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17 **EIGHTH JUDICIAL DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 SCOTT J. KIPPER, COMMISSIONER OF
20 INSURANCE, STATE OF NEVADA,
21
22 Petitioner,
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24 vs.
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26 FRIDAY HEALTH PLANS OF NEVADA, INC.,
27
28 Defendant.

CASE NO. A-23-871639-C
DEPARTMENT 18

[HEARING REQUESTED]

**MOTION REQUESTING APPROVAL
OF EARLY ACCESS AGREEMENT
AND PAYMENTS TO NLHIGA**

Petitioner, SCOTT J. KIPPER, COMMISSIONER OF INSURANCE, STATE OF NEVADA as Receiver (“Commissioner” or “Receiver”) for FRIDAY HEALTH PLANS OF NEVADA, INC. (“Friday Health” or the “Company”), files this Motion Requesting approval of Early Access Agreement and payments to the Nevada Life and Health Insurance Guaranty Association (“Motion”). This Motion is made and based on these papers and oral argument permitted on this matter.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND BACKGROUND**

3 This Motion seeks Court approval of an early access agreement and payments to the Nevada
4 Life and Health Insurance Guaranty Association¹ (“NLHIGA”) to cover claims NLHIGA has paid
5 on behalf of Friday Health after the entry of this Court’s Liquidation Order.²

6 Friday Health is a Nevada-domiciled insurer offering life and health products and health
7 insurance. In 2022, the Nevada Division of Insurance (“Division”) required Friday Health to infuse
8 funds to increase its total capital and surplus because its finances suggested that it was approaching
9 a dangerous financial condition.³ Despite the infusion, Friday Health’s financial filings with the
10 Division suggested that it had insufficient capital, and it was in financial distress. The Commissioner
11 of Insurance thus initiated delinquency proceedings with Friday Health’s consent based on concerns
12 about Friday Health’s financial condition.

13 On June 12, 2023, the Court authorized the Receiver to assume control over Friday Health
14 and attempt rehabilitation (“Receivership Order”). After the Commissioner was appointed as
15 Receiver, he designated Ellingson & Associates, LLC, as the Special Deputy Receiver (“SDR”)(the
16 Receiver and SDR will be referred to jointly herein as “Receiver”). In furtherance of the
17 Receivership Order, the Receiver obtained various Friday Health records, including information
18 related to policyholders, claims status, and the company’s financial records. The Receiver

19 _____
20 ¹ The Nevada Life & Health Insurance Guaranty Association was created by the Nevada legislature to protect
21 state residents who are policyholders and beneficiaries of policies issued by an insolvent insurance company,
22 subject to exclusions and specified limits. All insurance companies and health maintenance organizations
23 (with limited exceptions) licensed to write life and health insurance or annuities in Nevada are required, as a
condition of doing business in the state, to be members of the NLHIGA. If a member company becomes
insolvent, money to continue coverage and pay claims is obtained from the insolvent estate and through
assessments of the NLHIGA other member insurance companies writing the same line or lines of insurance
as the insolvent company.

24 ² On July 25, 2023, this Court entered an order finding Friday Health insolvent and formally placing the
Company into liquidation (the “Liquidation Order”).

25 ³ Friday Health is one of several related companies scattered across the United States offering health
26 insurance, all of which are also in pending receiverships due to financial inadequacy. As further detailed in
27 the Petition for Appointment of Receiver and exhibits thereto, Friday Health is a subsidiary of Friday Health
28 Plans Management Services Company, Inc. (“FHP Parent”), which is licensed as a non-resident third-party
administrator in Nevada, and as a non-resident producer firm in Nevada. FHP Parent is a subsidiary of Friday
Health Plans, Inc. (“FHP Ultimate Parent”), a Delaware company located in Colorado. FHP Parent and FHP
Ultimate Parent have other “Friday Health Plan” insurance companies in other states, including Colorado,
Texas, Georgia, Oklahoma, and North Carolina (collectively, “FHP Companies”). FHP Ultimate Parent
operated the FHP companies, which are all now subject to receivership proceedings.

