

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

\_\_\_\_\_  
COMMISSIONER OF THE  
DEPARTMENT OF FINANCIAL  
REGULATION

PLAINTIFF,

v.

EMERGENCY PHYSICIANS INSURANCE  
EXCHANGE RISK RETENTION GROUP  
RESPONDENT.  
\_\_\_\_\_

CIVIL DIVISION

DOCKET NO. 21-cv-348 Wncv

**REHABILITATOR'S THIRD STATUS REPORT**

I, J. David Leslie, Special Deputy Rehabilitator, hereby submit this Third Status Report regarding the rehabilitation of Emergency Physicians Insurance Exchange Risk Retention Group ("EPIX" or the "Company").

1. On February 18, 2021, the Commissioner of the Department of Financial Regulation ("Commissioner") filed a Petition for Order of Rehabilitation for EPIX pursuant to 8 V.S.A. § 7051, seeking, among other things, authorization to take possession and control of the assets of EPIX, to administer those assets under the general supervision of the Court, and to implement the proposed Plan of Rehabilitation. The Court granted the Commissioner's petition by entering its Order for Rehabilitation of EPIX ("Rehabilitation Order") on February 26, 2021. The Rehabilitation Order appointed the Commissioner as Rehabilitator, granted the requested authority, and directed the Rehabilitator to implement the Plan of Rehabilitation. The Rehabilitator appointed me to serve as Special Deputy Rehabilitator.

2. Notice. Following entry of the Rehabilitation Order, the Rehabilitator provided notice of the rehabilitation to all former EPIX members (the Company has had no in-force policies since September 1, 2020) including with that notice a Q&A document that described the reasons for the Commissioner's petition, the Plan of Rehabilitation, and the effect of rehabilitation on policyholders. Notice of rehabilitation has also been provided to regulators, defense counsel, EPIX vendors with then current claims, the Company's reinsurer, and other affected parties. Further, counsel for the Rehabilitator has participated in telephone calls with many individual insureds, defense counsel, and plaintiffs' counsel regarding the Company's insolvency, the effects of rehabilitation, and next steps.

3. Prior Status Reports. I filed the Rehabilitator's First Status Report with the Court on May 24, 2021, advising as to the provision of notice, describing implementation of the Plan of Rehabilitation, and reporting on receipts/disbursements from the start of the proceeding. I filed the Second Status Report on December 27, 2021. The Second Status Report provided a semiannual accounting and an update on estate assets and liabilities. Both Status Reports were posted on the Department of Financial Regulation website ([www.dfr.vermont.gov/epix](http://www.dfr.vermont.gov/epix)) where the public may also access the Commissioner's petition (including the Plan of Rehabilitation), the Rehabilitation Order, and a Q&A document. The Rehabilitator also posted these records on the Company's former website ([www.epixrrg.com](http://www.epixrrg.com)) which was maintained through May 31, 2022. To reduce maintenance costs, that site no longer hosts content and instead redirects visitors to the Department of Financial Regulation's website for the EPIX estate.

4. Semiannual Accounting & Opinion Regarding Reorganization. The insurance laws require that, after an order of rehabilitation has been entered, the rehabilitator provide semiannual accountings to the supervising court and that these accountings shall include a report

of the rehabilitator's opinion as to the likelihood that a plan of reorganization will be filed. See 8 V.S.A. § 7052(b). In accordance with the receivership statutes, a report identifying all receipts and disbursements from the Company's accounts during the period December 1, 2021 to May 31, 2022 is attached as Exhibit A.<sup>1</sup> With one exception (see, *infra*, ¶ 11), all of the disbursements reported were approved by the Rehabilitator and are consistent with the Rehabilitation Order and Plan of Rehabilitation. With regard to the likelihood of reorganization, the Rehabilitator notes that EPIX transitioned all of its coverage to another carrier prior to insolvency and was operating in voluntary runoff prior to rehabilitation. The Rehabilitator is therefore of the opinion that there is no going concern that might be reorganized and that there is minimal likelihood that such a plan will be filed.

