

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4000034

Raymond G Farmer

Consumers Choice Health Insurance Company

SC Department of Insurance

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

JEANETTE W. McBRIDE  
 2016 JAN - 8 PM 12: 01  
 RICHLAND COUNTY  
 FILED  
 S.C.P. & G.S.

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Jan, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Geoffrey Ross Bonham

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
Court Reporter

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Clerk of Court

*Jeanette W. McBride*

**STATE OF SOUTH CAROLINA  
RICHLAND COUNTY**

**IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT**

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

Civil Action No. 2016-CP-40- 00034

Petitioner,

vs.

**CONSENT ORDER  
COMMENCING REHABILITATION  
PROCEEDINGS & GRANTING AN  
INJUNCTION & AUTOMATIC STAY OF  
PROCEEDINGS**

Consumers' Choice Health Insurance  
Company,

Respondent.

This matter comes before me pursuant to the South Carolina Insurers Supervision, Rehabilitation and Liquidation Act, pursuant to S.C. Code Ann. §§ 38-27-10 *et seq.* Petitioner seeks an Order appointing him as Receiver of Respondent, Consumers' Choice Health Insurance Company (Respondent), for the purposes of rehabilitation. By the signature of its authorized representative below, Respondent acknowledges service of the Petition pursuant to S.C. Code Ann. § 38-27-60 (2015) and has otherwise been informed of Petitioner's intent, and does not oppose rehabilitation as set forth more fully below. The Court, having reviewed the record and otherwise being fully informed in the premises, finds:

1. This Court has jurisdiction over the subject matter and is the proper venue for this proceeding pursuant to S.C. Code Ann. §§ 38-27-60(f) & -310 through -330 (2015).
2. Petitioner is the duly appointed Director for the State of South Carolina Department of Insurance with such powers, duties and responsibilities as are prescribed under the insurance laws of this State to the Director for company licensing, delinquency and receivership matters, and is specifically authorized to file a petition for rehabilitation pursuant to § 38-27-310 (2015).

3. The Department has regulatory jurisdiction over the Respondent pursuant to, *inter alia*, Chapters 3 and 25 and 71 of Title 38 of the South Carolina Code of Laws 1976, as amended.

4. Respondent CCH is a South Carolina Consumer Operated and Oriented Plan (CO-OP) organized and licensed under the provisions of Section 1322 of the Affordable Care Act, Pub. L. No. 111-148, 45 CFR §§ 156.500 *et seq.* and S.C. Code Ann. §§ 38-25-10 *et seq.* and §§ 38-71-10 *et seq.* The Department granted CCH a license to transact business as an accident and health insurer on May 2, 2013. It started enrolling members in October 2013 and commenced operations on the federally-facilitated exchange (FFE) in January 2014.

5. As a Consumer Operated and Oriented Plan, CCH is owned by its members, and is governed by a board consisting of seven board members. CCH, like other federal CO-OPs, was funded by a start-up loan of \$18,709,800 and an interest bearing solvency loan of \$68,868,408 from the federal government pursuant to a contract between the Centers for Medicare & Medicaid Services (CMS) and the CO-OP.

6. As of October 2015, CCH had approximately 67,000 participating members.

7. On or about October 1, 2015, CCH was informed by CMS that it would receive only 12.6% of the risk corridor payments that it was scheduled to receive for 2014. These payments were to be made in full in 2015. CMS represented to CCH and the Department that the remaining 87.4% would be paid in subsequent years based on collections and funding.

8. Subsequently, the Department received communications from CMS indicating that CCH would not receive any of the remaining risk corridor payments owed for 2014. This resulted in CCH having to non-admit this asset because it no longer qualified as an admitted asset and is required by statutory accounting principles to be non-admitted. Consequently, CCH's risk-based capital (RBC) ratio dropped from 877% as of December 31, 2014 to an amount at or below the regulatory action

level.

9. As a result of the action by CMS relating to the risk corridor payments, the Department requested that the insurer provide pro forma projections for its operation for 2015, 2016 and 2017. These pro forma projections indicated that CCH would be in hazardous financial condition without additional federal financial support or a significant capital infusion.

