

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DISTRICT OF COLUMBIA,
Department of Insurance, Securities and
Banking,

Petitioner,

Civil Action No.: 2012 CA 008227 2

Judge: Melvin R. Wright

v.

D.C. CHARTERED HEALTH PLAN, INC.,

Respondent.

**PARTY-IN-INTEREST D.C. HEALTHCARE SYSTEM, INC.'S MOTION TO COMPEL
REHABILITATOR TO PURSUE CHARTERED CLAIM AGAINST THE DISTRICT OF
COLUMBIA AND REQUEST FOR AN EXPEDITED STATUS CONFERENCE ON OR
BEFORE APRIL 16, 2013**

Pursuant to District of Columbia Superior Court Rule of Civil Procedure 7, D.C. Healthcare Systems, Inc. ("DCHSI"), by and through its undersigned counsel of record, hereby moves this Court to enter an order requiring the Rehabilitator (1) to cause Chartered to withdraw the Consent Motion to Stay All Proceedings that Chartered filed on March 18, 2013, in District of Columbia Contract Appeals Board ("CAB") case number D-1445 ("Motion to Stay Claim") or, in the alternative, if the CAB grants the Motion to Stay Claim while the instant motion is pending, to cause Chartered to use its best efforts to have the CAB vacate the stay; (2) to cause Chartered to pursue Chartered's November 30, 2011, claim that is currently before the CAB (the "Original Claim") in the most expeditious manner possible; and (3) to pursue the claim submitted by Chartered to the Office of Contracting and Procurement on February 21, 2013, which Chartered stated "effectively amends and supersedes" the Original Claim (the "New Claim"), in a manner that causes as little delay to the Original Claim as is practicable without diminishing Chartered's total potential recovery—the Rehabilitator may seek to amend the

Original Claim before the CAB to include additional losses; seek to amend the New Claim on submission to the Office of Contracting and Procurement to eliminate redundancy; or pursue another option provided that it would not delay or diminish Chartered's potential recovery.

The Motion to Stay Claim already is pending before the CAB and that motion indicates that the Rehabilitator is not diligently pursuing discovery—for example, Chartered has not taken or scheduled any depositions although it admits in the Motion to Stay Claim that depositions are necessary; it was granted to leave in December 2012 to depose DHCF Director Wayne Turnage; and fact discovery is set to close on April 12, 2013.

For the reasons outlined above and in DCHSI's Memorandum of Law in support of its Motion to Compel Rehabilitator to Pursue Chartered Claim Against the District of Columbia, DCHSI respectfully requests that the Court hold an expedited conference on the instant motion and issue the requested order on or before April 16, 2013. DCHSI further requests that the District be required to file any opposition to the instant motion on or before April 9, 2013.

WHEREFORE, good cause having been shown, DCHSI respectfully requests that its Motion to Compel Rehabilitator to Pursue Chartered Claim Against the District of Columbia be granted. A Proposed Order is submitted herewith.

ORAL HEARING REQUESTED ON OR BEFORE APRIL 16, 2013

Dated: April 2, 2013

Respectfully submitted,

_____/s/_____
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DISTRICT OF COLUMBIA,
Department of Insurance, Securities and Banking,

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v.

D.C. CHARTERED HEALTH PLAN, INC.,

Respondent.

Civil Action No. 2012 CA 008227 2

Judge: Melvin R. Wright

Next Event: None

**DCHSI'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO COMPEL
REHABILITATOR TO PURSUE CHARTERED CLAIM AGAINST THE DISTRICT OF
COLUMBIA**

Party-in-Interest D.C. Healthcare Systems, Inc. ("DCHSI"), by and through its attorneys, hereby moves this Court to order the Rehabilitator of D.C. Chartered Health Plan, Inc. ("Chartered") to pursue a claim against the District of Columbia ("Motion to Pursue Claim") pending before the Contract Appeals Board ("CAB").

