

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN,  
INSURANCE COMMISSIONER OF  
THE COMMONWEALTH OF  
PENNSYLVANIA AS STATUTORY  
REHABILITATOR OF HRM HEALTH  
PLANS (PA), INC. (In Rehabilitation),

Plaintiff,

v.

HRM HEALTH PLANS (PA), INC.  
(In Rehabilitation),

Defendant.

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Docket No. 407 MD 2001

**ORDER OF LIQUIDATION**

M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, and Statutory Rehabilitator of HRM Health Plans (PA), Inc. (In Rehabilitation) ("HRMPA"), having filed a Petition for Liquidation in accordance with Article V of the Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, 40 P.S. §§211-221.63, the Court hereby finds that sufficient grounds exist for the entry of an Order of Liquidation because further attempts to rehabilitate HRMPA would substantially increase the risk of loss to the creditors and would be futile, and additionally on the basis of insolvency and HRMPA's consent to Liquidation.

NOW, THEREFORE, it is ordered, judged, and decreed:

1. The Petition of Liquidation filed by M. Diane Koken Insurance Commissioner of the Commonwealth of Pennsylvania ("Commissioner") is granted.
2. Commissioner M. Diane Koken and her successors in office are hereby appointed Liquidator of HRMPA and the Liquidator or her designees are directed

immediately to take possession of HRMPA's property, business and affairs as Liquidator, and to liquidate the business and affairs of the company pursuant to the provisions of Article V of the Insurance Department Act (40 P.S. §§211 et seq.), and to take such action as the nature of this case and the interest of the enrollees, creditors, or the public may require.

3. The Liquidator or her designees are vested with full powers authorized under Article V of the Insurance Department Act, supra, and by other provisions of law.

#### **ASSETS OF THE ESTATE**

4. Commissioner M. Diane Koken and her successors, as Liquidator, or her designees, are vested with title to all property, assets, contracts and rights of action of HRMPA, of whatever nature and wherever located, whether held directly or indirectly, as of the date of the filing of the Petition for Liquidation. According to Section 520(c), supra, "the filing or recording of the Order with the clerk of the Commonwealth Court or with the recorder of deeds of the county in which the principal business of the company [HRMPA] is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted."

5. All banks, investment bankers, or other companies, entities or persons having in their possession assets which are, or may be, the property of HRMPA, be and are hereby ordered to deliver the possession of the same immediately to the Liquidator or her designees, and are further ordered not to disburse, convey, transfer, pledge, assign, hypothecate, encumber or in any manner dispose of the same without the prior written consent of, or unless directed in writing by, the Liquidator or her designees, and are further ordered that such persons and entities, and all other persons and entities, are enjoined from disposing of or destroying any records pertaining to any business

transactions between HRMPA and banks, investment bankers or other persons, entities, or companies having done business with HRMPA or having in their possession assets which are or were the property of HRMPA. Such person and entities, and all other persons and entities, are enjoined from disposing of or destroying any records pertaining to any business transactions between HRMPA and banks, investment bankers or other persons or companies having done business with HRMPA or having in their possession assets, which are, or were, the property of HRMPA.

6. All insurance agents, brokers, or other persons having sold policies of insurance and/or solicited enrollment by Medicaid beneficiaries in HRMPA shall account for and pay all such commissions unearned due to the cancellation of HRMPA's contracts with the Department of Public Welfare and/or the transfer of HRMPA's enrollees to other health maintenance organizations or to the Medicaid fee for service program, directly to the Liquidator or her designees within 30 days of the date of the Liquidation Order or appear before this Court to show good cause as to why they should not be required to account to the Liquidator or her designees, or be held in contempt of Court for violation of the provisions of this Order. No insurance agent, broker or other person shall disburse or use monies owed to HRMPA for any purpose other than payment to the Liquidator or her designees.

7. All attorneys employed or retained by HRMPA or performing legal services for HRMPA as of the date of this Order shall, within 30 days notice of this Order, report to the Liquidator or her designees on the name, company claim number and status of each file they are handling on behalf of HRMPA. Said report shall include the full caption, docket number and name and address of opposing counsel in each case they are handling on behalf of HRMPA. Said report shall also include an accounting of any funds received from or on behalf of HRMPA for any purpose and in any capacity. All attorneys described herein are hereby discharged as of the date of this Order unless their services are retained by the Liquidator or her designees in writing.