5. Estate Assets. As of May 31, 2022, EPIX had liquid assets of \$8,567,584.<sup>2</sup> Reinsurance recoveries may also constitute a material asset of the estate but, as these are contingent and unquantified, they are not reported as liquid assets. In addition to these liquid assets, it should also be noted that when calculating distributions in liquidation the EPIX estate will be entitled to credit for approximately \$1,460,000 in reimbursement on policy-level claims made pursuant to the Plan of Rehabilitation through May 31, 2022. See, *infra*, ¶ 8; Exhibit A.

6. Estate Liabilities. To avoid the creation of preferences, payments in rehabilitation must be made in a manner consistent with the statutory priority classes. See 8 V.S.A. §§ 7067 and 7081. With regard to priority class 1 (administrative expenses), the Petition for Order of

---

<sup>1</sup> The Rehabilitator's First and Second Status Reports both included exhibits setting forth all receipts and disbursements from inception of the proceeding to the specified reporting date. As the proceeding continues, such cumulative and repetitious reporting is unwieldy. Exhibit A therefore includes a report on receipts and disbursements in the current period (i.e. since the last report) and the Rehabilitator will continue to make reports on that basis going forward.

<sup>2</sup> All of these assets are presently held in cash or money market funds because the Rehabilitator had liquidated EPIX investments in anticipation of transfer to a Vermont institution. Following transfer, the assets will be re-invested in a manner consistent with the estate's anticipated liquidity needs.

Rehabilitation noted that the Company had accrued \$0.9 million in administrative expense and that, on a conservative basis, total administrative costs to complete runoff and liquidation might total \$1.9 million. See *id.*, ¶ 6. The Rehabilitator continues to believe that this is a reasonable and conservative estimate.<sup>3</sup> Priority class 2 (administrative expenses of guaranty associations) will be empty in this proceeding because EPIX is a risk retention group and therefore barred by federal law from participating in the guaranty association system. See 15 U.S.C.A. § 3902(a)(2). Priority class 3 (policyholder level claims) is expected to include loss, loss adjustment expenses, and a small amount of return premium. The Petition for Order of Rehabilitation noted that the Company's actuaries had provided low (optimistic), high (conservative), and central (select) estimates of claim exposures. The Rehabilitator believes that the high estimate -- \$13.2 million in loss and loss adjustment expenses -- is appropriate for purposes of rehabilitation planning and that other policy-level claims may be reasonably estimated at \$100,000. It is unlikely that estate assets will be sufficient to make distribution on claims that would fall in priority classes 4 through 10 so the Rehabilitator has not attempted to estimate the value of such liabilities.

7. Staffing & Administrative Services. In an effort to minimize the disruption resulting from insolvency, the Rehabilitator initially retained the EPIX claims staff to continue providing, as vendors, the services they had rendered as employees. An insolvent estate cannot offer long-term employment prospects, however, so it was anticipated that the Rehabilitator would ultimately need to engage consultants or other vendors to provide services. This transition occurred in January of 2022 when the final EPIX claims staffer gave notice of resignation and the Rehabilitator engaged VCM (Vertical Claims Management, a division of Cannon Cochrane

---

<sup>3</sup> Total administrative expenses in calendar year 2021 were \$349,474. Total administrative expenses through May 31, 2022 were \$116,107. On an annualized basis, this reflects a nearly 30% reduction in administrative expense due primarily to the transition to a vendor-based administrative model. See, *infra*, ¶ 7. The Liquidator is hopeful that, with the stability produced by a vendor-based model, it will be possible to maintain this reduced level of expense through the remainder of the proceeding.

Management Services, Inc.) to provide certain third-party administrator services. The Rehabilitator believes that the transition to VCM's claims handling platform has been smooth and that, going forward, the relationship should yield stability and efficiency for the estate and the EPIX policyholders.