As this Court is aware, DCHSI is the sole shareholder of Chartered and is a Party-in-Interest in this proceeding. Chartered is a District of Columbia health maintenance organization that since 1987 has ably served as an incumbent to the Department of Health Care Finance ("DHCF") Medicaid and Alliance contract (the "DHCF Contract"). Chartered was placed into rehabilitation because of concerns about the adequacy of its capital. Chartered claims that it is owed over \$60 million by the District under the DHCF Contract, and that the District's improper failure to pay caused any capital shortfall. On November 30, 2011, prior to its rehabilitation, Chartered asserted a claim against the District for almost \$25.8 million (plus interest), as described below (the "Original Claim"). Recently, the Rehabilitator asserted three claims against

the District for over \$60 million (plus interest), including a claim asserted on February 21, 2013 for almost \$51.3 million (the “New Claim”) that redundantly includes the \$25.8 million Original Claim along with additional losses following the same contract change. (The other two new claims are additional to both the Original Claim and the New Claim and are not at issue in this Motion to Pursue Claim.)

The Original Claim has gone through 16 months of administrative process, including a mandatory request for relief to the Contracting Officer—who ignored the claim throughout the 120-day waiting period—followed by an “appeal” to the CAB (the “CAB Proceeding”). Fact discovery in the CAB Proceeding closes on April 12, 2013, and expert discovery closes on July 12, 2013.

DCHSI recently learned that, on March 18, 2013, Chartered filed a Consent Motion to Stay All Proceedings in the CAB Proceeding concerning the Original Claim (“Motion to Stay Claim”)—and thus Chartered’s effort to recover over \$25 million—until the New Claim, which was filed 15 months later, wends its way through the administrative process, possible appeal, consolidation, and presumably a renewed discovery schedule. In the March 18 filing, Chartered also revealed that it has not taken or even scheduled a single deposition in pursuit of the Original Claim, although it admits that depositions are needed, fact discovery expires April 12, 2013, and the CAB ruled in December 2012 that Chartered had the right to depose DHCF Director Wayne Turnage.

DCHSI respectfully submits that the Rehabilitator is breaching his paramount duty to pursue Chartered’s claims against the District to recover Chartered’s missing capital. This also reveals, again, the problems inherent in having a District-appointed Rehabilitator taking actions that impair Chartered’s financial position without providing this Court with sufficient

information to supervise his actions as the Rehabilitation Act requires. In this instance, the Rehabilitator's actions would inure to the advantage of the District by greatly delaying the prosecution of a more than \$25 million claim against the District and to the disadvantage of Chartered and, consequently, DCHSI by greatly delaying Chartered's recovery of capital and hampering its ability to emerge from rehabilitation. For these reasons, the Court should require the Rehabilitator to withdraw the March 18 Motion to Stay Claim and to proceed with the Original Claim before the CAB without delay.

I. FACTS

A. Chartered Is the Long-Time Incumbent to the DHCF Contract and the Sole Source of Party-in-Interest DCHSI's Revenue

Chartered is a District of Columbia HMO that since 1987 has been an incumbent to the DHCF Contract. The DHCF Contract is Chartered's only business and source of income. *See* Emergency Consent Petition for an Expedited Order of Rehabilitation ("Rehabilitation Petition") at ¶¶ 2-3 (Oct. 19, 2012); Special Deputy to the Rehabilitator's First Status Report ("First Status Report") at 3, ¶ 4A (Jan. 11, 2013).¹

DCHSI is the sole shareholder of Chartered. *See* Ex. 1 (Affidavit of Richard Evans) at ¶ 2. Chartered is DCHSI's sole source of revenue. *See id.* at ¶ 3. DCHSI is a Party-in-Interest. *See* Rehabilitation Petition at ¶ 4.

¹ DCHSI has presented additional facts and circumstances concerning the Rehabilitator's actions in briefs filed on March 6 and March 20, 2013 in support of its Motion for (1) A Stay Pending Appeal of the Order Approving the Asset Purchase Agreement, Plan of Reorganization, and Related Matters; and (2) Injunctive Relief. Only facts necessary to consideration of the instant motion are presented here.

B. The District Failed to Pay What It Owed, Causing the Erosion of Chartered's Reserves

Under the DHCF Contract, the District compensates Chartered through fixed capitation rates that are developed by DHCF and its actuaries and are to be reviewed every twelve months and adjusted as necessary to maintain capitation rates within an actuarially-sound range. *See* Ex. 2 (Ltr. from D. Watkins to O. Fuller, Feb. 21, 2013) at 3-4 (discussing, *inter alia*, DHCF Contract Section B.3.2).

