

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CIVIL DIV. : PART 35

-----X  
In the Matter of, :  
 :  
the Liquidation of : Index No.  
 : 450500/16  
HEALTH REPUBLIC INSURANCE OF NEW YORK :  
CORP. : **STATUS**  
-----X UPDATE

60 Centre Street  
New York, New York  
November 29, 2018

B E F O R E :

HON. CAROL. R. EDMOND,  
Justice

A P P E A R A N C E S :

NEW YORK LIQUIDATION BUREAU  
180 Maiden Lane  
New York, N.Y. 10038  
BY: JOHN PEARSON KELLY, ESQ.  
Assistant Special Deputy  
Superintendent General Counsel

TIBBETS, KEATING & BUTLER, LLC  
Attorneys for Northwell Health, Inc.  
Nine East 45th Street  
New York, N.Y. 10017  
BY: THOMAS NOONAN, ESQ.

ALSO PRESENT:

NEW YORK LIQUIDATION BUREAU  
BY: GAIL PIERCE-SIPONEN, Director  
Creditor & Ancillary Operations

NEW YORK LIQUIDATION BUREAU  
BY: RONALD LABENSKI,  
Chief Financial Officer

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ROBERT PORTAS, R.P.R., C.R.R.:  
SENIOR COURT REPORTER

## PROCEEDINGS

1 THE COURT: Health Republic at the table.

2 (Brief pause.)

3 THE COURT: On the record.

4 All right, today is a day to get an update, a  
5 status on what's going on with respect to the liquidation  
6 of Health Republic; yes?

7 MR. KELLY: Yes, Your Honor.

8 MR. LABENSKI: Yes, Your Honor.

9 MS. PIERCE-SIPONEN: Yes.

10 MR. KELLY: Your Honor, before we begin, we have  
11 some materials that we've presented both for the Court and  
12 for any interested person here in the courtroom that would  
13 like to refer to them (handing).

14 THE COURT: Anyone?...

15 Anyone else?

16 MR. KELLY: Anyone else here on Health Republic?

17 THE COURT: That would like a package.

18 AUDIENCE MEMBER: Thank you.

19 THE COURT: Do you have one more for this  
20 gentleman (indicating)?

21 (Mr. Kelly handing to audience member.)

22 THE COURT: Thank you.

23 Okay, let's go.

24 MR. KELLY: Your Honor, I'm John Kelly, I'm the  
25 general counsel of Liquidation Bureau. We're here to  
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## PROCEEDINGS

1 provide a status report on the progress of the estate which  
2 will include a discussion of policy claims, explanations of  
3 benefits that have been issued to claimants, the status of  
4 appeals, estate expenses this year and projected expenses  
5 for 2019.

6 THE COURT: Go ahead.

7 MR. KELLY: With the Court's permission, I would  
8 like to have Gail Pierce-Siponen, who you have met before,  
9 Your Honor, address the claims process. When she is  
10 finished I will turn to our chief financial officer, Ron  
11 Labenski, he will address the expenses in the estate, and  
12 then when he is finished I will return to myself, if I may,  
13 and address some legal issues that relate to the estate.

14 THE COURT: You're up.

15 MS. PIERCE-SIPONEN: I'm up.

16 Good morning, Your Honor. Gail Pierce-Siponen,  
17 I'm director of credit and ancillary operations. I  
18 essentially oversee the receiver function relations --

19 THE COURT: I'm sorry, one second.

20 In the back row, are you here listening to this  
21 or are you here on the hearing? I just want to know if  
22 you can hear.

23 AUDIENCE MEMBER: We're here for the hearing.

24 THE COURT: You're here for...?

25 AUDIENCE MEMBER: The other case.

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## PROCEEDINGS

1 THE COURT: You?

2 AUDIENCE MEMBER: The other hearing.

3 AUDIENCE MEMBER: Hearing.

4 AUDIENCE MEMBER: Hearing.

5 THE COURT: The hearing? The other case. Okay.

6 So you can go. I don't need to move my  
7 microphones. Go ahead.

8 MS. PIERCE-SIPONEN: That's good. I can raise my  
9 voice a bit.

10 So my job essentially is overseeing the  
11 inception of claims, the classification of claims and the  
12 resolution of claims. Last time we were here we were  
13 still, as you know, in the process of issuing and  
14 finalizing the explanation of benefits. And, as I had  
15 indicated, it was our projection or goal that we would  
16 try our best to resolve those all by the end of the year.  
17 And I'm here to tell you that we have done that.

