inc. in Liquidation (w/encl.)

Stephen A. Josey, Esquire, Trial Attorney, Tax Division, U.S. Department of Justice (w/encl.)

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**IN THE SUPERIOR COURT OF
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Docket No.: C-119-98

REVISED ORDER

THIS MATTER having been opened to the Court by Stern & Eisenberg, PC, counsel for Plaintiff Richard J. Badolato, Acting Commissioner of the State of New Jersey Department of Banking and Insurance, in his capacity as Liquidator of American Preferred Provider Plan, Inc., upon notice to all parties requiring notice, for an Order approving the determination of claims, confirming the final distribution of assets, authorizing the elimination of records, and closing of the estate of American Preferred Provider Plan, Inc. in Liquidation ("**APPP**" or "**Estate**"), and the Court having considered the moving papers and any opposition papers thereto, if any, and for good cause shown:

IT IS on the _____ day of _____, 2016,

ORDERED as follows:

1. Plaintiff's Motion is **GRANTED**.

2. The March 31, 2016 American Preferred Plan in Liquidation Proposed Final Distribution Formula attached as Exhibit "4" to the Supplemental Certification of Michelina A. Lombardo is approved. The Liquidator shall make the following distributions:

A. \$2,950,375.08 to Class One claimant, the New Jersey Insolvent Health Maintenance Organization Assistance Association;

B. \$471,833.30 to Class Three claimant, the New Jersey Insolvent Health Maintenance Organization Assistance Association; and

C. \$4,295.99 to Class Three Government claimant, the Internal Revenue Service ("**IRS**").

3. The Liquidator's \$60,699.45 settlement with the IRS is approved.

4. The Liquidator may issue the \$56,403.46 balance of the settlement out of the amount set aside for the Reserve Contested Case identified in the March 31, 2016 American Preferred Plan in Liquidation Proposed Final Distribution Formula attached as Exhibit "4" to the Supplemental Certification of Michelina A. Lombardo.

5. The Liquidator has established a reserve account in the amount of \$170,000.00 for remaining administrative and operating expenses necessary to complete the remainder of the liquidation proceeding for APPP (the "**Reserve**"). Included in the Reserve are costs specific to applicable archival offsite storage fees (and eventual destruction) of certain records, as required.

6. If any surplus Reserve remains or any assets are recovered by the Liquidator after the date of final distribution, if economic and practical, distributions shall be paid after deduction for any associated administrative expenses of the Liquidator, *pro rata*, to all allowed claimants that have not been satisfied. If the Liquidator determines that the distribution of such assets would be uneconomic or otherwise impractical, the Liquidator shall escheat such assets to the State of New Jersey Department of the Treasury, Unclaimed Property Administration (the “*Treasury*”), after adjustment for any associated administrative expenses of the Estate.

7. Payment by the Liquidator to any claimant shall be complete upon the mailing of the funds to the claimant at claimant’s last known address. If a payment is returned and, after reasonable inquiry, the whereabouts of the claimant remain unknown to the Liquidator, the Liquidator shall escheat the funds to the Treasury. The Liquidator’s mailing of the funds to the Treasury shall satisfy and release the Liquidator’s payment obligation to the claimant.

8. Within ten (10) days of the date of this Order, the Liquidator shall provide the most recent monthly bank statement for the NJ Insolvent HMO Assistance Association account, active under the Wells Fargo Business Cash Manager Account, *redacted* account number xxxxxxxxx40026 (the “*Account*”), to the Office of Financial Solvency, State of New Jersey, Department of Banking & Insurance. The Liquidator shall have no further obligation in connection with the Account other than requesting the Office of Financial Solvency to arrange for the Account mail address instructions to be changed to c/o New Jersey Department of Banking and Insurance, Office of Solvency Regulation, or its designee, and to reassign account access security levels.

9. Personal property and records of APPP within the Liquidator's possession, custody and/or control, and/or held on behalf of the New Jersey Insolvent Health Maintenance Organization Assistance Fund (the "*Fund*"), including, without limitation, accounting, administrative, financial and human resource records, as well as member medical records, can be eliminated. Doing so will not adversely affect any party's rights and will serve to aide in reducing expense, costs and increase Estate assets available for distribution.

10. Records relating to the liquidation, as proscribed in N.J.S.A. 17:3A-3a, may be destroyed, but no earlier than the expiration of one (1) year from the completion of the liquidation and making of the final distribution.

11. The Liquidator may immediately destroy the remainder of APPP's records within the Liquidator's possession, custody and/or control, and/or held on behalf of the Fund, including, without limitation, accounting, administrative, financial and human resource records, as well as member medical records.

12. The Liquidator may immediately destroy all of APPP's personal property within the Liquidator's possession, custody and/or control, and/or held on behalf of the Fund.

13. Once the Liquidator has made the final distribution of funds as set forth above, and subject to the filing of the final statement of accounting pursuant to N.J.S.A. 17B:32-75(a), the Court will be satisfied that the Liquidation is complete.

14. Upon compliance with this Order, and the filing with this Court of a final accounting, the New Jersey Commissioner of Banking and Insurance, the New Jersey Commissioner of Banking and Insurance, as Liquidator of American Preferred Provider Plan, Inc., the Deputy Liquidator, and their agents, attorneys, employees, successors, assigns, and other representatives and agents are forever discharged, released and held harmless from any and

all liability arising out of the confidential administrative supervision, rehabilitation and liquidation of APPP, and this liquidation proceeding shall be terminated without need for any further order of Court. Notice of this Order shall be published on the State of New Jersey Department of Banking and Insurance website for no less than one hundred twenty (120) days.

15. The New Jersey Commissioner of Banking and Insurance and his successors may take any and all additional actions that he deems advisable for the administration and termination of the Estate, without need for further application to the Court.

16. Plaintiff shall, within seven (7) days after receipt of this Order by its counsel, serve a copy of this Order upon all parties who received notice of the Motion by First-Class Mail.

PAUL INNES, P.J.Ch.

___ Opposed

___ Unopposed