Chartered suffered a substantial deterioration of capital in 2011—which led to Chartered's rehabilitation—because the District has failed to pay Chartered amounts due under the DHCF Contract in several respects, only one of which is important to this motion. Effective August 1, 2010, the District Council passed legislation unilaterally transferring certain members of the D.C. Health Care Alliance Program (the “774/775 Populations”)—which included primarily childless adults living at up to 200% of the federal poverty level “with unique demographic characteristics, needs, and circumstances”—into the District of Columbia Health Families Program (“Medicaid Program”). *Id.* at 1, 2, 5. As a consequence, the 774/775 Populations became eligible for benefits, including pharmacy benefits, for which they previously were not covered and which were not accounted for when the effective rates were set. *Id.* at 1-3, Attachment D (Ltr. from Mercer to DHCF, June 22, 2010); Ex. 3 (Mercer's DCHFP Data Book for Rates Effective May 1, 2010). This caused Chartered's costs to skyrocket. Ex. 2 at 2.

Consequently, Chartered incurred tens of millions of dollars in additional expenses. *Id.* The District, however, substantially delayed increasing its capitation rates, and when it belatedly did so as of May 1, 2012, it did so prospectively only. *See id.* The District still has not paid the substantial additional amounts Chartered was compelled to pay for the period August 2010 through April 2012. *See id.* at 1.

C. Chartered Filed the Original Claim Well Before the Rehabilitation Began

On November 30, 2011, Chartered presented a claim to the Contracting Officer, seeking \$25,771,117 to compensate Chartered for increased pharmacy benefit costs it incurred due to the District's contract change requiring Medicaid coverage and benefits for the 774/775 Populations. *Id.* at 1, 2. In the Original Claim, Chartered sought "(1) a review of the capitation rate decision along with the applicable assumptions as the rate chosen by the District is not equitable; (2) a review of the annual adjustment to the rates along with the applicable assumptions as the adjustment is not equitable; (3) an adjustment to capitated rate [*sic*] to make such rates actuarially sound; or, in the alternative (4) an equitable adjustment to the capitated rate due to significant increases in actual pharmacy benefit costs; (5) payment in the amount of \$13,665,419 for the losses experienced by Chartered for the period of August 1, 2010 to October 31, 2011, for the District's failure to set actuarially sound rates; and (6) payments in the amount of \$12,105,699 [], for the los[s]es projected for the period between November 1, 2011 [through] April 30, 2012." Ex. 2 at Attachment B (Ltr. from C. Barnes to J. Alpert, Nov. 30, 2011), 1.

The District took no action in response to Chartered's Original Claim within the 120-day period prescribed by the D.C. Municipal Regulations, and the claim therefore was deemed denied, entitling Chartered to appeal that denial to the CAB. *See* D.C. Mun. Regs. Tit. 27, §§ 3803.4, 3803.7. Chartered filed a Notice of Appeal and Complaint with the CAB on April 9, 2012. Ex. 2 at 2. The CAB proceedings are ongoing, and fact discovery is set to close on April 12, 2013.

D. Chartered Was Forced into Rehabilitation

Although it now is clear that Chartered is in a financial recovery, *see* Section II.A. *infra* (discussing September 30, 2012 Quarterly Financial Statement), in the spring of 2012 the DISB

Commissioner and the DHCF Director relied on the capital depletion the District had caused to pressure both Chartered and DCHSI to consent to Chartered's rehabilitation.

On October 19, 2012, the Court entered the Rehabilitation Order and appointed DISB Commissioner White as the Rehabilitator. *See* Emergency Consent Order of Rehabilitation ("Rehabilitation Order") at 1 (Oct. 19, 2012). The Rehabilitation Order vests the Rehabilitator with the duty to "reform and revitalize" Chartered, if possible. Rehabilitation Order at 2; *see also* D.C. Code § 31-1312. The Rehabilitator is "charged to 'pursue all appropriate claims and legal remedies on behalf of Chartered.'" Ex. 2 at 1; D.C. Code § 31-1312(d). Established practice within rehabilitations includes common and universal steps such as promptly seeking to settle accounts concerning both assets and liabilities, which, in a case like this, would include aggressive recovery of Chartered's claims against the District. Ex. 4 (Affidavit of Gregory V. Serio) at ¶ 33. Pursuant to the Rehabilitation Order, "the Rehabilitator shall seek Court approval of any compromise or settlement of Chartered's claim pending before the [CAB]." Rehabilitation Order at 2.