18 THE COURT: When you say "We resolved those  
19 claims," what does that mean?

20 MS. PIERCE-SIPONEN: What it means is that  
21 everyone who was issued an EOB --

22 THE COURT: EOB.

23 MS. PIERCE-SIPONEN: EOB is an explanation of  
24 benefits.

25 THE COURT: Right.

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## PROCEEDINGS

1 MS. PIERCE-SIPONEN: And, just to explain, that is  
2 generally what a doctor submits when he is seeking  
3 reimbursement, and it's the document you get back from the  
4 insurance company telling you what you will pay.

5 What we did here is we attempted to aggregate by  
6 provider as much as possible, so the EOBs that they got  
7 were larger but it was less paper and it was less  
8 expensive to do the mailing.

9 Everyone who's received one of those, whether a  
10 provider or a member, has either accepted the initial  
11 determination on the explanation of benefits; or, if they  
12 filed either a question, we've resolved it with them  
13 without filing a formal appeal; or, if they filed a  
14 formal appeal they -- we have resolved it and they have  
15 accepted the redetermination of the appeal.

16 THE COURT: That's all?

17 MS. PIERCE-SIPONEN: All. We have no open claims  
18 for policyholders at this time.

19 And just to --

20 THE COURT: For policyholders.

21 MS. PIERCE-SIPONEN: For policyholder claims.  
22 That's all at this point that we have been working on.

23 THE COURT: Excellent.

24 MS. PIERCE-SIPONEN: Now, just to give you some  
25 numbers there, the total number of explanation of benefits  
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## PROCEEDINGS

1 that was issued was 190,000, and that's on Chart A,  
2 Slide 1.

3 MR. KELLY: Slide 1.

4 MS. PIERCE-SIPONEN: Slide 1.

5 There was 190,367 explanation of benefits issued  
6 to -- either to members or providers. That encompassed  
7 approximately 881,000 claims, meaning individual  
8 submissions for services by providers. And that  
9 encompassed, going down just a little further, about  
10 2.1 million of individual service codes within that,  
11 because a doctor may have done two or three or four  
12 different procedures.

13 We were able to resolve the vast majority on the  
14 EOB itself. And principally I would say the main reason  
15 is because of the website in the interactive voicemail,  
16 we're able to resolve issues if people had questions  
17 before they had to go through the formal process. And,  
18 also, as you recall, you had approved us conducting the  
19 Truven audit before we issued the EOB and that gave, I  
20 think, a lot more clarity and confidence in the numbers.

21 We received a total of 1,401 official appeals.  
22 And we have, as I indicated, resolved all those with the  
23 provider or the member, and they have accepted the  
24 determination. So, in essence, none have had to go  
25 either to the next stage, which is either the referee or  
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## PROCEEDINGS

1 the independent medical --

2 THE COURT: Is there something that falls in the  
3 category of unofficial appeals? Because you said "Official  
4 appeals."

5 MS. PIERCE-SIPONEN: Well, what I meant, Your  
6 Honor, is what I said earlier, which is people who  
7 indicated they might want to appeal but when we spoke with  
8 them we were able to resolve their issue. It might have  
9 been that they thought they had to appeal on the copay --

10 THE COURT: Okay.

11 MS. PIERCE-SIPONEN: -- and we explained to them,  
12 "No, that's not for the procedure."

13 THE COURT: So that's what we would consider  
14 unofficial that was resolved.

15 MS. PIERCE-SIPONEN: Correct.

16 THE COURT: The official is the actual appeals  
17 process.

18 MS. PIERCE-SIPONEN: Actual people who went into  
19 the porthole --

20 THE COURT: Right.

21 MS. PIERCE-SIPONEN: -- and submitted a form that  
22 said, "We are appealing."

23 THE COURT: Right. Got it.

24 MS. PIERCE-SIPONEN: So at the end of the day we  
25 have 190,367 claims that have been resolved and the total  
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## PROCEEDINGS

1 is \$217,950,702.

2 THE COURT: That is the number that reflects what?

3 MS. PIERCE-SIPONEN: That reflects the amount of  
4 the resolution of the claims with the providers and  
5 members.

6 THE COURT: When you say "Resolution of the  
7 claims," is this a payout?

8 MS. PIERCE-SIPONEN: This is the amount that would  
9 be subject to any distribution that was made --

10 THE COURT: Got it. Because the distributions  
11 can't be made yet --

12 MS. PIERCE-SIPONEN: Right.

13 THE COURT: -- so the 217 plus million is the  
14 amount that would be subject to distribution.

15 MS. PIERCE-SIPONEN: Yes.

16 THE COURT: But the distribution is not happening  
17 yet.

18 MS. PIERCE-SIPONEN: Right.

19 THE COURT: Got it.

20 MR. KELLY: May I add one slight addition to that,  
21 Your Honor? That is the amount that we are going to be  
22 recommending to you --

23 MS. PIERCE-SIPONEN: Yes.

24 MR. KELLY: -- as the amount to be allowed.  
25 Because the actual allowance, of course, rests with you.

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1 MS. PIERCE-SIPONEN: Right. And that's why I'm  
2 saying we resolved them. But ultimately we will have to  
3 give them to you for final approval.

