

CAUSE NO. D-1-GN-23-001549

THE TEXAS DEPARTMENT OF INSURANCE, <i>Plaintiff,</i>	§ § § § § § § § §	IN THE DISTRICT COURT OF
v.		TRAVIS COUNTY, TEXAS
FRIDAY HEALTH INSURANCE COMPANY, INC. <i>Defendant.</i>		345th JUDICIAL DISTRICT

APPLICATION TO APPROVE FIRST EARLY ACCESS DISTRIBUTION

TO THE HONORABLE JUDGE OF SAID COURT:

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Friday Health Insurance Company, Inc. (the “SDR” and “FHIC” respectively), files this Application to Approve First Early Access Distribution (the “Application”).

I. INTRODUCTION

1.1 The SDR files this Application for authority to make a first Early Access Distribution to the Texas Life and Health Insurance Guaranty Association (“TLHIGA”) in the amount of \$25,000,000. At present, the SDR estimates that the current unencumbered cash assets of the FHIC estate will exceed the amount of all Class 1 and Class 2 claims. Accordingly, providing an early access payment to TLHIGA in the requested amount is appropriate. Moreover, pursuant to relevant law, if the SDR’s estimates are incorrect, TLHIGA will repay to the FHIC estate any sums necessary to ensure that TLHIGA does not receive a preference for its claims.

II. AUTHORITY

2.1 The SDR is authorized to file this Application pursuant to TEX. INS. CODE § 443.303, which provides for early access distribution to insurance guaranty associations with the approval of this Court.

2.2 The subject matter of this Application is referred to the Special Master appointed in this proceeding in accordance with Section III of the *Agreed Order of Reference to Master* entered on March 23, 2023.

III. BACKGROUND

3.1 On March 23, 2023, the Court entered the *Agreed Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay* (the “Permanent Injunction”). The Permanent Injunction appointed the Texas Commissioner of Insurance as Liquidator of FHIC. On that same date, the Texas Commissioner of Insurance appointed CANTILO & BENNETT, L.L.P. as Special Deputy Receiver of FHIC.

3.2 The SDR has determined that the estate has distributable assets and now seeks Receivership Court authority to make a first Early Access Distribution to TLHIGA so that it may use that distribution to pay any Class 1 expenses incurred by TLHIGA as well as Class 2 payments of policyholder benefits payable by TLHIGA.

IV. STATUTORY REQUIREMENTS

4.1 **Approval of the First Early Access Distribution.** Pursuant to TEX. INS. CODE § 443.303, the SDR shall apply to the Court for approval to make early access payments to a guaranty association having obligations in connection with the liquidation on at least an annual basis if distributable assets are available. However, distributions are not limited to a set timetable and the SDR may, at its sole and absolute discretion, seek a distribution at any time that it determines that an estate has distributable assets. Early access payments are not limited to the claims and expenses paid to date by a guaranty association; however, the SDR may not make a distribution to a guaranty association in excess of all anticipated claims of the guaranty association. Amounts advanced to a

guaranty association under TEX. INS. CODE § 443.303 are treated as advances against distributions to be made under TEX. INS. CODE § 443.302.

4.2 TEX. INS. CODE § 443.303(c) provides:

Within 120 days after the entry of an order of liquidation by the receivership court, and at least annually after the entry of the order, the liquidator shall apply to the receivership court for approval to make early access payments out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or shall report that there are no distributable assets at that time based on financial reporting as required in Section 443.016. . . .

TEX. INS. CODE § 443.303(f) directs that an application for early access payments shall, based on the best information available to the SDR at the time, provide the following:

- (1) the amount reserved for the entire expenses of the liquidation through and after its closure and for distributions on claims, to the extent necessary and appropriate;
- (2) the computation of distributable assets and the amount and method of equitable allocation of early access payments to each of the guaranty associations; and
- (3) the most recent financial information filed with the National Association of Insurance Commissioners.