E. The Rehabilitator Caused Chartered to File New Claims Against the District

In the course of its financial oversight of Chartered prior to the Rehabilitation Order, DISB engaged an independent statutory accounting firm, Rector and Associates, Inc. ("Rector"), in part to give its opinion as to whether the DHCF Contract is a retrospectively-rated contract, as Chartered's outside statutory accounting consultant, Millennium Consulting Services, LLC, had concluded, and to determine whether Chartered had properly accounted for its claim against the District in its financial statements. Ex. 2 at 2. Rector concluded that the DHCF Contract is a retrospectively rated contract, and an independent actuary and auditor hired by the Rehabilitator

(at Chartered's expense) after commencement of the Rehabilitation, agreed. Ex. 2 at 2; *id.*, Attachment C.

The conclusion that the DHCF Contract is retrospectively rated is significant because it means that—in addition to seeking an equitable adjustment amounting to compensation for the additional pharmacy costs as it did in the Original Claim—Chartered should have sought an equitable adjustment that takes into account its entire loss experience from the time of the contract change, not just the increased pharmacy costs directly resulting from the transfer of the 774/775 Populations. *Id.* at 2-3.

The Rehabilitator had two options to recover the remainder of Chartered's loss experience not already included within the Original Claim: amend the Original Claim to include the entire loss experience from the time of the contract change or file a new claim for those losses not sought in the Original Claim. Instead, the Rehabilitator chose a third option that would delay any recovery to the maximum possible extent: submitting a new claim that “effectively amends and supersedes” the Original Claim, seeking “compensation and recovery from the District for all of [Chartered's] increased costs under the Contract during the contract period at issue after the change in services mandated by the District[.]”² *Id.* at 1, 2.

F. The Rehabilitator Caused Chartered to Abandon the Original Claim Against the District

Chartered (under the Rehabilitator's control) now has asked the CAB to stay proceedings regarding the Original Claim, by motion filed with the District's consent on March 18, 2013. Ex. 5 (Motion to Stay Claim) at 1. Chartered asserts in the Motion to Stay Claim that the New Claim (and the two new unrelated claims) are based on the same facts and legal theories as the Original

² Whether the Rehabilitator is seeking the full amount of damages to which Chartered is entitled is beyond the scope of this Motion to Pursue Claim, as DCHSI does not have the records. DCHSI reserves its right to raise this issue at a later date.

Claim. *Id.* at 3. If the new claims eventually are denied or deemed denied, Chartered would appeal the denial of the new claims to the CAB, seek to consolidate the appeals, and then file an amended complaint. *Id.* The Rehabilitator asserts that a stay of the Original Claim would avoid unnecessary and/or duplicative discovery and expense and that it would be more efficient to consider the appeals together. *Id.* at 1.

Missing from the analysis in the Motion to Stay Claim is the harm that would befall Chartered, and its shareholder, DCHSI, if resolution of Chartered's \$25.8 million claim against the District is delayed. The viability of the companies is at stake. By delaying consideration of the Original Claim while the Contracting Officer takes 120 days to consider (or ignore) the new claims, while new appeals are filed, while motions for consolidation are filed (and possibly opposed), and while, presumably, additional discovery takes place on the new claims, the Rehabilitator will delay consideration of the Original Claim for an indeterminate time—easily a year or more, judging by the Original Claim's lengthy procedural history. By taking this course, the Rehabilitator is denying Chartered the possibility of collecting as much as \$25,771,117, plus interest, even though recovery could solve the supposed financial shortfall that brought about the rehabilitation and could provide the basis for terminating the rehabilitation and returning the company to its management and shareholder.

On March 27, 2013, counsel for DCHSI sent a letter to the Rehabilitator inquiring why the Rehabilitator had Chartered seek a stay of the Original Claim and how this was in Chartered's best interests, given the harm to Chartered from such a delay. Ex. 6 (Ltr. from D. Killalea to D. Watkins, Mar. 27, 2013). Counsel for the Rehabilitator, A. Scott Bolden, responded that "Chartered could not have pursued [the New Claim] without first submitting its claim to the contracting officer." Ex. 7 (Ltr. from A. Bolden to D. Killalea, Mar. 29, 2013) at 1.

Mr. Bolden assumed, without any authority, that Chartered had to start the claim process anew to recover the additional amounts owed to Chartered and assumed, without analysis, that it would be more efficient to do so.