4 THE COURT: Right.

5 MS. PIERCE-SIPONEN: Now -- So that -- that's one  
6 part of the functions that we talked about that we do. The  
7 other was the handling of complaints or inquiries or issues  
8 that the members or providers had in a more general sense.  
9 And that, as you know, we had the website where they could  
10 submit those, we also had the interactive phone lines and  
11 we also had a dedicated phone line at the NYLB.

12 Since inception to the end of October we  
13 received a total of 43,445 calls, all of which we've  
14 handled in some capacity. And of that about 4500 came  
15 directly to the bureau, the rest to the interactive voice  
16 system. We've had 87,617 visitors to the website of  
17 which 61,000 --

18 THE COURT: I think I required multi-language,  
19 didn't I?

20 MS. PIERCE-SIPONEN: You did. Spanish and  
21 English.

22 THE COURT: The website is in Spanish and English,  
23 because many of the policyholders were Spanish speaking.  
24 Got it. Okay.

25 MS. PIERCE-SIPONEN: And we had -- Of the 87,600  
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1 that visited the website, 61,181 were unique visitors.

2 THE COURT: Which means...?

3 MS. PIERCE-SIPONEN: Which means they went only  
4 one time.

5 THE COURT: Okay.

6 MS. PIERCE-SIPONEN: As opposed to people who went  
7 back more than once.

8 THE COURT: Got it.

9 MS. PIERCE-SIPONEN: So, essentially what I would  
10 say at this point is that the adjudication, except for the  
11 final stage, which is your approval of what we have  
12 resolved with the policyholders, is completed on our end.  
13 But we will continue with the website and we will continue  
14 with the call center in order to continue to facilitate  
15 whatever may be the interest of the public or the interest  
16 of creditors.

17 And the last slide that I have is Slide 3, which  
18 just divides what are the types of inquiries we've  
19 received. And, as you can notice, probably close to  
20 three quarters was -- involved the claims process in some  
21 fashion, and the others were more general, it might be an  
22 eligibility question, it might be something they needed  
23 for their new insurance carrier, it might be the tax  
24 forms they needed under the ACA, and it simply might have  
25 been us explaining to them what the liquidation procedure

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1 is.

2 So we have met the target of completing our part  
3 of it this year, and, with your permission, Mr. Kelly  
4 will go a little more into detail as to how we propose or  
5 we would like to discuss with you how we would handle the  
6 final approval of our recommended allowances for the  
7 Class 2.

8 THE COURT: I thought it was going this way first  
9 (indicating).

10 MR. KELLY: It is, with a slight detour back to  
11 me, if I may, just because this is sort of the subject of  
12 the moment, Your Honor. We wanted to ask you the form in  
13 which you would like to have the request for allowance or  
14 final allowance by the Court presented.

15 THE COURT: You know what I'm going to say. I say  
16 this with respect to everything I ask you to do: I want  
17 you to submit a proposal, I want it uploaded, unless  
18 there's a reason it shouldn't be, and I need to hear that,  
19 and then I will bring you in and we will have an open  
20 discussion on the record and then I'll make a ruling.

21 MR. KELLY: Well, certainly there's no reason why  
22 certain aspects of it can't be posted. That's --

23 THE COURT: Anything that you think cannot be  
24 posted, as I've done in the past, I will tell you to  
25 provide to me in camera, and I will just make a note on  
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1 what's posted and uploaded that where something is  
2 in camera just indicate, "Submitted to the Court  
3 in camera," and so the -- so the uploaded proposal is  
4 complete with redaction, where it will say, "Submitted to  
5 the Court in camera." And if I believe it should not be  
6 protected I will let everyone know universally, as I always  
7 do. And if I -- whatever the determination is, the  
8 determination will be universal, the application for  
9 redaction and in camera is granted or denied, area and  
10 item. So that's the -- that's how I want it.

11 MR. KELLY: That's fine, Your Honor.

12 THE COURT: When will it be posted?

13 MR. KELLY: Let me ask you this, if I may and then  
14 I'll address that: We have an example of information that  
15 we think should not be made public should be redacted.