10. CCH represented that it had an investor willing to infuse an additional \$10 to \$12 million. Assuming this infusion would meet all statutory requirements, it would not have been enough to bring CCH's RBC back up to a level that would not require regulatory action on the part of the Department. The current RBC would place the CO-OP in violation of the contract with CMS to operate on the federally-facilitated exchange.

11. On October 20, 2015, CMS advised that it would not approve the reclassification of the start-up loan as a surplus note. It further stated that it was extremely unlikely that any additional federal funds would be forthcoming.

12. Based on CCH's required monthly reports, assets as of August 31, 2015 were sufficient to pay claims; however, without continued federal support, the premium structure for CCH is not sufficient to support its ongoing operation.

13. For the reasons articulated above, Petitioner determined that CCH was in a hazardous financial condition rendering its continued operation hazardous to the public and/or its insureds, warranting supervision pursuant to S.C. Code Ann. § 38-26-40(A)(1) (2015), and issued a consent order placing CCH into supervision on October 21, 2015.

14. CCH is not offering coverage for the plan year 2016 on the federally-facilitated health insurance exchange for South Carolina, and all of its policies shall expire no later than December 31, 2015.

15. On October 22, 2015, the Department issued a public notice indicating that CCH had agreed to wind down its operations, would be entering run-off and would not offer health insurance coverage in 2016.

16. Accompanying this notice were answers to frequently asked questions which advised CCH plan members that they would be able to choose a new health insurer for 2016 during the next open enrollment period, which began on November 1, 2015 and runs through January 31, 2016, and further advised them that consumers would have to enroll by December 15, 2015 to have insurance on January 1, 2016.

17. CCH posted a similar notice on its website at <http://www.cchpsc.org/2016-important-message/>.

18. On or about December 10, 2015, the Department issued a notice to CCH plan members reminding them they needed to enroll in a replacement plan by December 15th in order to ensure they had health insurance coverage beginning January 1, 2016. Effective December 31, 2015, all health insurance policies issued by CCH are terminated or expire by their own terms.

19. In October 2015, the Department determined that, based on the most recent unaudited financial statement available at the time, CCH's net admitted assets as of August 31, 2015, were \$134,218,875, its liabilities were \$86,820,719 and its capital and surplus, after deducting the non-admitted 2015 risk corridor asset of \$23,000,000, was \$24,398,156.

20. In December 2015, CCH submitted a monthly financial statement for the month ending October 31, 2015, which reflected net admitted assets of \$91,176,691, total liabilities of \$89,753,788 and capital and surplus of \$1,422,904.

21. Additional risk corridor payments were expected from the federal government, but it has now been determined that no additional payments would be forthcoming in 2015. It is also unlikely

that any additional risk corridor payments will be received by CCH in 2016.

22. Although there may be additional recoverables from the federal government in 2016, it is anticipated that they will not be sufficient to cover all obligations.

23. CCH's projections indicate that, even counting potential accrued receivables, its total capital and surplus as of December 31, 2015 will be a negative \$23,453,366.

24. On December 23, 2015, CMS issued a letter notifying CCH that its start-up and solvency loan agreement would terminate effective December 31, 2015 and that the amount of the loans, together with all interest accrued thereon, and all fees, costs, expenses, indemnities and other amounts payable under this agreement are immediately due and payable without further notice or cure opportunities. This action results in the addition of approximately \$69 million in liabilities to CCH's books.

25. S.C. Code Ann. § 38-27-310 (2015) sets forth the grounds upon which an insurer may be placed into rehabilitation, including but not limited to the insurer is in such condition that the further transaction of business would be hazardous, financially, to its policyholders, its creditors and/or the public. Additionally, an insurer may be placed into rehabilitation when the board of directors or a majority of the voting shares request or consent to rehabilitation.

26. CCH is in a condition that the further transaction of business would be hazardous, financially, to its policyholders, its creditors and/or the public.

27. The Board of Directors of CCH has consented to rehabilitation, as evidenced by the copy of the resolution accompanying this Petition and the signature of the Board Chairperson below.

