

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO

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1437 Bannock Street
Denver, CO 80202

PETITIONER

MICHAEL CONWAY, in his official capacity as the
Commissioner of Insurance of the State of
Colorado,

v.

RESPONDENT

COLORADO HEALTH CO-OP, a Colorado
Domestic Insurance Company.

^ COURT USE ONLY ^

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Case No. 2015CV33680

**PETITIONER'S MOTION FOR COURT APPROVAL FOR FIFTH
DISBURSEMENT OF CO-OP ASSETS PURSUANT TO § 10-3-533, C.R.S.**

Petitioner Michael Conway, Commissioner of Insurance for the State of Colorado ("Commissioner"), pursuant to § 10-3-533, C.R.S., and this Court's Liquidation Order, hereby moves this Court to approve a Fifth

Disbursement of Colorado Health Insurance Cooperative, Inc. (“CO-OP”) assets to the Life and Health Insurance Protection Association, and as grounds therefor, states as follows:

A. Procedural Background of Colorado Health CO-OP Liquidation Action

1. On January 4, 2016, this Court appointed the Commissioner, at the time Marguerite Salazar, to serve as Liquidator of the CO-OP pursuant to § 10-3-517(1), C.R.S.

2. On September 4, 2018, the Court approved the substitution of Insurance Commissioner Michael Conway as the Liquidator of the CO-OP.

3. The Liquidator was granted the authority to employ Joseph B. Holloway of INS Consultants, Inc., acting as Receivership Supervisor, to assist in the Liquidation with all the powers of the Liquidator.

4. In addition to other enumerated powers, the Court’s Order granted the Liquidator the authority to assemble and take possession of all the assets of the CO-OP, including any funds or securities held by the Division of Insurance pursuant to § 10-3-201, C.R.S., and to administer them under the general supervision of this Court.

5. Section 10-3-520(m), C.R.S., grants the Liquidator the authority to

enter such contracts as are necessary to carry out the Liquidation Order.

6. The CO-OP is a member insurer of the Life and Health Insurance Protection Association (“Association”).

7. The Association provides protection against failure of member insurers to perform their contractual obligations due to insolvency. § 10-20-102(1), C.R.S.

8. Member insurers of the Association are subject to assessments to provide funds to carry out the purpose of Title 10, Article 20. § 10-20-102(2), C.R.S.

9. Member insurers are assessed for the purpose of providing the funds necessary to carry out the duties of the Association with regard to an impaired or insolvent insurer. § 10-20-109, C.R.S.

10. To date, member insurers have been assessed \$110,740,686.00, to cover the liabilities of the CO-OP.

11. Pursuant to the State’s priority scheme detailed in C.R.S. § 10-3-541, the Association is a class 2 creditor.

12. Each member insurer is required to recoup the assessments it pays through a surcharge on health insurance policy premiums.

§ 10-20-113, C.R.S.

13. On December 30, 2015, Joseph B. Holloway, as Liquidator¹, and Lori Gadelmann, Chairman of the Association, entered into an Early Access Agreement (“Agreement”). See Early Access Agreement attached hereto as **Exhibit 1**.

14. The Agreement allows the Association to file proof of claims with the Liquidator for CO-OP assets, to the extent assets are available.

15. Pursuant to the Agreement, the Liquidator will review the proofs of claim provided by the Association and calculate and pay early access distributions in accordance with § 10-5-533, C.R.S.

16. On May 16, 2016 this Court approved the Liquidator’s request to disburse up to \$10,000,000.00 in cash assets to the Association in accordance with the Agreement. See Order Granting Petitioner’s Motion for Court Approval to Disburse CO-OP Assets attached hereto as **Exhibit 2**.

17. On December 23, 2016, this Court approved the Liquidator’s request to disburse up to an additional \$3,000,000.00 in cash assets to the Association in accordance with the Agreement. See Order Granting

¹ The term “Liquidator” is used herein to reference the Commissioner and Joseph B. Holloway.

Petitioner's Motion for Court Approval for Second Disbursement of CO-OP Assets attached hereto as **Exhibit 3**.

18. On October 31, 2017, this Court approved the Liquidator's request to disburse up to an additional \$8,500,000.00 in cash assets to the Association in accordance with the Agreement. *See* Order Granting Petitioner's Motion for Court Approval for Third Disbursement of CO-OP Assets attached hereto as **Exhibit 4**.

19. On December 11, 2019, this Court approved the Liquidator's request to disburse up to an additional \$20,000,000 in cash assets to the Association in accordance with the Agreement. *See* Order Granting Petitioner's Motion for Court Approval for Fourth Disbursement CO-OP Assets attached hereto as **Exhibit 5**.