16 THE COURT: I don't need an example, I want the  
17 for real. I want it submitted to me it could be in boxes  
18 or --

19 MR. KELLY: No, I understand that.

20 THE COURT: -- but I don't need to --

21 MR. KELLY: The example was just to show you, Your  
22 Honor, what it is, and then I was going to ask you in what  
23 form you would like to have it. Because we could give it  
24 you to as a flash drive, as a CD-ROM or some other media.  
25 It's over 4,000, I believe --

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1 THE COURT: 4,000...?

2 MS. PIERCE-SIPONEN: Pages.

3 THE COURT: Pages?

4 MR. KELLY: Pages of claimant information showing  
5 the claimant name --

6 THE COURT: Thumb drive, and I'll just upload.

7 MR. KELLY: Okay.

8 THE COURT: Thumb drive. I don't need all that --  
9 I don't do paper -- I mean, I -- the part is a paperless  
10 part to the degree it can be so. So give me a thumb drive  
11 and if I need anything beyond the thumb drive I will let  
12 you know. But the likelihood is I can go through it on the  
13 screens and then if I -- and I could make rulings. But I  
14 also need a -- with the thumb drive I need an index of what  
15 I'm getting so I can make rulings next to or I can put  
16 right next to the page. Don't worry about an index, I can  
17 put it right next to the document.

18 MR. KELLY: I think it consists of each of the  
19 claims, the amount, the provider and the name. And  
20 obviously that's information we don't want to be made  
21 generally public.

22 THE COURT: If that's what we're talking about  
23 that's very easy. Just send me a thumb drive.

24 MR. KELLY: That's good, Your Honor.

25 THE COURT: Because we have a lot of information  
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1 that should not be disclosed with the HIPAA violations and  
2 things like that. So give it to me as a thumb drive and  
3 I'll go through it.

4 MR. KELLY: We will do it that way, Your Honor.  
5 And I think it will be forthcoming relatively soon.

6 THE COURT: I'm only here till the 14<sup>th</sup> of  
7 December. So if it's not here before then understand I  
8 don't need to get it until January 2<sup>nd</sup> when the Court  
9 opens up again.

10 MR. KELLY: Okay. Thank you, Your Honor.

11 THE COURT: All right? So that's the reality of  
12 time.

13 MR. KELLY: And, if I may clarify one other point  
14 on this point: We generally when we ask for allowances  
15 submit them by ex parte application. And by that I mean  
16 not on notice. We would upload it to the docket and it  
17 would include a -- an affirmation discussing the fact that  
18 this was the result of the process that had been previously  
19 ordered, and it would recite what the process was and the  
20 fact that we are asking the Court to review and allow the  
21 recommendations that we have made. It would not, however,  
22 be on notice, other than to be uploaded onto the Court's  
23 E-File docket. Is that sufficient for the Court here?

24 THE COURT: Well, the concern I would have, of  
25 course, is this would then require that everyone who might  
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1 be disallowed be viewing the -- the web, be viewing the  
2 site. Do you see what I mean? And I don't assume even in  
3 2018 that everybody is upload--- online looking at  
4 everything, especially in this kind -- this case, which is  
5 massive. It's massive.

6 So a disallowance where you're asking the Court  
7 to disallow would be the only notice that a person or a  
8 provider or a client would get that it was disallowed?

9 MR. KELLY: No, Your Honor. This is the end of a  
10 process where everyone has already had an opportunity to  
11 review their --

12 THE COURT: On notice.

13 MR. KELLY: -- their results.

14 MS. PIERCE-SIPONEN: They received the EOB --

15 THE COURT: Then it's okay.

16 MS. PIERCE-SIPONEN: -- and on the appeals they  
17 accepted our information.

18 THE COURT: As long as this isn't the first  
19 notice. This is the notice to the Court saying, "This is  
20 what we'd like you to do," but they've already received  
21 notice of the determination.

22 MR. KELLY: That's correct, Your Honor.

23 THE COURT: That's fine.

24 MR. KELLY: This is the end of the process, the  
25 last step.

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1 THE COURT: Got it. Good. That's all right.

2 MR. KELLY: Thank you, Your Honor.

3 THE COURT: Next.

4 MR. KELLY: And now we will turn to Mr. Labenski,  
5 if we may.

6 MR. LABENSKI: Good morning, Your Honor.

7 THE COURT: Good morning again.

8 MR. LABENSKI: My name is Ron Labenski --

9 THE COURT: We know your name.

10 MR. LABENSKI: -- and I am the CFO of the New York  
11 Liquidation Bureau.

12 THE COURT: We know what you do.

13 MR. LABENSKI: I'm here to report on the 2018  
14 actual expenses and the 2019 projected expenses.

15 THE COURT: Okay.

16 MR. LABENSKI: On Slide 4 I have the total  
17 incurred expenses from 2016 to 2018 and the projected  
18 expenses for 2019. In 2016 total incurred expenses  
19 amounted to \$7.5 million and were reduced to \$2.8 million  
20 in 2017 with a further decline in expenses in 2018 to  
21 \$1.7 million. For this period of time expenses have been  
22 reduced by \$6.2 million. This reduction is due to the  
23 internalization by the NYLB of the claims, legal and  
24 financial functions with the complete elimination of  
25 outside consultants and a reduction in audit fees.

