

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	DATE FILED: August 16, 2023 4:32 PM CASE NUMBER: 2023CV31646
<b>PETITIONER</b> MICHAEL CONWAY, in his official capacity as the Commissioner of Insurance of the State of Colorado,  v.  <b>RESPONDENT</b> FRIDAY HEALTH PLANS OF COLORADO, INC., a Colorado Health Maintenance Organization.	<p style="text-align: center;"><b>^ COURT USE ONLY ^</b></p> Case No.: 2023CV31646  Division: Courtroom 466
<b>ORDER OF LIQUIDATION</b>	

The above matter comes before the Court upon the Petitioner’s request for an Order of Liquidation (“Petition”) for Friday Health Plans of Colorado, Inc. (“Respondent”), pursuant to sections 10-3-515(1) and 10-3-516(1)(a)-(c), C.R.S. The Court having considered the Petition, and being fully advised of the premises, does hereby determine and order as follows:

The Court hereby adopts and enters Petitioner’s proposed Order of Liquidation, with minor edits to address typos and for clarity.

### I. Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to sections 10-3-504(1) and (2), C.R.S. Specifically, section 10-3-504(2), C.R.S., states that:

The district court in and for the city and county of Denver shall have jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceeding other than in accordance with this part 5.

2. Venue is proper in this Court pursuant to section 10-3-504(5), C.R.S., which states that “All actions authorized pursuant to this part 5 shall be brought in the district court in and for the city and county of Denver.”

## II. Grounds for Liquidation

3. For the reasons set forth in the Petition, this Court finds that there are sufficient grounds for the entry of an order liquidating Respondent.

4. For the reasons set forth in the Petition, this Court finds further transaction of business by Respondent would be hazardous, financially or otherwise, to Respondent’s policyholders, creditors, or the public.

5. Pursuant to section 10-3-516(1)(a), C.R.S., grounds exist for an Order liquidating Respondent as grounds exist for an order of rehabilitation as specified in section 10-3-511, C.R.S.

6. Pursuant to section 10-3-516(1)(c), C.R.S., grounds exist for an Order liquidating the Respondent, as the Respondent is in such a condition that the further transaction of business would be hazardous, financially or otherwise, to the Respondent’s policyholders, its creditors, or the public.

7. Finally, any further attempts to rehabilitate the Respondent would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile. As a result, pursuant to section 10-3-515(1), C.R.S., grounds exist for an order of liquidation of the Respondent.

## III. Order

WHEREFORE, pursuant to sections 10-3-501 to 10-3-559, C.R.S., and **effective 12:01 a.m. on September 1, 2023**, this Court grants the following relief:

8. An Order liquidating Respondent hereby enters.

9. The Commissioner’s status of Rehabilitator of Respondent is terminated.

10. Pursuant to section 10-3-517, C.R.S., Petitioner Michael Conway, as Commissioner of Insurance for the State of Colorado, is hereby appointed to serve as Liquidator of Respondent.

11. Pursuant to section 10-3-520(1)(a), C.R.S., the Commissioner is granted the authority to employ Don Roof of Examination Resources, LLC, acting as Special Deputy Receiver, to assist in the Liquidation with all of the powers of the Liquidator.<sup>1</sup>

12. Pursuant to section 10-3-520(1)(a), C.R.S., Don Roof and Examination Resources, LLC shall be reimbursed for services and costs at their customary and ordinary rates, which shall constitute expenses of the administration of the Liquidation pursuant to section 10-3-541(1)(a), C.R.S.

13. Pursuant to section 10-3-520(1)(b), C.R.S., the Liquidator shall have the authority to employ employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the Liquidator may deem necessary to assist in the liquidation. Pursuant to section 10-3-520(1)(d), (e) and 10-3-541(1)(a), the Liquidator may reimburse Don Roof and Examination Resources, LLC and any employees, agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel employed by the Liquidator for services and costs at their customary and ordinary rates, which shall be defrayed from the funds or assets of Respondent and shall constitute expenses of the administration of the liquidation pursuant to section 10-3-541(1)(a), C.R.S.

14. Pursuant to section 10-3-517(1), C.R.S., title to all the property, contracts, rights of action, and books and records of Respondent shall be vested by operation of law with the Liquidator, as of the effective date of this Order.

15. Pursuant to section 10-3-517(2), C.R.S., the rights and liabilities of Respondent and of its creditors, policyholders, shareholders, members, and all other persons interested in Respondent's estate shall become fixed, except as provided in sections 10-3-518 and 10-3-536, C.R.S., upon the effective date of this Order.

