

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 SECOND 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 Second Early Access Distribution (the “Application”).

I. INTRODUCTION

1.1 The SDR files this Application for authority to make a second Early Access Distribution to the Texas Life and Health Insurance Guaranty Association (“TLHIGA”) in the amount of \$21,456,812.17. 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 additional 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 second early access distribution to TLHIGA so it may use that distribution to pay any Class 1 expenses incurred by TLHIGA and Class 2 payments of policyholder benefits paid 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 September 30, 2024, the unrestricted *cash* assets of the receivership estate are approximately \$171 million. Payment of the requested sum as a second Early Access distribution will leave approximately \$150 million¹ as a prudent reserve for expenses of the administration of the estate, payment of any other Class 1 and/or Class 2 claims that are not payable by TLHIGA, and payments

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

to TLHIGA which might exceed the amounts provided in the first and second early access distributions.

VI. GUARANTY ASSOCIATION CLAIMS

6.1 From the outset of the receivership, the SDR and TLHIGA have worked to gather data regarding the 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. The SDR and TLHIGA worked to establish claims handling processes and procedures and to document costs associated with TLHIGA's claims handling that would be entitled to Class 1 treatment. Pursuant to that data gathering process, the SDR has determined that a second early access distribution in the amount of \$21,456,812.17 will substantially cover FHIC's remaining estimated Class 1 and Class 2 liabilities to 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 this Application. Neither this Application, nor any other early access application, constitutes an adjudication of the POCs filed by TLHIGA.

6.3 At this time, the SDR seeks to make a second early access distribution based on the estimates described above to TLHIGA. The SDR estimates that even after payment of the proposed second 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 \$21,456,812.17 from the receivership estate as the second 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 December 30, 2024.

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 \$21,456,812.17 from the assets of the receivership estate to TLHIGA as the second 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
Gregory A. Pierce

State Bar No. 15994250
P.O. Box 40
Austin, Texas 78767
Tel: (512) 474-2154
gpierce@gpiercelaw.com

-and-

Christopher Fuller
State Bar No. 07515500
FULLER LAW GROUP
4612 Ridge Oak Drive
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 Second Early Access Distribution* is hereby set for written submission before the Special Master, Tom Collins, on **December 30, 2024**.

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 Second Early Access Distribution* was sent in accordance with TEX. INS. CODE § 443.007(d) on December 10, 2024 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 Email: Shawn.Martin@tdi.texas.gov
Shawn Martin
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via Email: John.Walker@tdi.texas.gov
John Walker
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Vane.Hugo@tdi.texas.gov
Vane Hugo
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: David.Ashton@tdi.texas.gov
David Ashton
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Zachary.Rhines@oag.texas.gov
Zachary L. Rhines
Assistant Attorney General
General Litigation Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548, Mail Stop 01901
Austin, TX 78711-2548
Counsel for Texas Department of Insurance

Via e-Service: jrixen@rixenlaw.com
Jacqueline Rixen
RIXENLAW
P.O. Box 9879
Austin, TX 78766
*Counsel for the Texas Life and Health
Insurance Guaranty Association*

Via e-Service: dprice@sp-legal.com
Dan Price
SHANLEY PRICE
5501A Balcones Drive, Suite 218
Austin, TX 78731
*Counsel for the Texas Life and Health
Insurance Guaranty Association*

Via e-Service: sstrickland@mwlaw.com
Stanton Strickland
MITCHELL, WILLIAMS, SELIG, GATES &
WOODYARD, P.L.L.C.
500 W. 5th Street, Ste. 1150
Austin, TX 78701
Counsel for Friday Health Insurance, Inc.

Via First Class Mail
INTERNAL REVENUE SERVICE
Special Procedures Branch
300 East 8th Street, Suite 352
Mail Stop 5026AUS
Austin, TX 78701

Via Email: BPollock@mayerbrown.com
Bronwyn Pollock
MAYER BROWN LLP
333 Grand Ave., 47th Floor
Los Angeles, CA 90071
Counsel for AXA France Vie

Via Email: RHarrell@mayerbrown.com
Via Email: JDanford@mayerbrown.com
Robert Harrell
James Danford, Jr.
MAYER BROWN LLP
700 Louisiana St., Suite 3400
Houston, TX 77002
Counsel for AXA France Vie

Via Email: VSidhu@mayerbrown.com
Via Email: JToes@mayerbrown.com
Vikram Sidhu
Juliana Toes
MAYER BROWN LLP
1221 Avenue of the Americas
New York, NY 10020-10011
Counsel for AXA France Vie

Via Email: Brian.Hansen@hcahealthcare.com
Brian Hansen
HCA HEALTHCARE
One Park Plaza, Building 1-2E
Nashville, TN 37203

Via Email: mpcooley@reedsmith.com
Michael P. Cooley
REED SMITH LLP
2850 N. Harwood Street, Suite 1500
Dallas, TX 75201
Counsel for Molina Healthcare, Inc.

