

NO. D-1-GV-13-000384

THE STATE OF TEXAS		IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
	§	
UNIVERSAL HMO OF TEXAS, INC.,	§	345th JUDICIAL DISTRICT

APPLICATION FOR APPROVAL OF FEES AND EXPENSES

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Jean G. Johnson, Special Deputy Receiver for Universal HMO of Texas, Inc., (“Universal Texas,”) and files this *Application for Approval of Fees and Expenses* (“*Application*,”) and in support respectfully shows the Court as follows:

I. BACKGROUND, AUTHORITY, AND EVIDENCE

1.1 Universal Texas was placed in rehabilitation by this Court’s *Agreed Order Appointing Rehabilitator and Granting Permanent Injunction* (“*Rehabilitation Order*”) on April 18, 2013 (“receivership estate.”) This *Rehabilitation Order* appointed the Texas Commissioner of Insurance as Rehabilitator of the Universal Texas receivership estate (“Receiver¹.”) The Receiver designated Jean G. Johnson as Special Deputy Receiver of Universal Texas (“Special Deputy Receiver”) on April 29, 2013. Universal Texas was subsequently placed into liquidation on May 17, 2013 by this Court’s *Order of Liquidation* (“*Liquidation Order*.”)

1.2 Pursuant to TEX. INS. CODE ANN. § 443.154(a), the Special Deputy Receiver has all the powers of the Receiver, unless specifically limited by the Receiver; therefore, the Special Deputy Receiver is authorized to file this *Application* pursuant to

¹ “Receiver means liquidator, rehabilitator, or ancillary conservator, as the context requires.” TEX. INS. CODE ANN. § 443.004(a)(22).

TEX. INS. CODE ANN. § 443.015, which provides for the approval of the Special Deputy Receiver's expenses and compensation by the Court. The Special Deputy Receiver requests this Court find that the Special Deputy Receiver is authorized to file this *Application* pursuant to TEX. INS. CODE ANN. §§ 443.015 and 443.154(a).

1.3 Jurisdiction for all matters regarding the receivership estate is properly in the 345th Judicial District Court of Travis County, Texas, as the court in which these delinquency proceedings are pending. TEX. INS. CODE ANN. § 443.005(c). The Special Deputy Receiver requests this Court find that the Court has jurisdiction over the subject matter of this *Application*.

1.4 The subject matter of this *Application* and the hearing of any objections to the *Application* have been referred to Tom Collins, the receivership master appointed by this Court in this proceeding (“receivership master,”) in accordance with Paragraph III (5), (6) and (15) of the *Order of Reference to Master* entered on May 22, 2013 (“*Order of Reference.*”)

1.5 Attached as Exhibit A and incorporated by reference as if fully set out is the *Affidavit of Jean G. Johnson*, which serves as evidence of all the factual matters contained in this *Application*. The Special Deputy Receiver requests that this Court admit Exhibit A into evidence.

1.6 Attached as Exhibit B and incorporated by reference as if fully set out are the rates for compensation for the Special Deputy Receiver and subcontractors. The Special Deputy Receiver requests that the Court admit Exhibit B into evidence.

1.7 All of the records previously filed with this Court or attached to this *Application* are authenticated as admissible and are true and correct copies of papers,

documents, or records which are part of the books, records, documents, and papers of the receivership estate. TEX. INS. CODE ANN. § 443.017(b). The Special Deputy Receiver requests that this Court admit the facts contained in the *Application* and its exhibit, testified to and authenticated by Exhibit A, into evidence as *prima facie* proof of the matters asserted. TEX. INS. CODE ANN. § 443.017(c). The Special Deputy Receiver also requests that this Court find that the evidence submitted supports approval of the *Application*.

II. APPROVAL OF TERMS OF COMPENSATION

2.1 TEX. INS. CODE ANN. § 443.015(c)(1) requires the Special Deputy Receiver to submit an application for the approval of the terms of compensation of the Special Deputy Receiver or contractor when the Receiver reasonably expects that the total amount of compensation to be paid over the course of the proceeding will exceed \$250,000, or such other amount established by the Court. TEX. INS. CODE ANN. § 443.015(d) also permits the Special Deputy Receiver, at her discretion, to submit an application to approve any compensation, anticipated expenses, or incurred expenses not described by Subsection (c)(1).

