

**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. 2012-8227

Judge Melvin R. Wright

Next Event: Status Hearing

August 21, 2013 at 9:30 a.m.

**PARTY-IN-INTEREST D.C. HEALTHCARE SYSTEMS, INC.’S OPPOSITION TO  
CONSENT MOTION FOR EXPEDITED HEARING TO SET BRIEFING SCHEDULE**

The Rehabilitator of D.C. Chartered Health Plan, Inc. (“Chartered”) has filed a disingenuously titled “Consent Motion” seeking an expedited hearing to set a briefing schedule concerning his motion to approve a proposed settlement agreement between Chartered and the District of Columbia. That settlement agreement would resolve Chartered’s claims for underpayments due from the District under the DHCF Contract that Chartered was party to with DHCF until April 30, 2013. As an initial matter, D.C. Healthcare Systems, Inc. (“DCHSI”) informed the Rehabilitator’s counsel that it does not consent to the proposed effort to insulate the proposed settlement from adequate review by precluding discovery. Accordingly, the motion is hardly by “consent.” Indeed, the only party that consents is the District, which is hardly surprising since, as described below, the only party to the proposed settlement is the District.

At the outset, the Rehabilitator’s “Consent Motion” and proposed settlement must be viewed with the understanding that the proposed settlement agreement is *not* the result of arms-length negotiations, contrary to the Rehabilitator’s contention. Rather, it is the product of a negotiation the District *had with itself* to determine how much the District would pay to Chartered and the breadth of the respective releases Chartered and the District would give to one another. This is illustrated most clearly by the fact that all signatories to the settlement

agreement are officers or employees of the District of Columbia: the Commissioner of the Department of Insurance, Securities and Banking (“DISB”); the Director of the Department of Health Care Finance (“DHCF”); and lawyers for the Attorney General of the District of Columbia. Moreover, these non-arms-length negotiations involve what the Rehabilitator has acknowledged is Chartered’s “most significant asset.” Memorandum in Support of the Consent Motion (July 25, 2013) (“Memorandum”) at 2. As such, the normal rule of deference that the Rehabilitator relies on are inapplicable here, and searching scrutiny on a full record is required to determine whether the proposed settlement is in the best interests of Chartered, its creditors and its shareholder. *See* First Status Report at 2, ¶2 (Jan. 11, 2013) (admitting that one of the Rehabilitator’s responsibilities is to “preserve any residual value for Chartered’s shareholder”).

The proposed settlement has two basic aspects. First, it resolves Chartered’s three pending claims against the District, in the amount of more than \$62 million, for underpayments due under the DHCF Contract. The Rehabilitator refers to these in his Memorandum in Support of the Consent Motion as the “Preamble Claims,” and recommends that all “Preamble Claims be settled for \$48 million.” Memorandum at 5.

Second, in a dramatic departure from normal practice in resolving underpayment claims under District contracts, the proposed agreement releases not only the Preamble Claims, but also all other claims Chartered “could have asserted against the District ... relating to both the Medicaid and Alliance programs.” Proposed Settlement at ¶ 8. The Rehabilitator admits in the proposed settlement agreement that these additional unasserted claims are valuable (*see* Proposed Settlement Recital K), and in the Memorandum the Rehabilitator states, without support, that the proposed settlement agreement “factors potential other claims into settlement consideration.” Memorandum at 7. The Rehabilitator relies on this and other similarly unsupported conclusory assertions to support his proposed settlement. There is no *evidence* of the value accorded by the Rehabilitator to such other claims, and it appears that the Rehabilitator failed to obtain any additional value for such claims, yet those other claims are critical to paying Chartered’s creditors and to DCHSI’s interest in Chartered’s residuary.

The proposed settlement purports to resolve complicated claims, both asserted and unasserted. Any meaningful evaluation of whether the proposed compromise is in the best interests of Chartered, and those with a financial interest in Chartered, requires a reasonable opportunity to examine the value of the asserted claims and any potential defenses, and the value of the unasserted claims and any potential defenses. It also requires an evaluation of the non-parallel and grossly unequal and prejudicial releases that would be given in the proposed agreement, and other departures from the normal payment process under the DHCF Contract. This requires facts that DCHSI and the Court do not have access to unless DCHSI is allowed to take discovery.