20. As of September 30, 2021, the CO-OP held \$27,478,300 in assets, including \$24,489,800.00 recoverable from reinsurers. *See* CO-OP Sept. 30, 2021 Statement of Assets and Liabilities attached hereto as **Exhibit 6**.

21. The \$24,489,800.00 in assets deemed recoverable from reinsurers by the CO-OP as of September 30, 2021, reflects the booked value of the \$24,489,799 judgment awarded to the CO-OP in the Federal Claims Litigation, discussed in more depth below.

B. Federal Claims Litigation

22. The Commissioner, acting as Liquidator of the CO-OP, has been forced to take significant steps to protect policy holders, creditors, and the public as a result of the financial shortfall resulting from the decision by the US Department of Health and Human Services to withhold payments owed to the CO-OP under the Patient Protection and Affordable Care Act.

23. Pursuant to C.R.S. § 10-3- 520, the Liquidator is granted authority to “institute, prosecute and defend, compromise, adjust, intervene in or become a party to such suits, actions, proceedings in law, or in equity, in state or federal courts or before any administrative agency as may in the Commissioner’s opinion be necessary for the proper protection, maintenance, preservation or liquidation of the assets of the CO-OP.”

24. Additionally, the Liquidator is granted all the powers and authority specified in C.R.S. § 10-3-520, including, the authority to collect all debts and moneys due to the CO-OP, and “may do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as the liquidator deems best.” C.R.S. § 10-3- 520(1)(h)(II).

25. In October 2019, Commissioner Conway, in his role as Liquidator, brought an action against the United States in Federal Claims Court for payments

from the U.S. Department of Health and Human Services' Center for Medicare and Medicaid Services which the Liquidator asserted were owed to the CO-OP under the Patient Protection and Affordable Care Act. (Federal Claims Litigation.)

26. Through the Federal Claims Litigation, Commissioner Conway, in his capacity as Liquidator, was ultimately awarded a judgment against the United States in the amount of \$24,489,799. *See*, United States Court of Federal Claims case No. 1:18-cv-01623-RAH.

27. In May 2021, a Federal Court of Appeals affirmed the judgment awarded to Commissioner Conway, as Liquidator, against the United States.

28. On December 9, 2021, the United States Treasury wired funds to counsel representing the Liquidator in the amount of \$24,489,714.31.

29. After payment of agreed-upon legal fees and costs, Liquidator was ultimately wired \$22,040,819.10 in funds related to the Federal Claims Litigation.

30. Petitioner notes that the \$24,489,714.31 paid by the United States to counsel for the Liquidator is approximately \$81.00 less than the final judgment received in favor of the Liquidator, but Liquidator understands that this type of minor variation is not uncommon due to required IRS tax adjustments.

31. The approximately \$81 shortfall was ultimately deducted from the amount paid by the Liquidator to trial counsel for the Liquidator, resulting in the

final \$22,040,819.10 in funds received by Liquidator in relation to the Federal Claims Litigation.

32. The Liquidator has now reached an agreement with the Association regarding the disbursement of the funds received through the Federal Claims Litigation.

33. Pursuant to §10-3-533, C.R.S., The Liquidator now requests that this Court approve an additional \$20,000,000.00 in CO-OP cash assets for early disbursement to the Association, which may serve to limit future assessments levied upon the member insurers and ultimately the public.

34. Pursuant to section 3.1 of the Agreement, should the Liquidator require any of the assets disbursed in order to fulfill any obligation of the CO-OP to a secured creditor or claims pursuant to the priorities as established under C.R.S. §§ 10-3-533 and 10-3-541, the Association will return them to the Liquidator.

WHEREFORE, pursuant to §10-3-533, C.R.S., the Liquidator respectfully requests that this Court enter an order granting the Liquidator's request to approve an additional \$20,000,000.00 in early disbursement of CO-OP assets, bringing the total approved early disbursement up to \$61,500,000.00.

DATED this 24th day of February, 2022.

PHILLIP J. WEISER
Attorney General

/s/ Karl D. Kaesemeyer

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CERTIFICATE OF SERVICE

This is to certify that I have duly filed the within **PETITIONER'S MOTION FOR COURT APPROVAL FOR FIFTH DISBURSEMENT OF CO-OP ASSETS PURSUANT TO § 10-3-533, C.R.S.**, via the Colorado Court E-Filing System, this 24th day of February, 2022.

/s/ Kathy Recchiuti _____
Office of the Colorado Attorney General

This is to certify that I have duly served the within **PETITIONER'S MOTION FOR COURT APPROVAL FOR FIFTH DISBURSEMENT OF CO-OP ASSETS PURSUANT TO § 10-3-533, C.R.S.**, upon all parties via First-Class US Mail, this 24th day of February, 2022 to the following recipients:

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/s/ Jason Mashburn _____
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