8. Any company providing telephonic services to HRMPA shall maintain such service and create a new account as of the date of this Order unless instructed to the contrary by the Liquidator or her designees, and perform any other changes necessary to the conduct of the receivership at the request of the Liquidator or her designees, including the provision of a reference of calls from the numbers presently assigned to HRMPA to any such number designated by the Liquidator or her designees.

9. Any entity furnishing water, electric, sewage, garbage, trash removal, or utility services to HRMPA shall maintain such service and create a new account for the Liquidator or her designees as of the date of this Order unless instructed to the contrary by the Liquidator or her designees.

10. Any entity including any affiliate of HRMPA which has custody or control of any data processing information and records including but not limited to source documents, all types of electronically stored information, master tapes or any other recorded information relating to HRMPA, shall transfer custody and control of such records in a form readable by the Liquidator to the Liquidator or her designees as of the date of this Order unless instructed to the contrary by the Liquidator or her designees.

11. Any entity including any affiliate of HRMPA furnishing claims processing or data processing services to HRMPA shall maintain such services and transfer any such accounts to the Liquidator as of the date of this Order, unless instructed to the contrary by the Liquidator.

12. The United States Postal Service is requested to provide any information requested regarding HRMPA and to handle future deliveries of HRMPA's mail as directed by the Liquidator or her designees.

13. HRMPA, its affiliates, or their officers, directors, trustees, employees, consultants, agents, and attorneys are hereby ordered to surrender peacefully to the Liquidator, her successors, her designees, her agents, and attorneys, the premises where HRMPA conducts its business, and to deliver all keys or access codes thereto and to any

safe deposit boxes, and to advise the Liquidator, her successors, her designees, her agents, and attorneys, of the combinations or access codes of any safe or safekeeping devices of HRMPA or any password or authorization code or access code required for access to data processing equipment.

14. HRMPA, its affiliates, or their officers, directors, trustees, employees, consultants, agents, and attorneys are hereby ordered to deliver and surrender peacefully to the Liquidator, her successors, her designees, her agents, and attorneys, all and singular, all of the assets, books, records, files, credit cards, or other property of HRMPA in its possession or control, wherever located, and to otherwise advise and cooperate with the Liquidator or her designees in identifying and locating any of the foregoing.

15. Except for contracts of insurance and for reinsurance, all executory contracts including provider contracts to which HRMPA is a party to as of the date of this Order are canceled and will stand canceled unless specifically adopted by the Liquidator or her designees within 30 days of the date of this Order, and that any cancellation under this provision shall not be treated as an anticipatory breach of such contracts.

#### **NOTICE AND PROCEDURE FOR FILING CLAIMS**

16. The Liquidator or her designees shall give notice by first-class mail to all persons (including but not limited to individuals, aggregations of individuals, partnerships, corporations, associations, estates, trusts and governmental units, to include all other entities not named), which may have claims against HRMPA, contingent or otherwise, as revealed by its books and records, and shall advise such persons to present and file with the Liquidator or her designees, proper proofs of claim in the form hereafter set forth. Said notice by the Liquidator or her designees to claimants shall specify one year from the Liquidation Order's date at 5:00 p.m. EST to be the last day for the filing of such proofs of claim with the Liquidator at the offices designated in such notice.

17. The Liquidator or her designees shall notify all other persons who have, or may have a claim or claims against HRMPA, by causing a notice to be published in a newspaper of general circulation where HRMPA has its principal place of business. Such notice shall: (a) specify the last day for the filing of claims; (b) advise all persons of the procedure by which all such persons may present their claims to the Liquidator or her designees; (c) advise all such persons of the Liquidator's office wherein they may present their claim; and (d) advise all such persons of their right to present their claim or claims to the Liquidator or her designees.