1 concluded, after reviewing the records, that Friday Health could not be rehabilitated as it could not
2 meet financial obligations as they became due and continuing operations would deplete the limited
3 remaining assets at the detriment of the company, policyholders, creditors, and public. As a result
4 of the same, the Commissioner determined that the continuation of Friday Health’s business would
5 jeopardize the insurer’s solvency and notice was provided to policyholders that all policies would
6 terminate at the end of the day on August 31, 2023. Thereafter, this Court found Friday Health to
7 be insolvent and placed Friday Health into liquidation as of September 1, 2023, *via* the Liquidation
8 Order.

9 Subsequent to the entry of the Liquidation Order, NLHIGA stepped in to cover certain claims
10 pursuant to the provisions of the Nevada Life and Health Insurance Guaranty Association Act found
11 in NRS 686C. Specifically, NRS 686C provides a legal framework to protect policyholders if their
12 insurance company becomes insolvent and a process by which NLHIGA covers certain claims
13 pursuant to section NRS 686C.010., et seq (“Covered Obligations”). As is contemplated by statute,
14 the Receiver and NLHIGA desire to facilitate early access payments from the Receiver to NLHIGA
15 consistent with the priority statues found in NRS 696B and seek Court approval of the same.

16 **II. RELEVANT FACTS & BASIS FOR EARLY ACCESS REQUEST**

17 NRS 696B.415⁴ specifies that the Commissioner, in his capacity as Receiver apply to the

18 ⁴ NRS 696B.415 provides:

19 1. Upon the issuance of an order of liquidation with a finding of insolvency against a
20 domestic insurer, the Commissioner shall apply to the district court for authority to disburse
21 money to the Nevada Insurance Guaranty Association or the Nevada Life and Health Insurance
22 Guaranty Association out of the marshaled assets of the insurer, as money becomes available, in
23 amounts equal to disbursements made or to be made by the Association for claims-handling
24 expense and covered-claims obligations upon the presentation of evidence that disbursements
25 have been made by the Association. The Commissioner shall apply to the district court for
26 authority to make similar disbursements to insurance guaranty associations in other jurisdictions
27 if one of the Nevada Associations is entitled to like payment pursuant to the laws relating to
28 insolvent insurers in the jurisdiction in which the organization is domiciled.

2. The Commissioner, in determining the amounts available for disbursement to the Nevada
Insurance Guaranty Association, the Nevada Life and Health Insurance Guaranty Association
and similar organizations in other jurisdictions, shall reserve sufficient assets for the payment of
the expenses of administration.

3. The Commissioner shall establish procedures for the ratable allocation of disbursements
to the Nevada Insurance Guaranty Association, the Nevada Life and Health Insurance Guaranty
Association and similar organizations in other jurisdictions, and shall secure from each
organization to which money is paid as a condition to advances in reimbursement of covered-
claims obligations an agreement to return to the Commissioner, on demand, amounts previously
advanced which are required to pay claims of secured creditors and claims falling within the
priorities established in paragraph (a) or (b) of subsection 1 of [NRS 696B.420](#).

1 district court for authority to disburse money to Nevada guaranty associations from the marshaled
2 assets of the receivership estate. NRS 696B.415(1). The statute further tasks the Receiver with
3 determining the appropriate amount available to disburse to the guaranty associations while
4 reserving sufficient assets to pay administrative expenses. NRS 696B.415(2).

5 Subsequent to the entry of the Liquidation Order, NLHIGA has taken responsibility for
6 ongoing medical claims for Friday Health Members. Indeed, the Guaranty Association has
7 processed over 13,000 claims for Friday Health Members and continues to process claims daily.
8 NLHIGA will process all claims for services provided to policy holders before midnight on August
9 31st (the last day of Friday Health insurance coverage), pursuant to the terms of the policy and up
10 to a statutory limit of \$500,000.

11 Currently, the Receiver has approximately \$5,840,7474.00 in cash assets relating to Friday
12 Health and believes it is prudent to enter into an agreement with NLHIGA and make early access
13 distribution payments to NLHIGA in consideration for the claims that have been and continue to be
14 paid by NLHIGA. To facilitate the same the Receiver and NLHIGA have agreed, subject to Court
15 approval, to the terms set forth in the Early Access Agreement attached hereto as **Exhibit A**. The
16 Early Access Agreement will allow the Receiver to make early access distributions to NLHIGA of
17 available cash assets of Company that are attributable to policies, plans or contracts giving rise to
18 Covered Obligations, which are not reasonably necessary for use by the Receiver for administrative
19 expenses or reserves contemplated by NRS 696B.420. *See* Ex. A.

