



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHRISTOPHER S. PORRINO
Attorney General

MICHELLE L. MILLER
Acting Director

September 12, 2016

DELIVERED BY HAND

Hon. Paul Innes, P.J.Ch.D.
Mercer County Civil Courts Building
175 S. Broad Street, 4th Floor
Trenton, NJ 08650

Re: RICHARD J. BADOLATO, Commissioner of the
Department of Banking and Insurance
of New Jersey, vs.
FREELANCERS CONSUMER OPERATED AND ORIENTED
PROGRAM OF NEW JERSEY d/b/a Health
Republic Insurance of New Jersey
Docket No. C-

Dear Judge Innes:

Please be advised that our office represents the New Jersey Commissioner of Banking and Insurance. The defendant, Freelancers Consumer Operated and Oriented Program of New Jersey ("Freelancers"), is insolvent and is in a hazardous financial condition. Accordingly, the Commissioner has deemed it necessary to seek an Order of Rehabilitation with respect to Freelancers.

Enclosed herewith for your Honor's consideration please find an original and one copy of each of the following documents:

- (a) Order to Show Cause;
- (b) Petition for Rehabilitation;
- (c) Verified Complaint;
- (d) Certification of Kristine A. Maurer;



- (e) Certification of Richard Schlesinger:
- (f) Letter Brief; and
- (g) Order of Rehabilitation (original and 3 copies).

For the reasons set forth in the supporting documents, the Commissioner respectfully requests that your Honor consider this application and, if appropriate, enter the Order to Show Cause as soon as possible. Based upon the imminent cost to the Freelancers of several million dollars if rehabilitation is not ordered swiftly, and the fact that Freelancers has consented to being placed into rehabilitation, the Commissioner further respectfully requests that your Honor consider and, if appropriate, set a short return date for the Order, preferably September 19, 2016.

If your Honor should enter the requested Order to Show Cause, kindly have your clerk contact our office and we will arrange for our courier to pick up a copy of the conformed Order. Thank you for your anticipated courtesy and consideration in this matter.

Respectfully yours,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 

William B. Puskas, Jr.
Deputy Attorney General
William.Puskas@dol.lps.state.nj.us

c w/encs: DoB&I

CHRISTOPHER S. PORRINO
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Commissioner of the Department
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RECEIVED
SEP 12 2016
PAUL INNES, J.S.C.

By: William B. Puskas, Jr. (NJ Attorney ID# 014901976)
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-

RICHARD J. BADOLATO,
COMMISSIONER OF THE
DEPARTMENT OF BANKING AND
INSURANCE OF NEW JERSEY,

Plaintiff,

v.

FREELANCERS CONSUMER OPERATED
AND ORIENTED PROGRAM OF NEW
JERSEY D/B/A HEALTH REPUBLIC
INSURANCE OF NEW JERSEY,

Defendant.

Civil Action

ORDER TO SHOW CAUSE WITH
TEMPORARY RESTRAINTS
PURSUANT TO RULE 4:52 AS
TO WHY AN ORDER OF
REHABILITATION AND
DECLARATION OF INSOLVENCY
SHOULD NOT BE ENTERED

This matter having been opened to the Court by
Christopher S. Porrino, Attorney General of New Jersey, by
William B. Puskas, Jr., Deputy Attorney General, as attorney for

plaintiff, Richard J. Badolato, the Commissioner of the Department of Banking and Insurance of the State of New Jersey ("Commissioner"), seeking relief by way of temporary restraints pursuant to R. 4:52, based on the facts set forth in the Verified Complaint filed herewith for an order directing all persons having an interest in or claim against Freelancers Consumer Operated and Oriented Program of New Jersey d/b/a Health Republic Insurance of New Jersey ("Freelancers") to appear and show cause why an order should not be entered, pursuant to N.J.S.A. 17B:32-42, providing for the rehabilitation of Freelancers, and imposing injunctive relief pursuant to N.J.S.A. 17B:32-39, and the Court having considered the Verified Complaint, Petition for Liquidation, Letter Brief, and the Certifications of Kristine A. Maurer, Assistant Director of the Division of Insurance for the New Jersey Department of Banking and Insurance, and Richard Schlesinger, Chief Insurance Examiner in the Office of Solvency Regulation for the New Jersey Department of Banking and Insurance; and

IT APPEARING that Freelancers is insolvent and in such financial condition that its further transaction of business will be hazardous to its policyholders, creditors, or the public; and

IT FURTHER APPEARING that Freelancers's book of business is comprised of policies directly written in New Jersey; and

IT FURTHER APPEARING that Freelancers has consented to being placed into rehabilitation by the Commissioner; and

IT FURTHER APPEARING that immediate and irreparable damage will probably result before notice can be given and a hearing held, and for good cause appearing therefrom;

IT IS on this _____ day of _____, 2016,

ORDERED that:

(1) Defendant Freelancers appear and show cause before the Honorable Paul Innes, Presiding Judge, Chancery Division, Superior Court of New Jersey, Mercer County Civil Courts Building, 175 South Broad Street, Trenton, New Jersey on September _____, 2016, at _____ .m., or as soon thereafter as counsel may be heard, why an order should not be entered:

(a) declaring Freelancers to be insolvent;

(b) appointing the Commissioner as Rehabilitator of Freelancers with all the powers and authority expressed or implied by N.J.S.A. 17B:32-31 to -92 and the implementing regulations for those statutes, and vesting him with immediate and exclusive possession and control of, and title to, the business of Freelancers and all books, records, files,

equipment, computer hardware and software, assets, and property of any nature of or relating to Freelancers' operations, whether real or personal, including but not limited to bank accounts, certificates of deposit, bonds, securities, or other financial instruments of Freelancers, wherever such materials may be located or situated;

(c) directing the Commissioner to take immediate and exclusive possession of the business and property of Freelancers, to exercise full and exclusive authority over the business and affairs of Freelancers, and to rehabilitate Freelancers;

(d) temporarily enjoining all persons and entities from pursuing litigation against Freelancers, or from interfering with the Commissioner's efforts to rehabilitate Freelancers;

(e) halting further payment of claims by Freelancers except with the express written consent or directive of the Rehabilitator or his designees or appointees;

(f) providing that all claims must be asserted against Freelancers no later than one year from the date of the Order of Rehabilitation, in the form established by the Commissioner, or such claims will be forever barred;

(g) establishing procedures governing the payment of claims by Freelancers;

(h) granting the Commissioner such other injunctive and equitable relief as may be necessary to protect the policyholders and creditors of Freelancers and the public from the effects of Freelancers' insolvency (a copy of the proposed form of Order of Rehabilitation is filed concurrently herewith); and

(2) Effective immediately on entry of this Order, and until further order of this court, Freelancers is declared to be insolvent. This declaration of insolvency is without prejudice and shall not preclude the management or members of Freelancers, if any, who deny that Freelancers is insolvent from contesting the Commissioner's Petition for Rehabilitation on the return date of this Order, or at a subsequent hearing; and

And it is further ORDERED that, pending the return date herein:

(1) Effective immediately upon entry of the within Order and pursuant to N.J.S.A. 17B:32-39, all persons, corporations, partnerships, associations, governmental entities, and all other entities of any nature wherever situated including, but not limited to, those not within the jurisdiction of the Commissioner, and Freelancers, its directors, officers, trustees, agents, employees, representatives, and claimants, and creditors thereof, are hereby enjoined and restrained from:

- (a) Commencing, maintaining, or further prosecuting any action at law or equity, or any special proceeding or any other proceeding of any nature against Freelancers, without leave of the Commissioner or this court;
- (b) Taking any action in violation of any administrative orders issued with respect to Freelancers, which remain in full force and effect;
- (c) Undertaking any other threatened or contemplated action that might lessen the value of Freelancers' assets, or prejudice the rights of the policyholders, creditors, or members in this proceeding except as permitted by the Commissioner;
- (d) Commencing, maintaining, or further prosecuting any action at law or in equity, or any special proceeding or any other proceeding of any nature against the policyholders of Freelancers resulting from Freelancers' insolvency or the failure of Freelancers or any party contracted by Freelancers to pay any of its contractual obligations; and
- (e) Except as otherwise provided herein, terminating or canceling without leave of Court, any lease, contract, license, or other arrangement with Freelancers for the provision or supply of any office space supplies, or equipment including, but not limited to, computer hardware and/or software or any other services or materials or equipment of any nature that are required to operate the business of Freelancers; and

(2) All secured creditors or parties, lien holders, collateral holders, or other persons claiming a secured,

priority, or preferred interest in any property or assets of Freelancers are hereby enjoined and restrained from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of, or exercise purported rights in or against, any property or assets of Freelancers; and

(3) Effective immediately upon execution of this Order, no bank, savings and loan association, or other financial institution, or any other entity of any nature holding property, assets, funds, or accounts of, for, or on behalf of, Freelancers, including any member, provider, subscriber, or creditor of Freelancers, shall exercise any form of set-off, alleged set-off lien, or any form of self-help whatsoever with respect to said property, assets, funds, or accounts without the prior approval of this Court; and

(4) Effective immediately upon execution of this Order, the officers, directors, trustees, agents, representatives, and employees of Freelancers, and, if appropriate, any entity that contracts with such party shall permit the Commissioner, his staff, or designees to have access to any and all premises, and if requested, copies of all or parts of any and all accounts, records, and files, relating to the operation of Freelancers; and

(5) Effective immediately and pending the return date of this Order, all court actions, arbitrations, and mediations

currently or hereafter pending in which Freelancers is a party in the State of New Jersey or elsewhere, are hereby stayed; and

(6) Effective immediately and pending the return date of this Order, there shall be no further payment of claims by Freelancers except at the directive of the Commissioner or of this court; and

It is further ORDERED that:

(1) The above restraints shall expire on _____, 20____, unless on or before that date said restraints shall be extended as provided by the Rules of Court, and Freelancers may move to dissolve or modify the temporary restraints herein contained on two days' notice to Deputy Attorney General William B. Puskas, Jr.; and

(2) A copy of this Order, Verified Complaint, Petition for Rehabilitation, supporting Certification, and Letter Brief shall be served on Freelancers and on all parties listed on the Petition for Rehabilitation or before _____, 2016, in accordance with R. 4:4-3 and R. 4:4-4, this being original process; and

(3) Plaintiff must file with the court his proof of service of the pleadings on Freelancers no later than three days before the return date; and

(4) A copy of this Order and all supporting materials filed herewith shall be available for public inspection on the

Department's website (<http://www.state.nj.us/DoB&I/finesolv.htm>) and during regular business hours beginning two days after the date of this Order and until the return date of this Order at the following locations:

- (a) Health Republic Insurance Company
570 Broad Street, Suite 1100
Newark, NJ 07102
- (b) N.J. Department of Banking and Insurance
Office of Solvency Regulation
20 West State Street, 8th Floor
Trenton, NJ 08625
- (c) Superior Court of New Jersey, Mercer County
Mercer County Civil Courts Building
175 South Broad Street
Trenton, NJ 08650-0068

