

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division**

DISTRICT OF COLUMBIA
Department of Insurance, Securities
and Banking,

Petitioner,

v.

D.C. CHARTERED HEALTH PLAN, INC.,

Respondent.

Civil Action No.: 2012 CA 008227 2
Judge: Judith Bartnoff
Calendar No.: 15
Next Scheduled Event: Status Hearing
May 7, 2015, at 10:00 a.m.

PRAECIPE

**NOTICE OF FILING OF SPECIAL DEPUTY TO THE
REHABILITATOR'S SIXTEENTH STATUS REPORT**

D.C. Chartered Health Plan, Inc., acting through its Rehabilitator and his attorneys, files the attached Special Deputy to the Rehabilitator's Sixteenth Status Report.

Dated: April 29, 2015

Respectfully submitted,

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Certificate of Service

I hereby certify that on April 29, 2015, a copy of the foregoing *Notice of Filing of Special Deputy to the Rehabilitator's Sixteenth Status Report* was filed and served by email upon:

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SPECIAL DEPUTY TO THE REHABILITATOR’S SIXTEENTH STATUS REPORT

Daniel L. Watkins, as Special Deputy to the Rehabilitator of D.C. Chartered Health Plan, Inc. in Rehabilitation (“Chartered”), files this *Sixteenth Status Report*.

1. **Update From Fifteenth Status Report.** On January 21, 2015, the Special Deputy filed his Fifteenth Status Report with the Court. The following information provides an update to that Report.

(a) **Financial Matters.**

i. On February 23, 2015, Chartered submitted to the District of Columbia Department of Insurance, Securities and Banking (“DISB”) and the National Association of Insurance Commissioners (“NAIC”) its 2014 statutory financial statements (“Annual Statement”). A copy of the Annual Statement is attached as **Exhibit 1**. Report highlights include the following:

✓ Chartered reported a pre-tax loss for the year 2014 of \$1,497,569; the 2014 loss was \$1,679,662 on an after-tax basis. These results compare to a loss for 2013 in the amount of \$2,868,751 on both a pre-tax and after-tax basis.

- ✓ Chartered incurred administrative expenses of approximately \$2.1 million in 2014. Chartered recorded income in excess of \$500,000 from pharmacy rebates, subrogation receipts, provider refunds and a return of premium from a third-party reinsurance carrier.
- ✓ As described in paragraph 1(b)(iii) below, Chartered filed non-consolidated federal income tax returns for its four tax years ended April 30, 2011 through April 30, 2014. As a consequence of those filings, Chartered recorded a current federal income tax expense of \$182,093, primarily due to alternative minimum taxes.
- ✓ Cash, Chartered's sole statutory asset,¹ declined from \$9.9 million to \$7.9 million during 2014.
- ✓ Chartered's December 31, 2014 balance sheet shows a \$12.8 million deficit in its Capital and Surplus account. As noted above, Chartered's sole statutory asset at the end of 2014 was \$7.9 million in cash. Liabilities consist of \$10.5 million in unpaid healthcare provider claims (which declined moderately during the year from a high of \$10.8 million) plus various other additional liabilities totaling \$10.2 million, most of which (approximately \$8.4 million) represent unpaid premium taxes owed to DISB.

Chartered submitted a supplement to its 2014 Annual Statement to DISB on April 1, 2015, attached as **Exhibit 2**.

¹ Insurers like Chartered follow statutory accounting principles (SAP), sometimes referred to as "liquidation" accounting, in their financial filings to their regulators. (In contrast, other entities more commonly use General Accounting Principles, "GAAP"). SAP is a very conservative version of GAAP, strictly limiting what companies may include as assets. Thus, for example, Chartered may not include as an asset any potential recovery it may obtain in the *Thompson* Action, described further in paragraph 1(b)(i) below.

- ii. The auditing firm of Brown Smith Wallace completed its audit of Chartered's 2014 financials, and Chartered filed the audit report with DISB on April 24, 2015. A copy of the audit report is attached as **Exhibit 3**. The audit report includes an unqualified opinion that the statutory financial statements for 2013 and 2014 present fairly Chartered's financial position.

