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 July 21, 2016, at 10:00 a.m.

PRAECIPE

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

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

Dated: July 12, 2016

Respectfully submitted,

By: /s/ Richard E. Hagerty
Richard E. Hagerty
Bar Number 411858
TROUTMAN SANDERS LLP
1850 Towers Crescent Plaza, Suite 500
Tysons Corner, VA 22182
(703) 734-4326
(703) 448-6520 (facsimile)
richard.hagerty@troutmansanders.com

By: /s/ Charles T. Richardson
Charles T. Richardson
Faegre Baker Daniels LLP
1050 K Street, N.W. Suite 400
Washington, D.C. 20001
202-312-7487
crichardson@faegrebd.com

Attorneys for the Rehabilitator and the Special Deputy to the Rehabilitator for D.C. Chartered Health Plan, Inc.

Certificate of Service

I hereby certify that on July 12, 2016, a copy of the foregoing *Notice of Filing of Special Deputy to the Rehabilitator's Eighteenth Status Report* was filed and served by email upon:

Stephen C. Taylor, Rehabilitator
of D.C. Chartered Health Plan, Inc.
c/o Adam Levi
DISB, Office of the General Counsel
810 First Street, NE, Suite 701
Washington, D. C. 20002
Adam.Levi@dc.gov

Eric Glover
E. Louise R. Phillips
Office of the Attorney General
441 Fourth Street, NW, 630 South
Washington, D.C. 20001
Eric.Glover@dc.gov
Louise.Phillips@dc.gov

Daniel L. Watkins
Special Deputy to the Rehabilitator
of D.C. Chartered Health Plan, Inc.
1050 K Street NW, Suite 400
Washington, DC 20001
danwatkins@sunflower.com

/s/ Richard E. Hagerty
Richard E. Hagerty

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 July 21, 2016, at 10:00 a.m.

SPECIAL DEPUTY TO THE REHABILITATOR'S EIGHTEENTH STATUS REPORT

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

1. **Update From Seventeenth Status Report.** On January 14, 2016, the Special Deputy filed his Seventeenth Status Report with the Court. The following information provides an update to that Report.

   (a) **Financial Matters.** On February 29, 2016 and May 12, 2016, Chartered submitted to the Department of Insurance, Securities and Banking (Department) its statutory financial statements for 2015 and for the quarter of 2016 ending March 31, respectively. Brown Smith Wallace issued its audit report on Chartered's 2015 financials on May 31, 2016. The audit report is attached as **Exhibit 1**. The statutory financial statements and audit report showed the following:

   - ✓ Chartered reported a net loss of $1,328,332 for 2015. The 2015 audit report increased the loss by $122,645 due to an additional accrual for interest and

penalties for failure to file imposed by the IRS related to 2011 and 2012 income tax returns (see 1(b)ii below), as these interest and penalty amounts are not subject to abatement by the IRS.

- ✓ Chartered reported a net loss of $168,416 for the quarter ended March 31, 2016.
- ✓ The losses in 2015 and 2016 were largely driven by expenses associated with resolving Chartered's IRS tax matters and activity in the Thompson Action described in 1(b)i and ii.
- ✓ Cash declined from $7,856,377 to $7,083,093 during 2015. Cash at March 31, 2016 was $7,019,877 and increased to approximately $7,239,000 at June 30, 2016 due to subrogation recoveries in the 2nd quarter.
- ✓ Chartered's unpaid healthcare provider claims remained unchanged at $10,524,573 in 2015 and 2016.
- ✓ Accrued general expenses were $10,476,800 and $10,566,596 at December 31, 2015 and March 31, 2016, respectively. Unpaid premium taxes owed to the District of Columbia in the amount of $8,378,763 (without applying any interest or penalties) comprise over 80% of these expenses.
- ✓ The deficit reported in Chartered's capital and surplus account was $14,100,374 and $14,253,386, respectively, as of December 31, 2015 and March 31, 2016. The deficits were adjusted in amended filings filed with the Department on June 24, 2016 to reflect the additional interest accrual for taxes discussed above (**Exhibits 2 and 3**). The amended deficits are now $14,223,019 and $14,379,472, respectively, as of December 31, 2015 and March 31, 2016.

(b) **Parent Company and Related Party Issues.**

i. Thompson Action. As previously reported, Chartered is involved in litigation with its sole shareholder District of Columbia Heath Systems, Inc. (DCHSI) and DCHSI's owner, Jeff Thompson (The Thompson Action, D.C. Super. Ct. Civil Case No. 2013 CA 003752 B). On December 31, 2015, the Thompson Action was transferred from Judge Mott to Judge Rankin. On March 8, 2016, the Court entered an Order officially staying discovery, pending resolution of various discovery related motions. The Court also extended the discovery-close deadline by 45 days to April 22, 2016, or to such time as may be appropriate based upon the Court's rulings on outstanding motions. The Order further stated that once the pending motions were decided, the Court would schedule an oral hearing with the parties to determine the appropriate case timeframe going forward.

On April 22 and April 28, Judge Mott issued rulings on the parties' pending motions, ordering (1) Chartered to supplement its responses to several interrogatories propounded by defendants and, (2) Thompson to pay the reasonable expenses, including attorney's fees, caused by his failure to appear for his deposition pursuant to Super. Ct., Civ. R. 37 (d)(3). Chartered anticipates that, as Judge Rankin indicated in his March 8, 2016 Order, the Court will, after hearing, determine the appropriate pretrial schedule going forward and issue an order accordingly.