20 The Receiver anticipates making an initial payment to NLHIGA of \$2,500,000.00 and seeks
21 the ability to provide additional funds to NLHIGA pursuant to the Early Access Agreement as
22 deemed warranted based on payments made by NLHIGA and available receivership funds. Such
23 payments shall be made pursuant to the priority of claims and early access provisions contained in
24 NRS 686C.330 and NRS 696B.415.

25 . . .

26 _____
27 4. The Commissioner, as receiver for an insolvent insurer, may file a claim on behalf of all
28 insureds for any unearned premiums. The Nevada Insurance Guaranty Association, the Nevada
Life and Health Insurance Guaranty Association and similar organizations in other jurisdictions
shall accept the claim in lieu of requiring each insured to file a claim for the unearned premium.

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III. CONCLUSION

For the reasons discussed above, the Receiver respectfully requests that the Court approve the Early Access Agreement attached hereto and enter an order allowing the Receiver to make payments to NLHIGA consistent with same.

DATED this 1st day of November, 2024

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks

MARK E. FERRARIO, ESQ.
Nevada Bar No. 01625
KARA B. HENDRICKS, ESQ.
Nevada Bar No. 07743
JERRELL L. BERRIOS, ESQ.
Nevada Bar No. 15504
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on **November 1, 2024**, I caused a true and correct copy of the foregoing **MOTION REQUESTING APPROVAL OF EARLY ACCESS AGREEMENT AND PAYMENTS TO NLHIGA** to be filed with the Clerk of Court using the Odyssey e-FileNV Electronic Service system and served on all parties with an email address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

/s/ Evelyn Escobar-Gaddi
An employee of Greenberg Traurig, LLP

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EXHIBIT A

EXHIBIT A

EARLY ACCESS AGREEMENT

Early Access Agreement

THIS EARLY ACCESS AGREEMENT (the “Agreement”) is entered into as of the _____, 2024 (the “Contract Date”), by and among the Nevada Life and Health Insurance Guaranty Association (“NLHIGA”), and Scott J. Kipper, Commissioner of Insurance for the State of Nevada, as Liquidator (the “Liquidator”) of Friday Health Plans of Nevada, Inc. (“Company”).

RECITALS

WHEREAS, on June 1, 2023, Scott J. Kipper, the Commissioner of Insurance for the State of Nevada filed a petition for the appointment of the Commissioner as Receiver and requested injunctive relief as Friday Health Plans of Nevada, in the Eighth Judicial District Court of Nevada, Clark County, Nevada in Civil Case Number A-23-871639-C (the “Liquidation Court”) which was granted on June 12, 2023.

WHEREAS, on July 25, 2023, the Liquidation Court entered an order finding the Company insolvent and formally placing the Company into liquidation (the “Liquidation Order”).

WHEREAS, upon entry of the Liquidation Order, Company had in force certain 3,500 Health Insurance Policies (“Policies”); and

WHEREAS, as a result of the Liquidation Order, NLHIGA has obligations pursuant to the provisions of Chapter 686C of the Nevada Revised Statutes, subject to statutory conditions and limitations on coverage and applicability, to holders of the Policies, plans or contracts who reside within the Nevada jurisdiction pursuant to section NRS 686C.010., et seq (“Covered Obligations”). In addition, NLHIGA in certain cases may have Covered Obligations to holders of the Policies who reside in states and territories where Company was not licensed to do business prior to liquidation; and

WHEREAS, the Liquidator may make claim payments and anticipates making additional claims payments to or on behalf of insured and certificate holders after September 1, 2023, which payments may be the obligations of NLHIGA and in addition, may have funds from time to time which can be distributed to NLHIGA for claims payments; and

WHEREAS, the Liquidator and NLHIGA (collectively the “Parties”) desire to facilitate the provision of early access distributions to NLHIGA and believe that this Agreement and its terms are necessary and appropriate to carry out the provisions of the Liquidation Order and NRS 686C and NRS 696B., to allow for payment of early access distributions and to ensure the proper return of early access distributions if necessary to recognize the priority to be accorded to all policyholders and creditors of the Company in accordance with NRS 696B.420. .