II. ARGUMENT

A. The Rehabilitator's Obligation to Work to Rehabilitate Chartered Requires That He Diligently Pursue the Original Claim as Expeditiously As Possible

Collection of Chartered's claims against the District should be the centerpiece of the Rehabilitator's effort to reform and revitalize Chartered and the Rehabilitator's "first priority." Ex. 4 at ¶¶ 27, 28, 29, 33; *see also* Rehabilitation Order at 2; D.C. Code § 31-1312.

The Rehabilitator has increased the overall amount of Chartered's claims, but he has not aggressively pursued collection of the \$25.8 million Original Claim that Chartered asserted sixteen months ago and that could correct the perceived capital shortfall that is the basis of the Rehabilitation. Moreover, despite his duties, the Rehabilitator has not taken any depositions in the pending CAB matter, even though Chartered won the right to take DHCF Director Turnage's deposition in December, and Chartered stated in the Motion to Stay Claim that depositions are necessary.

The Rehabilitator's failure to pursue the Original Claim aggressively is inexplicable given Chartered's current financial picture and that its rehabilitation primarily was the result of a perceived capital shortfall. Chartered's capital reserves were depleted in 2010–2011 because the District caused Chartered to incur substantially increased costs in connection with the 774/775 Populations without compensation. *See* First Status Report at Ex. 3 (Chartered 2011 Independent Auditors' Report), 3.

The Rehabilitator has offered no sound basis for his decision to delay pursuing the Original Claim. The sole basis Chartered's counsel has offered to explain the decision to seek a

stay of the CAB appeal and how this was in the best interests of Chartered, is that Chartered “could not have pursued the [New Claim] without first submitting its claim to the contracting officer.” Ex. 7 at 1. In other words, the Rehabilitator claims that, in order to pursue the full amount due Chartered, he had to submit a brand new claim for *all* of the amounts owed to Chartered. The Rehabilitator offered no support for this conclusion, and there is none. CAB rules governing appeals by contractors specifically allow the amendment of pleadings in the CAB’s discretion. D.C. Mun. Regs. Tit. 27, § 207. Thus, the Rehabilitator could have sought CAB approval to amend the original complaint to include the additional amounts owed to Chartered, thereby avoiding the unnecessary procedural delay stemming from restarting the claim process from the beginning. This route seems all the more appropriate given that the Contracting Officer did not respond at all in the 120 days she had to evaluate the Original Claim, so there is little point to repeating that process.

Alternatively, the Rehabilitator could have filed a new, separate claim to recover for those non-redundant portions of Chartered’s loss experience not already sought in the Original Claim. The Original Claim only seeks pharmacy-related losses stemming from the contract changes. The additional amounts not sought in the Original Claim are for separate and distinct losses related to Chartered’s loss experience from the time of the contract change and could be asserted in a separate claim. The Rehabilitator instead improperly chose to delay collection of the Original Claim.

The Rehabilitator asserts a need to avoid duplicative discovery and expense by pursuing both claims in a single action. Ex. 5 at 1. However, no such duplicative discovery and expense would be incurred if the Original Claim were amended to include the non-redundant portions of the New Claim. This course of action would achieve the efficiencies of considering the appeals

together, while avoiding the harmful procedural delay of the Rehabilitator's chosen course of action. Furthermore, even if the two claims were pursued separately, the Rehabilitator could always seek to re-use any discovery obtained in the Original Claim, thus eliminating the need for duplicative discovery efforts; there certainly is no reason to assume that the District Government, in defending the claim, would insist on such duplication of efforts. The Rehabilitator's avoidance-of-duplicative-discovery rationale is even more curious given his limited discovery efforts to date in the Original Claim as evidenced by his failure to take any depositions when he admits that depositions are necessary.

Chartered is a strong candidate for rehabilitation. Despite the depletion of Chartered's reserves in 2011, Chartered has already begun to recover financially. Chartered earned approximately \$7 million more in premiums in the first nine months of 2012 than it incurred in costs. Ex. 8 (September 30, 2012 Quarterly Financial Statement). Chartered's capital levels increased by approximately 50%—from \$5.9 million to just over \$9 million—over the first three quarters of 2012. *Id.*

Collection of the \$25.8 million at issue in the Original Claim would put Chartered's capital level substantially above the levels reached over the past eight years. If Chartered were to collect the \$25.8 million, Chartered might be able to emerge from rehabilitation and there would be no reason why it could not compete effectively for the DHCF Contract if the bidding process is re-opened.