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1 We expect this trend to continue in 2019 and we  
2 project total incurred expenses to amount to \$1.2 million  
3 in 2019, a 30 percent reduction from the 2018 incurred  
4 expenses.

5 I will discuss the 2019 projected expenses in  
6 more detail when we get to Slide Number 7.

7 On Slide Number 5 you will find the New York  
8 Liquidation Bureau's average expenses per quarter. This  
9 slide represents the NYLB's average monthly charges for  
10 each quarter from May 2016 to September 2018. This  
11 includes NYLB salaries allocated to the HRI, along with  
12 the allocation of the NYLB's overhead, such as rent,  
13 benefits and administrative expenses.

14 The slide demonstrates a downward trend from  
15 130,000 in the second quarter of 2016 to 51,000 in the  
16 third quarter of 2018. This decrease is due to  
17 accounting issues being resolved and a reduction in the  
18 claims handling process.

19 THE COURT: What was the big spike in  
20 July/September of 2017.

21 MS. PIERCE-SIPONEN: The EOBs.

22 MR. LABENSKI: That was the processing of the EOBs  
23 and the appeals.

24 THE COURT: Got it. Okay.

25 MR. LABENSKI: If you look at Slide 6, you will  
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1 see the actual 2018 incurred expenses versus the 2018  
2 projected expenses. The green line is the projected  
3 expenses and the blue line is the actual expenses.

4 THE COURT: Tell me about February, March, April,  
5 the spike.

6 MR. LABENSKI: The spike is due to a settlement  
7 with an outside vendor.

8 THE COURT: Which vendor?

9 MR. KELLY: That was Magna Carry, Your Honor.  
10 That was the repricing services that were performed for the  
11 liquidator post liquidation where the liquidator had a  
12 disagreement about the cost and we resolved it, and we  
13 submitted it to Your Honor for your review and approval.

14 THE COURT: Okay.

15 MR. LABENSKI: So for the year 2018 we projected  
16 expenses of \$2.7 million. Our actual will be 1.8 million,  
17 which is \$900,000 under our projected expenses. The  
18 savings is primarily due to the NYLB's efficient manner in  
19 the processing of EOBs and appeals that resulted in a  
20 \$310,000 savings.

21 Other savings were realized through the  
22 internalization by the NYLB of the legal and financial  
23 functions and a reduction in the annual audit fees.

24 We talked about the spike, and, as John alluded,  
25 it was due to a one-time settlement.

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1 THE COURT: Got it.

2 MR. LABENSKI: On Slide 7 we have the 2019  
3 projected incurred expenses. Our projected expenses for  
4 2019 is \$1.2 million, a reduction of \$509,000 of 30 percent  
5 from the 2018 actual expenses of \$1.7 million.

6 In 2019 I'm going to have three major categories  
7 of expenses: Administration expenses, legal expenses and  
8 the annual audit.

9 THE COURT: The legal expenses, does that pick up  
10 the claim -- the cases that may be brought or are brought  
11 in pending federal cases?

12 MR. KELLY: It does, Your Honor. And that's  
13 something that I'll address --

14 THE COURT: Okay.

15 MR. KELLY: -- more fully.

16 THE COURT: But that's being handled in-house or  
17 outside counsel?

18 MR. KELLY: No, that is being handled by outside  
19 counsel, Your Honor.

20 THE COURT: What's the firm?

21 MR. KELLY: Garren...

22 THE COURT: I remember. Yes.

23 AUDIENCE MEMBER: It's Clarick.

24 THE COURT: What is it?

25

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## PROCEEDINGS

1 MR. KELLY: Clarick.

2 THE COURT: C-L... Just spell it.

3 AUDIENCE MEMBER: Clarick & Gueron.

4 C-L-A-R-I-C-K.

5 THE COURT: Is the firm handling the federal  
6 litigation.

7 AUDIENCE MEMBER: Correct.

8 MR. KELLY: Federal litigation.

9 THE COURT: I remember that came before the Court.  
10 I just wanted the record to pick it up. Got it. All  
11 right.

12 MR. LABENSKI: The claims handling expenses will  
13 be less of a driving factor in 2019 as the claim processing  
14 function, as Gail has alluded to, as mentioned earlier, the  
15 2018 incurred expenses will be \$1.7 million. Claims  
16 pros--- I'm talking on Slide 8 now.