(5) Notice of this application to any other interested parties shall be accomplished by publishing a copy of this Order in a newspaper of general circulation in the county within which Freelancers's corporate offices are located, specifically, The Newark Star Ledger, The Courier Post, and The New Jersey Law Journal, with such publication to commence as soon as practicable after the date of entry of this Order. Such notice shall constitute good and sufficient notice of this application to all persons having an interest in or claim against Freelancers subject to the requirements of due process of law; and

(6) The Commissioner's representatives shall serve a copy of this Order by facsimile transmission upon all Civil

Presiding Judges and all Civil Case Managers upon receipt of an executed copy; and

(7) Plaintiff must file and serve any written reply to Freelancers' opposition to this Order, if any, by _____, 2016. The original reply papers and one copy must be filed with the Honorable Paul Innes, P.J. Ch. Div., Superior Court of New Jersey, Mercer County Civil Courts Building, 175 South Broad Street, Trenton, New Jersey 08650; and

(8) If Freelancers does not file and serve opposition to this Order, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiff files a proof of service and a proposed form of order at least _____ days prior to the return date; and

(9) If Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than five days before the return date; and

(10) Defendant take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this Order states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof

of service with 35 days from the date of service of this order to show cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$175.00 filing fee payable to the "Treasurer, State of New Jersey." You must also send a copy of your Answer to Plaintiff's attorney whose name and address appear above, or to Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the Order is not an Answer and you must file both. Please note further: If you do not file and serve an Answer within 35 days of this Order, the court may enter a default against you for the relief plaintiff demands; and

(11) If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided; and

(12) If any interested party intends to file answering affidavits or briefs or seek other relief in the present matter,

such papers shall be filed with the Court and served upon Deputy Attorney General William B. Puskas, Jr., Attorney for the Commissioner, on or before _____, 2016; and

(13) The court will entertain argument, but not testimony, on the return date of this Order, unless the court and parties are advised to the contrary no later than _____ days before the return date.

Hon. Paul Innes, P.J. Ch. Div.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 117
Trenton, New Jersey 08625
Attorney for Plaintiff,
Commissioner of the Department
of Banking and Insurance

By: William B. Puskas, Jr. (NJ Attorney ID# 014901976)
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(609) 292-7669
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-

RICHARD J. BADOLATO,
COMMISSIONER OF THE
DEPARTMENT OF BANKING AND
INSURANCE OF NEW JERSEY,

Plaintiff,

v.

FREELANCERS CONSUMER OPERATED
AND ORIENTED PROGRAM OF NEW
JERSEY D/B/A HEALTH REPUBLIC
INSURANCE OF NEW JERSEY

Defendant.

Civil Action

PETITION FOR REHABILITATION
OF FREELANCERS CONSUMER
OPERATED AND ORIENTED PROGRAM
OF NEW JERSEY D/B/A HEALTH
REPUBLIC INSURANCE OF NEW
JERSEY

TO: Honorable Paul Innes, P.J. Ch. Div.
Superior Court of New Jersey, Chancery Division
Mercer County Civil Courts Building
175 South Broad Street
Trenton, NJ 08650

Freelancers Consumer Operated and Oriented
Program of New Jersey d/b/a Health Republic
Insurance of New Jersey
570 Broad Street, Suite 1100
ATTN: Thomas Dwyer, Interim Chief Executive Officer


New Jersey Life and Health Insurance Guaranty
Association
11 Wharf Avenue
Red Bank, NJ 07920
James Lenaghan, Executive Director

PLEASE TAKE NOTICE that as soon as counsel may be heard, Christopher S. Porrino, Attorney General of New Jersey, by William B. Puskas, Jr., Deputy Attorney General, attorney for Richard J. Badolato, Commissioner of Banking and Insurance, will move before the court at a date and time to be set by the Honorable Paul Innes, P.J. Ch. Div., for: (1) an Order To Show Cause with Temporary Restraints; and (2) an Order approving the rehabilitation of Freelancers Consumer Operated and Oriented Program of New Jersey d/b/a Health Republic Insurance of New Jersey; and

PLEASE TAKE FURTHER NOTICE that in support of this application, the Commissioner will rely on the Letter Brief and the Certification of Assistant Commissioner Steven P. Kerner, Jr. submitted in support of this Petition.

A form of Order to Show Cause and a form of Order of Rehabilitation are also submitted with this Petition.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL
OF NEW JERSEY

By: 

William B. Puskas, Jr.
Deputy Attorney General

Dated: September 12, 2016

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 117
Trenton, New Jersey 08625
Attorney for Plaintiff,
Commissioner of the Department
of Banking and Insurance

By: William B. Puskas, Jr. (NJ Attorney ID# 014901976)
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-

RICHARD J. BADOLATO,
COMMISSIONER OF THE
NEW JERSEY DEPARTMENT OF
BANKING AND INSURANCE,

Plaintiff,

v.

FREELANCERS CONSUMER
OPERATED AND ORIENTED
PROGRAM OF NEW JERSEY
D/B/A/ HEALTH REPUBLIC
INSURANCE OF NEW JERSEY,

Defendant.

Civil Action

VERIFIED COMPLAINT FOR AN
ORDER TO SHOW CAUSE WITH
TEMPORARY RESTRAINTS
AS TO WHY AN ORDER OF
REHABILITATION AND A
DECLARATION OF INSOLVENCY
SHOULD NOT BE ENTERED

Plaintiff, Richard J. Badolato, Commissioner of
Banking and Insurance ("Commissioner"), and his successors, with
his principal office at 20 West State Street, Trenton, Mercer
County, New Jersey, by way of complaint against defendant,

Freelancers Consumer Operated and Oriented Program of New Jersey, doing business as Health Republic Insurance of New Jersey ("Freelancers"), says:

THE PARTIES

1. The Office of the Commissioner of the Department of Banking and Insurance ("Department") was created and now exists pursuant to N.J.S.A. 17:1-1 et seq.

2. The Department is responsible for the regulation of, among others, life and health insurance companies domiciled in New Jersey.

3. Freelancers is a New Jersey health insurer licensed to transact insurance business in New Jersey. Freelancers was formed as a mutual health insurance company on May 1, 2013, and authorized to transact health insurance business as of June 21, 2013.

4. Based upon the most recent information Freelancers provided to the Department, Freelancers has 15,879 policies (14,507 individual; 1,372 small employer group) covering 34,950 lives (25,934 individual; 9,016 small employer group) in force as of June 30, 2016.

JURISDICTION AND VENUE

5. The Commissioner has the sole jurisdiction to institute and maintain this action before the Superior Court pursuant to the Life and Health Insurers Rehabilitation and Liquidation Act, N.J.S.A. 17B:32-31 to -92 ("the Act"), specifically N.J.S.A. 17B:32-34.

6. Venue is properly laid in Mercer County because the cause of action arises by action of the Commissioner, whose principal office is located in Mercer County.

LEGAL AUTHORITY

7. At all relevant times, Freelancers was governed by the provisions of the Act.

8. Pursuant to the Act, the Commissioner is authorized to apply to this court for an Order directing him to rehabilitate an insurer that, among other grounds, is in a hazardous financial condition. As shown below, Freelancers is in a hazardous financial condition. Pursuant to the Act, the Commissioner also seeks an Order declaring Freelancers to be insolvent, as shown below.

BACKGROUND

9. Freelancers was formed pursuant to the Consumer Operated and Oriented Plan (CO-OP) Program established as a part of the federal Patient Protection and Affordable Care Act, P.L.

111-148 ("ACA"). The ACA's CO-OP Program provided loans to foster the creation of consumer-governed, private, nonprofit health insurers to offer qualified health plans in the health insurance exchanges created pursuant to the ACA.

10. Under the CO-OP Program, the Centers for Medicare and Medicaid Studies ("CMS") awarded Freelancers a start-up loan of \$14.7 million to fund its required development activities and a solvency loan of \$94.3 million to provide the statutory capital required to operate as a health insurer in New Jersey.

11. Freelancers entered the New Jersey individual and small employer markets for policy year 2014, and the carrier has not made a net profit during any year of its operation.

12. The ACA prohibits health insurers from denying coverage or charging higher premiums to individuals based on preexisting health conditions. Because of concerns that insurers might try to avoid sicker enrollees and uncertainty as to how to properly price coverage as new people entered the market, the ACA included three provisions -- risk adjustment, reinsurance and risk corridors -- that were intended to promote competition among insurers that participate in the exchanges and promote market stability.

13. The risk adjustment program is a permanent program that redistributes funds from health insurance plans

with "lower-risk" (that is, healthier) enrollees to plans with "higher-risk" (sicker) enrollees. The reinsurance program is a temporary three-year (2014 - 2016) program that provides reinsurance funded by federal monies for plans that enroll higher-cost individuals. The risk corridor program is another temporary three-year (2014 - 2016) program that limits an insurer's losses and gains beyond an allowable range. All three of these programs are administered by CMS.

14. As a new company breaking into the New Jersey health insurance market, Freelancers experienced significant compliance and operational difficulties as evidenced by Consent Order No. E14-124 and Consent Order No. E15-106. Now, Freelancers is experiencing serious financial difficulties such that the insurer is in a hazardous financial condition as detailed herein.

15. During the 2016 plan year, Freelancers' financial condition has deteriorated despite its draw of the remaining \$10,000,300 of its solvency loan from CMS. Briefly here, this has included the following:

a. The utilization volume and severity of claims for Freelancers' 2016 membership has trended significantly above projections and continues to rise. It is anticipated that this trend will persist as member utilization

of health coverage tends to increase throughout a plan year and the amount of member cost-sharing decreases as members reach maximum out-of-pocket cost limitations under law.

b. On June 30, 2016, CMS issued Freelancers' Risk-Adjustment bill for the 2015 plan year totaling \$46.3 million.

c. Freelancers' own projections show a negative cash position is likely to arise by the first quarter of 2017 as follows: cash on hand is projected to be \$19,763,250; Incurred, but not yet reported ("IBNR") claims projected to be \$37,031,000; thus resulting in a negative cash position totaling \$(17,267,750) by January 2017.

d. Freelancers' year-to-date net loss through June 30, 2016 is \$(58,956,461).

e. Freelancers' capital and surplus as of December 31, 2015, was \$33,697,215, but decreased to \$(14,411,124) as of June 30, 2016.

16. In light of this, the Commissioner finds that Freelancers' financial condition, as more particularly described below, has deteriorated, such that any further transaction of business by Freelancers would be hazardous financially to its policyholders, creditors or the public. Based on this finding,

the Commissioner has determined that it is necessary to place Freelancers into rehabilitation.

COUNT ONE

17. N.J.S.A. 17B:32-33 defines "insolvency" or "insolvent" to mean that an insurer's admitted assets do not exceed its liabilities plus its required capital and surplus.

18. Based on financial information provided to the Department by Freelancers, as of June 30, 2016, Freelancers has: admitted assets of \$113,898,588, liabilities of \$128,309,712, and is required to maintain a minimum of capital and surplus of \$9,087,000 for a total required capital and surplus of \$137,396,712.

19. Freelancers' liabilities and required capital and surplus exceed its admitted assets by \$23,498,124. Accordingly, Freelancers is insolvent as defined by statute and the court should enter a declaration of insolvency.

COUNT TWO

20. Plaintiff incorporates the allegations of Count One by reference as if fully set forth herein.

21. The provisions of N.J.A.C. 11:2-27, a subchapter entitled "DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION", provide a list of factors that the Commissioner may

consider in determining whether an insurer is in a hazardous financial condition.