2.2 Given the uncertainties associated with the future administration of this proceeding, it is difficult to predict whether the total compensation for the Special Deputy Receiver or any subcontractor will exceed \$250,000. It is anticipated that a number of the Special Deputy Receiver's subcontractors will be paid less than \$250,000. To ensure compliance with the provisions of Chapter 443 of the Texas Insurance Code ("Code,") the Special Deputy Receiver requests the Court approve all terms of compensation pursuant to TEX. INS. CODE ANN. § 443.015(d). The rates for compensation for the

Special Deputy Receiver and her subcontractors are shown on Exhibit B. These rates have been approved by the Receiver in accordance with TEX. INS. CODE ANN. § 443.154(b). The Special Deputy Receiver requests this Court approve the rates for compensation set forth in Exhibit B.

2.3 TEX. INS. CODE ANN. § 443.015(g) provides that on a quarterly basis, or as otherwise provided by this Court, the Receiver shall submit to the Court a summary of expenses incurred during the period. The Special Deputy Receiver requests the Court to establish quarterly reporting periods that coincide with the State of Texas fiscal year. The current fiscal year began on September 1, 2012. The receivership estate began in April 2013, during the third quarter of the fiscal year. The Special Deputy Receiver further requests that such reports be filed by the 15th day of the month following the end of the fiscal year quarterly reporting periods, with the first report to cover the period from April 2013 through May 2013 (inception through the third fiscal quarter). The Special Deputy Receiver requests the Court approve that the first report would be submitted by June 15, 2013, which extends the financial reporting requirement in TEX. INS. CODE ANN. § 443.016(a) of no later than 120 days after the entry of an order of receivership to 150 days.

III. NOTICE AND HEARING

3.1 This *Application* is filed pursuant to TEX. INS. CODE ANN. § 443.007. All of the proceedings governing the procedure for addressing this *Application* are set out in TEX. INS. CODE ANN. § 443.007 and the *Order of Reference*. The subject matter of this *Application* has been referred to the receivership master in the *Order of Reference*, under Paragraph III (5), (6), and (15). The *Order of Reference* modifies the requirement for

length of notice of a hearing contained in TEX. INS. CODE ANN. § 443.007(e) to fourteen calendar days. *Order of Reference*, p.7, paragraph IV, 3(a). As shown in the Applicant's Notice of Submission, this *Application* is set for hearing by submission ("hearing") on a date that complies with the fourteen calendar day notice requirement set forth in the *Order of Reference*. The Special Deputy Receiver requests the Court find that notice given of the hearing for this *Application* complied with the length of notice requirement in the *Order of Reference*.

3.2 The Special Deputy Receiver has provided notice of the hearing for this *Application* to all persons entitled to notice, including those who have requested notice in the receivership estate in accordance with TEX. INS. CODE ANN. § 443.007(a) and the notice requirements in the *Order of Reference*. The Special Deputy Receiver also noticed all parties in interest as that term is defined by TEX. INS. CODE ANN. § 443.004(a)(17), and as shown on the certificate of service, as well as persons the Special Deputy Receiver has determined need to be noticed under TEX. INS. CODE ANN. § 443.007(d). Notice of the hearing for the *Application* to any party in interest does not confer standing in the Court to raise, appear, or be heard on any issue. TEX. INS. CODE ANN. § 443.007(a). The Special Deputy Receiver requests the Court find that the notice given of the hearing for this *Application* to the certificate of service complied with the breadth of the notice requirements in the Code and the *Order of Reference* and was sufficient.

