

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 15

Next Event: March 30, 2021, 10:00 a.m.

Status Hearing

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION BY THE REHABILITATOR
FOR APPROVAL OF SETTLEMENT AGREEMENT WITH
JEFFREY THOMPSON AND D.C. HEALTHCARE SYSTEMS, INC.

D.C. Chartered Health Plan, Inc., acting through its Rehabilitator, Special Deputy to the Rehabilitator and their attorneys (“Chartered”), and pursuant to SCR-Civil Rule 12-(I), files this Memorandum of Points and Authorities in support of its Motion for Approval of a Settlement Agreement with Jeffrey Thompson and D.C. Healthcare Systems, Inc., and respectfully states as follows.

INTRODUCTION/BACKGROUND

This matter is a rehabilitation proceeding involving Chartered, which was a Medicaid provider that was on the verge of financial collapse and defaulting on its obligations to D.C.’s poorest.¹ The proceeding was initiated by the District of Columbia, acting through the Commissioner of the Department of Insurance, Securities and Banking (“DISB”), the regulator with authority over Chartered. DISB filed its petition for an expedited order of rehabilitation on

¹ As used in this Memorandum and commonly understood in the industry, “receivership” encompasses both rehabilitation and liquidation. Rehabilitation is a type of receivership, and rehabilitators sometimes are referred to as receivers (as are liquidators). D.C. Code §§ 31-1301, *et seq.*, therefore, is a receivership statute because it addresses both rehabilitation and liquidation.

October 19, 2012, and that petition was granted by consent on the same date. *See* Emergency Consent Order of Rehabilitation entered October 19, 2012 (the “Rehabilitation Order”).

Since entry of the Rehabilitation Order, the Commissioner and her predecessors² have been acting as Rehabilitator of Chartered with active assistance of Daniel L. Watkins, their Special Deputy, and undersigned counsel. Among other matters, the Rehabilitator has been seeking to assemble assets of the Chartered estate so they can be distributed in payment of the claims allowed against the estate. Chartered and the Rehabilitator have considered and addressed almost all claims asserted by creditors of Chartered, including claims filed by D.C. Healthcare Systems, Inc. (“DCHSI”), the sole shareholder of Chartered, and DCHSI’s sole shareholder, Jeffrey E. Thompson (“Thompson”). *See* Special Deputy to the Rehabilitator’s 23rd Status Report (September 17, 2019).

On May 30, 2013, Chartered filed a Complaint against DCHSI and Thompson in a case captioned *D.C. Chartered Health Plan, Inc. v. Thompson, et al.*, Case No. 2013 CA 003752 B (the “Thompson Litigation”). The object of the Thompson Litigation was to recover in excess of \$12,000,000.00 from Thompson and DCHSI, based on various theories. The parties have actively litigated the claims and defenses in that case for over seven years.

Separately, DCHSI filed a lawsuit in the United States District Court for the District of Columbia captioned *D.C. Healthcare Systems, Inc. v. District of Columbia, et al.*, Civil Case No. 16-1644 (the “District Court Action”), in which it seeks damages against, among others, the Commissioner and her Special Deputy (both individually and in their official capacities) based on claims that the District of Columbia and others unlawfully deprived DCHSI of its interest in

² The Commissioner of DISB is currently Karima M. Woods. This proceeding was initiated by William P. White, who was then the Commissioner of DISB, and who was succeeded by Chester McPherson, as Acting Commissioner, who was in turn succeeded by Stephen Taylor. Commissioner Woods was appointed Acting Commissioner on January 20, 2020, and confirmed as Commissioner on July 28, 2020. *See* <https://disb.dc.gov/biography/karima-m-woods>. The Rehabilitation Order appointed former Commissioner White and his successors in office as Rehabilitator.

Chartered. With this Court's approval Chartered and its estate have been providing a defense to the Commissioner and her Special Deputy and have been paying for this defense from estate assets. The District Court Action remains pending following remand on appeal to the United States Court of Appeals for the District of Columbia Circuit.

Approximately two years ago Chartered, Thompson and DCHSI began confidential discussions regarding a possible settlement of their disputes in a manner that could help to resolve the current rehabilitation proceeding as well as the District Court Action. The parties have now finalized agreement on a settlement in the form attached here to as **Exhibit 1** (the "Settlement Agreement").³ Chartered now seeks the Court's approval of the Settlement Agreement.

ARGUMENT

This Court should approve the Settlement Agreement in the form signed by the parties because it is the most efficient means of resolving the long-running disputes between them and will bring about a fair and successful termination of this rehabilitation proceeding. Apart from the prosecution of the Thompson Litigation and defense of the District Court Action, the Chartered rehabilitation proceeding is essentially completed. Chartered has paid \$56,563,378 on account of provider claims totaling \$67,035,641 and continues to hold cash assets of approximately \$4,828,525 as of April 30, 2020. Were it not for the Thompson Litigation and the District Court Action, Chartered would be in a position to address its federal income tax issues and distribute the bulk of its remaining assets, bringing the total amount distributed to providers and other similarly-ranked creditors to approximately \$60,000,000, or a payout of approximately 90% of the allowed claims.

³ Exhibit 1 does not include Attachment A, which the parties have agreed to keep confidential and to submit to this Court *in camera* to the extent the Court wants to review it.

In this regard, the parties anticipate that approving the proposed settlement will not only end the Thompson Litigation and the District Court Action, including certain attendant expenses incurred by the Chartered estate, but will result in the waiver and withdrawal of DCHSI's and Thompson's claims against the estate in this rehabilitation, which seek indemnification for Thompson's attorneys' fees and expenses and for the amount of any judgment that might be entered against him in the Thompson Litigation.⁴ Resolving these claims will enable the Rehabilitator to complete the distribution of payments to Chartered's providers and other similarly-ranked creditors in the manner approved by this Court in its *Order Approving the Asset Purchase Agreement, Plan of Reorganization and Related Matters* entered March 1, 2013.