22. N.J.A.C. 11:2-27.3(a) sets forth 34 factors to be considered "either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition."

23. A finding that an insurer is in a hazardous financial condition constitutes grounds for rehabilitation under N.J.S.A. 17B:32-41a.

24. N.J.A.C. 11:2-27.3(a)1 provides that the Commissioner shall consider adverse findings reported in financial condition reports, audit reports, and actuarial opinions, reports or summaries.

25. Based on financial condition reports submitted to the Department, Freelancers' capital and surplus as of December 31, 2015, was \$33,697,215, but decreased to \$(14,411,124) as of June 30, 2016.

26. Several factors accounted for this rapid decrease in surplus. As noted above, the ACA created various programs to smooth carriers experience under the new federal law. The risk adjustment program redistributes funds from health insurance plans with healthier enrollees in a given policy year to plans with sicker enrollees during that same

policy year. On June 30, 2016, CMS advised Freelancers that its risk adjustment payable liability for the individual and small group health benefits plans issued in 2015 increased from a projected liability of \$17,138,000 as of December 31, 2015, to an actual liability of \$46,318,191.

27. Freelancers also experienced a decrease in its reinsurance payment receivable from CMS from \$32,314,125 as of December 31, 2015, to \$26,089,768 as of June 30, 2016.

28. Freelancers also experienced an increase in its unpaid claims (IBNR [incurred but not reported]) liability from \$28,412,875 as of December 31, 2015, to \$41,556,291 as of June 30, 2016.

29. The above three items total \$48,547,964. This amount was offset by a solvency loan payment received from CMS of \$10,000,300, resulting in a total quantified financial deterioration of \$38,547,664. The \$38,547,664 comprises 80% of the reduction in Freelancers' surplus, necessitating the Commissioner's petition for Rehabilitation.

30. Based on those adverse findings as to Freelancers' surplus, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)1.

COUNT THREE

31. Plaintiff incorporates the allegations of Counts One and Two by reference as if fully set forth herein.

32. Based on financial condition reports submitted to the Department, Freelancers' net loss for 2015 was \$(17,560,987) and its year-to-date net loss through June 30, 2016 is \$(58,956,461).

33. Based on those adverse findings regarding Freelancers' net losses, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)1.

COUNT FOUR

34. Plaintiff incorporates the allegations of Counts One through Three, inclusive, by reference as if fully set forth herein.

35. N.J.A.C. 11:2-27.3(a)3 provides that the Commissioner shall consider whether the insurer has made adequate provision for its anticipated required cash flows.

36. Based on financial condition reports submitted to the Department, Freelancers estimates its cash position at January 2, 2017, will be \$19,763,250. It also estimates its liability for IBNR claims to be \$37,031,000. Thus, Freelancers

cash flows and liquidity are estimated to be negative in the first quarter of 2017.

37. Based on those adverse findings as to Freelancers' anticipated required cash flows, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)3.

COUNT FIVE

38. Plaintiff incorporates the allegations of Counts One through Four, inclusive, by reference as if fully set forth herein.

39. N.J.A.C. 11:2-27.3(a)4 provides that the Commissioner shall consider a finding that the insurer's asset portfolio "is not of sufficient value, liquidity, or diversity to assure the [insurer's] ability to meet its outstanding obligations as they mature."

40. Based on financial condition reports submitted to the Department, Freelancers' admitted assets as of June 30, 2016, are \$113,898,588 and its total liabilities are \$128,309,712, resulting in negative surplus of \$(14,411,124). Accordingly, Freelancers' asset portfolio is inadequate to meet its outstanding obligations as they mature.

41. Based on those findings regarding Freelancers' asset portfolio, the Commissioner has determined that

Freelancers is in a hazardous financial condition under N.J.A.C.
11:2-27.3(a)4.

COUNT SIX

42. Plaintiff incorporates the allegations of Counts One through Five, inclusive, by reference as if fully set forth herein.

43. N.J.A.C. 11:2-27.3(a)6 involves a finding that the insurer's operating loss in the last 12 month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets and cash dividends to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

44. Based on financial condition reports submitted to the Department, Freelancers' 2016 year-to-date operating loss through June 30, 2016 is \$(58,956,461). Its remaining surplus is \$(14,411,124). Thus, Freelancers' operating loss in the last six months is greater than 50 percent of its remaining surplus.

45. Based on those findings regarding Freelancers' operating loss, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)6.

COUNT SEVEN

46. Plaintiff incorporates the allegations of Counts One through Six, inclusive, by reference as if fully set forth herein.

47. N.J.A.C. 11:2-27.3(a)7 involves a finding that the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.

48. Based on financial condition reports submitted to the Department, Freelancers' 2016 year-to-date operating loss, excluding net capital gains, through June 30, 2016, is \$(59,974,577). Its remaining surplus is \$(14,411,124). Thus, Freelancers' operating loss, excluding net capital gains, in the last six months is greater than 20 percent of its remaining surplus.

49. Based on those findings regarding Freelancers' operating loss, excluding net capital gains, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)7.

COUNT EIGHT

50. Plaintiff incorporates the allegations of Counts One through Seven, inclusive, by reference as if fully set forth herein.

51. N.J.A.C. 11:2-27.3(a)9 involves a finding that contingent liabilities, pledges or guarantees involve a total amount that, in the opinion of the Commissioner, may affect the solvency of the insurer.

52. Based on financial condition reports submitted to the Department, as of June 30, 2016, Freelancers had total liabilities of \$128,309,712 but admitted assets of only \$113,898,588. Accordingly, the Commissioner has determined that Freelancers' solvency has been negatively affected.

53. Based on those findings as to Freelancers' solvency, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)9.

COUNT NINE

54. Plaintiff incorporates the allegations of Counts One through Eight, inclusive, by reference as if fully set forth herein.

55. N.J.A.C. 11:2-27.3(a)17 involves a finding that the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

56. Based on financial condition reports submitted to the Department, Freelancers estimates its cash position at January 2, 2017 will be \$19,763,250. It also estimates its liability for IBNR claims to be \$37,031,000. Accordingly, the Commissioner finds that Freelancers will experience cash flow or liquidity problems in the foreseeable future.

57. Based on those findings as to Freelancers' cash flow and liquidity, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)17.

COUNT TEN

58. Plaintiff incorporates the allegations of Counts One through Nine, inclusive, by reference as if fully set forth herein.

59. N.J.A.C. 11:2-27.3(a)18 involves a finding that the insurer's surplus as regards policyholders is inadequate in relation to the amount of the insurer's loss and loss adjustment expense reserve liabilities established.

60. Based on financial condition reports submitted to the Department, Freelancers' admitted assets as of June 30, 2016, are \$113,898,588 and its total liabilities are \$128,309,712, resulting in negative capital and surplus of \$(14,411,124).

61. Based on those findings as to Freelancers' surplus, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)18.

COUNT ELEVEN

62. Plaintiff incorporates the allegations of Counts One through Ten, inclusive, by reference as if fully set forth herein.

63. Freelancers' capital and surplus as of as of June 30, 2016, is negative, thus resulting in a negative Risk-Based Capital ratio below mandatory control level pursuant to N.J.A.C. 11:2-39.1 et seq., and which requires the Commissioner take actions necessary to cause a domestic insurer or HMO to be placed under regulatory control pursuant to the Life and Health Insurers Receivership Act, N.J.S.A. 17B:32-31 et seq.

CONCLUSION

64. For these reasons, the Commissioner has determined that it is necessary and appropriate to place Freelancers into court-supervised rehabilitation pursuant to N.J.S.A. 17B:32-31 et seq. in order to protect its policyholders, creditors and the public at large.

65. Placement of Freelancers into rehabilitation now will enable the Commissioner protect its policyholders and the providers who have rendered medical treatment to those

policyholders by taking control of the operations of the carrier, marshalling its assets, reducing its costs and beginning the process of an orderly wind-down with termination of all health benefits plans by December 31, 2016.

66. Placement of Freelancers into rehabilitation now will enable the Commissioner to act expeditiously to provide notice to all Freelancers' policyholders, both individual and small employer policyholders, of the termination of their plans at year-end and enable those individual consumers to make an orderly and informed transition to new carriers during the 2017 plan year open enrollment which begins on November 1, 2016. Small employers are not limited to an open enrollment period and may apply for a replacement small employer plan from another carrier at any time.

67. Placement of Freelancers into rehabilitation now will prevent the carrier from proceeding to sell plans into policy year 2017 and avoid a probable mid-year 2017 wind-down that would require movement of policyholders to new carriers during a special enrollment period, thus causing confusion and market uncertainty.

68. Placement of Freelancers into rehabilitation now is not only required by law, but will enable the Commissioner to take immediate actions to minimize any eventual need for

financial support from New Jersey Life and Health Insurance Guaranty Association ("LHIGA"), pursuant to N.J.S.A. 17B:32A-1 et seq.

69. Importantly, Freelancers acknowledges the above circumstances and has consented to placement into rehabilitation through entry of the enclosed form of Order of Rehabilitation. See, Certification of Kristine A. Maurer, Exhibit A.

WHEREFORE, plaintiff demands an Order:

(a) declaring that Freelancers is insolvent as defined at N.J.S.A. 17B:32-33; and further

(b) declaring that Freelancers is in a financial condition such that its further transaction of business will be hazardous to its policyholders, creditors, and the public pursuant to N.J.S.A. 17B:32-41a; and further

(c) appointing the Commissioner and his successors in office as Rehabilitator of Freelancers to rehabilitate Freelancers in accordance with N.J.S.A. 17B:32-31 et seq., with all the powers and authority express or implied thereunder and as set forth in the Order of Rehabilitation that is being filed herewith; and further

(d) vesting the Rehabilitator with immediate title to, and exclusive possession of, and control over, the business and affairs of Freelancers and all real and personal property,

assets, funds, accounts, records, files or any other property, assets or possessions of any nature of Freelancers, wherever situated or located; and further

(e) directing the Rehabilitator to take immediate and exclusive possession and control of the businesses and affairs of Freelancers, as well as all of its real and personal property, assets, files, records, accounts and funds wherever located and to immediately begin removing the causes and conditions that have made rehabilitation necessary; and further

(f) restraining and enjoining all persons or entities, including but not limited to Freelancers, its officers, directors, or members, from further conducting the business of Freelancers; and further

(g) granting such other relief as the Court may deem appropriate.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff,
Commissioner of Banking and
Insurance

By: 

William B. Puskas, Jr.
Deputy Attorney General

Dated: September 22, 2016

DESIGNATION OF TRIAL COUNSEL

Deputy Attorney General William B. Puskas, Jr. is hereby designated as trial counsel in this matter.