18. Any and all persons, firms, or corporations having or claiming to have any accounts, debts, claims or demands against HRMPA, contingent or otherwise, or claiming any right, title, or interest in any funds or property in the possession of the Liquidator or her designees are hereby ordered and required to file with the Liquidator or her designees at the offices designated in the above-described notice, on or before 5:00 p.m. EST one year from this Order's date, a properly completed proof of claim, subject to the late filing provisions of the Insurance Department Act, supra, 40 P.S. §221.37, or be thereafter barred as claimants against any assets in the hands of the Liquidator or her designees.

19. No person having or claiming to have any claim or claims against HRMPA shall participate in any distribution of the assets of HRMPA unless such claims are filed or presented in accordance with and within the time limits established by this Order, subject to the provisions for the late filing of claims contained in the Insurance Department Act, supra, 40 P.S. §221.37.

#### **EXPENSES, PAYMENTS AND LAWSUITS**

20. Without filing a petition for distribution, the Liquidator or her designees shall have the discretion to pay as "costs and expenses of administration" pursuant to 40 P.S. §221.44, the actual, reasonable and necessary costs of preserving or recovering assets

of HRMPA and the costs of goods or services including healthcare provider services provided to and approved by HRMPA (In Rehabilitation) during the period of Rehabilitation and that are unpaid as of the date of liquidation.

21. The rights and liabilities of HRMPA and of its creditors, policyholders, trustees, shareholders, members, and all other persons interested in this estate are determined in accordance with Article V of the Insurance Department Act, Act of May 19, 1921, P.L. 789, as amended, 40 P.S. §§211-221.63, as of the date of the filing of the Petition for Liquidation.

22. HRMPA, its affiliates, or their directors, officers, trustees, employees, attorneys, brokers, consultants, agents, enrollees, creditors, and any other persons, wherever located, are enjoined from: (a) the transaction of further business, (b) transferring, selling, concealing, terminating, canceling, destroying, disbursing, disposing of or assigning any assets, funds or other property of any nature, (c) any interference, in any manner, with Commissioner M. Diane Koken or her successors, or any of her designees in liquidating HRMPA's business and affairs, (d) any waste of HRMPA's assets or property, (e) the dissipation and transfer of bank accounts and negotiable instruments, (f) the institution or further prosecution of any actions in law or equity, (g) the obtaining of preferences, judgments, attachments, garnishments or liens against HRMPA's assets, property and policyholders, (h) the levy of execution process against HRMPA and its assets, property and policyholders, (i) the negotiation or execution of any agreement of sale or deed conveying personal or real property for nonpayment of taxes or assessments or for any other purpose, (j) withholding from the Liquidator or her designees or removing, concealing, transferring or destroying books, accounts, documents, policies or policy related documents or other records relating to HRMPA business, (k) making any assessments or indirectly collecting such assessments by setting them off against amounts otherwise payable to HRMPA, (l) attempting to collect unpaid claims from HRMPA's enrollees and (m) the taking of any other action which might

lessen the value of HRMPA's assets or property, prejudice the rights and interests of enrollees and creditors, or interfere in the administration of the proceeding.

23. No action at law or equity, including but not limited to arbitrations and mediations, shall be brought against HRMPA, the Liquidator or her designees, whether in this Commonwealth or elsewhere, nor shall any such existing action be maintained or further prosecuted after issuance of this Order. All actions currently pending against HRMPA in the courts of the Commonwealth of Pennsylvania or elsewhere are hereby stayed. All actions, including but not limited to arbitrations and mediations, against HRMPA, the Liquidator or her designees, shall be submitted and considered as claims in this liquidation proceeding.

24. No judgment or order against HRMPA entered after the date of filing of the Petition for Liquidation, and no judgment or order against HRMPA entered at any time by default or by collusion, need be considered as evidence of liability or quantum of damages by the Liquidator or her designees.

25. No action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in this Commonwealth or elsewhere against HRMPA, the Liquidator, her designees or their assets.

26. All secured creditors or parties, pledges, lienholders, collateral holders or other person claiming secured, priority or preferred interests in any property or assets of HRMPA are hereby enjoined from taking any steps whatsoever to transfer, sell, assign, encumber, attach, dispose of, or exercise, purported rights in or against any property or assets of HRMPA.

27. This Order shall be effective October 1, 2001.

*DATED*  
*SEPTEMBER 20, 2001*

*Warren G. Morgan*

Certified from the Record

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and Order Exit