Via Email: dhollaway@houstonlaw.com
T. Daniel Hollaway
Hollaway PC – Attorneys at Law
19 Briar Hollow Lane, Suite 245
Houston, TX 77027
Counsel for Christus Health

Via Email: Kristen.Perry@faegredrinker.com
Kristen L. Perry
FAEGRE DRINKER BIDDLE & REATH LLP
1717 Main Street, Ste 5400
Dallas, TX 75201
Counsel for Quest Diagnostics Clinical Laboratories, Inc.

Via Email: MTurner@plevinturner.com
Miranda H. Turner
PLEVIN & TURNER LLP
1701 Pennsylvania Ave., N.W. Suite 200
Washington, DC 20006

Via Email: Amy_Condo@bcbsil.com
Amy Pinkerman Condo
HEALTH CARE SERVICE CORPORATION
300 E. Randolph Street
Chicago, IL 60601
*Counsel for Health Care Service Corporation
Blue Cross and Blue Shield of Illinois,
Montana, New Mexico, Oklahoma and Texas*

/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

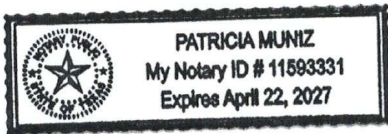
County of Travis

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 Second 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 December 9, 2024, 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
SECOND EARLY ACCESS DISTRIBUTION**

On this date, the Court heard the Application to Approve Second 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 second 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 \$21,456,812.17 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 _____, _____.

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: 95167030

Filing Code Description: Motion (No Fee)

Filing Description: APPLICATION TO APPROVE SECOND EARLY ACCESS DISTRIBUTION

Status as of 12/11/2024 9:18 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Fuller	7515500	cfuller@fullerlaw.org	12/10/2024 4:40:55 PM	SENT
Gregory Pierce	15994250	gpierce@gpiercelaw.com	12/10/2024 4:40:55 PM	SENT
Thomas Hollaway	9866700	dhollaway@houstonlaw.com	12/10/2024 4:40:55 PM	SENT
Jacqueline Rixen	16962550	jrixen@rixenlaw.com	12/10/2024 4:40:55 PM	SENT
Kelly M.Olson		kelly.olson@faegredrinker.com	12/10/2024 4:40:55 PM	SENT
James Danford	24105775	jdanford@mayerbrown.com	12/10/2024 4:40:55 PM	SENT
Patricia Muniz		pmuniz@inquestresources.com	12/10/2024 4:40:55 PM	SENT
Brian Falligant		bfalligant@inquestresources.com	12/10/2024 4:40:55 PM	SENT
Daniel Price	24041725	dprice@sp-legal.com	12/10/2024 4:40:55 PM	SENT

Associated Case Party: TEXAS DEPARTMENT OF INSURANCE

Name	BarNumber	Email	TimestampSubmitted	Status
Shawn Martin	13122100	shawn.martin@tdi.texas.gov	12/10/2024 4:40:55 PM	SENT
Zachary L.Rhines		zachary.rhines@oag.texas.gov	12/10/2024 4:40:55 PM	SENT
Special Master Clerk		specialmasterclerk@tdi.texas.gov	12/10/2024 4:40:55 PM	SENT
Vane Hugo		Vane.Hugo@tdi.texas.gov	12/10/2024 4:40:55 PM	SENT
John Walker		John.Walker@tdi.texas.gov	12/10/2024 4:40:55 PM	SENT
David Ashton		David.Ashton@tdi.texas.gov	12/10/2024 4:40:55 PM	SENT

Associated Case Party: FRIDAY HEALTH INSURANCE COMPANY, INC

Name	BarNumber	Email	TimestampSubmitted	Status
------	-----------	-------	--------------------	--------

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: 95167030

Filing Code Description: Motion (No Fee)

Filing Description: APPLICATION TO APPROVE SECOND EARLY ACCESS DISTRIBUTION

Status as of 12/11/2024 9:18 AM CST

Associated Case Party: FRIDAY HEALTH INSURANCE COMPANY, INC

Name	BarNumber	Email	TimestampSubmitted	Status
Stanton Strickland	786392	sstrickland@mwlaw.com	12/10/2024 4:40:55 PM	SENT

Associated Case Party: QUEST DIAGNOSTIC CLINICAL LABORATORIES, INC.

Name	BarNumber	Email	TimestampSubmitted	Status
Kristen Perry		Kristen.perry@faegredrinker.com	12/10/2024 4:40:55 PM	SENT