28. Although CCH may be insolvent, in order to avoid the least disruption and/or loss to employers and their employees and to preserve the limited assets of CCH, Petitioner is seeking appointment as receiver for the purpose of rehabilitation in order to avoid unnecessary disruption to

policyholders, plan members, providers, creditors, the public and the industry and to facilitate the continued orderly runoff of claims.

29. It is in the best interest of Respondent, its policyholders, its creditors and the public that the relief requested be granted.

**IT IS THEREFORE ORDERED THAT:**

1. PURSUANT TO S.C. Code Ann. §§ 38-27-310 and 38-27-320 (2015), Petitioner and his successors in office are appointed Receiver for the purposes of rehabilitation of Respondent.

2. PURSUANT TO S.C. Code Ann. § 38-27-320 (2015):

a) The filing or recording of this Order with the Clerk of Court or Register of Deeds of the county in which the principal business of the company is conducted or the county in which its principal office or place of business is located imparts the same notice which a deed, bill of sale, or other evidence of title duly filed or recorded with that office would have imparted.

b) By operation of law, title to all assets of Respondent is vested in the Receiver.

c) The Receiver shall file an accounting with the Court at no less than six-month intervals, the first such accounting to be filed no sooner than 180 days from the date of entry of this Order, as set forth in S.C. Code Ann. § 38-27-320(b) (2015); and, he shall also ensure that Respondent continues to comply with the quarterly and annual reporting requirements set forth in Title 38 of the Code of Laws of South Carolina 1976, as amended, and any other reports prescribed by law or the National Association of Insurance Commissioners (NAIC). Copies of all such reports and filings shall be made available to Respondent's Board of Directors or its representative.

3. PURSUANT TO S.C. Code Ann. §§ 38-27-320 & -330 (2015), Petitioner and his successors shall have all the powers and responsibilities set forth under those sections to assist his or his

designee as Receiver for Rehabilitation, including but not limited to:

a) Conducting the business of Respondent and taking all steps, as the Court may direct, toward the removal of the causes and conditions which have made this Order necessary and taking such further action as the Receiver deems necessary or appropriate to reform and revitalize Respondent.

b) Taking immediate possession of all the property, assets and estate, and all other property of every kind whatsoever and wherever located, belonging to Respondent.

c) Applying for and ensuring the enforcement of any restraining orders, preliminary and permanent injunctions, and other orders considered necessary pursuant to S.C. Code Ann. § 38-27-70 and -340 (2015).

d) Employing and authorizing the compensation of legal counsel, actuaries, accountants, consultants and other assistants as he deems necessary, and authorizing the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, to be paid out of the funds or assets of Respondent that are in the possession of the Receiver or that come into his possession.

e) Imposing, if, within the Receiver's sole judgment, it is determined to be necessary, a moratorium on the payment of claims with consideration given to hardship exceptions, whereby claims meeting certain established criteria would be paid at a pre-determined percentage or amount. In establishing such procedures, the Receiver shall be fully informed as to coverage issues and how claims will be handled in the future. If the Receiver implements a hardship procedure, approved by the Court, it shall be detailed and carefully documented, and shall include an appeal process. These procedures must include a complete description of the information that needs to be submitted by the policyholder requesting the hardship payment and the methodology utilized to evaluate that



information.

(f) If it appears to the Receiver that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, pursuing all appropriate legal remedies on behalf of Respondent.

(g) Assuming all the powers of the directors, officers, and managers, whose authority is suspended, except as they are re-delegated, in writing, by the Receiver, and, having full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of Respondent.

(h) Taking any action respecting pending litigation he considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public, and after immediately considering all litigation pending outside this State, petitioning the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer, with all litigation pending within this State to be governed by S.C. Code Ann. §§ 38-27-70 & -340 (2015) and this Order.

4. PURSUANT TO S.C. Code Ann. § 38-27-330 (2015), the Receiver has the power under S.C. Code Ann. §§ 38-27-450 and 38-27-460 (2015) to avoid fraudulent transfers.

5. In the event the Receiver determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of Respondent is appropriate, the Receiver is directed to prepare a plan to effect such changes and submit the plan to this Court for consideration.

