

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 RAYMIOND G. FARMER, ETC. )  
 Plaintiff )  
 )  
 v. )  
 )  
 South Carolina Health Cooperative Etc. )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.  
 2014-CP-40-7340

MOTION AND ORDER INFORMATION  
 FORM AND COVER SHEET

2016 AUG - 1 PM 3: 19  
 C.C.P. & G.S.  
 SOCIAL AND ORDER  
 FILED

Plaintiff's Attorney: Geoffrey R. Bonham, Bar No. 13058 Address: PO Box 100105, Columbia SC 29202 phone: 803-737-6219 fax: 803-737-6229 e-mail: gbonham@doi.sc.gov other:	Defendant's Attorney: E. Warren Moise, Esq., Bar No. NA Address: Grimball & Cabaniss, LLC PO Box 816, Charleston, SC 29402-0816 phone: 843-722-0311 fax: 843 722-1374 e-mail: warren.moise@gmail.com other:
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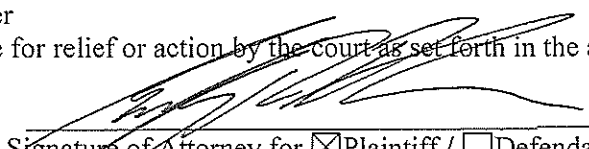
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion for Approval of Settlement Agreement w/ Excess Stop Loss Insurer  
 Estimated Time Needed: 15 Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

August 1, 2016  
 Date submitted

**SECTION III: Motion Fee**

PAID – AMOUNT: \$25.00  
 EXEMPT:

- Rule to Show Cause in Child or Spousal Support
- (check reason)  Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)
- Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE \_\_\_\_\_  
 CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Date Filed: \_\_\_\_\_

Collected by: \_\_\_\_\_

MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED – AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
RICHLAND COUNTY

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, Director of the South  
Carolina Department of Insurance,

Petitioner,

vs.

South Carolina Health Cooperative, Inc., a  
Multiple Employer Self-Insured Health Plan,

Respondent.

C.A. No. 2014-CP-40-7340

**MOTION FOR APPROVAL OF  
SETTLEMENT AGREEMENT WITH  
EXCESS STOP-LOSS INSURER**

2015  
JUN-1  
PM 3:19  
RICHLAND COUNTY  
FILED  
JENNIFER W. HOBBS/CLC  
Clerk of Court & G.S.

Raymond G. Farmer, Director of the South Carolina Department of Insurance, in his capacity as Receiver of South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan (“SCHC”), by and through the undersigned counsel, hereby moves the Court for an Order approving an agreement between the Receiver and those Certain Underwriters at Lloyd’s, London (“Underwriters”) to settle claims that Receiver has asserted or could have asserted against Underwriters or that SCHC has otherwise asserted or could have asserted against Underwriters. In support of this motion, SCHC would show the following:

1. The above-described claims are in connection with aggregate excess stop-loss insurance policies issued by Underwriters to SCHC. Underwriters have agreed to pay SCHC the sum of two million five hundred thousand dollars (\$2,500,000); and, the Receiver on behalf of SCHC and Underwriters have agreed to a mutual release in full of any and all such claims, without admission or acknowledgement of any liability on the part of any party, all as set forth in a written Settlement Agreement and Mutual Release in Full (the “Agreement”), a copy of which is attached hereto as Exhibit A.

2. The parties have executed the Agreement while acknowledging and agreeing that it is not effective unless and until it is approved by the Court.

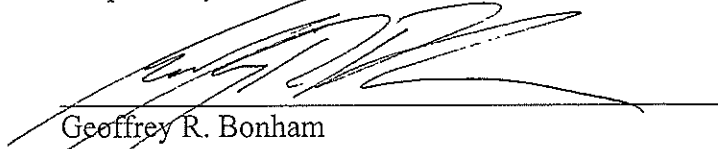
3. The Agreement is between the Receiver on behalf of SCHC and Underwriters only, and does not operate as a release of any rights, claims, causes of action, demands or suits that the Receiver and/or SCHC have or may have against any other parties, including but not limited to any past or present officers, directors, employees or agents of SCHC. The Agreement does, however, state that any order approving the Agreement must contain a provision explicitly barring any and all claims against Underwriters by third parties, including but not limited to any claims by SCHC, its members, participants, or beneficiaries, any providers, and any creditors of SCHC.

4. A copy of this Motion, with the Agreement attached as an exhibit thereto, has been filed with the Clerk of Court and served on counsel of record, and shall be posted on the South Carolina Department of Insurance's website at <http://doi.sc.gov/840/SCHC>, as will be a Notice of the hearing on this matter upon receipt from the Court of same by the Rehabilitator.

5. The Receiver recommends approval of this Agreement and further stipulates that the settlement is reasonable and is a fair, just and equitable resolution of this dispute and in the best interest of all providers and all participants and beneficiaries of the SCHC and all other creditors of SCHC, and respectfully requests that the Agreement be approved and that the Receiver on behalf of SCHC and Underwriters be directed and authorized to perform all acts necessary to carry it out.