(b) Parent Company and Related Party Issues.

- i. Thompson Action. On March 4, 2015, the defendants in the *Thompson Action* (Civil Case No. 2013 CA 003752 B, before Judge Mott) filed their answer to Chartered's amended complaint, asserting affirmative defenses and eleven putative federal and state law "counterclaims" against the District of Columbia, District officials, the Special Deputy and Mercer LLC (the District's Medicaid actuary). Chartered and the "counterclaim-defendants" moved to strike or, in the alternative, sever these claims. The parties completed briefing on the motions to strike on April 28. In the meantime, Chartered and the defendants served written discovery on each other, and now have outstanding disputes related to their respective discovery requests. The defendants' motion for protective orders (relating to a now-postponed deposition notice and a now-narrowed third-party document subpoena on Cardinal Bank) are also pending before Judge Mott.
- ii. Federal Action Dismissed. Virtually concurrently with the filing of their answer/counterclaims in the *Thompson Action*, D.C. Healthcare Systems, Inc. (DCHSI) and Thompson voluntarily dismissed the federal *DCHSI Action*, in which they had asserted virtually identical claims against the same parties, as described in paragraph 2(a)(ii) of the Fifteenth Status Report.
- iii. Tax Matters. As previously reported, in light of DCHSI's continued failure to file consolidated tax returns on Chartered's behalf, in December 2014 the

Rehabilitator filed with the IRS tax returns for Chartered for tax years 2011-2014. Chartered also filed a Request for Prompt Assessment with the IRS which, if granted, would reduce the applicable statute of limitations. Chartered's tax professionals have had many communications with the IRS concerning Chartered's filings. Based on Chartered's filings, the IRS sent "balance due" notices to Chartered for the tax years ended April 30, 2011 and April 30, 2012, with demands for payment of outstanding tax liabilities as well as penalties for failure-to-file and failure-to-pay. On April 10, 2015, Chartered's tax professionals filed with the IRS a request for abatement of Chartered's failure-to-file and the failure-to-pay penalties for the April 30, 2012 tax period, on the grounds that Chartered has acted with reasonable cause and not willful neglect. They will file soon a similar request for the tax period ending April 30, 2011. (Chartered believes it should have no tax liability for the tax years ending April 30, 2013 and April 30, 2014, and, to date, the IRS has not assessed any taxes or penalties for those periods.) Chartered recently learned from the IRS that it may have some additional, relatively small pre-rehabilitation payroll tax liability; Chartered is seeking additional information about this.

2. **Carrying Out the Plan of Reorganization and Payment of Chartered's Liabilities.**

- (a) **Proofs of Claim Process.** The status of the proof of claim process remains unchanged since the last status report.
- (b) **Provider Claims and Payments.** The status of provider claims and payments remains unchanged since the last status report.
- (c) **Claim Appeals.** The Court has previously approved \$957,129 in payments for provider claim appeals. Because of a misunderstanding over "gross" amounts (i.e., 100% of an allowed appeal) and "net" amounts (i.e., the current allowable 83.88% pro-ration), the

Rehabilitator will be submitting a petition to the Court shortly for reconciliation of “gross” and “net” payments and for authorization to pay approximately \$57,000 to effect the reconciliation.

3. **Rehabilitation Expenses.** On March 24, 2015, Chartered submitted its Fifteenth Submission for fees and expenses for work in November and December, 2014. Chartered is currently preparing a submission of its fees for January and February 2015.

4. **Chartered Assets.** Chartered currently has cash assets of approximately \$7.7 million. Chartered’s pending Fifteenth Submission for fees and expenses seeks reimbursement of \$139,562.91, which, if approved by the Court, would be paid from Chartered’s assets.

Respectfully submitted,

/s/ Daniel L. Watkins
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Special Deputy to the Rehabilitator for
D.C. Chartered Health Plan, Inc.