17 THE COURT: Yes. I'm on 8.

18 MR. LABENSKI: You're on eight?

19 Claims processing has been our largest function  
20 at 49 percent of total expenses. This entailed a  
21 processing of EOBs and addressing and resolving appeals.

22 Finance is 23 percent of the total expenses and  
23 includes the audit fee and continued administration of  
24 HRI's books and records; IT, which provides support  
25 services to claims and finances, 14 percent of the  
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## PROCEEDINGS

1 expenses; creditor communications is performed by an  
2 outside vendor who maintains the website and porthole and  
3 incurred 3 percent of the total expenses; legal  
4 constitutes 11 percent of total incurred expenses.

5 THE COURT: Okay. Off the record.

6 (Discussion off the record.)

7 THE COURT: Back on. Am I -- I'm on Page 9.

8 MR. LABENSKI: Turning to Slide 9, the last slide.  
9 We have assets, liabilities and the deficit.

10 As of October 31, 2018 cash and invested assets  
11 totaled \$36.3 million, assets were \$37 million. Cash and  
12 invested assets is basically the only asset that HRI has  
13 at the moment. Liabilities total 705.8 million, which  
14 includes Class 2 claims of \$217.9 million. From 2016 to  
15 2018, October of 2018 the deficit reported to the Court  
16 has remained fairly consistent going from the negative  
17 659.7 million to 2016 to a negative 668.7 million in  
18 October 2018. The decrease in equity is basically due to  
19 the increase in the Class 2 expenses claims.

20 The HRI audited finance financial statements  
21 with footnotes for the years 2016 and 2017 can be found  
22 in the HRI website. The 2018 annual audit is scheduled  
23 to commence in January of 2019.

24 THE COURT: Say that again. The 2000...

25 MR. LABENSKI: 19.

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## PROCEEDINGS

1 THE COURT: Yes. Audit?

2 MR. LABENSKI: Is scheduled to start in January of  
3 2019.

4 THE COURT: Excellent. Okay. Excellent. We're  
5 moving well.

6 Now, back to Individual Number 1, and then I  
7 want to know if you have any issues I need to address.

8 MR. KELLY: Thank you, Your Honor.

9 THE COURT: Yes.

10 MR. KELLY: I wanted to discuss some matters that  
11 bear on the estate, one of which has been discussed really  
12 from the beginning, and that is the estate's potential  
13 claims against some former directors and officers of Health  
14 Republic. We've been investigating this, really, from the  
15 beginning of the liquidation, it's been averted to a number  
16 of times before Your Honor. I wanted to let he know,  
17 without going into too much detail about it, that we have  
18 entered into a toeing agreement with the potential targets  
19 of those claims and are in discussions with them. We are  
20 doing what we can to seek a resolution of these claims  
21 without the necessity of having to commence what could be a  
22 lengthy and expensive litigation. So it would be --

23 THE COURT: You understand that's going to be  
24 subject to scrutiny.

25 MR. KELLY: Of course it would come before the  
Robert Portas, RPR, CRR

## PROCEEDINGS

1 Court if we do reach a potential resolution.

2 THE COURT: Because the Court -- I would want to  
3 know what was the outside possibility of liability and what  
4 the resolution number is and that it's in the best interest  
5 of the -- of the overall interest of resolving it in the  
6 best interest of the claims holders.

7 MR. KELLY: Yes, Your Honor.

8 THE COURT: To make sure the money goes -- as much  
9 as possible stays in the pot to be divided up by those  
10 whose claims have been approved. So, believe me, that will  
11 have strict scrutiny.

12 MR. KELLY: We understand that, Your Honor. And,  
13 of course, we would bring it before you as soon as possible  
14 if such a proposal is reached.

15 THE COURT: Okay.

16 MR. KELLY: But I think it would be premature and  
17 unwise for me to discuss any details of it right now.

18 THE COURT: Yes. I don't need to know any more  
19 now --

20 MR. KELLY: Thank you, Your Honor.

21 THE COURT: -- because the point is, until it's  
22 ready to be reviewed you can negotiate as much as you want.

23 MR. KELLY: I just wanted to let you know that  
24 it's underway, Your Honor.

25 THE COURT: Okay.

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## PROCEEDINGS

1                   What about the other suits?

2                   MR. KELLY: The other suit, the federal litigation  
3 is still stayed as of today.

4                   THE COURT: Stayed by...? At whose request?

5                   MR. KELLY: It's pending in the Court of Claims,  
6 federal Court of Claims, it is stayed by agreement of the  
7 parties and the Judge who's presiding. Pending the outcome  
8 of the related -- legally related cases, Land of Lincoln  
9 and Moda Health.