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff,
Commissioner of Banking and
Insurance

By: 

William B. Puskas, Jr.
Deputy Attorney General

Dated: September 12, 2016

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff hereby certifies pursuant to R. 4:5-1 that there are no other civil proceedings either pending or contemplated with respect to the matter in controversy herein and no other parties who should be joined to this action. I further certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff,
Commissioner of Banking and
Insurance

By: 

William B. Puskas, Jr.
Deputy Attorney General

Dated: September 12, 2016

VERIFICATION

RICHARD SCHLESINGER, of full age, hereby certifies:

I am the Chief Insurance Examiner in the Office of Solvency Regulation (OSR) for the New Jersey Department of Banking and Insurance. I have held this position since April 2015. From 2011 to 2015, I held the position of Chief of Reinsurance and Surplus Lines in OSR at the Department. Prior

to that, I have over forty years of experience in insurance, both at insurance companies, trade associations, and as a regulator at the New York Insurance Department from 1971 through 1984. My current responsibilities include monitoring the financial condition of all insurance entities transacting business in New Jersey. I have read the Complaint and certify that the allegations contained in the Complaint are true to the best of my knowledge and belief.

I certify that the foregoing statements are true. I am aware that if any statement made herein is willfully false, I am subject to punishment.



RICHARD SCHLESINGER

Dated: September 12, 2016

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 117
Trenton, New Jersey 08625
Attorney for Plaintiff,
Commissioner of the Department
of Banking and Insurance

By: William B. Puskas, Jr. (NJ Attorney ID# 014901976)
Deputy Attorney General
(609) 292-7669
William.Puskas@dol.lps.state.nj.us

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-

RICHARD J. BADOLATO,
COMMISSIONER OF THE
NEW JERSEY DEPARTMENT OF
BANKING AND INSURANCE,

Plaintiff,

v.

FREELANCERS CONSUMER
OPERATED AND ORIENTED
PROGRAM OF NEW JERSEY
D/B/A/ HEALTH REPUBLIC
INSURANCE OF NEW JERSEY,

Defendant.

Civil Action

**CERTIFICATION OF KRISTINE
A. MAURER**

KRISTINE A. MAURER, of full age, hereby certifies and

says:

1. I am the Assistant Director of the Division of
Insurance in the New Jersey Department of Banking and Insurance

("the Department"). My primary responsibility is to work extensively with the Director of Insurance to coordinate and direct the operations of the Insurance Division in regulating the insurance industry in New Jersey. The Insurance Division contains six primary operating units, including the Office of Solvency Regulation ("OSR") that monitors and oversees the financial condition of all insurance entities transacting business in New Jersey, and all of these units including OSR report directly to me and Insurance Director Peter L. Hartt. I make this certification in further support of the Commissioner's application to place Freelancers Consumer Operated and Oriented Program of New Jersey, doing business as Health Republic Insurance of New Jersey ("Freelancers"), into rehabilitation.

2. Freelancers is a New Jersey mutual health insurance company licensed in transact commercial health insurance business in New Jersey since June 21, 2013.

3. Based upon the most recent information Freelancers provided to the Department, Freelancers has 15,879 policies (14,507 individual; 1,372 small employer group) covering 34,950 lives (25,934 individual; 9,016 small employer group) in force as of June 30, 2016.

4. Freelancers was formed pursuant to the Consumer Operated and Oriented Plan (CO-OP) Program established as a part of the federal Patient Protection and Affordable Care Act, P.L.

111-148 ("ACA"). The ACA's CO-OP Program provided loans to foster the creation of consumer-governed, private, nonprofit health insurers to offer qualified health plans in the health insurance exchanges created pursuant to the ACA.

5. Under the CO-OP Program, the Centers for Medicare and Medicaid Studies ("CMS") awarded Freelancers a start-up loan of \$14.7 million to fund its required development activities and a solvency loan of \$94.3 million to provide the statutory capital required to operate as a health insurer in New Jersey.

6. The ACA includes three programs -- risk adjustment, reinsurance and risk corridors -- aimed at promoting competition among insurers, and pricing and therefore market stability. Most important for the purposes of this certification, the risk adjustment ("RA") program is a permanent program that redistributes funds from health insurance plans with "lower-risk" (that is, healthier) enrollees to plans with "higher-risk" (sicker) enrollees. On June 30, 2016, CMS advised Freelancers that its liability to the RA program is \$46.3 million.

7. Freelancers is insolvent and is in a hazardous financial condition as detailed in this rehabilitation petition and the Certification of Chief Insurance Examiner Schlesinger. Briefly here, Freelancers' own projections show a negative cash position is likely to arise by the first quarter of 2017 as

follows: cash on hand is projected to be \$19,763,250; Incurred, but not yet reported ("IBNR") claims projected to be \$37,031,000; thus resulting in a negative cash position totaling \$(17,267,750) by January 2017.

8. For these reasons and all others as set forth in this rehabilitation petition, the Commissioner has determined that it is necessary and appropriate to place Freelancers into court-supervised rehabilitation pursuant to N.J.S.A. 17B:32-31 et seq. in order to protect its policyholders, creditors and the public at large.

9. Despite this rapidly deteriorating liquidity position, on or about August 22, 2016, CMS netted a significant portion of Freelancers' RA liability against CMS receivables in accordance with CMS' guidance dated July 15, 2016. Attached hereto as Exhibit A is a true and correct copy of CMS' July 15, 2016 Netting Guidance.

10. In total, CMS netted approximately \$21.2 million from Freelancers' August receivables. Stated another way, in August 2016, Freelancers was entitled to receive approximately \$21.2 million from CMS for reinsurance and advance premium tax credits; however, Freelancers received nothing because CMS applied those funds towards its RA liability. This means that CMS reduced Freelancers' actual cash income by \$21.2 million and accelerated the decline of Freelancers' liquidity position.

11. CMS has advised the Department that placement of Freelancers into rehabilitation will enable CMS to forgo further netting upon our request. It is the Department's understanding that CMS' next scheduled netting will occur on or about September 20, 2016. Therefore, placement of Freelancers into rehabilitation prior to that date is essential to avoid further loss of liquidity in the estate.

12. Additionally, placement of Freelancers into rehabilitation before September 20th is necessary to enable the Commissioner to take expeditious action to notify all interested parties that Freelancers will not operate in 2017. Individual and small employer policyholders will need time to review and shop for replacement coverage effective January 1, 2017. This is essential to ensure that policyholders obtain replacement coverage timely and thereby avoid lapses in covered medical treatment and to ensure that their new plans fit their budgets and contain their preferred and/or treating medical providers and facilities.

13. Overall, placement of Freelancers into rehabilitation is not only required by law, but will enable the Commissioner to timely marshal the company's assets, reduce costs and hopefully take immediate steps to minimize any eventual need for financial support from New Jersey Life and

Health Insurance Guaranty Association ("LHIGA"), pursuant to
N.J.S.A. 17B:32A-1 et seq.

14. Importantly, Freelancers was provided prior notice of the Department's intent to seek rehabilitation and the basis for same. Freelancers consents to its placement into rehabilitation and entry of the Order of Rehabilitation as enclosed in this petition. Attached hereto as Exhibit B is an E-mail from Thomas Dwyer, Interim Chief Executive Officer of Freelancers, dated September 11, 2016, evidencing this consent.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

 9/12/16

KRISTINE A. MAURER
Assistant Director of Insurance

Certification of Kristine A. Maurer
in Support of NJ Dept. of Banking and Insurance's Petition for Rehabilitation
of Freelancers

EXHIBIT A

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



Date: July 15, 2016

Re: Netting of Payments and Charges under 45 CFR 156.1215

Under 45 CFR 156.1215, CMS has the authority to net payments owed to issuers and their affiliates operating under the same tax identification number against amounts due to the Federal or State governments from the issuers and their affiliates under the same taxpayer identification number for:

- advance payments of the premium tax credit and cost-sharing reductions;
- reconciliation of cost-sharing reductions;
- Federally-facilitated Exchange user fees and fees for State-based Exchanges utilizing the Federal platform; and
- risk adjustment, reinsurance, and risk corridors payments and charges.

CMS has a policy of netting all of the above payments and charges to efficiently operate these programs and expeditiously support payments under the premium stabilization programs, including risk adjustment. Doing so permits CMS to make timely and complete payments to issuers under the premium stabilization programs, which we believe is important for reducing the incentives for issuers to avoid the sickest enrollees and for increasing issuers' ability to maintain premium stability.

There may, however, be circumstances when refraining from netting a particular payment will have no impact on collections for or operations of the premium stabilization programs. In those cases, CMS may elect not to net the payment. A State department of insurance may reasonably notify CMS that an issuer will be required to end coverage if advance payments are netted, but that if CMS refrains from netting such payments, continued coverage would -- in the State's view -- be in the best interest of the enrollees or the market. In those cases, CMS will refrain from netting advance payments for the months for which the coverage would otherwise have been terminated.

Advance payments of the premium tax credit and cost-sharing reductions fund current coverage of low-income enrollees; if coverage is ended, CMS does not make those payments to the issuer and therefore these payments would not be available for netting. In such a circumstance, refraining from netting these payments would not result in CMS foregoing timely collection of funds that would otherwise be available. Other payments and charges that are subject to netting do not bear the same relationship to current coverage; it would therefore not be appropriate to apply the same policy to these other payments.

Certification of Kristine A. Maurer
in Support of NJ Dept. of Banking and Insurance's Petition for Rehabilitation
of Freelancers

EXHIBIT B

Maurer, Kristine

From: THOMAS DWYER <TDwyer@healthrepublicnj.com>
Sent: Sunday, September 11, 2016 10:40 PM
To: Hartt, Peter; Maurer, Kristine
Cc: Craig Domalewski
Subject: HRINJ

Dear Peter and Kristine:

Please accept this email in lieu of a more formal document in accordance with the Department's request for a certification. As you know, the Company has expended significant time and effort to explore potential alternatives to the entry of an Order of Rehabilitation.

Unfortunately, Obamacare and local market conditions have proven difficult to raise substantial capital needed to survive in my beloved New Jersey.

As a result, the Company consents to the entry of the Order of Rehabilitation, and will work cooperatively with the Department to ensure that the interests of the Company's stakeholders are protected and to continue to pursue any options for re-emerging to the marketplace in 2018.

I strongly urge the Department to develop reforms to the NJ market that will ensure a competitive environment and avoid a death spiral.

Respectfully submitted,

Tom Dwyer
cell: 732-887-8269

--
THOMAS DWYER

Interim Chief Executive Officer

O: | C: 732-887-8269 | Fax: 201.308.8605 TDwyer@healthrepublicnj.com Send me a secure message <<https://securecontact.me/%40newjersey.healthrepublic.us>>

570 Broad St | Suite 1100 | Newark, NJ 07102 newjersey.healthrepublic.us <<http://newjersey.healthrepublic.us>>

[Facebook] <<https://www.facebook.com/HealthRepublicNJ>> [Twitter] <https://twitter.com/HRI_NJ> [LinkedIn] <<http://www.linkedin.com/company/health-republic-insurance-of-new-jersey>>

CHRISTOPHER S. PORRINO
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Attorney for Plaintiff,
Commissioner of the Department
of Banking and Insurance

By: William B. Puskas, Jr. (NJ Attorney ID# 014901976)
Deputy Attorney General
(609) 292-7669
William.Puskas@dol.lps.state.nj.us

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-

RICHARD J. BADOLATO,
COMMISSIONER OF THE
NEW JERSEY DEPARTMENT OF
BANKING AND INSURANCE,

Plaintiff,

v.