6. Upon petition by the Receiver stating that further efforts to rehabilitate Respondent would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, this Court will consider entry of an Order of Liquidation of Respondent in accordance with S.C. Code

Ann. § 38-27-350(a) (2015), and such petition shall have the same effect as a petition filed under S.C. Code Ann. § 38-27-360 (2015).

8. The rehabilitation may be otherwise terminated as provided in S.C. Code Ann. § 38-27-350 (2015).

9. Michael J. FitzGibbons of FitzGibbons and Company, Inc., 8300 N. Hayden Rd., Suite A100, Scottsdale, Arizona 85258 is hereby appointed as Special Deputy Receiver in this matter.

### **NOTICE OF AUTOMATIC STAY**

Notice is hereby given that pursuant to S.C. Code Ann. §§ 38-27-70 & -340 (2015), the Court grants an automatic stay applicable to all persons and proceedings, other than the Receiver, which shall be permanent and survive the entry of the Order and which prohibits:

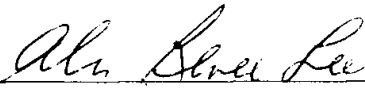
- (1) The transaction of further business;
- (2) The transfer of property;
- (3) Interference with the Receiver or with a proceeding under Chapter 27 of Title 38 of the South Carolina Code;
- (4) Waste of Respondent's assets;
- (5) Dissipation and transfer of bank accounts;
- (6) The institution or further prosecution of any actions or proceedings;
- (7) The obtaining of preferences, judgments, attachments, garnishments, or liens against Respondent, its assets, or its policyholders;
- (8) The levying of execution against Respondent, its assets, or its policyholders;
- (9) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of Respondent;

(10) The withholding from the receiver of books, accounts, documents, or other records relating to the business of Respondent; or

(11) Any other threatened or contemplated action that might lessen the value of Respondent's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under Chapter 27 of Title 38 of the South Carolina Code.

This Court retains jurisdiction of this cause for the purpose of granting such other and further relief as from time to time may be necessary and appropriate.

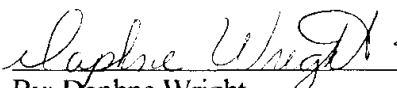
**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
Alison R. Lee  
Chief Administrative Judge  
Fifth Judicial Circuit


*January 8, 2016*  
This 6 day of January, 2016  
Columbia, South Carolina

**WE CONSENT:**

Consumers' Choice Health Insurance Company.  
Respondent

  
\_\_\_\_\_  
By: Daphne Wright  
Its: Chairperson, Board of Directors

Petitioner:

  
\_\_\_\_\_  
Geoffrey R. Bonham  
One of the Attorneys for Petitioner

## RESOLUTION

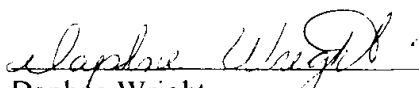
I, Daphne Wright, hereby state as follows:

1. That I am the Chair of the Board of Directors for Consumers' Choice Insurance Company (Consumers' Choice), a corporation duly organized and existing under the laws of the State of South Carolina with its principal office located at 4995 LaCrosse Road, Suite 1300, North Charleston, S.C. 29406;
2. That during a special meeting of the Board of Directors held on January 5, 2016, wherein a quorum was present and acted throughout, after being informed of all necessary facts and particulars concerning the financial condition of the Company, the Board approved the following resolution, to wit:

RESOLVED, that the Consumers' Choice Board of Directors fully supports and consents to exploring any and all options for rehabilitating the Company, if possible;

RESOLVED FURTHER, that the Board of Directors of Consumers' Choice, hereby authorizes its Chairman, Daphne Wright, to sign, execute and deliver a consent order in the Richland County of Common Pleas for the Fifth Circuit in Columbia, South Carolina placing Consumers' Choice Health Insurance Company, into Rehabilitation in accordance with the provisions of Chapter 27 of Title 38 of the Code of Laws of South Carolina 1976, as amended,

Dated this 6 day of January, 2016.

  
\_\_\_\_\_

Daphne Wright

Chair, Board of Directors

Consumer's Choice Health Insurance Company