V. DISTRIBUTABLE ASSETS

5.1 TEX. INS. CODE § 443.303(a) defines “distributable assets” as all general assets of the receivership estate, less the necessary and appropriate amounts reserved for expenses of liquidation through and after closure and distributions on claims other than those of the guaranty associations that fall within the priority classes of claims established in Section 443.301(b). As of August 31, 2023, the unrestricted *cash* assets of the receivership estate are approximately \$186,368,160, with an additional approximately \$1,941,469 in unrestricted short-term investments. After adjustment for expenses of liquidation, and establishing a prudent reserve, the SDR’s preliminary estimate for liquid “distributable assets” for the First Early Access Distribution

is \$25,000,000. That will leave approximately \$163,309,629¹ as a prudent reserve for expenses of the administration of the estate and any other Class 1 and/or Class 2 claims that are not payable by TLHIGA, as well as for TLHIGA payments which might exceed the \$25 million provided in the First Early Access Distribution.

VI. GUARANTY ASSOCIATION CLAIMS

6.1 From the outset of the receivership, the SDR and TLHIGA have worked to gather data regarding the remaining outstanding claims owed by the FHIC estate pursuant to its policies. FHIC ceased issuing policies as of December 31, 2022, and coverage under virtually all policies that it issued expired on that date. Additionally, the SDR and TLHIGA have worked to quickly establish claims handling processes and procedures and to estimate the costs associated with TLHIGA's claims handling that would be entitled to Class 1 treatment. As part of this effort, the SDR and TLHIGA have sought to estimate both the amount that will be paid by TLHIGA, as well as the amount of any "over-the-cap" claims that might be owed by the FHIC estate in addition to the amount paid by TLHIGA, and subject to Class 2 treatment. Pursuant to that data gathering and estimation process, the SDR has determined that a First Early Access Distribution in the amount of \$25 million will fully fund the association's estimated Class 1 claim and make a substantial distribution on Class 2 covered claim payments by TLHIGA.

6.2 The estimate of the amount needed by TLHIGA to pay its Class 1 and Class 2 liabilities in connection with the FHIC estate (as well as the SDR's estimates of its Class 1 costs and the amount of other Class 2 claims not covered by TLHIGA) are subject to supplementation as additional expenses and claims payments are incurred. The claims and reserve numbers have not been verified or audited. They are used exclusively for making the calculations necessary for

¹ This does not include additional assets of the estate relating to reinsurance and other claims of the estate.

this Application. Neither this Application, nor any other early access application, constitutes an adjudication of the POCs filed or to be filed by TLHIGA.

6.3 At this time, the SDR seeks to make an Early Access Distribution based on the estimates described above for Class 1 expenses and Class 2 claims payments for TLHIGA. The SDR estimates that even after payment of the proposed First Early Access Distribution, the FHIC estate will retain sufficient unrestricted assets to pay all Class 1 and 2 claims in full.

VII. PROPOSED DISTRIBUTION

7.1 The SDR proposes to distribute \$25,000,000 from the receivership estate as the first Early Access Distribution to TLHIGA. The SDR will make the distribution within thirty (30) business days after the date the Order is entered by the Receivership Court, unless a motion for new trial or an appeal is filed, or an order staying the distribution is entered and not yet expired.

VIII. NOTICE

8.1 The SDR has served this Application to all known parties at interest as that term is defined in TEX. INS. CODE § 443.303(a)(17) as well as persons the SDR has determined need to be noticed under TEX. INS. CODE § 443.007(d) and all individuals and entities identified by the SDR in the Certificate of Service, including TLHIGA. The SDR served this Application by e-mail and, as noted, by mail or overnight delivery to certain state and federal agencies. Further, TLHIGA has agreed to waive the thirty (30) days' actual notice of the filing of the application required by TEX. INS. CODE § 443.303(e).

8.2 The Application is set for submission before the Special Master on October 30, 2023.

IX. OFFER OF PROOF AND VERIFICATION

9.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) of Susan E. Salch, designated representative of CANTILO & BENNETT, L.L.P., in its capacity as Special Deputy Receiver of Friday Health Insurance Company, Inc.