To this end, the Rehabilitator recommends that the Court approve the Settlement Agreement because, based on the facts of which she is aware and the sworn confidential financial statement provided by Thompson,⁵ the cost of pursuing the Thompson Litigation would exceed the probable recovery to the Chartered estate. Further, given the mutual releases and waivers of claims by Thompson and DCHSI that are a part of the Settlement Agreement, as well as their commitment to dismiss the District Court Action, with prejudice, upon receipt of a release of claims from the District of Columbia, the Rehabilitator submits that a negotiated settlement with Thompson and DCHSI that brings an end to the Thompson Litigation, the District Court Action, and ultimately, this rehabilitation proceeding, is in the best interests of the Chartered estate and its creditors.

The Commissioner, as Rehabilitator, has the power to prosecute civil actions like the Thompson Litigation, to defend actions like the District Court Action, and to resolve such

⁴ While Chartered and its Rehabilitator have never conceded Thompson's indemnification claim, without a settlement this claim could open a new front of litigation with Thompson adding additional expense to the Chartered estate.

⁵ The Thompson Financial Statement is a highly confidential document which the Rehabilitator has agreed to keep confidential and to not share with anyone other than a limited number of persons, including this Court, *in camera*, to the extent the Court wants to review a copy.

actions through negotiated compromise. *See* D.C. Code § 31-1312; *see also* this Court’s Rehabilitation Order. Indeed, since the Commissioner acting as Rehabilitator is, in effect, a *receiver*, *see* n. 1, *supra*, the Commissioner has all the powers of a receiver under traditional receivership practice. The Rehabilitator has previously set forth the standards for settlement approval for somewhat analogous class action settlements. In brief, courts should “assess whether the proposed settlement is ‘fair, reasonable, and adequate’ in relation to the strength of the plaintiffs’ case and in comparison with the likely recovery that plaintiffs would have received if the case had gone to trial.” *Ball v. AMC Entm’t, Inc.*, 315 F. Supp.2d 120, 125 (D.D.C. 2004). In so doing, courts should “consider the facts and circumstances of each case and exercise their discretion to determine whether approval is warranted, while recognizing that the discretion ‘to reject a settlement is restrained by the principle of preference that encourages settlements.’” *Id.* (quoting *Pigford v. Glickman*, 185 F.R.D. 82, 98, 103 (D.D.C. 1999)). Courts need *not* determine “whether a better settlement is conceivable.” *Id.* at 129 (quoting *In re Vitamins Antitrust Litig.*, No. 99-197, 2000 U.S. Dist. LEXIS 8931, 2000 WL 1737867 at *2 (D.D.C. Mar. 31, 2000)). It is because the art and science of evaluating a settlement is by its very nature imprecise that a trial court’s ruling on the adequacy of a proposed compromise is given great deference. *See Thomas v. Albright*, 139 F.3d 227, 231-33 (D.C. Cir.), *cert. denied*, 525 U.S. 1016, 1033 (1998).

This Court has recognized and applied these standards when it has approved (in some cases, over DCHSI’s objections) various settlements entered into by the Rehabilitator with, for instance, Cardinal Bank (*see* August 22, 2013, Order Granting Motion for Order Approving Settlement Between D.C. Chartered Health Plan, Inc. and Cardinal Bank), the District of Columbia (*see* August 22, 2013, Order Granting motion for Order Approving Settlement Between D.C. Chartered Health Plan, Inc. and the District of Columbia), and Washington Hospital Center Corporation (d/b/a MedStar Washington Hospital Center) and MedStar

Georgetown Medical Center, Inc. (*see* October 17, 2013 Order Approving Medstar Settlement). For the same reasons this Court has approved prior settlements in this case it should approve the Settlement Agreement proposed to the Court. In short, approving the settlement will enable the Rehabilitator to complete the administration of the Chartered estate, to address Chartered's federal income tax issues, to make a final distribution to Chartered's providers, and to dissolve Chartered and terminate this rehabilitation proceeding by mid-2021.⁶

CONCLUSION

Because the terms and provisions of the Settlement Agreement are fair and reflect the product of extensive negotiations between Chartered and the Rehabilitator, on the one side, and Thompson and DCHSI, on the other, and because in the sound exercise of the Rehabilitator's judgment the proposed settlement is in the best interests of the Chartered estate and of its creditors, Chartered respectfully requests that the Court approve the Settlement Agreement in the form appended hereto and authorize the Rehabilitator, acting on behalf of Chartered, to perform under and consummate the settlement provided thereby.

Date: November 24, 2020

Respectfully submitted,

/s/ Richard E. Hagerty

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⁶ To be clear, although the Settlement Agreement resolves the pending claims Thompson and DCHSI have filed with the Chartered estate, the outcome will not result in a payment or distribution of estate assets for purposes of the Rehabilitator's obligation to settle the claims filed with the estate in a manner inconsistent with the rehabilitation plan and order of priorities previously approved by the Court. The Settlement Agreement simply resolves litigation instituted by the estate as a part of the Rehabilitator's efforts to marshal estate assets based on a determination that the expense of continuing the Thompson Litigation, and if successful, pursuing collection efforts, is not worth the benefit of the minimal assets that might be realized. Should the Court approve the Settlement Agreement, the Rehabilitator will file for approval a final recommendation to distribute the remaining assets.

/s/ David K. Herzog
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