By delaying possible collection of \$25.8 million from the District, the Rehabilitator has taken yet another step that is inconsistent with any genuine effort to rehabilitate Chartered. The Rehabilitator instead should be required, consistent with the provisions of the Rehabilitation Act

and the Rehabilitation Order entered by this Court, to withdraw the Motion to Stay Claim before the CAB and to aggressively pursue the Original Claim without delay.

III. CONCLUSION

For the foregoing reasons, DCHSI respectfully requests that the Court enter an order requiring the Rehabilitator (1) to cause Chartered to withdraw the Consent Motion to Stay All Proceedings that Chartered filed on March 18, 2013, in District of Columbia Contract Appeals Board case number D-1445, or, in the alternative, if the CAB grants the Motion to Stay Claim while the instant motion is pending, to cause Chartered to use its best efforts to have the CAB vacate the stay; (2) to cause Chartered to pursue Chartered's November 30, 2011, claim that is currently before the CAB in the most expeditious manner possible; and (3) to pursue the claim submitted by Chartered to the Office of Contracting and Procurement on February 21, 2013, which Chartered stated "effectively amends and supersedes" the Original Claim, in a manner that causes as little delay to the Original Claim as is practicable without diminishing Chartered's total potential recovery (*e.g.*, by seeking to amend the Original Claim before the CAB to include additional losses; by seeking to amend the New Claim on submission to the Office of

Contracting and Procurement to eliminate redundancy; or by pursuing another option provided that it would not delay or diminish Chartered's potential recovery).

Dated: April 2, 2013

Respectfully submitted,

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Counsel for DCHSI

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2013, a copy of the foregoing was filed and served by email upon:

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DISTRICT OF COLUMBIA,
Department of Insurance, Securities and
Banking,

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Civil Action No.: 2012 CA 008227 2

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v.

DC CHARTERED HEALTH PLAN, INC.,

Respondent.

**ORDER GRANTING PARTY-IN-INTEREST D.C. HEALTHCARE SYSTEM, INC.'S
MOTION TO COMPEL REHABILITATOR TO PURSUE
CHARTERED CLAIM AGAINST THE DISTRICT OF COLUMBIA**

Before this Court is Party-in-Interest D.C. Healthcare Systems, Inc.'s ("DCHSI") Motion to Compel Rehabilitator to Pursue Chartered Claim Against the District of Columbia. The Court having considered the arguments of the parties hereby orders that:

1. The Rehabilitator is required to cause Chartered to withdraw the Consent Motion to Stay All Proceedings that Chartered filed on March 18, 2013, in District of Columbia Contract Appeals Board ("CAB") case number D-1445 ("Motion to Stay Claim"), or, in the alternative, if the CAB grants the Motion to Stay Claim while the instant motion is pending, the Rehabilitator is required to cause Chartered to use its best efforts to have the CAB vacate the stay;
2. The Rehabilitator is required to cause Chartered to pursue Chartered's November 30, 2011, claim that is currently before the CAB (the "Original Claim") in the most expeditious manner possible; and

3. The Rehabilitator is required to pursue the claim submitted by Chartered to the Office of Contracting and Procurement on February 21, 2013, which Chartered stated “effectively amends and supersedes” the Original Claim (the “New Claim”), in a manner that causes as little delay to the Original Claim as is practicable without diminishing Chartered’s total potential recovery. The Rehabilitator may seek to amend the Original Claim before the CAB to include additional losses; seek to amend the New Claim on submission to the Office of Contracting and Procurement to eliminate redundancy; or pursue another option provided that it would not delay or diminish Chartered’s potential recovery.

SO ORDERED.

Judge Melvin R. Wright

Entered on: _____

Copies to Be Served:

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA,
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D.C. CHARTERED HEALTH PLAN, INC.,

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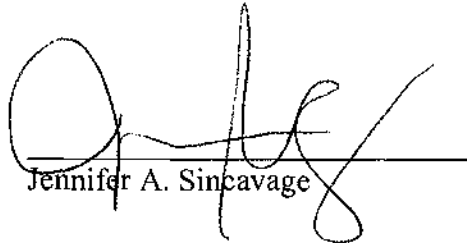
**AFFIDAVIT OF JENNIFER A. SINCAVAGE IN SUPPORT OF PARTY-IN-INTEREST
D.C. HEALTHCARE SYSTEMS, INC.'S MOTION TO COMPEL REHABILITATOR
TO PURSUE CHARTERED CLAIM AGAINST THE DISTRICT OF COLUMBIA**

