

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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LINDA A. LACEWELL,

Plaintiff,

- v -

ATLANTIS HEALTH PLAN, INC.,

Defendant.

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INDEX NO. 450297/2019

MOTION DATE 09/12/2024

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 52, 53, 54, 55, 56, 57, 58, 60

were read on this motion for MISCELLANEOUS

The instant motion is hereby granted, on default and on the merits, pursuant to the annexed order.

10/11/2024

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE

At IAS Part 37 of the Supreme Court of the State of New York, County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the 11 day of OCTOBER, 2024.

P R E S E N T:

HON. ARTHUR F. ENGORON, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of

Index No.: 450297/2019

the Liquidation of

ORDER

ATLANTIS HEALTH PLAN, INC.

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Upon the motion of the Superintendent of the Department of Financial Services of the State of New York, as liquidator (“Liquidator”) of Atlantis Health Plan, Inc. (“Atlantis”), for an order, *inter alia*: (i) approving the Liquidator’s report on the status of the Atlantis liquidation proceeding (“Court Report”), and the financial transactions detailed therein, annexed as Exhibit 2 to the affirmation of Yuanzhou Wu; (ii) authorizing the continued payment of actual and necessary administrative expenses incurred by the Liquidator in the administration of the Atlantis liquidation proceeding; (iii) authorizing the Liquidator to distribute Atlantis’ assets, consistent with the priorities set forth in Insurance Law § 7434, to those former policyholders and creditors of Atlantis with allowed claims; (iv) approving the Liquidator’s Closing Plan proposed in the Court Report; and (v) granting such other and further relief that this Court deems just and proper;

NOW, on the motion of the Liquidator, and no opposition having been filed with the Court, it is:

ORDERED, that the application is granted; and it is further

ORDERED, that the Court Report and the financial transactions detailed therein are approved; and it is further

ORDERED, that continued payment of actual and necessary administrative expenses, if any, is authorized; and it is further

ORDERED, that the Liquidator is authorized to distribute Atlantis' assets, consistent with the priorities set forth in Insurance Law § 7434, to those former policyholders and creditors of Atlantis with allowed claims.

OCT 11 2024

ENTER



HON. ARTHUR F. ENGORON J.S.C.

**REPORT ON THE STATUS OF THE LIQUIDATION
PROCEEDING OF ATLANTIS HEALTH PLAN, INC.
AND REQUEST FOR AUTHORITY TO DISTRIBUTE ASSETS**

INTRODUCTION

Adrienne A. Harris, Superintendent of the Department of Financial Services of the State of New York (“Superintendent”), as liquidator (“Liquidator”) of Atlantis Health Plan, Inc. (“Atlantis”), by her Agent David Axinn, Special Deputy Superintendent, hereby submits this report (“Report”) on the status of the Atlantis liquidation proceeding (“Liquidation Proceeding”) and requests authority to distribute assets.

BACKGROUND

A. Atlantis Business and Its Consent to Liquidation

Atlantis was incorporated in the State of New York on or about April 17, 1995 and obtained a Certificate of Authority to operate as a health maintenance organization pursuant to Article 44 of the New York Public Health Law on or about May 17, 2000. Atlantis commenced business on or about September 1, 2000. Atlantis offered plans providing Medicare Advantage and Medicare Advantage Part D prescription drug coverage and healthcare to Medicare beneficiaries through a network of hospitals and other health service providers. Atlantis also provided non-government sponsored coverage to individuals and companies.

By a written resolution dated October 24, 2012, Atlantis’ board of directors unanimously consented to the entry of an order of liquidation pursuant to Article 74 of the New York Insurance Law (“Insurance Law”).

On April 19, 2019, the Supreme Court of the State of New York, County of New York (the “Court”), entered an order placing Atlantis into liquidation and appointing the Superintendent as Liquidator (“Liquidation Order”). NYSCEF Doc. No. 13. The Liquidator has

appointed David Axinn as Special Deputy Superintendent and Agent of the Liquidator and other agents to carry out through her staff at the New York Liquidation Bureau (“NYLB”) the responsibilities of the Liquidator. NYSCEF Doc. No. 50.

B. Bar Date

The Court set October 11, 2019 as the bar date (“Bar Date”) by which all claims against Atlantis or its insureds and evidence supporting those claims, other than the Liquidator’s claims for administrative expenses, were required to be submitted to the Liquidator, via an electronic web portal (www.nylbpoc.org).