The Rehabilitator's claim of urgency is unavailing. The Rehabilitator claims in its Memorandum that time is of the essence in settling Chartered's claims against the district because (1) the funding authority for this settlement lapses at the end of the District's fiscal year on September 30, 2013 and (2) that time is of the essence from the view of the providers with claims that have not been paid. As to the first point, if this year's District Litigation Fund is not preserved, next year's fund will be available. As to the second point, while payment sooner rather than later is almost assuredly better from a provider's standpoint, the delay is a result of the District's own failure to pay timely and in the proper amount, and expediting a partial payment, conditioned on a overly-broad, non-parallel and prejudicial release, cannot justify an effort to avoid a reasoned evaluation of the proposed settlement agreement to determine whether the best interests of Chartered require that more should be paid, or less should be released.

Furthermore, there is no sound good faith basis for the Rehabilitator even to have entered into a settlement that arguably would fix the extent of the District's liability to Chartered under the DHCF Contract when the bar date for claims will not pass until ten days *after* the Rehabilitator would have this Court approve the proposed settlement. That is, even though the District's liability to Chartered is driven in large measure by the extent of services providers performed, Chartered will not know the full extent of asserted provider claims until after the August 31, 2013 bar date – which this Court entered at the Rehabilitator's request. Further, the

District's contractual liability to Chartered is completely dependent on how disputed provider claims against Chartered ultimately are resolved and the effect of these claims on the District's federally-mandated obligation to pay actuarially-sound rates to Chartered throughout the periods of service. As such, it was inappropriate – and contrary to Chartered's best interests – for the Rehabilitator to attempt to fix the District's liability to Chartered while Chartered's potential claims against the District remain unfixed and uncertain.

The Rehabilitator has put the proverbial cart before the horse by seeking to resolve all claims against the District, asserted and unasserted, arising from the DHCF Contract, before (1) the claims bar date has passed and (2) the extent of Chartered's obligations to providers arising from the Contract, and thus of the District's obligations to Chartered, are determined.

Accordingly, DCHSI submits that a reasonable period for discovery is necessary and appropriate, and that a full merits hearing on August 21, 2013 is inappropriate. DCHSI respectfully proposes that the Court accept preliminary briefing along the schedule the Rehabilitator proposes. DCHSI intends in its August 9, 2013 brief to detail certain problems with the proposed settlement agreement that are apparent from its terms, but also will submit an expert affidavit detailing the information that DCHSI and the Court would require to fairly examine and evaluate the complicated give-aways contained in the proposed agreement. After this preliminary briefing, DCHSI would be entitled to focused discovery and the Court would hold a further status conference in mid-November 2013 to determine the final steps to an evidentiary hearing on the merits.

### **CONCLUSION**

DCHSI respectfully requests that the Court enter a scheduling order that (1) permits initial briefing to define and narrow the issues consistent with the schedule proposed by the Rehabilitator; (2) permits discovery thereafter; and (3) sets a status conference for mid-November 2013 to determine the final steps and set an evidentiary hearing on the merits.

Dated: July 26, 2013

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of July, 2013, a copy of the foregoing was filed and

served by email upon:

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/s/  
Jennifer Sincavage

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
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DISTRICT OF COLUMBIA,  
Department of Insurance, Securities and  
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Civil Action No.: 2012-8227 2  
Judge Melvin R. Wright

v.

DC CHARTERED HEALTH PLAN, INC.,

Respondent.

**SCHEDULING ORDER CONCERNING CONSIDERATION OF  
PROPOSED SETTLEMENT AGREEMENT BETWEEN D.C. CHARTERED  
HEALTH PLAN, INC. AND THE DISTRICT OF COLUMBIA**

Before this Court is the Rehabilitator's Consent Motion for Expedited Hearing to Set a Briefing Schedule and for Order Approving the Settlement Agreement Between D.C. Chartered Health Plan, Inc. and the District of Columbia and Party-in-Interest D.C. Healthcare Systems, Inc.'s ("DCHSI") Opposition thereto. The Court having considered the arguments of the parties hereby orders that:

1. any preliminary brief opposing the approval of the proposed settlement agreement shall be filed on or before August 9, 2013;
2. any preliminary reply brief in support of approval of the proposed settlement agreement shall be filed on or before August 16, 2013;
3. discovery concerning the proposed settlement agreement shall commence on August 17, 2013; and



4. a status conference shall be held on November \_\_\_\_, 2013 to set an evidentiary hearing on the merits and set a schedule as to any other matters that must be addressed in advance of such evidentiary hearing.

SO ORDERED.

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Judge Melvin R. Wright

Entered on: \_\_\_\_\_

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