10                  Now, as I think the Court is aware, those two  
11 cases were heard in the federal claims, they reached  
12 opposite results in terms of the federal government's  
13 obligations to pay, they were both appealed to the  
14 Federal Circuit and the Federal Circuit reached a  
15 decision in June. The Federal Circuit decision was  
16 somewhat odd, it basically said, "Yes, the government has  
17 an obligation to pay the money that it agreed to pay,  
18 but, no, there's no obligation to pay now because  
19 congress has withheld any appropriations and has withheld  
20 funding for the risk --"

21                  THE COURT: I don't find that complex. It's very  
22 clear. It's very clear. Okay.

23                  MR. KELLY: So at the time that I wrote Your Honor  
24 a letter in June, I think it was in June or July, last  
25 summer, we were expecting that there would be a petition  
Robert Portas, RPR, CRR



## PROCEEDINGS

1 for an En Banc rehearing of the Federal Circuit decision.  
2 That petition was made and was recently denied.

3 We are now expecting in the aftermath of that  
4 denial that there will be a petition for cert to the  
5 Supreme Court. A writ of certiorari.

6 THE COURT: Certiorari to the Supreme Court of the  
7 United States. Okay.

8 MR. KELLY: Now, the timing of that, Your Honor,  
9 is that the petition would need to be made by February 4,  
10 2019. That's 90 days from --

11 THE COURT: And...? You all should be getting on  
12 it.

13 MR. KELLY: It hasn't been -- well, actually,  
14 we're -- we're bystanders to this one, Your Honor, in that  
15 it's the Moda and the Land of Lincoln attorneys that will  
16 be bringing it on, I believe. But we're watching closely  
17 because it involves the same risk corridor issues that are  
18 the subject of -- partially the subject of our lawsuit  
19 against the federal government.

20 THE COURT: We will see.

21 MR. KELLY: So what we expect will happen is that  
22 by the end of the current Supreme Court term in June we  
23 should know whether the Supreme Court is going to grant  
24 cert or not.

25 (To the reporter) Certiorari, that's lawyer  
Robert Portas, RPR, CRR

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1 talk.

2 ...grant certiorari or not. And I think at that  
3 point we will have a much better idea of where the risk  
4 corridor question is going to go. Because if the Supreme  
5 Court grants certiorari, then it's going to be briefed  
6 and there will ultimately be a decision by the Supreme  
7 Court. If they do not, then the Federal Circuit decision  
8 is going to stand, and all the parties are going to have  
9 to work by interpreting that decision and reaching a  
10 resolution of the matter.

11 Meanwhile, our case is stayed, it is subject to  
12 review by the Court in January 2019, and my expectation  
13 is that it will continue to be stayed until the  
14 resolution in the Supreme Court one way or another.

15 THE COURT: Okay.

16 MR. KELLY: So I think that we and the other coops  
17 around the country and other participants in the ACA are  
18 all waiting for a resolution of the risk corridors issue  
19 before there really can be a global resolution of -- of  
20 the --

21 THE COURT: ACA, for the record --

22 MR. KELLY: The Affordable Care Act.

23 THE COURT: Thank you.

24 MR. KELLY: ...a global resolution of claims  
25 against the federal government, and also a resolution of  
Robert Portas, RPR, CRR

## PROCEEDINGS

1 claims that the federal government has against the -- the  
2 coops, because the federal government has claims for  
3 payment in our estate, we also have payments -- we also  
4 have claims against the federal government that they owe us  
5 money.

6 THE COURT: I've got to wrap this up, folks.

7 MR. KELLY: If I may speak to one other quick  
8 point, Your Honor?

9 THE COURT: Yes.

10 MR. KELLY: I just want you to know, too, that  
11 because we don't think the risk corridor issue is going to  
12 be resolved immediately --

13 THE COURT: Any time soon.

14 MR. KELLY: -- although we expect that it will be  
15 resolved once we get a decision from the Supreme Court, in  
16 the meantime we have taken another avenue and we've asked  
17 the federal government to grant a partial waiver of federal  
18 claims against the Health Republic estate. A partial  
19 waiver would permit an initial partial distribution of  
20 assets of the estate to allowed claimants. It would be a  
21 distribution as to which the government had waived any  
22 claim that it had against the estate or against the  
23 receiver of the estate.

