

SUPERIOR COURT OF 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: Laura A. Cordero
Calendar No.: 15
Next Scheduled Event: Status Hearing
September 17, 2019, 2:00 p.m.

PRAECIPE

**NOTICE OF FILING OF SPECIAL DEPUTY TO THE
REHABILITATOR'S TWENTY-THIRD STATUS REPORT**

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

Dated: September 17, 2019

Respectfully submitted,

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

Certificate of Service

I hereby certify that on September 17, 2019, a copy of the foregoing *Notice of Filing of Special Deputy to the Rehabilitator's Twenty-Third Status Report* was filed and served by e-mail upon:

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SPECIAL DEPUTY TO THE REHABILITATOR'S
TWENTY-THIRD STATUS REPORT

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

1. **Update from Twenty-Second Status Report.** On April 13, 2018, the Special Deputy filed his Twenty-Second Status Report with the Court. The following information provides an update to that Report.

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

(i) **Thompson Action.**

- a. Chartered's litigation with its sole shareholder District of Columbia Health Systems, Inc. (DCHSI) and DCHSI's owner, Jeff Thompson (the "Thompson Action," D.C. Super. Ct. Civil Case No. 2013 CA 003752 B) continues. On June 6, 2018, Judge Rankin granted the Rehabilitator's motion for partial summary judgment, addressing the bulk of DCHSI/Thompson's claimed affirmative defenses, and

granting the Rehabilitator's separate motion for a protective order with respect to DCHSI/Thompson's discovery addressed to those stricken defenses. These rulings and Judge Rankin's subsequent order denying DCHSI's motion for interlocutory appeal should significantly narrow the scope of remaining discovery. In January 2019 the parties submitted competing proposals to Judge Rankin for entry of an amended scheduling order that remain under advisement. The Rehabilitator is proposing a shorter schedule with limited discovery and an opportunity to more quickly file a renewed motion for partial summary judgment on at least some of Chartered's claims.

- b. Since mid-Summer 2018 the parties have held discussions on various issues pertinent to their dispute and on the possibility of settlement. The parties' discussions have reached a critical stage, and although the Rehabilitator had hoped to know by the September 17, 2019, status conference whether the parties will be able to reach a settlement of all issues between them, things have been delayed by the death of Jeffrey Thompson's mother, who resided in Jamaica. Judge Rankin had delayed issuing a scheduling order to accommodate the parties' settlement discussions and had scheduled a July 24, 2019 status/scheduling conference at which he had indicated he would enter a scheduling order on or after September 20, 2019, if the parties had not reached a settlement by that date. Because of the delay occasioned by the death of Mr. Thompson's mother the parties have requested that

Judge Epstein, to whom the case has been assigned, continue the September 20, 2019, status/scheduling conference to a date in October.

- (ii) DCHSI Federal Lawsuit. DCHSI filed a lawsuit in the U.S. District Court for the District of Columbia on August 12, 2016, and amended its complaint on January 11, 2017, against Defendants the District of Columbia; Commissioner Stephen C. Taylor, Commissioner of the Department of Insurance, Securities and Banking (DISB), in his official capacity as Rehabilitator of Chartered; former DISB Commissioner and Chartered Rehabilitator William White; Daniel Watkins, in his official capacity as Special Deputy to the Rehabilitator (SDR) and personally; Wayne Turnage, Director of the D.C. Department of Health Care Finance (DHCF), in his official capacity and personally; AmeriHealth (purchaser of Chartered assets); and Mercer LLC (actuarial firm engaged by DHCF). This lawsuit was dismissed on September 6, 2017, by Judge Richard Leon for lack of subject matter jurisdiction. Citing the *Rooker-Feldman* doctrine, the Court concluded “that it is barred from reviewing the claims asserted by DCHSI” in what is “the functional equivalent of an appeal from a state court.” DCHSI filed an appeal of Judge Leon’s decision to the U.S. Court of Appeals for the District of Columbia Circuit on October 5, 2017. The appeal was argued before a panel of the D.C. Circuit on November 16, 2018, and on May 28, 2019, Judge Merrick Garland, writing for the panel, vacated Judge Leon’s ruling and remanded the matter to the District Court for further proceedings. Although the Circuit Court’s mandate issued on July 8,

2019, there has been no action in the District Court since the case was remanded.

- (iii) Motion to Intervene. On December 19, 2016, Judge Judith Bartnoff entered an order denying DCHSI's Motion to Intervene in this case after a hearing on December 15, 2016, at which the Court heard from counsel for both DCHSI and Chartered. Judge Bartnoff found the proposed intervention was untimely and that there was no basis for DCHSI to claim that its interests are not adequately represented by existing parties. In response, DCHSI filed a motion for this Court's reconsideration, a notice of appeal of the denial of intervention with the D.C. Court of Appeals, and a motion to stay in this Court pending appeal of the denial. Chartered filed responses in opposition to the motions in this Court. This Court denied the motion to stay on June 27, 2017. The Court of Appeals case was briefed and argued, and on August 21, 2018, the Court of Appeals entered a *per curiam* order affirming Judge Bartnoff's decision.
- (b) **Tax Matters.** The IRS has granted Chartered's requests for abatement of certain penalties and interest previously assessed for Chartered's late-filed 2011 and 2012 tax returns. After the IRS abatements, Chartered has Alternative Minimum Tax ("AMT") liabilities, penalties and interest totaling approximately \$375,000 relating to tax years 2011-2012. Chartered believes it has no tax liability for the tax years 2013-2018 on which returns have been filed with the IRS. Chartered's filings with the IRS have noted the priority order of asset distribution set by the Court in the Reorganization Plan. To date, no payment has been made to the IRS toward the tax obligations (Class 3 priority)

as there currently are not sufficient assets to pay 100% of Class 2 healthcare provider claims. Chartered has filed requests with the IRS to shorten the statutory period for audit or other exception to Chartered's returns. The IRS has granted those requests, and applicable statutory periods for audit exceptions have already run on tax returns for 2011-2016. Chartered remains a member of DCHSI's consolidated tax group and DCHSI has not filed tax returns since 2010. Therefore, federal tax matters relating to DCHSI and Chartered as a member of DCHSI's consolidated tax group have yet to be fully or finally resolved.

2. **Creditor Claims.**

(a) **Proofs of Claim Process.** The status of the proofs of claim process remains unchanged since the last status report. All claims except the three cited previously have been determined with no outstanding appeals.

3. **Rehabilitation Expenses/Assets/Status.** Chartered filed its 2018 Annual financial statement on March 1, 2019. As of June 30, 2019, the estate had \$5,035,864 in assets on hand. This Court has recently approved the Special Deputy's submissions for fees and expenses for work performed in this proceeding by the Special Deputy, counsel and consultants from February through May 2019 in the total amount of \$21,724.74.

Respectfully submitted,

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