FREELANCERS CONSUMER
OPERATED AND ORIENTED
PROGRAM OF NEW JERSEY
D/B/A/ HEALTH REPUBLIC
INSURANCE OF NEW JERSEY,

Defendant.

Civil Action

CERTIFICATION OF RICHARD
SCHLESINGER

RICHARD SCHLESINGER, of full age, hereby certifies and
says:

1. I am the Chief Insurance Examiner in the Office
of Solvency Regulation for the New Jersey Department of Banking

and Insurance ("the Department"). My responsibilities include monitoring and overseeing the financial condition of all insurance entities transacting business in New Jersey. I make this certification to explain the business of Freelancers Consumer Operated and Oriented Program of New Jersey, doing business as Health Republic Insurance of New Jersey ("Freelancers"), and the financial reasons that support placing Freelancers into rehabilitation.

2. The Office of the Commissioner of the Department of Banking and Insurance ("Department") was created and now exists pursuant to N.J.S.A. 17:1-1 et seq.

3. The Department is responsible for the regulation of, among others, life and health insurance companies domiciled in New Jersey.

4. Freelancers is a New Jersey health insurer licensed to transact insurance business in New Jersey. Freelancers was formed as a mutual health insurance company on May 1, 2013, and authorized to transact health insurance business as of June 21, 2013.

5. Based upon the most recent information Freelancers provided to the Department, Freelancers has 15,879 policies (14,507 individual; 1,372 small employer group) covering 34,950 lives (25,934 individual; 9,016 small employer group) in force as of June 30, 2016.

BACKGROUND

6. Freelancers was formed pursuant to the Consumer Operated and Oriented Plan (CO-OP) Program established as a part of the federal Patient Protection and Affordable Care Act, P.L. 111-148 ("ACA"). The ACA's CO-OP Program provided loans to foster the creation of consumer-governed, private, nonprofit health insurers to offer qualified health plans in the health insurance exchanges created pursuant to the ACA.

7. Under the CO-OP Program, the Centers for Medicare and Medicaid Studies ("CMS") awarded Freelancers a start-up loan of \$14.7 million to fund its required development activities and a solvency loan of \$94.3 million to provide the statutory capital required to operate as a health insurer in New Jersey.

8. Freelancers entered the New Jersey individual and small employer markets for policy year 2014, and the carrier has not made a net profit during any year of its operation.

9. The ACA prohibits health insurers from denying coverage or charging higher premiums to individuals based on preexisting health conditions. Because of concerns that insurers might try to avoid sicker enrollees and uncertainty as to how to properly price coverage as new people entered the market, the ACA included three provisions -- risk adjustment, reinsurance and risk corridors -- that were intended to promote

competition among insurers that participate in the exchanges and promote market stability.

10. The risk adjustment program is a permanent program that redistributes funds from health insurance plans with "lower-risk" (that is, healthier) enrollees to plans with "higher-risk" (sicker) enrollees. The reinsurance program is a temporary three-year (2014 - 2016) program that provides reinsurance funded by federal monies for plans that enroll higher-cost individuals. The risk corridor program is another temporary three-year (2014 - 2016) program that limits an insurer's losses and gains beyond an allowable range. All three of these programs are administered by CMS.

11. As a new company breaking into the New Jersey health insurance market, Freelancers experienced significant compliance and operational difficulties as evidenced by Consent Order No. E14-124 and Consent Order No. E15-106. Now, Freelancers is experiencing serious financial difficulties such that the insurer is in a hazardous financial condition as detailed herein.

12. During the 2016 plan year Freelancers' financial condition has deteriorated despite its draw of the remaining \$10,000,300 of its solvency loan from CMS. Briefly, this has included the following:

a. The utilization volume and severity of claims for Freelancers' 2016 membership has trended significantly above projections and continues to rise. It is anticipated that this trend will persist as member utilization of health coverage tends to increase throughout a plan year and the amount of member cost-sharing decreases as members reach maximum out-of-pocket cost limitations under law.

b. On June 30, 2016, CMS issued Freelancers' Risk-Adjustment bill for the 2015 plan year totaling \$46.3 million.

c. Freelancers' own projections show a negative cash position is likely to arise by the first quarter of 2017 as follows: cash on hand is projected to be \$19,763,250; Incurred, but not yet reported ("IBNR") claims projected to be \$37,031,000; thus resulting in a negative cash position totaling \$(17,267,750) by January 2017.

d. Freelancers' year-to-date net loss through June 30, 2016 is \$(58,956,461).

e. Freelancers' capital and surplus as of December 31, 2015, was \$33,697,215, but decreased to \$(14,411,124) as of June 30, 2016.

13. In light of this, the Commissioner finds that Freelancers' financial condition, as more particularly described below, has deteriorated, such that any further transaction of business by Freelancers would be hazardous financially to its

policyholders, creditors or the public. Based on this finding, the Commissioner has determined that it is necessary to place Freelancers into rehabilitation.

FREELANCERS IS INSOLVENT

14. N.J.S.A. 17B:32-33 defines "insolvency" or "insolvent" to mean that an insurer's admitted assets do not exceed its liabilities plus its required capital and surplus.

15. Based on financial information provided to the Department by Freelancers, as of June 30, 2016, Freelancers has: admitted assets of \$113,898,588, liabilities of \$128,309,712, and is required to maintain a minimum of capital and surplus of \$9,087,000 for a total required capital and surplus of \$137,396,712.

16. Freelancers' liabilities and required capital and surplus exceed its admitted assets by \$23,498,124. Accordingly, Freelancers is insolvent as defined by statute and the court should enter a declaration of insolvency.

FREELANCERS IS IN A HAZARDOUS FINANCIAL CONDITION

17. The provisions of N.J.A.C. 11:2-27, a subchapter entitled "DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION", provide a list of factors that the Commissioner may consider in determining whether an insurer is in a hazardous financial condition.

18. N.J.A.C. 11:2-27.3(a) sets forth 34 factors to be considered "either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition."

19. A finding that an insurer is in a hazardous financial condition constitutes grounds for rehabilitation under N.J.S.A. 17B:32-41a.

20. N.J.A.C. 11:2-27.3(a)1 provides that the Commissioner shall consider adverse findings reported in financial condition reports, audit reports, and actuarial opinions, reports or summaries.

21. Based on financial condition reports submitted to the Department, Freelancers' capital and surplus as of December 31, 2015, was \$33,697,215, but decreased to \$(14,411,124) as of June 30, 2016.

22. Several factors accounted for this rapid decrease in surplus. As noted above, the ACA created various programs to smooth carriers' experience under the new federal law. The risk adjustment program redistributes funds from health insurance plans with healthier enrollees in a given policy year to plans with sicker enrollees during that same policy year. On June 30, 2016, CMS advised Freelancers that its risk adjustment payable liability for the individual and small group health benefits plans issued in 2015 increased from a projected liability of

\$17,138,000 as of December 31, 2015, to an actual liability of \$46,318,191.

23. Freelancers also experienced a decrease in its reinsurance payment receivable from CMS from \$32,314,125 as of December 31, 2015, to \$26,089,768 as of June 30, 2016.

24. Freelancers also experienced an increase in its unpaid claims (IBNR [incurred but not reported]) liability from \$28,412,875 as of December 31, 2015, to \$41,556,291 as of June 30, 2016.

25. The above three items decreased Freelancers' surplus by a total of \$48,547,964. This amount was offset by a solvency loan payment received from CMS of \$10,000,300, resulting in a total quantified financial deterioration of \$38,547,664, which comprises 80% of the total reduction in Freelancers' surplus of \$48,108,339. As noted above, this results in Freelancers' having negative surplus of \$(14,411,124) as of June 30, 2016, thus necessitating the Commissioner's petition for Rehabilitation.

26. Based on those adverse findings as to Freelancers' negative surplus, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)1.

27. Based on financial condition reports submitted to the Department, Freelancers' net loss for 2015 was \$(17,560,987)

and its year-to-date net loss through June 30, 2016 is \$(58,956,461).

28. Based on those adverse findings regarding Freelancers' net losses, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)1.

29. N.J.A.C. 11:2-27.3(a)3 provides that the Commissioner shall consider whether the insurer has made adequate provision for its anticipated required cash flows.

30. Based on financial condition reports submitted to the Department, Freelancers estimates its cash position at January 2, 2017, will be \$19,763,250. It also estimates its liability for IBNR claims to be \$37,031,000. Thus, Freelancers cash flows and liquidity are estimated to be negative in the first quarter of 2017.

31. Based on those adverse findings as to Freelancers' anticipated required cash flows, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)3.

32. N.J.A.C. 11:2-27.3(a)4 provides that the Commissioner shall consider a finding that the insurer's asset portfolio "is not of sufficient value, liquidity, or diversity to assure the [insurer's] ability to meet its outstanding obligations as they mature."

33. Based on financial condition reports submitted to the Department, Freelancers' admitted assets as of June 30, 2016, are \$113,898,588 and its total liabilities are \$128,309,712, resulting in negative surplus of \$(14,411,124). Accordingly, Freelancers' asset portfolio is inadequate to meet its outstanding obligations as they mature.

34. Based on those findings regarding Freelancers' asset portfolio, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)4.

35. N.J.A.C. 11:2-27.3(a)6 involves a finding that the insurer's operating loss in the last 12 month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets and cash dividends to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

36. Based on financial condition reports submitted to the Department, Freelancers' 2016 year-to-date operating loss through June 30, 2016 is \$(58,956,461). Its remaining surplus is \$(14,411,124). Thus, Freelancers' operating loss in the last six months is greater than 50 percent of its remaining surplus.

37. Based on those findings regarding Freelancers' operating loss, the Commissioner has determined that Freelancers

is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)6.

38. N.J.A.C. 11:2-27.3(a)7 involves a finding that the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of such insurer's remaining surplus as regards policyholders in excess of the minimum required.

39. Based on financial condition reports submitted to the Department, Freelancers' 2016 year-to-date operating loss, excluding net capital gains, through June 30, 2016, is \$(59,974,577). Its remaining surplus is \$(14,411,124). Thus, Freelancers' operating loss, including net capital gains, in the last six months is greater than 20 percent of its remaining surplus.

40. Based on those findings regarding Freelancers' operating loss, excluding net capital gains, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)7.

41. N.J.A.C. 11:2-27.3(a)9 involves a finding that contingent liabilities, pledges or guarantees involve a total amount that, in the opinion of the Commissioner, may affect the solvency of the insurer.

42. Based on financial condition reports submitted to the Department, as of June 30, 2016, Freelancers has liabilities

totaling \$128,309,712, but admitted assets of only \$113,898,588, and thus is insolvent. Accordingly, the Commissioner has determined that Freelancers' solvency has been negatively affected.

43. Based on those findings as to Freelancers' insolvency, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)9.

44. N.J.A.C. 11:2-27.3(a)17 involves a finding that the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

45. Based on financial condition reports submitted to the Department, Freelancers estimates its cash position at January 2, 2017 will be \$19,763,250. It also estimates its liability for IBNR claims to be \$37,031,000. Accordingly, the Commissioner finds that Freelancers will experience cash flow or liquidity problems in the foreseeable future.