8. Plan of Rehabilitation. Because EPIX is insolvent, the provision of a defense to insureds with open claims or the payment of losses insured under the Company's policies could create preferences under the insurance laws. See 8 V.S.A. § 7067. The Plan of Rehabilitation therefore contemplated that EPIX would cease providing its insureds with a defense, that insureds would assume responsibility for the defense of claims against them, and that EPIX would reimburse 40% of those defense expenses as well as 40% of insured loss. The Rehabilitator has reached out to policyholders and defense counsel to describe the Plan of Rehabilitation, discuss the necessity of policyholders engaging defense counsel directly, explain the reimbursement process, and answer questions. Through May 31, 2022, the Rehabilitator has received and processed loss adjustment expenses totaling \$720,604 and made reimbursements (at the 40% rate) totaling \$288,241. During the same period, the Rehabilitator has received proof of loss totaling \$2,925,000 and made indemnity reimbursements totaling \$1,170,000.<sup>4</sup>

9. Status of Open Claims. When the Rehabilitation Order entered on February 26, 2021, EPIX had fifty-six open claims, forty-two of which involved active litigation. Following notice of this proceeding and outreach to the policyholders, the Rehabilitator has received reimbursement requests regarding forty-three claims that have produced the reimbursements described in the preceding paragraph. Twenty-five of the original open claims have been resolved through judgment, settlement, closure of the underlying matter (e.g. a disciplinary

---

<sup>4</sup>In the month of June, the Rehabilitator processed a further \$65,906 in loss adjustment expenses (\$26,362 in reimbursements) and approved indemnity claims of \$500,000 (\$200,000 in reimbursements).

proceeding), or the issuance of coverage denial letters leaving a total of twenty-seven remaining open claims.

10. Of the twenty-seven remaining open claims, eleven have trials scheduled in the coming twelve months and two have received defense verdicts and are awaiting appellate review. Discovery has been completed with regard to most of the other open claims which are therefore “on hold” pending a trial date. As a result, there are only a handful of cases where the parties are continuing to develop facts, background, and expert opinion. The Rehabilitator is hopeful that trial calendars will clear in the coming months as pandemic-related backlogs are addressed such that cases can move more quickly to trial (or focused negotiations in anticipation of trial). It remains difficult, however, to project the pace of claim resolutions and thus the time that may be required to complete wind-down of the Company’s affairs.

11. Unauthorized Withdrawals from Estate Account. The Rehabilitator’s Second Status Report advised of an unauthorized withdrawal (\$23,000) from the Company’s checking account at US Bank that occurred on July 20, 2021. The Rehabilitator investigated the matter and learned that the funds had been removed pursuant to an order of garnishment secured from an Ohio court by a pre-insolvency judgment creditor of EPIX – Summa Emergency Associates, Inc. (“Summa”). The Rehabilitator had not been informed of the garnishment effort and contacted US Bank to request further information. The Rehabilitator also sought assurances that the bank was aware of the channeling injunction contained in the Rehabilitation Order and that it would take the steps necessary to prevent future efforts to circumvent the Rehabilitation Order.<sup>5</sup>

---

<sup>5</sup> The channeling injunction set forth in the Rehabilitation Order provides that:

“All persons are hereby enjoined from instituting any suit, action or other proceeding against EPIX... except before this Court... [or] executing or issuing or causing the execution or issuance of any writ, process, summons, attachment, subpoena, replevin, execution or other proceeding for the purpose of impounding or taking possession of or interfering with any property owned by or in the possession of EPIX.”