16. Pursuant to section 10-3-517(1)(a), C.R.S., the Liquidator is instructed to and granted the authority to proceed forthwith to assemble and to take possession of all the assets of Respondent, including any funds or securities held by the Division of Insurance pursuant to section 10-3-201, C.R.S., and to administer them under the general supervision of this Court.

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<sup>1</sup> The term "Liquidator" is used herein to reference the Commissioner and Don Roof, and any other future persons employed or appointed by the Commissioner pursuant to the authority set forth in section 10-3-520(1)(a), C.R.S.

17. The Liquidator, upon taking possession and control of Respondent's assets, is authorized, subject to the direction of this Court, to take such steps as are necessary and authorized by the laws of Colorado to liquidate the affairs and business of Respondent. The Liquidator is granted all the powers of Respondent's directors, officers, shareholders, and managers, whose authority shall be suspended by this Order except insofar as they are delegated by the Liquidator.

18. The Liquidator is instructed, pursuant to section 10-3-517(5), C.R.S., to file financial reports to this Court within one year after the effective date of this Order and at least annually thereafter. The financial reports shall include, at a minimum, the assets and liabilities of Respondent and all funds received or disbursed by the Liquidator during the reporting period.

19. Pursuant to part 5 of article 3 of title 10, the Liquidator is granted the 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 Respondent.

20. Furthermore, pursuant to section 10-3-523, C.R.S., this Court hereby enters an injunctive order that no action at law or equity or in arbitration shall be brought against Respondent or the Liquidator, whether in this state or elsewhere, nor shall any such existing actions be maintained or further presented after the effective date of this Order.

21. The Liquidator and all persons set forth in section 10-3-514.5, C.R.S., are entitled to the immunity set forth in section 10-3-514.5, C.R.S., and any other applicable laws.

22. In addition to the powers and authority set forth above, the Liquidator is granted all powers and authority specified in section 10-3-520, C.R.S., including, but not limited to:

- i. To appoint, subject to the approval of the court, an advisory committee of policyholders, claimants, or other creditors including guaranty associations should such a committee be deemed necessary; that any such committee shall serve at the pleasure of the Commissioner; and, that no other committee shall be appointed by the Commissioner or the Court in the liquidation proceedings;
- ii. To hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath,

- and compel any person to subscribe to the person's testimony after it has been correctly reduced to writing; and, in connection therewith, to require the production of any books, papers, records, or other documents which the Liquidator deems relevant to the inquiry;
- iii. To audit the books and records of all agents of Respondent insofar as those records relate to the business activities of Respondent;
  - iv. To collect all debts and monies due and claims belonging to Respondent, wherever located, and for this purpose:
    - A. To institute timely action in other jurisdictions, in order to forestall garnishment or attachment proceedings against such debts;
    - B. To do such other acts 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; and
    - C. To pursuant any creditors' remedies available to enforce the Liquidators' claims;
  - v. To conduct public and private sales of the property of Respondent;
  - vi. To use assets of the estate of the Respondent to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 10-3-541, C.R.S.;
  - vii. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the Respondent at its market value or upon such terms and conditions as are fair and reasonable. Furthermore, that the Liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the Liquidation;

- viii. To borrow money on the security of Respondent's assets or without security and to execute and deliver all documents necessary to such transaction for the purpose of facilitating the Liquidation. And, that any funds so borrowed may be repaid as an administrative expense and may be given priority over any other claims in class 1 under the priority of distribution pursuant to section 10-3-541, C.R.S.;
- ix. To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the Respondent is a party; except that the Liquidator shall not disavow, reject, or repudiate a federal home loan bank security agreement or any pledge agreement, security agreement, collateral agreement, guarantee agreement, or other similar arrangement or credit enhancement relating to a security agreement to which a federal home loan bank is a party;
- x. To continue to prosecute and to institute in the name of the Respondent or in the Liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims deemed unprofitable to pursue further;
- xi. To prosecute any action which may exist on behalf of the creditors, members, policyholders, or shareholders of the Respondent against any officer of the Respondent or any other person;
- xii. To remove any records and property of the Respondent to the offices of the Commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation;
- xiii. To deposit in one or more banks in this state such sums as are required to meet current administration expenses and dividend distributions;
- xiv. To invest all sums not currently needed, unless the court orders otherwise;
- xv. To file any necessary documents for record in the office of any recorder of deeds or record office where property of the Respondent is located, in this state or elsewhere;