46. Based on those findings as to Freelancers' cash flow and liquidity, the Commissioner has determined that Freelancers is in a hazardous financial condition under N.J.A.C. 11:2-27.3(a)17.

47. Freelancers' capital and surplus as of as of June 30, 2016, is negative, thus resulting in a negative Risk-Based Capital ratio below mandatory control level pursuant to N.J.A.C.

11:2-39.1 et seq., and which requires the Commissioner take actions necessary to cause a domestic insurer or HMO to be placed under regulatory control pursuant to the Life and Health Insurers Receivership Act, N.J.S.A. 17B:32-31 et seq.

THE NEED TO PLACE FREELANCERS IN REHABILITATION

48. For these reasons, the Commissioner has determined that it is necessary and appropriate to place Freelancers into court-supervised rehabilitation pursuant to N.J.S.A. 17B:32-31 et seq. in order to protect its policyholders, creditors and the public at large.

49. Placement of Freelancers into rehabilitation now will enable the Commissioner protect its policyholders and the providers who have rendered medical treatment to those policyholders by taking control of the operations of the carrier, marshalling its assets, reducing its costs and beginning the process of an orderly wind-down with termination of all health benefits plans by December 31, 2016.

50. Placement of Freelancers into rehabilitation now will enable the Commissioner to act expeditiously to provide notice to all Freelancers' policyholders, both individual and small employer policyholders, of the termination of their plans at year-end and enable those individual consumers to make an orderly and informed transition to new carriers during the 2017 plan year open enrollment which begins on November 1, 2016.

Small employers are not limited to an open enrollment period and may apply for a replacement small employer plan from another carrier at any time.

51. Placement of Freelancers into rehabilitation now will prevent the carrier from proceeding to sell plans into policy year 2017 and avoid a probable mid-year 2017 wind-down that would require movement of policyholders to new carriers during a special enrollment period, thus causing confusion and market uncertainty.

52. Placement of Freelancers into rehabilitation now is not only required by law, but will enable the Commissioner to take immediate actions to minimize any eventual need for financial support from New Jersey Life and Health Insurance Guaranty Association ("LHIGA"), pursuant to N.J.S.A. 17B:32A-1 et seq.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



RICHARD SCHLESINGER
Chief Insurance Examiner

Dated: September 12, 2016



State of New Jersey

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Governor

KIM GUADAGNO
Lt. Governor

September 12, 2016

DELIVERED BY HAND

Hon. Paul Innes, P.J.Ch.D.
Mercer County Civil Courts Building
175 S. Broad Street, 4th Floor
Trenton, NJ 08650

Re: RICHARD J. BADOLATO, Commissioner of the
Department of Banking and Insurance
of New Jersey, vs.
FREELANCERS CONSUMER OPERATED AND ORIENTED
PROGRAM OF NEW JERSEY d/b/a Health
Republic Insurance of New Jersey
Docket No. C-

Dear Judge Innes:

Please accept this letter brief in support of the
Petition for Rehabilitation of Freelancers Consumer Operated And
Oriented Program of New Jersey d/b/a Health Republic Insurance
of New Jersey ("Freelancers") filed by the Commissioner of
Banking and Insurance ("Commissioner"). Along with this letter
brief, the Commissioner relies on the Certification of Chief
Insurance Examiner Richard Schlesinger. We are also submitting
to the court a form of Order to Show Cause, Verified Complaint,



a form of Order of Rehabilitation. As set forth below, due to the increasingly rapid deterioration of Freelancers's financial condition and resulting insolvency, the Commissioner respectfully requests that Your Honor consider the petition on an expedited basis. Importantly, as evidenced by the e-mail from CEO Thomas Dwyer dated September 11, 2016, Freelancers consents to placement of the company into rehabilitation pursuant to N.J.S.A. 17B:32-31 et seq. as proposed in the enclosed form of Order of Rehabilitation. Certification of Kristine Maurer ("Maurer Cert."), ¶14 and Exhibit B.

Freelancers is a New Jersey-domiciled health insurance company. As set forth in the accompanying Certification, the Commissioner has determined that Freelancers is insolvent and its financial condition is such that its further transaction of business would be hazardous financially to its policyholders, creditors and the public. The Commissioner therefore respectfully requests that the court grant this petition and enter the Order to Show Cause and, ultimately, a Declaration of Insolvency and Order of Rehabilitation before September 20, 2016. Swift placement of Freelancers into rehabilitation will enable the Commissioner to best protect the interests of Freelancers' policyholders, their treating medical providers who are entitled to payment for covered medical services, and the public, and is essential to avoid further deterioration of the

company's financial condition - especially its liquidity. Moreover, Freelancers consents to their placement into rehabilitation.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Freelancers is a New Jersey health insurer licensed to transact insurance business in New Jersey. Freelancers was formed as a mutual health insurance company on May 1, 2013, and authorized to transact health insurance business as of June 21, 2013. See Certification of Richard Schlesinger ("Schlesinger Cert."), ¶4. Based upon the most recent information Freelancers provided to the Department, Freelancers has 15,879 policies (14,507 individual; 1,372 small employer group) covering 34,950 lives (25,934 individual; 9,016 small employer group) in force as of June 30, 2016. Schlesinger Cert., ¶5.

Freelancers was formed pursuant to the Consumer Operated and Oriented Plan (CO-OP) Program established as a part of the federal Patient Protection and Affordable Care Act, P.L. 111-148 ("ACA"). The ACA's CO-OP Program provided loans to foster the creation of consumer-governed, private, nonprofit health insurers to offer qualified health plans in the health insurance exchanges created pursuant to the ACA. Schlesinger Cert., ¶6.

Under the CO-OP Program, the Centers for Medicare and

Medicaid Studies ("CMS") awarded Freelancers a start-up loan of \$14.7 million to fund its required development activities and a solvency loan of \$94.3 million to provide the statutory capital required to operate as a health insurer in New Jersey. Schlesinger Cert., ¶7. Freelancers entered the New Jersey individual and small employer markets for policy year 2014. Schlesinger Cert., ¶8.

The ACA prohibits health insurers from denying coverage or charging higher premiums to individuals based on preexisting health conditions. Because of concerns that insurers might try to avoid sicker enrollees and uncertainty as to how to properly price coverage as new people entered the market, the ACA included three provisions -- risk adjustment, reinsurance and risk corridors -- that were intended to promote competition among insurers that participate in the exchanges and promote market stability. Schlesinger Cert., ¶9.

The risk adjustment program is a permanent program that redistributes funds from health insurance plans with "lower-risk" (that is, healthier) enrollees to plans with "higher-risk" (sicker) enrollees. The reinsurance program is a temporary three-year (2014 - 2016) program that provides reinsurance funded by federal monies for plans that enroll higher-cost individuals. The risk corridor program is another temporary three-year (2014 - 2016) program that limits an

insurer's losses and gains beyond an allowable range. All three of these programs are administered by CMS. Schlesinger Cert., ¶10.

As a new company breaking into the New Jersey health insurance market, Freelancers experienced significant compliance and operational difficulties as evidenced by Consent Order No. E14-124 and Consent Order No. E15-106. Now, Freelancers is experiencing serious financial difficulties such that the insurer is in a hazardous financial condition. Schlesinger Cert., ¶11.

During the 2016 plan year Freelancers' financial condition has deteriorated despite its draw of the remaining \$10,000,300 of its solvency loan from CMS. Freelancers' own projections show a negative cash position is likely to arise by the first quarter of 2017 as follows: cash on hand is projected to be \$19,763,250; incurred, but not yet reported ("IBNR") claims projected to be \$37,031,000; thus resulting in a negative cash position totaling \$(17,267,750) by January 2017. Freelancers' year-to-date net loss through June 30, 2016 is \$(58,956,461). Freelancers' capital and surplus as of December 31, 2015, was \$33,697,215, but decreased to \$(14,411,124) as of June 30, 2016. Schlesinger Cert., ¶12.

Despite this rapidly deteriorating liquidity position, on or about August 22, 2016, CMS netted a significant portion of

Freelancers' RA liability against CMS receivables in accordance with CMS' guidance dated July 15, 2016. In total, CMS netted approximately \$21.2 million from Freelancers' August receivables for reinsurance and advance premium tax credits. This means that CMS reduced Freelancers' actual cash income by \$21.2 million and accelerated the decline of Freelancers' liquidity position. CMS has advised the Department that placement of Freelancers into rehabilitation will enable CMS to forgo further netting. It is the Department's understanding that CMS' next scheduled netting will occur on or about September 20, 2016. Therefore, placement of Freelancers into rehabilitation prior to that date is essential to avoid further loss of liquidity in the estate. Maurer Cert., ¶9-11.

In light of this, the Commissioner finds that Freelancers' financial condition, as more particularly described below, has deteriorated, such that any further transaction of business by Freelancers would be hazardous financially to its policyholders, creditors or the public. See, Maurer Cert., ¶12-13. Based on this finding, the Commissioner has determined that it is necessary to place Freelancers into rehabilitation before September 20, 2016. Schlesinger Cert., ¶13; Maurer Cert., ¶9-11. As stated above, Freelancers has consented to this action. Maurer Cert., ¶14 and Exhibit B.

ARGUMENT

I. A DECLARATION OF INSOLVENCY SHOULD BE ISSUED BY THE COURT BECAUSE FREEHOLDERS' LIABILITIES AND REQUIRED CAPITAL AND SURPLUS EXCEED ITS ADMITTED ASSETS, MEETING THE STATUTORY DEFINITION OF "INSOLVENT".

An insurer is insolvent under the New Jersey Life and Health Rehabilitation and Liquidation Act, N.J.S.A. 17B:32-31 to -92, ("the Act"), if its admitted assets do not exceed its liabilities plus its capital and surplus as required by law. N.J.S.A. 17B:32-33. Freelancers' liabilities plus its required minimum capital and surplus exceed its admitted assets by \$23,498,124. Schlesinger Cert., ¶¶14-16. Thus, Freelancers is insolvent under the Act, and a Declaration of Insolvency should be issued.

II. THE ORDER OF REHABILITATION SHOULD BE GRANTED BECAUSE THE COMMISSIONER HAS SHOWN THAT FREELANCERS' FINANCIAL CONDITION IS SUCH THAT FURTHER TRANSACTION OF BUSINESS BY FREELANCERS WOULD BE HAZARDOUS TO ITS POLICYHOLDERS, ITS CREDITORS, AND THE PUBLIC.

The Act authorizes the Commissioner to petition the Superior Court for an Order of Rehabilitation "if an insurer is in a condition such that its further transaction of business would be hazardous financially to its policyholders, creditors or the public." N.J.S.A. 17B:32-41a. In addition, N.J.A.C. 11:2-27.3 sets forth factors that the Commissioner "shall

consider ..., either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition." N.J.A.C. 11:2-27.3(a).