12. During the course of discussion with US Bank, the Rehabilitator received notice that Summa was once again attempting to garnish EPIX assets held by US Bank. Counsel for the Rehabilitator contacted counsel for Summa to discuss the purported garnishment, explain that the Rehabilitation Order specifically enjoins efforts to seize estate assets, and warn that such a seizure could result in a voidable preference and thus personal liability for any individuals/entities participating in creation of the preference or receiving estate assets. See 8 V.S.A. § 7067 (regarding voidable preferences). Counsel advised that Summa would review the referenced authorities but, regardless, intended to continue with efforts to seize Company assets.

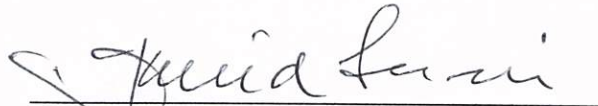
13. Counsel for the Rehabilitator then contacted US Bank to verify that appropriate controls were in place to ensure that the garnishment effort would be unsuccessful. US Bank advised of the safeguards it was implementing on March 11, 2022. The Rehabilitator did not hear further before US Bank, despite its assurances, debited \$23,000 from the EPIX account on March 17, 2022, and transferred it to Summa.

14. The Rehabilitator has contacted US Bank to demand restitution. Discussion regarding that issue is ongoing and the Rehabilitator is considering other potential avenues for recovery of the \$46,000 that Summa has seized since entry of the Rehabilitation Order. Consolidation of estate assets in a Vermont financial institution will also insulate against future efforts by creditors to circumvent the rehabilitation process.

---

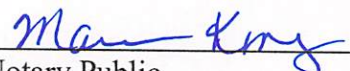
*Id.*, ¶ (f) (emphasis added). Such injunctions are commonly included in rehabilitation or liquidation orders in Vermont and other jurisdictions to ensure compliance with the priority statute (see, e.g., 8 V.S.A. § 7081), forestall the creation of preferences (see, e.g., 8 V.S.A. § 7067), avoid the chaos of a multi-forum “race to the courthouse”, and bring all creditor claims together in a single venue where they can be addressed in an orderly and consistent manner.

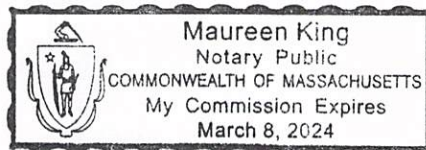
15. Next Steps. In the coming months, the Rehabilitator will continue to work with policyholders to ensure that the Rehabilitator remains informed of and involved in the management of open claims with a view towards resolving them in a prompt and efficient manner. The Rehabilitator proposes to make his next report and accounting in January of 2023 when data as of December 31, 2022 is available. See 8 V.S.A. § 7052(b) (rehabilitators to file semiannual accountings).

  
\_\_\_\_\_  
J. David Leslie

July 6, 2022

Subscribed and sworn before me this 6<sup>th</sup> day of July, 2022.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 3/8/24