24 So we have requested that. We requested that in  
25 June -- I'm sorry, in April of 2018, we have followed up  
Robert Portas, RPR, CRR

## PROCEEDINGS

1 with the government, but we have not as of yet received a  
2 response to our request. The silence of the government  
3 might be a matter that they've just not finished  
4 reviewing it, it might be that they don't think it  
5 advisable for them to do this until the risk corridor  
6 issue is --

7 THE COURT: Is resolved.

8 MR. KELLY: -- is resolved.

9 So -- but I wanted you to know that we had also  
10 made an application for a partial waiver in connection  
11 with an initial partial distribution of assets.

12 THE COURT: The proposed -- When would I be  
13 looking at getting that? I don't remember, the proposal  
14 that you're going to send me with the thumb drive.

15 MS. PIERCE-SIPONEN: The claims allowance?

16 MR. KELLY: We can try to do that before the  
17 14<sup>th</sup>.

18 MS. PIERCE-SIPONEN: We can try before the 14<sup>th</sup>.

19 MR. KELLY: We will try to do it before the  
20 14<sup>th</sup>, Your Honor.

21 THE COURT: If it's -- there's no -- I mean,  
22 believe me, between now and the 14<sup>th</sup> I won't be able to  
23 see it, so don't try to get it to me before the 14<sup>th</sup>.

24 MS. PIERCE-SIPONEN: All right.

25 THE COURT: You notice, I have another case that's  
Robert Portas, RPR, CRR

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1 chomping at the bit for you to get up and get out of here.

2 So what do you -- do you have anything I need to  
3 consider?

4 MR. NOONAN: No, Your Honor.

5 THE COURT: You're good.

6 From the public, did you have anything you  
7 wanted to add?

8 AUDIENCE MEMBER: Could we have that waiver  
9 request posted on the website?

10 THE COURT: The waiver request to...?

11 AUDIENCE MEMBER: To the government.

12 THE COURT: To the government?

13 MR. KELLY: I would prefer not to.

14 THE COURT: Well --

15 MR. KELLY: Well, the reason for that is, Your  
16 Honor, that be the waiver request contains information that  
17 we're requesting the government understand which would  
18 include the fact that we intend to make a distribution of  
19 the waived claim.

20 THE COURT: Right. But that can't -- so far that  
21 language is not in any way confidential yet, what you just  
22 said.

23 MR. KELLY: Well, well, I would suggest to Your  
24 Honor that it's not advisable to make that public for the  
25 following reason: It is not of assistance to creditors and  
Robert Portas, RPR, CRR

## PROCEEDINGS

1 it may very well be of assistance to speculators, factors  
2 and others who seek to purchase claims.

3 THE COURT: I see.

4 MR. KELLY: It is --

5 THE COURT: Actually, the point is --

6 MR. KELLY: We have a general --

7 THE COURT: The point is there is no need for  
8 anyone to know, other than the fact that they have  
9 requested a waiver. The details of what that would entail  
10 doesn't affect the decision, it's between the government  
11 and -- and Health Republic. So the details of why the  
12 waiver would be a good idea is not of moment to interested  
13 parties who have claims. What would be the interest?

14 AUDIENCE MEMBER: To have policyholders, including  
15 service providers, have a rough idea how much their claims  
16 are worth and when they will be paid.

17 THE COURT: First let me start out by saying:  
18 That doesn't include you. And, second, I don't think  
19 that's a sufficient reason for me to modify my decision  
20 that it does not have to be posted.

21 Anything else?

22 AUDIENCE MEMBER: May we have a copy of the  
23 minutes, Your Honor, posted?

24 THE COURT: Do I always -- don't I always have the  
25 minutes posted?

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## PROCEEDINGS

1 MR. KELLY: Yes, Your Honor.

2 THE COURT: They will be.

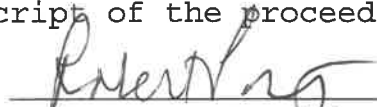
3 Folks, when am I bringing you back in? First of  
4 all, I'm going to get the proposal, and in the proposal,  
5 the cover letter, give me a recommended date you'd like  
6 me to have reviewed it and bring you back in for  
7 consideration. Okay?

8 MR. KELLY: Thank you, Your Honor.

9 MS. PIERCE-SIPONEN: Good.

10 THE COURT: Okay, thanks. Have a good holiday.  
11 This record is so ordered. I'll see you all next year.  
12 I'm back to my hearing.

13 (Whereupon, the above-captioned proceedings  
14 were concluded.)

15 oOo  
16 (It is hereby certified that the  
17 (foregoing is a true and accurate  
18 (transcript of the proceedings.  
19 (   
20 ( ROBERT PORTAS, RPR, CRR  
21 ( Senior Court Reporter  
22 oOo

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Robert Portas, RPR, CRR