Based on an analysis of the information set forth in Freelancers's financial statements provided to the Department of Banking and Insurance, the Commissioner has determined that Freelancers is in a hazardous financial condition. Schlesinger Cert., ¶¶17-47. Among other factors, Freelancers has negative surplus; an inadequate cash flow and asset portfolio; and is operating at a net loss. Ibid. Freelancers' own projections show a negative cash position is likely to arise by the first quarter of 2017 as follows: cash on hand is projected to be \$19,763,250; IBNR claims are projected to be \$37,031,000; thus, resulting in a projected negative cash position totaling \$(17,267,750) by January 2017. Schlesinger Cert., ¶12. Additionally, Freelancers' year-to-date net loss through June 30, 2016 is \$(58,956,461). Ibid. Moreover, Freelancers' capital and surplus as of December 31, 2015, was \$33,697,215, but decreased to \$(14,411,124) as of June 30, 2016. Ibid. Lastly, Freelancers' Risk-Based Capital ratio is at mandatory control level. Schlesinger Cert., ¶47. Pursuant to N.J.A.C. 11:2-39.7, in the event of a mandatory control level event "the Commissioner shall take actions necessary to cause a domestic insurer or HMO to be placed under regulatory control pursuant to

[the Life and Health Insurers Receivership Act], N.J.S.A.
17B:32-31 et seq."

Accordingly, granting of this rehabilitation petition is mandated under law and it is necessary for the protection of Freelancers's members, creditors, and the public. An Order of Rehabilitation will allow the Commissioner to run-off Freelancers' business and prevent further accumulation of debts. Therefore, the Commissioner requests that this court immediately declare Freelancers to be insolvent and issue an Order of Rehabilitation, especially in light of the Freelancers' consent to this action.

The enclosed form of Order to Show Cause also provides for the temporary injunctive relief of imposing a stay on litigation involving Freelancers. The court is authorized to issue such injunctions as are necessary to prevent interference with the liquidation proceeding, waste of the carrier's assets, or the creation of preferences. N.J.S.A. 17B:32-35. Extending the stay until the return date of the Order to Show Cause is in the public interest because it maintains the status quo.

An immediate declaration that Freelancers is insolvent and court approval to rehabilitate Freelancers are consistent with the grounds set forth in N.J.S.A. 17B:32-33 and -41. Furthermore, the Commissioner's decision to rehabilitate an insurer is entitled to substantial deference because of the

specialized nature of insurance generally and specifically, as here, in light of the Commissioner's financial expertise in making this type of decision. In re Assignment of Exposures to the Aetna Cas. & Sur. Co., 248 N.J. Super. 367, 376 (App. Div.), certif. denied, 126 N.J. 385 (1991), cert. denied, 502 U.S. 1121, S. Ct. 1244, 117 L. Ed. 2d 476 (1992); IFA Ins. Co. v. N.J. Dept. of Ins., 195 N.J. Super. 200, 208 (App. Div.), certif. denied, 99 N.J. 218 (1984). The Appellate Division reasoned in Fortunato v. N.J. Life Ins. Co., 254 N.J. Super. 420, 425-26 (App. Div.), certif. denied, 126 N.J. 386 (1991), that because an insurance company's financial solvency necessarily threatens the justifiable interests of policyholders, creditors and the public, the Commissioner's "informed prediction" regarding the company's financial condition should be upheld if it is neither "arbitrary nor unreasonable."

The Commissioner's decision to petition this court for rehabilitation is reasonable and necessary. First, Freelancers is insolvent and the Department is compelled by state law to place the carrier under its control. Freelancers is also in a hazardous financial condition under multiple factors in the Department's rules. The magnitude and speed of the deterioration of Freelancers' financial condition and the company's consent supports the Commissioner's determination that rehabilitation is necessary.

Second, the Commissioner must protect the interests of its policyholders, creditors and the public by petitioning to rehabilitate the company, and it is essential that entry of the Rehabilitation Order occur before September 20, 2016. Prompt rehabilitation of Freelancers will allow the company to be run-off in an orderly manner that will both protect policyholders and other claimants, and maximize assets for potential creditors. Placement of Freelancers into rehabilitation now will enable the Commissioner protect its policyholders and the providers who have rendered medical treatment to those policyholders by taking control of the operations of the carrier, marshalling its assets, reducing its costs and beginning the process of an orderly wind-down with termination of all health benefits plans by December 31, 2016. Additionally, it will enable the Commissioner to hopefully stop any further netting of receivables from CMS that is scheduled to occur in September because such netting greatly worsens Freelancers' liquidity position going forward. Placement of Freelancers into rehabilitation now will also enable the Commissioner to act expeditiously to provide notice to all Freelancers' policyholders, both individual and small employer policyholders, of the termination of their plans at year-end and enable those individual consumers to make an orderly and informed transition to new carriers during the 2017 plan year

open enrollment which begins on November 1, 2016. Small employers are not limited to an open enrollment period and may apply for a replacement small employer plan from another carrier at any time.

Finally, the public interest strongly favors granting the Commissioner's Petition for Rehabilitation. The Commissioner is charged with protecting the interests of Freelancers' policyholders, claimants, and creditors, as well as those of the general public. N.J.S.A. 17B:32-31. Rehabilitation proceedings for financially troubled insurers are an essential part of the regulation of the business of insurance in this State. N.J.S.A. 17B:32-32b(7) ("Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern."). Rehabilitation of Freelancers now is in the broader public interest because it will prevent the carrier from proceeding to sell plans into policy year 2017 and avoid a probable mid-year 2017 wind-down that would require movement of policyholders to new carriers during a special enrollment period, thus causing confusion and market uncertainty. Additionally, rehabilitation of Freelancers now will enable the Commissioner to take immediate actions to minimize any eventual need for financial support from New Jersey Life and Health Insurance Guaranty Association ("LHIGA"), pursuant to N.J.S.A. 17B:32A-1 et seq.

For all of the foregoing reasons, the Commissioner requests that the court approve the Commissioner's petition to rehabilitate Freelancers before September 20, 2016.

Respectfully yours,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: 

William B. Puskas, Jr.
Deputy Attorney General

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-MERCER COUNTY
DOCKET NO. MER-C-

RICHARD J. BADOLATO,
COMMISSIONER OF THE
DEPARTMENT OF BANKING AND
INSURANCE OF NEW JERSEY,

Plaintiff,

v.

FREELANCERS CONSUMER OPERATED
AND ORIENTED PROGRAM OF NEW
JERSEY D/B/A HEALTH REPUBLIC
INSURANCE OF NEW JERSEY,

Defendant.

Civil Action

ORDER OF REHABILITATION

This matter having been opened to the Court by
Christopher S. Porrino, Attorney General of New Jersey, by
William B. Puskas, Jr., Deputy Attorney General, as attorney for

Richard J. Badolato, the Commissioner of the Department of Banking and Insurance ("Commissioner"), on application for an Order to be entered: (a) declaring Freelancers Consumer Operated and Oriented Program of New Jersey d/b/a Health Republic Insurance of New Jersey ("Freelancers") to be insolvent; (b) directing the Commissioner to rehabilitate Freelancers; and (c) permanently enjoining all persons and entities from pursuing litigation against Freelancers or from interfering with the Commissioner's efforts to rehabilitate Freelancers, and the Court having considered the Commissioner's application, the Court hereby finds that:

A) Freelancers is an insurance company domiciled in the State of New Jersey and governed by the provisions of Title 17B of the Statutes of New Jersey.

B) This Court has general jurisdiction over this proceeding pursuant to N.J.S.A. 17B:32-31 to -92.

C) The written and published notice of the Petition for Rehabilitation to interested persons evidenced by the Affidavit and Notice filed with the Court constitutes the best notice practicable under the circumstances and meets the requirements of due process concerning such notice.

D) Sufficient grounds exist pursuant to N.J.S.A. 17B:32-41a and -33 for entry of an Order of Rehabilitation and

Declaration of Insolvency, and such Order of Rehabilitation should be entered pursuant to N.J.S.A. 17B:32-42.

It is, therefore, on this _____ day of _____, 2016, ORDERED:

1. Pursuant to N.J.S.A. 17B:32-31 and -41a, Freelancers is deemed to be insolvent and is in such a condition that its further transaction of business will be hazardous to its policyholders, to its creditors, and to the public.

2. The Commissioner and his successors in office are appointed as Rehabilitator of Freelancers (hereinafter as "Rehabilitator") with all the power and authority expressed or implied by N.J.S.A. 17B:32-31 to -92, including the power to appoint and recompense a Deputy Rehabilitator pursuant to N.J.S.A. 17B:32-43. The Deputy Rehabilitator shall have no personal liability for his acts or omissions in connection with his duties as Deputy Rehabilitator provided that such acts or omissions are undertaken or committed in good faith and without willful misconduct, or willful, wanton, or gross negligence or criminal intent. The Deputy Rehabilitator shall not be deemed to be an employee of the State of New Jersey and accordingly shall not be subject to the provisions of the New Jersey Tort Claim Act, N.J.S.A. 59:1-1 et seq. All expenses and costs incurred by the Deputy Rehabilitator in connection with lawsuits against him in his personal capacity shall, subject to the prior written

approval of the Commissioner, be paid out of the funds and assets of Freelancers, provided that such lawsuits are not the result of any bad faith, willful misconduct, gross negligence, or criminal actions on the part of the Deputy Rehabilitator. The Commissioner as Rehabilitator may also appoint and employ such counsel, clerks, professionals (e.g. actuaries, accountants, etc.), and assistants as deemed necessary in connection with the rehabilitation of Freelancers. All persons appointed by the Commissioner shall serve at the pleasure of the Commissioner.

3. The Rehabilitator is hereby vested with title to all assets of Freelancers, including but not limited to any of Freelancers' contracts, causes of action, books, records, bank accounts, certificates of deposits, funds, securities, or other funds, and all real or personal property of any nature, including furniture, fixtures, and office supplies, wherever located, including such property of Freelancers which may be discovered hereafter, and is hereby directed to take immediate and exclusive possession and control of same. The filing or recording of this Order with the Clerk of this Court and with the recorder of deeds of the jurisdiction in which Freelancers' corporate administrative offices are located or, in the case of real estate, with the recorder of deeds of the jurisdictions where the properties are located, shall impart the same notice

as would be imparted by a deed, bill of sale, or other evidence of title filed or recorded. Except as otherwise indicated elsewhere in this Order, and upon notice provided by the Rehabilitator, all agents and brokers and all other persons or entities holding funds, assets, or property of or on behalf of Freelancers shall forthwith file an accounting of those funds, assets, or property with the Rehabilitator and shall, within 10 days of the service of this Order, turn said funds, assets, or property over to the Rehabilitator. The Rehabilitator shall take such actions as he may deem necessary and appropriate to protect and preserve Freelancers' assets.

4. The Rehabilitator is directed to take such action as he deems necessary to or appropriate to reform, revitalize, rehabilitate, or run-off Freelancers.

5. The Rehabilitator shall deal with the property and business of Freelancers in his own name as Commissioner or as Rehabilitator in the name of Freelancers.

6. Pursuant to the inherent powers of this Court, all policies and contracts for the provision of health care benefits and services issued by Freelancers to any of its policyholders, members, or subscribers, shall terminate upon the earliest of the following:

(a) December 31, 2016; or

(b) The date when the policyholder, member or subscriber has effectuated replacement health benefits coverage with another carrier or otherwise terminated the policy or contract. This includes terminations for non-payment of premium with all applicable grace periods under law;

i) For small employer policies with renewal dates between the date of this Order and December 31, 2016, and subject to the exception in ii) below, the anniversary date of their policies will be extended at the same monthly premium rate and with same benefits to continue coverage through December 31, 2016, unless the policy is replaced by the small employer with new coverage from another carrier or terminated by non-payment of premium;

ii) For small employer policies with renewal dates between the date of this Order and December 31, 2016, where the small employer and/or the member has already made a new policy selection from Freelancers, Freelancers shall effectuate those new policy selections on the renewal date of the policy at the monthly premium rate for the new policy; however, those policies shall also terminate on December 31, 2016, absent additional action by the small employer as described above.