## EXHIBIT A

### EPIX Rehabilitation Accounting

Receipts and Disbursements – December 1, 2021 through May 31, 2022

Date	Payee/Payor	Description	Disbursements	Receipts
12/03/21	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	3,322.83	
12/03/21	Payroll transfer	Outsourced Claims Staff	4,348.15	
12/03/21	Payroll transfer	Outsourced Claims Staff	4,099.01	
12/06/21	Clement Rivers, LLP	Loss (40% Initial Distribution)	40,000.00	
12/06/21	SustainableHR PEO, LLC	Outsourced Claims Staff	1,065.27	
12/08/21	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	932.90	
12/08/21	Sarah Scheib	Administrative Expense	61.88	
12/08/21	Horn Aylward & Bandy, LLC	LAE (40% Initial Distribution)	607.25	
12/08/21	HeplerBroom LLC	LAE (40% Initial Distribution)	1,763.36	
12/08/21	Veritext Corp.	LAE (40% Initial Distribution)	419.68	
12/08/21	Cassiday Schade LLP	LAE (40% Initial Distribution)	31,223.62	
12/08/21	Clement Rivers, LLP	LAE (40% Initial Distribution)	81.40	
12/14/21	Emergency Care Health Organization	Deductible Recovery		5,000.00
12/16/21	Payroll transfer	Outsourced Claims Staff	4,319.85	
12/20/21	Rackemann Sawyer & Brewster	Administrative Expense	4,357.50	
12/22/21	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	932.90	
12/22/21	Richards & Connor	LAE (40% Initial Distribution)	316.40	
12/22/21	Olympia Emergency Services, PLLC	LAE (40% Initial Distribution)	7,313.52	
12/22/21	Clement Rivers, LLP	LAE (40% Initial Distribution)	3,820.68	
12/22/21	Bradford Wendell Cotton	LAE (40% Initial Distribution)	2,997.18	
12/22/21	HeplerBroom LLC	LAE (40% Initial Distribution)	109.84	
12/22/21	Cassiday Schade LLP	LAE (40% Initial Distribution)	9,965.41	
12/22/21	Morrison Mahoney L.L.P.	LAE (40% Initial Distribution)	232.20	
12/22/21	Hill, Ward & Henderson, PA	LAE (40% Initial Distribution)	320.00	
12/22/21	Horn Aylward & Bandy, LLC	LAE (40% Initial Distribution)	99.80	
12/22/21	Immediate Health Associates, Inc.	LAE (40% Initial Distribution)	2,997.18	
12/28/21	HCutt, LLC	IT Services/Licenses	820.00	
12/31/21	US Bank	Corporate Credit Card	930.69	
12/31/21	US Bank	Interest Received		0.36
01/03/22	Sarah Scheib	Administrative Expense	45.55	
01/03/22	Norman Hanson & DeTroy, LLC	LAE (40% Initial Distribution)	2,926.94	
01/03/22	Merrimack Valley Emergency Assoc., Inc.	LAE (40% Initial Distribution)	18,497.28	
01/03/22	Kinthead & Stilz, PLLC	LAE (40% Initial Distribution)	164.40	
01/03/22	Clement Rivers, LLP	LAE (40% Initial Distribution)	199.62	
01/03/22	Morrison Mahoney L.L.P.	LAE (40% Initial Distribution)	20.00	
01/03/22	Markoff Law LLC	Deductible Recovery Expense	6,000.00	
01/03/22	Hill, Ward & Henderson, PA	LAE (40% Initial Distribution)	100.00	