JENNIFER A. SINCAVAGE declares under penalty of perjury that:

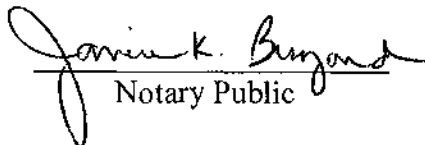
1. I am an attorney with Manatt, Phelps & Phillips, LLP, attorneys for D.C. Healthcare Systems, Inc. ("DCHSI"). I submit this affidavit in support of DCHSI's Motion to Compel Rehabilitator to Pursue Chartered Claim Against the District of Columbia.
2. Annexed as Exhibit 1 is a true and correct copy of the Affidavit of Richard Evans, dated February 27, 2013.
3. Annexed as Exhibit 2 is a true and correct copy of a letter, with attachments, dated February 21, 2013 from Daniel Watkins, Special Deputy to the Rehabilitator for D.C. Chartered Health Plan, Inc., to O'Linda Fuller, District of Columbia Office of Contracting and Procurement, regarding Claim Under Contract DCHC-2008-D-5052.
4. Annexed as Exhibit 3 is a true and correct copy of a document dated January 6, 2012 entitled "DCHFP Book for Rates Effective May 1, 2012: District of Columbia Department of Health Care Finance."

5. Annexed as Exhibit 4 is a true and correct copy of the Affidavit of Gregory V. Serio in Support of Party-in-Interest D.C. Healthcare Systems, Inc.'s Motion for (1) A Stay Pending Appeal of the Order Approving the Asset Purchase Agreement, Plan of Reorganization and Related Matters; and (2) Injunctive Relief, dated March 20, 2013.
6. Annexed as Exhibit 5 is a true and correct copy of the Consent Motion to Stay All Proceedings, filed by D.C. Chartered Health Plan, Inc. on March 18, 2013 in District of Columbia Contract Appeals Board case number D-1445.
7. Annexed as Exhibit 6 is a true and correct copy of a letter dated March 27, 2013 from David Killalea, counsel to DCHSI, to Daniel Watkins, Special Deputy to the Rehabilitator, regarding Chartered's November 30, 2011 Claim on Appeal to the Contract Appeals Board, No. D-1445.
8. Annexed as Exhibit 7 is a true and correct copy of a letter dated March 29, 2013 from A. Scott Bolden, counsel to D.C. Chartered Health Plan, Inc., to David Killalea, counsel to DCHSI, regarding D.C. Chartered Health Plan's November 30, 2011 Claim on Appeal to the District of Columbia Contract Appeals Board, No. D-1445.

9. Annexed as Exhibit 8 is a true and correct copy of D.C. Chartered Health Plan, Inc.'s quarterly statement to the Insurance Department of the District of Columbia for the quarter Ended September 30, 2012.


Jennifer A. Sincavage

Sworn to before me this
2nd day of April, 2013


Notary Public



**My Commission Expires
February 28, 2018**

EXHIBIT 1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,
Department of Insurance, Securities and
Banking,

Petitioner,

Civil Action No.: 2012-8227

v.

Judge Melvin R. Wright

DC CHARTERED HEALTH PLAN, INC.,

Respondent.


AFFIDAVIT OF RICHARD EVANS

The undersigned, RICHARD EVANS, having been duly sworn, hereby deposes and states as follows:

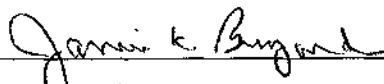
1. My name is Richard Evans and the facts set forth below are true based upon my personal knowledge. I am a Director of D.C. Healthcare Systems, Inc. ("DCHSI").
2. DCHSI is the sole shareholder of D.C. Chartered Health Plan, Inc. ("Chartered").
3. Chartered is DCHSI's sole source of revenue.
4. Without revenue from Chartered, DCHSI's existence would be threatened.

I solemnly affirm that the contents of the foregoing are true to the best of my knowledge, information and belief.

2-27-2013
Date


Richard Evans

Sworn to before me this 27th day of February, 2013


Notary Public

My commission expires: 2/28/13

JANICE K. BUZARD
NOTARY PUBLIC
District of Columbia
My Commission Expires
February 28, 2013