X. NOTICE OF ELECTRONIC SERVICE REQUIREMENT

10.1 All pleadings filed in response to this Application shall be served by e-mail on the undersigned counsel and all parties shown in the attached Certificate of Service.

PRAYER

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., in its capacity as Special Deputy Receiver of Friday Health Insurance Company, Inc., respectfully prays that this Court enter an order:

1. Approving the Application in all respects;
2. Authorizing the Special Deputy Receiver to distribute \$25,000,000 from the assets of the receivership estate to TLHIGA as the first Early Access Distribution pursuant to TEX. INS. CODE § 443.303;
3. Authorizing the SDR to make the Early Access Distribution within thirty (30) business days after the date the Order is entered by the Receivership Court, unless a motion for new trial or an appeal is filed, or an order staying the distribution is entered and not yet expired;
4. Ordering that TLHIGA shall, upon deposit of the payment in an account to TLIGHA's benefit, be deemed to have agreed to the provisions of TEX. INS. CODE § 443.303 and, in particular, § 443.303(g);

5. Authorizing the Special Deputy Receiver to take any actions necessary to implement the Order;
6. Finding that the Order constitutes a final order fully resolving all issues relating to this Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443; and
7. Granting the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Greg Pierce
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P.O. Box 40
Austin, Texas 78767
Tel: (512) 474-2154
gpierce@gpiercelaw.com

-and-

Christopher Fuller
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Austin, Texas 78731
Telephone: (512) 470-9544
cfuller@fullerlaw.org

**Attorneys for CANTILO & BENNETT, L.L.P.,
Special Deputy Receiver of
Friday Health Insurance Company, Inc.**

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Agreed Order of Reference to Master entered by the District Court in this cause, the *Application to Approve First Early Access Distribution* is hereby set for written submission before the Special Master, Tom Collins, on **October 30, 2023**.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by e-mail by such date on:
 - (a) The Special Master's Docket Clerk, at specialmasterclerk@tdi.texas.gov;
 - (b) The undersigned counsel, Greg Pierce at gpierce@gpiercelaw.com; and
 - (c) All interested parties, including those listed on the SDR's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512) 676-6915] to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
5. **Please note that if an objection is not filed as described in the Notice of Submission, the Master may consider the Application without a hearing.**
6. **Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.**
7. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/s/ Greg Pierce
Gregory A. Pierce

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the *Application to Approve First Early Access Distribution* was sent in accordance with TEX. INS. CODE § 443.007(d) on October 16, 2023 to:

Via Email: specialmasterclerk@tdi.texas.gov
Tom Collins, Receivership Master
c/o Special Master's Clerk
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Brian.Riewe@tdi.texas.gov
Brian Riewe
TEXAS DEPARTMENT OF INSURANCE
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Austin, TX 78711-2030

Via Email: John.Walker@tdi.texas.gov
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MITCHELL, WILLIAMS, SELIG, GATES &
WOODYARD, P.L.L.C.
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Nashville, TN 37203

/s/ Greg Pierce
Gregory A. Pierce

**SPECIAL DEPUTY RECEIVER'S VERIFICATION AND CERTIFICATION
PURSUANT TO TEX. INS.CODE ANN. §443.017(b)**

AFFIDAVIT OF SUSAN E. SALCH

State of Texas

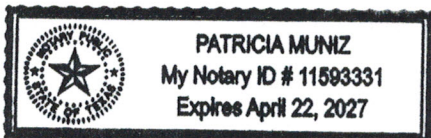
County of Travis

BEFORE ME, the undersigned authority appeared Susan E. Salch, who after being by me duly sworn, stated the following under oath:

1. "My name is Susan E. Salch. I am of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Friday Health Insurance Company, Inc. (the "SDR" and "FHIC" respectively), I am duly authorized to make this Affidavit on behalf of the SDR.
3. I have reviewed the *Application to Approve First Early Access Distribution* and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with the staff and subcontractors.
4. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE § 443.017, are either true and correct copies of records of FHIC and were received from the custody of FHIC or found among its effects, or were created by and filed with the Receiver's office in connection with the receivership of this delinquent company, and are held by the Special Deputy Receiver in its official capacity."