C. Classes of Creditors

The priority of distribution of assets from a liquidating insurer such as Atlantis is set forth in Insurance Law § 7434, which provides that all members of a senior class be paid in full before the members of the next class may receive any payment, and establishes the following classes:

Class One – Administrative Claims

Claims with respect to the actual and necessary costs and expenses of administration incurred by the Liquidator;

Class Two – Claims Under Policies

All claims under policies including claims of the federal, state or local government for losses incurred, third-party claims, claims for unearned premiums, and all claims of the security fund guaranty associations, but excluding claims arising under reinsurance contracts;

Class Three – Federal and Government Claims

Claims of the federal government, except those stated above in Class Two;

Class Four – Employee Claims

Claims for wages owing to employees of an insurer against whom an Article 74 proceeding is commenced and claims for unemployment insurance contributions required by Article 18 of the New York Labor Law;

Class Five – State and Local Government Claims

Claims of state and local governments, except those stated above in Class Two;

Class Six – General Creditor Claims

Claims of general creditors, including, but not limited to, claims under reinsurance contracts;

Class Eight – § 1307 Loans

Claims for advanced or borrowed funds made pursuant to Insurance Law § 1307; and

Class Nine – Shareholder Claims

Claims of shareholders or other owners in their capacity as shareholders.

D. Adjudication Procedure

By order entered December 23, 2019, this Court established an adjudication procedure to resolve claims against the Atlantis estate. NYSCEF Doc. No. 27. Pursuant to the adjudication procedure, claimants who objected to the Liquidator's classification determinations or recommendations of allowance or disallowance of their claims were entitled to have their objections heard by a court-appointed referee who would hear and report on the dispute.¹ Upon the referee's determination, either the claimant or the Liquidator could move the Court to confirm or deny the referee's report.

All timely filed claims that were within a priority that would receive a distribution, i.e., Class Two claims, were reviewed by the Liquidator. All claims adjudicated by the Liquidator were submitted to the Court as recommended allowances for approval pursuant to Insurance Law §§ 7428, 7433. The Court reviewed these proposed claims payments and approved them by issuing Court orders for each of the settlements.

E. Initial Court Report

On October 13, 2021, this Court entered an order approving the Liquidator's initial report ("Initial Report") on the status of the liquidation proceeding. NYSCEF Doc. No. 49. The Initial Report set forth Atlantis' financial condition as of June 30, 2021. At that time, Atlantis had assets of approximately \$2,944,081, Class One liabilities of \$14,678, Class Two liabilities

¹ The December 23, 2019 Order appointed the Honorable Edward H. Lehner to serve as referee.

of \$400,000, Class Three liabilities of \$7,627,354, Class Five liabilities of \$2,892,344, and Class Six liabilities of \$384,346, resulting in insolvency regarding Class Three, Five, and Six creditors of \$8,374,641.

CURRENT STATUS OF CLAIMS PRESENTED

A. Claims Submitted

Because the Bar Date for the submission of all claims was October 11, 2019, no additional claims or evidence in support of such claims against Atlantis or its insureds may be presented to the Liquidator. There were 17 claims in the liquidation proceeding. Of the total 17 claims received against the estate, one claim was voided, because it was erroneously set up.

The Liquidator reviewed and issued Notices of Determination (“NODs”) for Class Two claims, which informed claimants how to object to the Liquidator’s determination, if they wished, in accordance with the adjudication procedure. The Liquidator received no objections to the NODs. For all the claims, the time period for objections lapsed, and the Liquidator’s recommended allowances were deemed accepted.

The 17 claims consist of the following, which were aggregated by claimant to the extent possible to reduce administrative expenses:

- Class Two – There was one Class Two claim allowed by the Court and two Class Two claims allowed by the Superintendent for a total allowance of \$428,105.² The two claims allowed by the Superintendent were Department of Health & Human Services, Centers for Medicare and Medicaid Services (“CMS”) Secondary Payer Claims.
- Class Three – There were three Class Three CMS federal claims for a total amount claimed of \$7,627,354. The claims have been reviewed but not yet adjudicated fully, and they have been reserved in full amount.
- Class Four – There were no Class Four claims.

² Pursuant to Article 74 of the Insurance Law, the Superintendent may allow a claim without obtaining court approval, if the amount of such claim does not exceed twenty-five thousand dollars.

- Class Five – There were six Class Five claims. One claim was voided. The remaining five claims in the amount of \$2,892,344 were not adjudicated, because they were not within a priority that would receive a distribution.
- Class Six – There were five Class Six claims in the amount of \$384,382 that were not adjudicated, because they were not within a priority that would receive a distribution.
- Class Seven – There were no Class Seven claims.
- Class Eight – There were no Class Eight claims.
- Class Nine – There were no Class Nine claims.

FINANCIAL REPORT

Atlantis' Statement of Assets and Liabilities as of July 31, 2024, and Atlantis' Statement of Receipts and Disbursements for the Period April 19, 2019 to July 31, 2024, are attached hereto as Exhibit A.

A. As of July 31, 2024

As of July 31, 2024, Atlantis' records reflect total assets in the amount of \$3,012,251, and total liabilities in the amount of \$11,342,685.