- xvi. To assert all defenses available to Respondent as against third persons, which defenses shall include but not be limited to statutes of limitation, statutes of frauds, and the defense of usury and that a waiver of any defense by the Respondent after a petition in liquidation has been filed shall not bind the Liquidator;
- xvii. To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be conferred by law whether or not such power is conferred by sections 10-3-525 to 10-3-527, C.R.S.;
- xviii. To intervene in any proceeding, wherever instituted, which could result in the appointment of a receiver or trustee, and to act as the receiver or trustee whenever such appointment is offered;
- xix. To enter into agreements with any receiver, commissioner, or insurance department of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of Respondent, if it is found that Respondent has done business in both states; and
- xx. To exercise in a manner consistent with the provisions of Part 5 of Article 3 of Title 10, all powers now held or hereafter conferred upon receivers by the laws of this state.

23. The enumeration, in this Order and in section 10-3-520, C.R.S., of the powers and authority of the Liquidator shall not be construed as a limitation upon the Liquidator, nor shall it exclude in any manner the Liquidator's right to do such other acts not specifically enumerated or otherwise provided for in this Order or in section 10-3-520, C.R.S., as may be necessary or appropriate for the accomplishment of, or in aid of the purpose of, liquidation.

24. Additionally, pursuant to section 10-3-520(4), C.R.S., the powers of the Liquidator in this Order and in section 10-3-520(1), C.R.S., do not create an obligation for the Liquidator to defend claims or to continue to defend claims after the effective date of this Order liquidating Respondent.

25. Pursuant to section 10-3-505, C.R.S., Respondent, its agents, representatives, shareholders, employees and all officers and directors thereof, all persons acting in concert or participation with the Respondent and all persons **and**

other legal entities whatsoever, until further order of the Court, are permanently restrained and enjoined from:

- i. Unless otherwise directed by the Liquidator, exercising any direction, control or influence whatsoever or transacting any further business of the Respondent, any of its subsidiaries or their assets pending further order of this Court;
- ii. Unless otherwise directed by the Liquidator, transferring any of Respondent's property;
- iii. Unless otherwise directed by the Liquidator, interfering in any shape, form or fashion, either directly or indirectly, with the Liquidator's operation of this Liquidation or their possession or control of title, right and interest to the property, books, records and all other assets of Respondent;
- iv. Wasting of any of Respondent's assets;
- v. Unless otherwise directed by the Liquidator, dissipating or transferring, or both, any funds maintained in any of the bank or financial accounts of Respondent;
- vi. Commencing, maintaining or further prosecuting any actions or proceedings, in law or equity, related to or in any way involving the Respondent, including the commencement of or continuation of any action in the nature of an attachment, garnishment or execution against any of the property, personal or real, of the Respondent or any of its subsidiaries or any part thereof, except in this Court;
- vii. Obtaining any preferences, judgments, attachments, or other liens against any of the property, personal or real, of Respondent;
- viii. Unless otherwise directed by the Liquidator, levying of execution against Respondent, its assets or its policyholders;
- ix. Unless otherwise directed by the Liquidator, making of any sale or deed for nonpayment of taxes or assessments that would tend to lessen the value of the assets of Respondent;
- x. The withholding from the Liquidator of any books, accounts, documents, or other records relating to the business of Respondent;



- xi. Any other threatened or contemplated action that might tend to lessen the value of Respondent's assets or prejudice the rights of policyholders, creditors, or shareholders or the administration of any proceeding under section 10-3-501, C.R.S., *et seq*; and
- xii. Asserting any claim against the Liquidator or their agents and employees except insofar as such claims arise in this Receivership proceeding, in which case such claims must be presented solely to this Court in this proceeding.

26. Pursuant to section 10-3-506, C.R.S., each and every officer, manager, director, trustee, owner, employee, shareholder or agent of the Respondent, or any other person with authority over or in charge of any segment of the Respondent's affairs, shall cooperate with the Liquidator in this proceeding. Such cooperation shall include, but not be limited to, the following:

- i. To reply promptly in writing to any inquiry from the Liquidator requesting such a reply; and
- ii. To make available to the Liquidator any books, accounts, documents, or other records or information or property of or pertaining to Respondent and in the person's possession, custody or control.

27. Any reinsurer's liability and obligation to pay covered reinsured claims shall continue under the contract of reinsurance as set forth in section 10-3-531, C.R.S.

28. The Liquidator shall give notice or cause notice to be given, of the Order of Liquidation as soon as possible in accordance with section 10-3-521, C.R.S.

29. Prior orders entered by this Court do not conflict with placing Respondent under this Order of Liquidation.

30.

SO ORDERED this August 16, 2023.



Mark T. Bailey  
Denver District Court Judge