By: Susan E. Salch
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on October 14, 2023, by Susan E. Salch, Special Deputy Receiver of Friday Health Insurance Company, Inc.



Patricia Muniz
Notary Public

THE TEXAS DEPARTMENT OF INSURANCE, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
FRIDAY HEALTH INSURANCE COMPANY, INC. <i>Defendant.</i>	§	
	§	
	§	345th JUDICIAL DISTRICT

**ORDER GRANTING APPLICATION TO APPROVE
FIRST EARLY ACCESS DISTRIBUTION**

On this date, the Court heard the Application to Approve First Early Access Distribution (“Application”) filed by CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Friday Health Insurance Company (the “SDR” and “FHIC” respectively). The Application requests this Court approve the amount of the first early access payment pursuant to TEX. INS. CODE § 443.003 and to order relief approving the Application.

In accordance with the *Agreed Order of Reference to Master* entered on March 23, 2023 (“Order of Reference”), the Application was submitted to the Master appointed in this proceeding pursuant to TEX. INS. CODE § 443.007 and § 443.303. The Master issued a recommendation pursuant to Rule 171 of the Texas Rules of Civil Procedure, which is incorporated herein, finding as follows:

1. Notice of the Application was provided in accordance with TEX. INS. CODE § 443.007(d) and § 443.303(e), and the Order of Reference;
2. The Texas Life and Health Insurance Guaranty Association (“TLHIGA”) filed its acknowledgement and waiver;
3. No objections to the Application were filed;

4. The Court has jurisdiction over the Application and parties affected hereunder; and

5. The relief sought is an appropriate exercise of the SDR's and this Court's discretion, and the Application should in all respects be approved.

Having considered the pleadings, the evidence submitted, and the recommendation of the Master, the Court accepts the Master's recommendation and approves the Application.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The Application and relief requested in the Application is approved in all respects.

2. The affidavit of Susan E. Salch is admitted into evidence.

3. The SDR shall distribute \$25,000,000 from the assets of the receivership estate to TLHIGA as an early access distribution pursuant to TEX. INS. CODE § 443.303. The early access distribution to TLHIGA shall be treated as advances against distributions to be made under TEX. INS. CODE § 443.302.

4. The early access distribution[s] shall be made within thirty (30) business days after the date the Order is entered by the Receivership Court, unless a timely motion for new trial has been filed, an appeal has been filed or an order staying the distribution has been entered and not yet expired.

5. Upon deposit of the payment into an account to TLHIGA's benefit, TLHIGA is deemed to have agreed to the provisions of TEX. INS. CODE § 443.303 and, in particular, § 443.303(g).

6. The Special Deputy Receiver is authorized to take any actions necessary to implement this Order.

7. This first early access distribution will apply to the Class 1 and Class 2 claims of TLHIGA under TEX. INS. CODE §443.301(a).

8. This Order constitutes a final ruling fully resolving all issues relating to the Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to TEX. INS. CODE Chapter 443.

Signed on _____, 2023.

JUDGE PRESIDING

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Greg Pierce on behalf of Greg Pierce

Bar No. 15994250

gpierce@gpiercelaw.com

Envelope ID: 80650081

Filing Code Description: Motion (No Fee)

Filing Description: APPLICATION TO APPROVE FIRST EARLY ACCESS DISTRIBUTION

Status as of 10/17/2023 10:42 AM CST

Case Contacts

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Associated Case Party: FRIDAY HEALTH INSURANCE COMPANY, INC

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Quest Diagnostic Clinical Laboratories, Inc.

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Greg Pierce on behalf of Greg Pierce

Bar No. 15994250

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Envelope ID: 80650081

Filing Code Description: Motion (No Fee)

Filing Description: APPLICATION TO APPROVE FIRST EARLY ACCESS DISTRIBUTION

Status as of 10/17/2023 10:42 AM CST

Associated Case Party: Quest Diagnostic Clinical Laboratories, Inc.

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Associated Case Party: TEXAS LIFE AND HEALTH INSURANCE

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