The Rehabilitator can apply to the Court for permission to terminate these policies at an earlier date if determined necessary;

This paragraph shall not operate to terminate any other contracts of insurance to which Freelancers is a party, including but not limited to, reinsurance, any directors and officers liability policies, any commercial insurance and/or employee benefit plans covering the business interest of Freelancers and/or its employees.

7. All claims against Freelancers must be asserted not later than one year from the date of the Order of Rehabilitation, in the form established by the Rehabilitator, or such claims will be forever barred. For the purposes of this Order, the word "claim" is defined to include claims for payment made by members, policyholders, subscribers, medical and medical service providers, hospitals, physicians, surgery centers, vendors, contractors, creditors, governmental agencies or any other parties directly against Freelancers.

8. The Rehabilitator shall establish procedures governing the payment of claims by Freelancers in accordance with his powers under N.J.S.A. 17B:32-31 et seq. and the provisions of this Order.

9. All secured creditors or parties, lienholders, collateral holders, or other persons claiming secured, priority,

or preferred interests in any property or assets of Freelancers, including any governmental entity, are hereby permanently enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of, or exercise purported rights in or against any property or assets of Freelancers.

10. Freelancers, its officers, directors, policyholders, members, subscribers, enrollees, agents, and employees, and all other persons or entities of any nature, including but not limited to claimants, vendors, business partners, plaintiffs, petitioners, providers, hospitals or other medical or health care providers and any governmental agencies that have claims of any nature against Freelancers including crossclaims, counterclaims and third-party claims, are hereby enjoined and restrained from:

(a) Conducting any portion or phase of the business of Freelancers unless so authorized by the Rehabilitator or his designee;

(b) Instituting, maintaining or further prosecuting any action at law, suit in equity, special, or other proceeding against Freelancers, or the Commissioner as Rehabilitator or his successors in office as Rehabilitator therefore, or against the Deputy Rehabilitator;

(c) Making or executing a levy upon the property of Freelancers;

(d) Threatening, instituting, maintaining or further presenting any suit at law, suit in equity, or any collection activity, or any other proceeding of any nature against any policyholder, member, subscriber, enrollee, or insured of Freelancers resulting from Freelancers' insolvency or the failure of Freelancers or an third party administrator to pay on Freelancers' behalf, any medical or hospital bill or to meet any of Freelancers' contractual obligations due to its declaration of insolvency; except for any applicable member cost-sharing (co-payments, co-insurance and/or deductibles) or non-covered services that would ordinarily be the responsibility of the member or other insured party and not the obligation of Freelancers under the applicable health benefits plan; and

(e) Interfering in any way with the Rehabilitator, or any successors in office, in his possession of or title to the property and assets of Freelancers, or in the discharge of his duties pursuant to this Order, including but not limited to any lease or sublease for office space or computer hardware or software, contract or agreement (whether written or oral), license or other arrangement that is necessary to the operation of the business of Freelancers.

11. The Rehabilitator shall have the power to direct the operations of Freelancers, including but not limited to: the adjustment of any compensation paid to, or the removal and/or

discharge of, Freelancers' officers, directors, and employees; and, the affirmation, disavowal or renegotiation of any employment contracts.

12. Freelancers, its officers, directors, policyholders, members, subscribers, enrollees, agents, and employees, and all other persons or entities of any nature, including but not limited to claimants, plaintiffs, petitioners, providers, hospitals or other medical or health care providers and any governmental agencies have claims of any nature against Freelancers including crossclaims, counterclaims and third-party claims, having any property or records belonging to Freelancers, or pertaining to the business of Freelancers, including data processing information and records of any kind, are hereby directed to assign, transfer, and deliver to the Rehabilitator all of such property in whatever name the same may be, and any persons, firms, or corporations having any books, papers, or records relating to the business of Freelancers or its direct and indirect insurance subsidiaries shall preserve the same and submit these to the Rehabilitator for examination at all reasonable times.

13. All persons or entities of any nature, other than the Rehabilitator, are hereby restrained from commencing, maintaining, or further prosecuting any direct or indirect actions against any reinsurer of Freelancers or its direct and

indirect insurance subsidiaries for proceeds of reinsurance policies issued to, and treaties or other agreements with Freelancers.

14. The Rehabilitator shall have the power:

(a) to conduct the business of Freelancers under the general supervision of the Court;

(b) to honor, as expenses of administration, all expenses heretofore incurred by the Commissioner as Administrative Supervisor, or by his designees and appointees, which currently remain unpaid;

(c) to pay from the funds or assets of Freelancers, or from such other funds that may become available to him, all expenses of marshaling, taking possession of, conserving, conducting, rehabilitating, disposing of, or otherwise dealing with the business and property of Freelancers, as determined by the Rehabilitator in his discretion to be appropriate and reasonable, and such payments can either be made in full payment of the liabilities or in accordance with the priority of claims distribution provided in N.J.S.A. 17B:32-71;

(d) to collect all debts and monies due and claims belonging to Freelancers, wherever located, where economically feasible and for this purpose:

(i) to institute and maintain timely actions in other jurisdictions, in order to forestall

garnishment and attachment proceedings against such debts;

(ii) to do such other acts as are necessary or expedient to marshal, collect, conserve, or protect any of Freelancers' assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as he deems appropriate, and the power to initiate and maintain actions at law or equity or any other type of action or proceeding of any nature, in this and other jurisdictions;

(iii) to pursue any creditor's remedies available to enforce the Rehabilitator's claims;

(e) to conduct public and private sales of the assets and property of Freelancers, including any real property;

(f) to acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any asset or property of Freelancers, and to sell, reinvest, trade, or otherwise dispose of any securities or bonds presently held by Freelancers, upon such terms and conditions as the Rehabilitator deems to be fair and reasonable, irrespective of the value at which such property was last carried on the books of Freelancers. The Rehabilitator

shall also have the power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the rehabilitation;

(g) to borrow money on the pledge of assets of Freelancers, with or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the rehabilitation. Any funds so borrowed may be repaid as an administrative expense and have priority over any claims in Class 1 under the priority of distribution of claims pursuant to N.J.S.A. 17B:32-30a(12). Neither the Commissioner as Rehabilitator, his successors in office, nor his designees or appointees shall be held liable in their official or personal capacities for any loans made for such purposes;

(h) to enter into such contracts as are necessary to carry out this Order and to affirm, renegotiate or disavow any contracts to which Freelancers is a party;

(i) to institute and to prosecute, in the name of Freelancers or in his own name, any and all suits and other legal proceedings, to defend suits to which Freelancers or the Rehabilitator is a party, in this State or elsewhere, commenced prior or subsequent to this Order, to abandon the prosecution or defense of suits, legal proceedings, and claims which he deems

inappropriate to pursue further and to compromise suits, legal proceedings, or claims on such terms and conditions as he deems appropriate;

(j) to prosecute any action which may exist on behalf of the creditors or policyholders of Freelancers against any officer or director of Freelancers or any other person or entity;

(k) to audit the books and records of all agents of Freelancers insofar as those records relate to the business activities of Freelancers;

(l) to use the assets of Freelancers to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to the applicable priorities of N.J.S.A. 17B:32-71;

(m) to perform such further and additional acts, including but not limited to all powers contained in N.J.S.A. 17B:32-50a(6) through (24), as he may deem necessary or appropriate for the accomplishment of or in aid of the purpose of rehabilitation, it being the intention of this Order that the aforesaid enumeration of powers shall not be construed as a limitation upon the Rehabilitator or Deputy Rehabilitator.

15. The Rehabilitator may at his discretion as of the date of this Order discontinue the defense of claims, suits, and other proceedings, in this State and elsewhere, in which the

insureds of Freelancers are parties, including those claims made and suits and proceedings undertaken prior to the date of this Order.

16. The Rehabilitator shall give or cause to be given notice of the entry of this Order as soon as possible by publication in a newspaper of general circulation in the county in which Freelancers' corporate offices were previously located, specifically, The Newark Star Ledger, The Courier Post, and The New Jersey Law Journal. Such publication shall commence within _____ days of the date of this Order and shall be repeated once a week thereafter for two successive weeks.

17. The amounts recoverable by the Rehabilitator from any reinsurer of Freelancers shall not be reduced as a result of this delinquency proceeding, or by reason of any partial payment or distribution on a reinsured policy, contract, or claim. Set-offs shall be allowed between Freelancers and its reinsurer only with the consent of the Rehabilitator. Unless either the insurance contract or an applicable statute provides to the contrary, payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to Freelancers.

18. Premiums Owed to Freelancers:

(a) Any agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium, shall be obligated to pay any unpaid

premiums, whether earned or unearned, as shown on the records of Freelancers as of the date of entry of this Order. No credit or set-off shall be allowed in favor of such person against his account with Freelancers for the unearned portion of the premium on any canceled contract or policy, unless (i) that contract or policy was canceled prior to the entry of this Order, and (ii) the unearned premium on the canceled contract or policy was in fact refunded or credited to the insured or his or her assigns prior to the entry of this Order. The Rehabilitator shall also have the right to recover from such person any part of an unearned premium that represents a commission to such person.

(b) All group and individual policyholders of Freelancers shall be obligated to pay any unpaid earned premium due to Freelancers at any time, as shown on the records of Freelancers.

19. Existing contracts and other obligations by and between Freelancers and any reinsurer may, at the discretion of the Rehabilitator, be terminated. Such termination shall be effected by written notice issued by the Rehabilitator addressed to the reinsurer.

20. If the Rehabilitator determines that reorganization, conversion, reinsurance, merger or other transformation of Freelancers is appropriate, he shall prepare a plan to effect such changes. Upon the application of the

Rehabilitator for approval of the plan, and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved by the court shall be, in the judgment of the court, fair and equitable to all parties concerned.

21. Pursuant to N.J.S.A. 17B:32-42b, the court hereby requires accountings from the Rehabilitator at six-month intervals. Each accounting shall include a report concerning the Rehabilitator's opinion as to the likelihood that a plan as discussed in Paragraph 20 above will be prepared by the Rehabilitator and the timetable for doing so.

22. All further papers filed in these proceedings shall bear the caption and be entitled:

"I/M/O the Rehabilitation of Freelancers Consumer Operated and Oriented Program of New Jersey d/b/a Health Republic Insurance of New Jersey".

23. If any provision of this Order or the application thereof is for any reason held to be invalid, the remainder of this order and the application thereof to other persons or circumstances shall not be affected.

24. Any person, corporation or other entity having notice of this order who fails to abide by its terms shall be directed to appear before this Court to show good cause, if any

they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order.

25. The Rehabilitator may at any time make further application for such additional and different relief as he sees fit.

26. This Court shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

Paul Innes, P.J. Ch. Div.