6. In support of this Motion, the Receiver relies on the pleadings, papers and filings in this matter, as well as the attached Exhibit A.

Respectfully submitted,



Geoffrey R. Bonham  
Associate General Counsel  
South Carolina Department of Insurance  
Post Office Box 100105  
Columbia, South Carolina 29202-3105

T: (803) 737-6132

F: (803) 737-6229

[gbonham@doi.sc.gov](mailto:gbonham@doi.sc.gov)

One of the Attorneys for the Petitioner

August 7, 2016  
Columbia, South Carolina

**SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE IN FULL**

This Settlement Agreement and Mutual Release in Full (the "Agreement") is executed this 27th day of July, 2016 by and among Raymond G. Farmer, Director of the South Carolina Department of Insurance, in his capacity as Receiver of South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan ("SCHC"), on the one hand, and those Certain Underwriters at Lloyd's, London subscribing to the syndicates participating on the "Policies," as defined herein, on behalf of their subscribing members ("Underwriters"), on the other hand (all collectively, the "Parties").

**BACKGROUND STATEMENT**

WHEREAS, SCHC was created in 2012 as a Multiple Employer Welfare Arrangement ("MEWA"), whereby a group of employers pooled contributions to provide health benefits to employees and their dependents; and

WHEREAS, SCHC operated for two years, but by late 2014 serious financial problems had surfaced, and with the consent of its trustees, SCHC was placed into rehabilitation on December 23, 2014 by order of the Richland County Court of Common Pleas in the matter of *Farmer vs. South Carolina Health Cooperative, Inc., a Multiple Employer Self-Insured Health Plan*, C.A. No. 2014-CP-40-7340; and

WHEREAS, Section 38-41-50 of the Code of Laws of South Carolina 1976, as amended, required SCHC to keep in place aggregate excess stop-loss insurance coverage and individual excess stop-loss insurance coverage; and

WHEREAS, beginning with SCHC's inception in 2012, certain Underwriters issued three policies that provided the excess stop-loss insurance coverage required by S. C. Code § 38-41-50:

<u>Policy Number</u>	<u>Coverage Term</u>	<u>Aggregate Limits</u>
LL-0179-060112 (the "2012 Policy")	2012-2013	\$2 million
LL-0179-060113 (the "2013 Policy")	2013-2014	\$2 million
LL-0179-060114 (the "2014 Policy")	2014-2015	\$1 million

(collectively, the "Policies"); and

WHEREAS, SCHC filed a claim (the "Claim") under the 2014 Policy for the full amount of the unpaid plan liability as of November 30, 2014, the last day of coverage under the 2014 Policy; and

WHEREAS, to minimize disruption and/or loss to SCHC's members, participants, and beneficiaries, the Parties have extensively mediated their differences regarding the nature and scope of the Claim and the amount of the liability, if any, of Underwriters under the 2014 Policy and believe they have arrived at an agreement to resolve these differences that is in the best interest not only of the Parties, but also of SCHC's members, participants, and beneficiaries; and

WHEREAS, the Parties desire to record the settlement of any and all disputes between them relating to the Claim and the Policies with the Richland County Court of Common Pleas on the terms and conditions set forth in this Agreement;

NOW THEREFORE, for and in consideration specified below, and the covenants, conditions and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

#### AGREEMENT

1. Effective Date. The Parties hereby acknowledge that this Agreement is contingent upon and subject to approval by the presiding judge of the Richland County Court of Common Pleas and will not become effective until the date of such approval. It is further understood and agreed that the order approving this settlement shall contain a provision explicitly barring any and all claims against Underwriters by third parties, including but not limited to any claims by SCHC, its members, participants, or beneficiaries, providers, and any creditors of SCHC.

2. Payment to SCHC. Underwriters agree to pay to SCHC a lump sum amount of \$2,500,000.00 within twenty-one (21) days from the date of the order of the Richland County Court of Common Pleas approving this Agreement.

3. Release and Covenant Not to Sue by SCHC: In consideration of the foregoing, and subject to the conditions of this section, SCHC hereby releases, acquits and forever discharges Underwriters, their agents, employees, affiliated entities, predecessors, successors and assigns, from and against any and all claims or other causes of action which it or its successors or assigns shall or may have, or may hereafter have, against Underwriters, their agents, employees, affiliated entities, predecessors, successors or assigns, arising out of or related to the matters set forth herein. SCHC's release of Underwriters specifically includes, but is not limited to, all claims, damages, costs, and equitable relief of any kind, arising under federal, state and local statutory and common laws. Based upon said consideration, and subject to the conditions of this section, SCHC, on behalf of itself and its successors and assigns, further covenants and agrees not to prosecute any action against Underwriters, their agents, employees, affiliated entities, predecessors, successors or assigns based upon any conduct by Underwriters related to the matters set forth herein.

