

## Report for Special Master’s Status Conference

May 3, 2024

### R-565 Friday Health Insurance Company

SDR: CANTILO & BENNETT, L.L.P.  
Primary Responsible Person: Susan E. Salch  
Estate Counsel: Christopher Fuller and Greg Pierce  
Receiver’s Counsel: David Ashton  
RLO Analyst: John Walker

#### Receivership Background

- Date of Permanent Injunction (Liquidation): March 23, 2023
- Date of Appointment of SDR: March 23, 2023
- Claims Filing Deadline: September 5, 2024
- States Where Licensed: Texas
- Lines of Business: Friday Health Insurance Company (“FHIC”) offered Affordable Care Act (“ACA”) individual and small group health insurance plans
- Texas Guaranty Association Triggered: Texas Life and Health Insurance Guaranty Association (“TLHIGA”)
- Early Access Distribution: December 2023 - \$25,000,000

#### Statement of Assets and Liabilities as of March 31, 2024

Total Assets:	\$440,124,187
Cash:	\$167,925,876
Non-Cash Assets:	\$148,617,321
Restricted Assets:	\$123,580,990
Total Liabilities:	\$851,083,148
Negative Equity:	(\$410,958,961)

#### Status and Activity Since Last Conference

##### Claims Activity

**Proof of Claim (“POC”) Deadline and Notice:** The Receivership Court granted the SDR’s POC application on December 5, 2023. The deadline to file POCs with the SDR is September 5, 2024.

The POC notice and instructions are posted on the SDR web site, and inquiring parties are directed there to obtain the forms. The SDR sent Liquidation and POC notices to 214,684 parties by e-mail and 53,695 by mail. The SDR received confirmation that all of the publication notices were posted. The POC notice was sent to all individuals and entities specifically identified in the application, such as the IRS, CMS, and reinsurers, with the exception of two former directors for whom address research continues. The SDR

established a call center for the POC notice and filing process (888-958-7555) in late January.

**POC Processing:** As of March 31, 2024, 170 POCs were filed: 123 by providers, 2 for agent commissions, 5 for premiums or post policy termination payments, 6 by members for unpaid claims, 3 by members with no documentation or designation, and 2 by TLHIGA. One provider filed 29 POCs listing the names of members who had been treated there as the claimant.

The SDR expects to be able to process all POCs with existing approved subcontractors. Upon intake, the SDR's claims team identifies POCs that could be covered by TLHIGA, and then checks the association's claims log to see if the claim has already been determined. If not, the claim will be uploaded to the joint Dropbox account shared by the SDR and TLHIGA for its consideration. The SDR has not yet referred any POCs to TLHIGA.

A few of the POCs received to date fail to comply with the Receivership Court-approved instructions. For example, at least three POCs claim in excess of \$100,000 but fail to describe the basis for the claim or attach any documentation. Several POCs were not verified as required by the Receivership Court's order approving the POC form. In each instance, the SDR's claims subcontractor has been instructed to contact the claimant by mail and request that the omission be cured within thirty days. Failure to do so will result in the denial of the POC.

**TLHIGA:** As of April 22, 2024, TLHIGA has funded 154,934 claims totaling \$24,135,755. As part of its claim payment processing, TLHIGA reduced some payments issued to certain providers to account for FHIC's pre-liquidation provider overpayments. TLHIGA estimates approximately \$13 million in future claims payments. TLHIGA filed two POCs in February: one for claims costs and one for expenses. Both refer to figures as of December 31, 2023.

TLHIGA agreed to have claims that are in excess of the association's \$500,000 limit on coverage processed fully under its agreement with UST. The results are reported to the SDR for reinsurance reporting purposes. The Receivership Court authorized the SDR to deem all claims in excess of the TLHIGA's \$500,000 limit in order to protect consumers and facilitate reinsurance reporting.

**Early Access:** The Receivership Court approved the SDR's application for an early access distribution on November 9, 2023. The SDR distributed \$25 million to TLHIGA in December 2023. The SDR expects to seek approval for a second early access distribution in the next quarter.

**Risk Adjustment Transfer ("RAT") Liability:** The POC notice was served on Centers for Medicare & Medicaid Services ("CMS"). The RAT program is a component of the ACA that transfers premiums from insurers that enroll members with relatively lower health risks to insurers that enroll members with relatively higher health risks. CMS issued its 2022 Summary Report on June 30, 2023. It recites that FHIC owes \$634,864,844 in RAT liability for the 2022 plan year. RAT payments are calculated annually, and payment

for the 2022 assessment was due in August 2023. In October 2023, CMS issued a press release stating, in part:

As of October 2023, Friday has paid 5 percent of its total 2022 benefit year risk adjustment charges of \$780 million. As such, CMS will pursue all Federal debt collection methods available, including offsetting other ACA program payments to Friday pursuant to 45 CFR § 156.1215 and filing a proof of claim to assert the government's claim to all debts owed, including the unpaid debts for the 2022 benefit year risk adjustment charges in these states. Consistent with the established policy for addressing shortfalls in the collection of risk adjustment charges, issuers in the same state market risk pools as Friday who are eligible to receive 2022 benefit year risk adjustment payments will receive the initial funds collected as prorated 2022 benefit year risk adjustment payments in the November 2023 cycle. Any further collection of these amounts, through offsetting or otherwise, will be distributed to issuers in the affected state market risk pools as further prorated 2022 benefit year risk adjustment payments in the following monthly payment cycle.