3.3 As authorized by the *Liquidation Order*, the Special Deputy Receiver provided "notice of any application by first class mail, electronic mail, or facsimile transmission, at her discretion." *Liquidation Order*, Section VI, 6.4. The Special Deputy Receiver requests the Court find that the notice given of the hearing for this *Application*

to the certificate of service complied with the means of the notice requirement set forth in the *Liquidation Order*.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Jean G. Johnson, as the Special Deputy Receiver of Universal HMO of Texas, Inc., respectfully requests that this Court enter an Order:

1. Finding that the Special Deputy Receiver is authorized to file this *Application* pursuant to TEX. INS. CODE ANN. §§ 443.015 and 443.154(a);
2. Approving this *Application*;
3. Finding that the Court has jurisdiction over the subject matter of this *Application* pursuant to TEX. INS. CODE ANN. § 443.005(c);
4. Finding that the subject matter of this *Application* and the hearing of any objections to the *Application* have been referred to the receivership master in the *Order of Reference*, under Paragraph (5), (6), and (15);
5. Accepting Exhibits A and B into evidence;
6. Admitting the facts contained in the *Application* and its exhibit, testified to and authenticated by Exhibit A, into evidence as *prima facie* proof of the matters asserted. TEX. INS. CODE ANN. § 443.017(c);
7. Finding that the evidence submitted supports approval of the *Application*;
8. Approving all terms of compensation pursuant to TEX. INS. CODE ANN. § 443.015(d) and rates for compensation as set forth in Exhibit B;
9. Establishing quarterly reporting periods that coincide with the State of Texas fiscal year which runs from September 1 to August 31;

10. Approving quarterly reports be filed by the 15th day of the month following the end of the quarterly reporting period, with the first reporting period to cover April 2013 to May 2013;
11. Approving that the first report be filed by June 15, 2013;
12. Finding that the *Application* was properly submitted for hearing by submission before the receivership master pursuant to the *Order of Reference*;
13. Finding that the notice given of the hearing for this *Application* complied with the length of the notice requirements in the *Order of Reference*;
14. Finding that the notice given of the hearing for this *Application* to the certificate of service complied with the breadth of the notice requirements in the Code and the *Order of Reference* and was sufficient;
15. Finding that the notice given of the hearing for this *Application* to the certificate of service complied with the means of the notice requirement set forth in the *Liquidation Order*;
16. Authorizing the Special Deputy Receiver to execute any documents and incur any expenses to effectuate the purposes of this *Application*; and

17. Granting such other and further relief for which the Special Deputy Receiver shows itself entitled.

Respectfully submitted,

Wisener ★ Nunnally ★ Gold, L.L.P.

Robert H. Nunnally, Jr.

State Bar No. 15141600

Harold B. Gold

State Bar No. 08069600

625 W. Centerville Road, Suite 110

Garland, Texas 75041

T: 972-840-9080

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**ATTORNEYS IN CHARGE FOR
JEAN G. JOHNSON,
SPECIAL DEPUTY RECEIVER FOR
UNIVERSAL HMO OF TEXAS, INC.**

AMY JEANNE WELTON

Attorney at Law

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Dripping Springs, TX 78620-1644

(830) 868-7136

ajwelton@moment.net

Original Signed By

Amy Jeanne Welton

State Bar No. 21004800

**ATTORNEY FOR JEAN G. JOHNSON,
SPECIAL DEPUTY RECEIVER FOR
UNIVERSAL HMO OF TEXAS, INC.**

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the *Order of Reference to Master* entered on May 22, 2013, by the District Court in this cause, the *Application for Approval of Fees and Expenses* is set for written submission before the receivership master, Tom Collins, on Monday, June 17, 2013.

The Master has asked that the following rules be provided to you:

1. Any objection by a party in interest ("objecting party") must be filed with the Travis County District Clerk at least 3 calendar days before the submission date.
2. A copy of any objection shall be served by such date on:
 - (a) Master's Docket Clerk, Mrs. Jean Sustaita, Texas Department of Insurance, at jean.sustaita@tdi.state.tx.us (*by email*); 333 Guadalupe, Hobby Tower III, 5th Floor, Room 550, Austin, Texas (*by hand delivery*); or MC-305-1D, P.O. Box 149104, Austin, Texas 78714-9104 (*by mail*).
 - (b) All parties in interest, including those listed on the Applicant's Certificate of Service, and the undersigned counsel.
3. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
4. If a matter is set for submission, an objecting party shall expeditiously coordinate with Applicant's counsel and the Master's docket clerk [(512) 463-6450] to obtain an oral hearing, unless the Master determines that an oral hearing is not necessary. The objecting party shall serve a Notice of Oral Hearing on applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.
5. Failure to file timely a written objection before the Master constitutes a waiver of the right to object to the Master's recommendation to the District Court.
6. Any Acknowledgment of Notice and Waiver to be filed by any party in interest should be filed at least 3 calendar days before the submission or hearing date.