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, Liquidator and NLHIGA agree as follows:

1. Duties of Liquidator.

- 1.1 The Liquidator shall make early access distributions to NLHIGA of such cash assets of Company attributable to Policies, plans or contracts giving rise to Covered Obligations, which are not reasonably necessary for use by the Liquidator for (i) expenses of administration of the estate of Company or (ii) as a reserve for claims accorded a higher or equal priority of distribution by Nevada law including NRS 696B.420. For purposes of this Agreement, the term “cash assets of Company attributable to Policies, plans or contracts giving rise to Covered Obligations” means that proportion of the cash assets of Company which bear to the reserves that should have been established for all Policies, plans or contracts of insurance written by the Company. The amount of the early access distributions shall be made pursuant to the priority of claims and early access provisions contained in NRS 686C.330 and NRS 696B.415. The early access distributions NLHIGA shall receive shall be its share of the assets reserved for each class in which it has qualifying claims. The early access distribution may not exceed the amount needed to pay each such claim in full for each class of claim.
- 1.2 NLHIGA will be entitled to participate in and receive early access distributions from the Company made by the Liquidator after the Liquidation Order Effective Date.
- 1.3 Early access assets shall consist of funds received by NLHIGA as distributions from the Liquidator classified as early access distributions or from any ancillary receiver or state insurance departments or from statutory or special deposits actually received by NLHIGA; provided such funds in each case are attributable to Policies, contracts or plans giving rise to Covered Obligations as defined above.
- 1.4 The reasonable expenses of NLHIGA will be treated by the Liquidator as administrative expenses of the estate. These expenses will be advanced or reimbursed to NLHIGA by the Liquidator based on the quarterly reporting by NLHIGA in accordance with NRS NRS696B.420(1)(a).

2. Duties of NLHIGA.

- 2.1 NLHIGA, consistent with an accounting having been filed by the Liquidator and approved by the Liquidation Court, will return within thirty (30) days of the Liquidation Court’s approval to the Liquidator (or within 90 days if an assessment is required), (a) any amounts in excess of the amount ultimately determined by the Liquidation Court to be due to NLHIGA, or (b) any amounts representing the proportional share of the assets disbursed by the Liquidator which may be required to make equivalent distribution to creditors of the same priority class as policyholders in the event that NLHIGA may have received a policyholder level disbursement of assets (including early access distributions) in excess of that available to pay all creditors of the Company in the same class of priority as policyholders.
- 2.2 NLHIGA will file a proof of claim as supplemented from time to time and in a form mutually agreed to by the Liquidator and NLHIGA, for all obligations of NLHIGA which are paid or otherwise discharged.

2.3 In addition to the accounting and reports required herein, NLHIGA will respond in good faith to reasonable requests for information from the Liquidator concerning the receipt and disbursement of all assets transferred under this Agreement.

3. Access to Records and Information.

Liquidator and NLHIGA mutually agree to provide each other with reasonable access to certain business records and information, as follows:

3.1 Liquidator will provide NLHIGA with reasonable access, during normal business hours, to the books, records, and files of Company under the control of Liquidator and will respond affirmatively and in good faith to all reasonable requests from NLHIGA for information, files and documents pertaining to insurance coverage underwritten or reinsured by Company.

3.2 NLHIGA will provide Liquidator with reasonable access, during normal business hours, to the books, records, and files of Company, under the control of NLHIGA or the National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”) and will respond affirmatively and in good faith to all reasonable requests from Liquidator for information, files and documents pertaining to the adjudication, administration and payment of Covered Obligations.

3.3 On a quarterly basis, and within forty-five (45) days of the end of each calendar quarter, the Liquidator shall provide to NLHIGA a balance sheet and an income statement of Company which shall disclose the Liquidator’s best estimate of the nature and amount of all remaining assets, the nature and amount of all known liabilities and classify these liabilities by priority classification, and the nature and amount of all income and disbursements for the quarter.