4. Release and Covenant Not to Sue by Underwriters: In consideration of the foregoing, Underwriters hereby release, acquit and forever discharge SCHC, its agents, employees, affiliated entities, predecessors, successors and assigns, from and against any and all claims or other causes of action which it or its successors or assigns shall or may have, or may hereafter have, against SCHC, its agents, employees, affiliated entities, predecessors, successors or assigns, arising out of or related to the matters set forth herein. Underwriters' release of SCHC specifically includes, but is not limited to, all claims, warranties, damages, costs, and equitable relief of any kind, arising under federal, state and local statutory and common laws. Based upon said consideration, Underwriters, on behalf of itself and its successors and assigns, further covenants and agrees not to prosecute any action against SCHC, its agents, employees, affiliated entities, predecessors, successors or assigns based upon any conduct by SCHC related to the matters set forth herein.

5. Effect of Agreement on the Policies. Upon the execution of this Agreement, the Policies shall be deemed cancelled, terminated, and/or void *ab initio*, and shall have no further force or effect.

6. Attorneys' Fees and Costs. Except as noted herein, the Parties are and shall be responsible for payment of their own attorneys' fees and costs incurred in this action. It is expressly understood and agreed that the consideration exchanged hereunder is in full payment and satisfaction of all claims which the Parties now have or may hereafter assert against one another for payment of their attorneys' fees and costs, based on any rights they have or may have pursuant to any applicable law.

7. Agreement Not an Admission of Liability. It is understood and agreed that this Agreement represents a settlement of disputed claims and that the Parties have never acknowledged, nor do they now acknowledge, any liability to one another for the matters discussed herein, or for any other claims either party may have had against the other. It is further understood and agreed that the acceptance of the amount paid and other valuable consideration exchanged hereunder is in full accord and satisfaction of all claims between the Parties.

#### GENERAL PROVISIONS

8. Entire Agreement. This Agreement constitutes the whole and entire agreement between the Parties with respect to the subject matter hereof, supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with respect to the subject matter hereof, and may not be altered or amended except by an agreement in writing duly executed by all Parties.

9. Agreement to Become Public Record. The Parties hereby acknowledge that the terms of this Agreement necessarily will become a matter of public record when filed with the Richland County Court of Common Pleas.

10. Representations and Warranties by all Parties. Each of the Parties represents and warrants that (a) it has the capacity, full power, and authority to enter into this Agreement, (b) it has not assigned, encumbered, or in any manner transferred all or any portion of the claims covered by this Agreement, (c) there are no other charges, complaints, suits, arbitrations, or other claims or proceedings pending between the Parties in any court or in any forum, except as identified in the Background Statement herein, and (d) no other person, party, or other entity has any right, title, or interest in any of the claims covered by this Agreement.

11. Execution in Counterparts. This Agreement may be executed in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by all Parties hereto. All counterparts taken together shall constitute one and the same agreement and shall be fully enforceable as such. The execution and delivery of a signature page of this Agreement by electronic means such as facsimile or scanned pdf shall constitute due execution and delivery of this Agreement by such Party.

12. Governing Law. This Agreement shall be construed and governed by the laws of the State of South Carolina and the United States of America.

13. Effect of Release. This release shall be binding upon the Parties hereto and their respective heirs, personal representatives, successors and assigns.

14. Non-Disparagement: The Parties agree to refrain from disparaging the personal or professional reputation, character, or practices of each other.

15. Enforcement of this Agreement. If either Party to this Agreement brings an action against the other Party to enforce this Agreement, the Party substantially prevailing in that action shall be entitled to its reasonable attorneys' fees and costs incurred, as determined by a court of competent jurisdiction.

*[signature page to follow]*



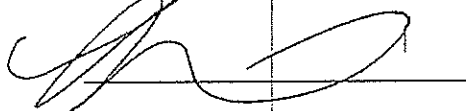
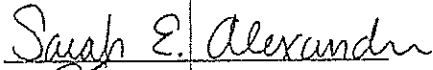
IN WITNESS WHEREOF, the Parties hereto have executed this agreement under seal as of the date and year indicated above.

**THE SOUTH CAROLINA HEALTH  
COOPERATIVE, INC., A MULTIPLE  
EMPLOYER SELF-INSURED HEALTH PLAN**

**WITNESSES:**



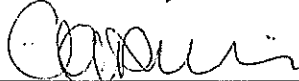
Michael J. FitzGibbons, Special Deputy Receiver



Dated: July 27, 2016

**CERTAIN UNDERWRITERS AT  
LLOYDS, LONDON**

**WITNESSES:**



(Signature)

GAIL COUSINS

FEDERAL CLAIMS MANAGER



Rachel Walkley  
Senior Claims Adjuster.

Dated: July 29<sup>th</sup>, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Approval of Settlement Agreement with Excess Stop-Loss Insurer has been served upon the following counsel of record, by electronic mail and by First Class U.S. Mail, postage prepaid, this 12<sup>th</sup> day of August 2016, addressed as follows:

Linda C. Garrett, Esq.  
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2016 AUG - 1 PM 3:19  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.  
FILED  
RICHLAND COUNTY

  
Christiline P. Lewis