1. Disbursements

As of July 31, 2024, the Liquidator had incurred \$139,916 in operating expenses, consisting of: \$48,115 for salaries of the Liquidator's staff and related payroll taxes, \$83,621 for professional fees (e.g., accountants for auditing and investment services and consultants for litigation support), \$2,371 for general and administrative expenses (e.g., tax payment and software services), and \$5,809 in miscellaneous expenses (e.g., bank fees).

2. Assets

As of July 31, 2024, Atlantis' records reflect total assets in the amount of \$3,012,251, consisting of \$1,852,801 in cash and cash equivalents, \$1,152,146 in bonds at fair market

value, and \$7,305 in accrued investment income.

3. Liabilities

As of July 31, 2024, Atlantis' records reflect total liabilities of \$11,342,685, consisting of \$10,500 in Class One Administrative Expenses, \$428,105 in Class Two Claims Under Policies, \$7,627,354 in Class Three Federal and Government Claims, \$2,892,344 in Class Five State and Local Government Claims, and \$384,382 in Class Six General Creditor Claims.

ATLANTIS PROPOSED CLOSING PLAN AND DISTRIBUTION OF ASSETS

The Liquidator has adjudicated all Class Two claims and has received confirmation from CMS that the Class Three claims are resolved in the amount of \$7,627,354. The only remaining step to closing the Atlantis estate is to receive a release from the Federal Government under the Federal Priority Statute, 31 U.S.C. § 3713(b) ("Federal Release"), relating to the Class Three claims. The Liquidator has been in communication with the Federal Government and continues to seek the Federal Release. A copy of this Report is being served upon the Federal Government.

The Liquidator proposes the following plan to close the estate ("Closing Plan"). The Liquidator will make a distribution of assets to the Class Two creditors to the extent assets are available and consistent with this Court's orders and the requirements of the Insurance Law. Following the distribution to the Class Two creditors, any assets remaining in the estate will be set aside for the benefit of the Class Three creditor (i.e., the Federal Government). Once the Federal Release is finalized, the Liquidator will pay remaining assets to the Class Three creditor, report to the Court that all affairs of the estate have been concluded, and request an order closing the estate.

RELIEF SOUGHT

Based on the facts set forth in this Report, the Liquidator respectfully requests that the

Court issue an order:

1. Approving the Report and the financial transactions detailed herein;
2. Authorizing the continued payment of actual and necessary expenses incurred by the Liquidator in the administration of the Liquidation Proceeding;
3. Authorizing the Liquidator to distribute Atlantis' assets to allowed claimants to the extent that, in the Liquidator's discretion, sufficient funds are available, and as consistent with this Court's orders and the requirements of the Insurance Law;
4. Approving the Liquidator's proposed Closing Plan; and
5. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 11, 2024



David Axinn
Special Deputy Superintendent and
Agent of Adrienne A. Harris,
Superintendent of the Department of
Financial Services of the State of New
York, as Liquidator of Atlantis Health
Plan, Inc.

EXHIBIT A

Atlantis Health Plan, Inc. in Liquidation

Statement of Assets and Liabilities

	<u>July 31, 2024</u>	<u>April 19, 2019 Liquidation Date</u>
ASSETS--		
Cash and Invested Assets--		
Cash	\$ 1,852,801	\$ 2,847,825
Bonds	1,152,146	-
Total Cash and Invested Assets	<u>3,004,946</u>	<u>2,847,825</u>
Accrued Investment Income	7,305	-
Total Assets	<u>\$ 3,012,251</u>	<u>\$ 2,847,825</u>

	<u>July 31, 2024</u>	<u>April 19, 2019 Liquidation Date</u>
Liabilities--		
Secured Claims	\$ -	\$ -
Class I - Administrative Expenses	10,500	4,507
Class II - Claims and Related Costs	428,105	400,000
Class III - Federal Government Claims	7,627,354	7,627,354
Class IV- Employee Claims	-	-
Class V - State and Local Government Claims	2,892,344	2,892,344
Class VI - General Creditor Claims	384,382	384,346
Class VII - Late Filed Claims	-	-
Class VIII - Section 1307 (Shareholder) Loans	-	-
Class IX - Shareholder Claims	-	-
Total Liabilities	<u>11,342,685</u>	<u>11,308,551</u>
Deficit	(8,330,433)	(8,460,726)
Total Liabilities and Deficit	<u>\$ 3,012,251</u>	<u>\$ 2,847,825</u>

Atlantis Health Plan, Inc.
Receipts and Disbursements
For The Period April 19, 2019 to July 31, 2024

Receipts

Net Investment Income Received	\$ 280,677
Miscellaneous	26,869

Total Receipts	307,546
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Operating Expenses

Salaries	48,115
Professional Fees	83,621
General and Administrative Expenses	2,371
Miscellaneous	5,809

Total Operating Expenses	139,916
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Receipts over operating Expenses	167,630
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Opening Cash, Cash Equivalents at Liquidation Date	2,847,825
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Unrealized (Loss) on Investments	(10,509)
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Cash, Cash Equivalents; End of Period	\$ 3,004,946
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