3.4 On a quarterly basis, and within forty-five (45) days of receiving the Company’s balance sheet and income statement from the Liquidator, NLHIGA shall provide Liquidator a written report in a form mutually acceptable to Liquidator and NLHIGA, disclosing the status of the following items to the extent relevant during the reporting period: claims received and adjudicated; benefit payments made; open claim benefit payment reserve; subrogation recoveries, if any; and such other items as may reasonably be required by Liquidator. Reports shall be sent by NLHIGA to Liquidator physically or electronically at the address set forth in Section 7 of this Agreement or to such other address as Liquidator may from time-to-time designate in writing.

3.5 Liquidator shall give NLHIGA reasonable prior written notice of any hearing before the Liquidation Court requested by the Liquidator in connection with the liquidation of the Company. Said notice shall be considered supplemental to, and not in lieu of, the rights of NLHIGA to intervene or make an appearance.

4. Premiums.

Premiums due for coverage for periods after the Liquidation Order Effective Date shall belong to and be payable at the direction of NLHIGA and shall not constitute early access distributions. Premiums due for coverage for periods prior to the Liquidation Order

Effective Date shall be assets of the estate, subject to the provisions of this Agreement and applicable law.

5. Audit.

The Liquidator shall, prior to and in connection with the final distribution of assets of this liquidation, be authorized to audit the financial accounts and records NLHIGA with respect to receipt of assets and early access distributions, and with respect to the payment or discharge of Covered Obligations.

6. Notice.

Any notice required or permitted under the terms of this Agreement to be given to the Parties shall be deemed given if provided in writing and (i) if actually received by the intended recipient by hand delivery or electronic mail or (ii) if posted by prepaid first-class mail, or (iii) if consigned to and received by a commercial delivery service and addressed as follows:

6.1 If to Liquidator:

Ellingson & Associates, LLC
Attn: Darren Ellingson
9348 E Wood Drive
Scottsdale, AZ 85260
E-mail: dellingson@ellingsonassociates.com

6.2 If to NLHIGA:

Nevada Life & Health Insurance Guaranty Association
Attn: Todd Thakar, Executive Director
2999 Douglas Boulevard, Suite 180
Roseville, CA 95661

With a copy to:

Cindy Oliver
Lewis Roca Rothgerber Christie LLP
1601 19th St., Ste, 1000
Denver, CO 80202
Telephone: (303)628-9534

E-mail: COliver@lewisroca.com

7. Merger and Choice of Law.

This Agreement merges all prior offers and agreements among the Parties with respect to the subject matter herein and expresses the full and final intent of the Parties. This Agreement shall be construed in accordance with the laws of Nevada and shall not be modified except by an instrument in writing, executed by the authorized representatives of all the Parties. In the event of any dispute between Liquidator and NLHIGA over (i) the legal obligations of the Parties to each other under this Agreement or (ii) the construction

of any term or provision of this Agreement, the Parties hereby consent to the *in-person* jurisdiction of the Liquidation Court for the limited purpose of adjudicating said issues. This consent shall not extend to matters other than those expressly referenced in the previous sentence, nor to any creditor, policy owner, contract holder, or beneficiary of Company nor to any party who may be deemed a third-party beneficiary of this Agreement.

This section shall not be construed to confer jurisdiction on the Liquidation Court to resolve coverage disputes between guaranty associations and those asserting claims against them resulting from the initiation of a receivership proceeding.

8. Termination.

8.1 This Agreement may be terminated by NLHIGA, by giving written notice in accordance with Section 7 to the Liquidator and by returning to the Liquidator all assets, together with actual interest earned thereon, previously advanced NLHIGA by the Liquidator under this Agreement.

8.2 This Agreement automatically terminates upon Order from the Liquidation Court discharging the liquidation of Company in accordance with the provisions of NRS 696B.

9. Effective Date.

The effective date of this Agreement shall be the Contract Date.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties or their duly authorized representatives as of the date noted below.

Nevada Life & Health Insurance Guaranty Association

By (Sign): _____
Todd Thakar, Executive Director

Date: _____

Scott J. Kipper, COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA, As Liquidator of the Friday Health Plans of Nevada, Inc.

By (Sign): _____
Darren Ellingson, Special Deputy Receiver
on behalf of Liquidator

Date: _____