Original Signed By

AMY JEANNE WELTON

**EXHIBIT A
AFFIDAVIT OF JEAN G. JOHNSON**

STATE OF TEXAS

COUNTY OF DALLAS

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§

Before me the undersigned authority personally appeared Jean G. Johnson who being first duly sworn states the following:

BACKGROUND

1. "My name is Jean G. Johnson. I am over 21 years of age and reside in Dallas, Dallas County, Texas. I am of sound mind, have never been convicted of a crime, and am fully competent and duly qualified to make this Affidavit. I am the Special Deputy Receiver of Universal HMO of Texas, Inc., ("Special Deputy Receiver,") that was placed in rehabilitation on April 18, 2013 and subsequently placed into liquidation on May 17, 2013. As a result of my duties as Special Deputy Receiver, I have knowledge of the facts stated in this Affidavit, and they are all true and correct.
2. "Jean G. Johnson has been Special Deputy Receiver of Universal HMO of Texas, Inc. ("receivership estate") since April 29, 2013.
3. "I have read the *Application for Approval of Fees and Expenses* ("*Application*") in the case styled *State of Texas v. Universal HMO of Texas, Inc.*;

Cause No. D-1-GV-13-000384 in the 345th Judicial District Court of Travis County, Texas. I certify that the facts in the *Application* are true and correct.

4. I have read Exhibit B attached to this *Application* and incorporated into the *Application* by reference. Exhibit B is a true and correct fee schedule of my staff and subcontractors approved by the Receiver for the administration of this receivership estate.
5. "I also request that the Court admit the facts contained in this *Application* into evidence as *prima facie* proof of the matters asserted pursuant to TEX. INS. CODE ANN. § 443.017(c)."

"The Affiant has nothing further to say."

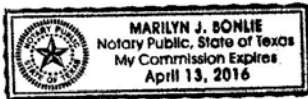
Original Signed By

Jean G. Johnson
Special Deputy Receiver for
Universal HMO of Texas, Inc.

STATE OF TEXAS

COUNTY OF DALLAS

SWORN AND SUBSCRIBED before me on the 31st day of May 2013.



Original Signed by

Notary Public

My Commission Expires: Apr. 13, 2016

Exhibit B
Rates for Compensation

SDR – Administrative Insurance Management Services, Inc.

SDR- Primary Responsible Party	\$150.00
Specialist	\$100.00
Specialist	\$ 90.00
Claims Manager	\$ 75.00
Claims Specialist	\$ 75.00
Clerical	\$ 35.00

Wisener * Nunnally * Gold, LLP

Partner	\$240.00
Partner	\$240.00
Associate	\$180.00
Clerical	\$ 35.00

Amy Jeanne Welton, Attorney at Law

Partner	\$210.00
Associate Atty I	\$210.00
Associate Atty II	\$180.00
Assistant	\$ 75.00
Clerical	\$ 30.00

Petrosewicz & Company, Inc.

Accountant, CPA	\$175.00
Accountant, CPA	\$150.00
Accountant	\$140.00
Staff Accountant	\$ 95.00
Staff Accountant	\$ 90.00
Staff Accountant	\$ 80.00
Clerical	\$ 35.00

Jennan Enterprises

IT Specialist	\$135.00
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Buttner Hammock & Company, PA

CPA/ Acctg Expert Witness	\$275.00
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Milford Consulting, LLC

Receivership Specialist	\$125.00
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CERTIFICATE OF SERVICE

I certify that pursuant to the Texas Rules of Civil Procedure, the *Order of Reference to Master*, and TEX. INS. CODE ANN. § 443.007(d), on May 31, 2013, a true and correct copy of the *Application for Approval of Fees and Expenses* was served on all interested parties by email.

Mr. Tom Collins, Receivership Master
by serving his Docket Clerk
Mrs. Jean Sustaita
Texas Department of Insurance
333 Guadalupe, Tower III, 5th Fl., MC-305-1D
Austin, Texas 78701
Email: jean.sustaita@tdi.texas.gov

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MD T201KA
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Amy Jeanne Welton