

D-1-GV-13-000384

THE STATE OF TEXAS
Plaintiff

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v.

UNIVERSAL HMO OF TEXAS, INC.
Defendant

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

THE SDR’S MOTION TO APPROVE AGREEMENT WITH THE UNITED STATES

TO THE HONORABLE JUDGE OF SAID COURT:

Jean Johnson, Special Deputy Receiver (“the Texas SDR”) of Universal HMO of Texas, Inc., (hereinafter collectively referred to as “Universal Texas”), now files this *Motion to Approve Agreement with the United States* (the “Motion”). In support of this Motion, the Texas SDR respectfully shows the Court the following:

THE RELIEF SOUGHT BY THIS MOTION

The Texas SDR sought a release from 31 U.S.C. § 3713 liability from the United States Department of Justice. The United States Department of Justice conducted a review and assented to this release. This motion seeks approval to enter into this release agreement, which will permit the estate to move forward without concerns about whether , subject to certain enumerated exceptions, the United States could assert that either the Receiver, the Texas SDR or the estate of Universal Texas bear any liability under the super-priority provisions of 31 U.S.C. § 3713.

I. BACKGROUND

1. Pursuant to Chapter 443 of the Texas Insurance Code (hereinafter the “Code”), this Court placed Universal Texas into receivership on April 18, 2013, for purposes of

rehabilitation and appointed Eleanor Kitzman, the Commissioner of the Texas Department of Insurance, as Receiver. The Receiver is now David Mattax, the current Commissioner of the Texas Department of Insurance.

2. Jean Johnson was appointed as SDR on April 29, 2013, and she is fully authorized to file this Motion pursuant to Section 443.154 of the Code.

3. Following a request for a release from personal liability as to claims arising from 31 U.S.C. § 3713(b), the United States Department of Justice agreed to enter into the Agreement attached as Exhibit "A-1" to the Affidavit of Jean Johnson and which is incorporated into this motion by reference for all purposes.

4. The parties' agreement provides for the approval of this Court.

II. AUTHORITY

5. This Court has jurisdiction over the subject matter of this Motion pursuant to Chapter 443 of the Code.

6. Under Section 443.154(a) of the Code, the Texas SDR has all the powers of the Receiver, unless specifically limited by the Receiver.

7. The subject matter of the Application has been referred to the Special Master appointed in this proceeding in accordance with Section III, Paragraphs 13 and 15 of the Order of Reference to Master entered on May 22, 2013.

III. ANALYSIS AND RECOMMENDATION

8. The Texas SDR supports this agreement because it releases claims for personal liability against the Special Deputy Receiver and the Receiver as to the federal priority imposed by 31 U.S.C. § 3713. This is an important step forward toward closing the estate, as distributions can be made at the appropriate time without concerns about this issue. The Texas SDR offers

her affidavit supporting this agreement; that affidavit is attached as Exhibit "A" and incorporated herein for all purposes.

IV. NOTICE

9. The Texas SDR sent notice of the submission of this Motion to all known parties of interest shown on the Certificate of Service (which includes all who have requested to be placed on the Certificate of Service). The Texas SDR will also post this Motion at <http://universalmotexasreceiver.com>.

V. RELIEF REQUESTED

1. Based on the foregoing, the Texas SDR respectfully requests that the Court enter an order approving the agreement with the United States.
2. The Texas SDR also requests all other just and equitable relief.

Respectfully submitted,

Wisener Nunnally Roth L.L.P.

By: _____

Original
Signed By

Robert H. Nunnally, Jr.
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Bar No. 15141600

Michael Roth
Bar No. 24070531

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document has been served on the following interested parties in accordance with Tex. Ins. Code §443.007(d) and the Rehabilitation Order this the 12th day of July, 2016.

Mr. Tom Collins, Receivership Master
by serving his Docket Clerk
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Ms. Kathy Gartner
Rehabilitation & Liquidation Oversight
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/s/ Michael C. Roth
Michael C. Roth

Exhibit A

THE STATE OF TEXAS
Plaintiff

v.

UNIVERSAL HMO OF TEXAS, INC.
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

AFFIDAVIT OF JEAN JOHNSON IN SUPPORT OF THE SDR'S MOTION TO APPROVE AGREEMENT WITH THE UNITED STATES

TO THE HONORABLE JUDGE OF SAID COURT:

Came before me, a notary public, Jean Johnson, Special Deputy Receiver ("SDR") of Universal HMO of Texas, Inc., who, being duly sworn, did subscribe and swear that:

1. I am Jean Johnson. I am the SDR of Universal HMO of Texas, Inc. (hereinafter collectively referred to as "Universal Texas"). I have personal knowledge of the facts to which I attest. I obtained my knowledge in my role as SDR.

2. I attach as Exhibit "A-1" the agreement with the United States that I recommend this Court to approve. I recommend the approval of the agreement as in the best interests of the estate.

Original signed by

Jean Johnson

Subscribed and sworn to on this 12 day of July 2016, by Jean Johnson, before me, a notary public.

Original signed by

Notary Public

Exhibit "A"

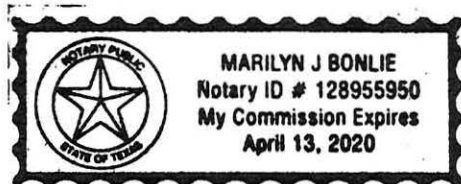


Exhibit A-1

RELEASE AGREEMENT

This Release Agreement is being entered into by the United States and Jean Johnson, Special Deputy Receiver (“Special Deputy Receiver”) of Universal HMO of Texas, Inc. (“Universal HMO”).

I. PARTIES

The parties to this Release Agreement are the United States and the Special Deputy Receiver (collectively, the “Parties”).

II. RECITALS

1. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b).

2. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Special Deputy Receiver or the Universal HMO estate.

3. The Parties understand that this Release Agreement may be subject to the approval the District Court of Travis County, Texas, 345th Judicial District (“Court”), which is supervising the liquidation of Universal HMO.

4. The United States enters into this Release Agreement in reliance upon the information contained in the Special Deputy Receiver’s affidavit dated October 7, 2015, attached as Exhibit A to this Release Agreement (“Affidavit”).

III. AGREEMENT

1. Except only for possible federal tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b), the United States hereby releases and discharges the Special Deputy Receiver, the Texas Commissioner of Insurance as Receiver of Universal HMO, and the estate of Universal HMO from any and all liability under 31 U.S.C. § 3713(b) in connection with the Universal HMO liquidation.

2. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of Universal HMO's records in accordance with the orders of the Court, during normal business hours, on a date and at a location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate, and of the Special Deputy Receiver, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the Universal HMO estate, or to determine Universal HMO's compliance with the terms of this Release Agreement. No documents, books, or records of the estate or Special Deputy Receiver may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of additional destruction. If the Special Deputy Receiver does not request approval from the Court, she must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate or of the Special Deputy Receiver as to the estate.

3. Except for the express undertakings of the Special Deputy Receiver and the United States in this Release Agreement, nothing in this Release Agreement shall be construed

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Special Deputy Receiver; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Special Deputy Receiver.

4. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Court, including, but not limited to, making the necessary witnesses available for testimony considered necessary or appropriate to provide the Court with an adequate record upon which to approve this Release Agreement.

Dated: _____

By: Sharon C. Williams
Trial Attorney
Civil Division
Department of Justice
Attorney for the United States

Dated: _____

By: Jean Johnson
Special Deputy Receiver
Universal HMO of Texas, Inc.
in Liquidation