Date	Payee/Payor	Description	Disbursements	Receipts
01/03/22	DiEdwardo, Christine	LAE (40% Initial Distribution)	1,300.00	
01/03/22	Payroll transfer	Outsourced Claims Staff	220.80	
01/04/22	Merrimack Valley Emergency Assoc., Inc.	LAE (40% Initial Distribution)	1,473.40	
01/07/22	Kollath & Associates CPA LLC	Outsourced Claims Staff	4,229.19	
01/11/22	Real Connection Media	IT Services/Licenses	100.00	
01/14/22	US Bank	Corporate Credit Card	877.10	
01/14/22	Emergency Care Health Organization	Deductible Recovery		5,000.00
01/19/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	384.55	
01/19/22	Rackemann Sawyer & Brewster	Administrative Expense	7,337.50	
01/26/22	Guy Carpenter & Company, LLC	Asset Recovery		10,838.92
01/31/22	Virginia Dept. of Taxation	Asset Recovery		1,331.00
01/31/22	US Bank	Interest Received		0.39
02/02/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	414.15	
02/03/22	McGrath Assoc. Claims & Risk Serv.	Administrative Expense	925.00	
02/03/22	AVID Risk Solutions, Inc.	Administrative Expense	922.30	
02/03/22	Kollath & Associates CPA LLC	Outsourced Claims Staff	3,481.47	
02/07/22	HCutt, LLC	IT Services/Licenses	1,615.00	
02/07/22	Markoff Law LLC	Deductible Recovery Expense	1,000.00	
02/11/22	Emergency Care Health Organization	Deductible Recovery		5,000.00
02/11/22	VCM	TPA Fees	13,970.00	
02/14/22	US Bank	Corporate Credit Card	891.56	
02/16/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	414.13	
02/16/22	Verrill & Dana LLP	Administrative Expense	6,626.50	
02/16/22	SustainableHR PEO, LLC	Outsourced Claims Staff	100.00	
02/28/22	US Bank	Interest Received		0.40
03/02/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	414.15	
03/02/22	US Bank	Corporate Credit Card	192.70	
03/08/22	Real Connection Media	IT Services/Licenses	100.00	
03/11/22	McGrath Assoc. Claims & Risk Serv.	Administrative Expense	1,150.00	
03/11/22	Emergency Care Health Organization	Deductible Recovery		5,000.00
03/11/22	HCutt, LLC	IT Services/Licenses	807.50	
03/11/22	Kollath & Associates CPA LLC	Outsourced Claims Staff	1,809.95	
03/14/22	US Bank	Corporate Credit Card	878.75	
03/14/22	Kentucky Department of Taxation	Premium Tax	125.00	
03/16/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	414.13	
03/17/22	Verrill & Dana LLP	Administrative Expense	8,617.00	
03/17/22	Summa Emergency Assoc.	Garnishment	23,100.00	
03/18/22	VCM	TPA Fees	11,100.00	
03/31/22	US Bank	Interest Received		0.42
04/05/22	Emergency Care Health Organization	Deductible Recovery		5,000.00
04/08/22	HCutt, LLC	IT Services/Licenses	807.50	
04/08/22	Kollath & Associates CPA LLC	Outsourced Claims Staff	2,176.59	
04/14/22	US Bank	Corporate Credit Card	893.28	

Date	Payee/Payor	Description	Disbursements	Receipts
04/15/22	Verrill & Dana LLP	Administrative Expense	10,364.50	
04/29/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	828.28	
04/30/22	Peoples' United Bank	Bank Fees	29.70	
04/30/22	US Bank	Interest Received		0.38
04/30/22	VCM Claims Escrow	LAE (40% Initial Distribution)	100.00	
05/05/22	Kollath & Associates CPA LLC	Outsourced Claims Staff	2,384.27	
05/06/22	HCutt, LLC	IT Services/Licenses	807.50	
05/10/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	414.13	
05/10/22	McGrath Assoc. Claims & Risk Serv.	Administrative Expense	5,475.00	
05/13/22	Peoples' United Bank	Bank Fees	898.81	
05/13/22	Emergency Care Health Organization	Deductible Recovery		5,000.00
05/17/22	Peoples' United Bank	Bank Fees	35.19	
05/19/22	Verrill & Dana LLP	Administrative Expense	14,482.50	
05/20/22	VCM Claims Escrow	LAE (40% Initial Distribution)	38,118.43	
05/24/22	VCM Claims Escrow	Loss (40% Initial Distribution)	300,000.00	
05/24/22	VCM Claims Escrow	Loss (40% Initial Distribution)	60,000.00	
05/26/22	Kollath & Associates CPA LLC	Accounting & Mgmt. Services	414.15	
05/31/22	US Bank	Interest Received		0.41
05/31/22	Peoples' United Bank	Interest Received		191.82
<b>Subtotal (Current Period)</b>			<b>688,633.95</b>	<b>42,364.10</b>
Prior Periods (Inception – November 2021)			1,282,051.22	63,437.90
<b>TOTAL</b>			<b>1,970,685.17</b>	<b>105,802.00</b>

Estate Disbursements (Inception to May 31, 2022)

Priority Class	Disbursements
Priority Class 1 (Administrative Expense)	465,580
Priority Class 3 (Policy-Related Claims)	1,459,005
Other (Improper Garnishments)	46,100
<b>TOTAL</b>	<b>1,970,685.17</b>