The RAT obligation arises under federal law, and it is the SDR's position that it has a Class 3 priority under Section 443.301 of the Insurance Code. The SDR will not make any distributions on the RAT liability outside of the POC process.

**Post-policy expiration payment claims:** After the receivership began, FHPMSC inadvertently continued to accept payments from some consumers after the expiration of their insurance policies. Consumers may have submitted payments through auto-drafts or an FHPMSC portal. After learning of the situation, the SDR closed the pre-receivership lockbox accounts and notified consumers who were still sending funds to stop. The SDR updated the notice on the web site advising former insureds to make sure they stopped automatic payments.

### **Asset Recovery Activity**

**Reinsurance:** FHIC has two reinsurance relationships. The first is a quota share agreement with AXA France Vie ("AXA") with coverage of 60% for 2021, and 80% for 2022. Shortly before receivership, AXA gave notice that it considered the agreement to be terminated as of January 1, 2022. Following regulatory action against the companies of the other states, AXA sent each of them a notice of dispute. The SDR and AXA have communicated regarding the reinsurer's contentions, and the SDR is preparing to respond to certain requests for information.

AXA owes FHIC approximately \$246 million as of March 31, 2024. Reporting is done quarterly, so the paid loss figure, which includes the ceded risk adjustment obligation reported by CMS in its June 30, 2023, report, will be quantified further in the quarterly

reporting, as post-receivership paid losses by TLHIGA and the guaranty associations for the other states' affiliates are reported.

FHIC has an excess-of-loss treaty with Odyssey Reinsurance Company. The treaty terminated on June 30, 2023, but continues to cover losses arising before and reported by June 30, 2023. TLHIGA has provided the SDR with information for claims that both exceed the association's \$500,000 cap and the same threshold for XOL coverage, which has been reported to the reinsurer. The parties to the agreement are negotiating a final commutation of the agreement.

**Subrogation:** Before receivership, Phia pursued subrogation recoveries for FHIC even though the only written agreement was between Phia and the Friday Colorado affiliate. Estate counsel notified Phia of the receivership and instructed it that all collections and communications regarding Texas claims had to go through the SDR. As of March 31, 2024, the SDR has received \$197,113 in subrogation; all on pre-liquidation claim payments.

The SDR confirmed with TLHIGA that the SDR will contract with Phia for the collection of all Texas claims. The SDR will then work with TLHIGA to reconcile which recoveries go to the estate (pre-liquidation claims) and which will be credited to TLHIGA (from their claim processing).

**Overpayment Recovery:** FHIC's financial records reflect significant overpayments to providers that are owed to the company. Some of these overpayments were recovered by TLHIGA's reduced claims payments, as discussed above. Payments have been made to the SDR on some of the accounts, such as US Renal. The SDR expects to begin the collection of the overpayments in the next quarter.

**Other Asset Recovery Activity:** The SDR and counsel continue to research potential asset recovery claims.

## General Legal Activity

**Delaware Assignment for Benefit of Creditors ("ABC") Proceeding:** The court hearing on the SDR's (and others') Motions to Dismiss or, Alternatively, to Abstain are set for hearing June 13, 2024. The SDR has been allotted thirty minutes for the argument for dismissal, while the other SDRs and Zelis will split thirty minutes in support of the SDR's motion to dismiss, and the FHP ABC's counsel will have thirty minutes.

**Litigation:** There are no pending lawsuits against FHIC. There were a number of arbitrations pending at receivership, consisting of health care providers objecting to the amount paid on particular claims under the Prompt Pay statutes and regulations. All claimants have been notified of the receivership and automatic stay.

**Summary of Major Achievements:**

- Served Notice of Liquidation and Claims Filing Deadline and POC Forms as described in the POC Application.
- Began accepting and initial processing of POCs.

**Estate Goals to Achieve Prior to Next Status Conference:**

- Begin collecting provider overpayments.
- Seek authority for second early access distribution.
- Argue motion to dismiss FHP/FHPMSC ABC proceeding in Delaware.
- Work with the guaranty associations and OSRs on reinsurance reporting.
- Review potential asset recovery activity.

**Estate Closing Date of Receivership:** TBD

**Identification of Factors Affecting Closing Date and Final Distribution:** TBD