On April 6, 2016, the parties participated in a Court ordered mediation. The parties agreed to reconvene mediation on June 8, 2016 but that meeting was

postponed. Mediation will be rescheduled soon. In response to Judge Mott's Order, Chartered filed a proposed notice of judgment for recovery of its attorneys' fees and costs.

ii. Tax Matters. As previously reported, in light of DCHSI's failure to file consolidated tax returns on Chartered's behalf, the Rehabilitator filed with the IRS tax returns for Chartered for tax years 2011-2015. The IRS accepted Chartered's Requests for Prompt Assessment for tax years 2011-2014, which reduces the applicable statute of limitations for those years. Based on Chartered's tax 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. Chartered's tax professionals requested, and the IRS agreed, to delay the IRS's processing of the levy for several reasons, including the fact that the IRS had not yet responded to Chartered's requests for abatement of the failure-to-file and the failure-to-pay penalties for the April 30, 2012, and April 30, 2011 tax periods, based on the grounds that Chartered has acted with reasonable cause and not willful neglect. A formal response to the IRS Notice of Intent to Levy was prepared and submitted on Chartered's behalf. (Chartered believes it should have no tax liability for the tax years ending April 30, 2013, April 30, 2014, and April 30, 2015, and, to date, the IRS has not assessed any taxes or penalties for those periods).

As a result of ongoing discussions with the IRS, the IRS issued two letters, one each to Chartered and DCHSI dated April 8, 2016, concerning how the

IRS plans to deal administratively with Chartered as a tax entity. The letters state that the IRS is asserting its regulatory authority and discretion to "break agency" between Chartered and DCHSI. This means that the IRS plans to deal with Chartered as a separate entity for purposes of direct communications only, rather than continuing to consider DCHSI as the "sole agent" for consolidated tax return group communications.

Importantly, the letter to Chartered also states that the IRS is accepting Chartered's separately filed tax returns "as its returns pursuant to its several tax liability under Treas. Reg. 1.1502-6(a)." The letters cover the five tax years April 30, 2011 through April 30, 2015. To date, the IRS has not granted permission for the DCHSI consolidated tax return group to de-consolidate for tax return filing requirement purposes. However, Chartered plans to continue to file separate returns in the same manner as it has for the previous five years. The return for the tax year ending April 30, 2016 is being prepared.

Chartered received a notice dated May 18, 2016 from the IRS denying Chartered's September, 2015 request to abate penalties and some interest for tax year 2012. Upon advice from the IRS in April, 2016, Chartered had filed new Form 843 requests for abatement of penalties and some interest for tax years 2011 and 2012 in late April 2016. The new Form 843 abatement requests were filed a few weeks prior to receiving the notice of denial for 2012 which referenced Chartered's September 2015 abatement request. The IRS denial for 2012 did not reference the new request for abatement filed in late April 2016. On June 9, 2016 Chartered received a notice from the IRS

abating some penalties and interest for tax year 2011. That notice did reference Chartered's April 2016 Form 843 abatement request. Chartered also received a letter in June from the IRS requesting an additional 45 days to consider its April, 2016 Form 843 abatement request for tax year 2012. Chartered intends to file a formal appeal of the denial notice for tax year 2012 if the IRS does not respond to the April Form 843 request by July 4, 2016. If the IRS denies the April, 2016 request, the Rehabilitator intends to appeal the denial, as well.

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.**

i. **Claim Appeals.** On July 11, 2016, the Rehabilitator filed a petition for approval of 83.88% pro rata payments for provider claim appeals and to reconcile prior pro rata claim payments.

The Court previously approved pro rata claim payments in four separate submissions on the same 83.88% pro rata basis which was determined in 2013 when $48 million in payments were made to healthcare providers for claims totaling $57.22 million.

The current petition addresses the 32 new provider claim appeals approved by the Rehabilitator totaling $43,657.77. The Special Deputy is seeking the Court's approval to pay these 32 new claims at the same 83.88% pro rata share paid on all other provider claims and appeals, a total of $36,620.15 (83.88% of $43,657.77).

The petition also seeks approval to pay $15,688.79 to DentaQuest, Chartered's third party administrator for its dental coverage, to correct a previous pro rata claim underpayment.

ii. **Reconciling Payment Authorization.** In reviewing financial records of claims paid to Chartered providers in the four previous submissions for payment of claims and appeals, the Special Deputy identified discrepancies between the dollar amounts approved by the Court to be paid and the amounts actually paid. Upon investigation, the Special Deputy determined that the pro rata rate of 83.88% was used in paying each claim but the summary amounts approved by the Court were not correct. The 83.88% pro rata rate was also applied to the DentaQuest claims that had already been calculated at the pro rata share amount. In essence, the pro rata rate was applied twice in some instances, which resulted in lower claim totals and pro rata amounts being submitted to the Court for approval.

The petition exhibit summarizes the correct claim amounts that should have been submitted and the actual total pro rata 83.88% payments made. Additional documentation on the claims is available upon request.

3. **Rehabilitation Expenses.** Submissions for fees and expenses for work performed in this proceeding are pending the Court's review and approval. It is anticipated that monthly submissions will be made to the Court on a regular basis going forward.

4. **Chartered Assets.** Chartered currently has cash assets of approximately $7.24 million.

5. **Rehabilitation Status.** The Rehabilitator continues to evaluate whether further efforts to rehabilitate Chartered are appropriate and feasible and will report its determination to the Court when the evaluation is completed.

Respectfully submitted,

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