INDEPENDENT RECEIVER REPORT

ON BEHALF OF

AFFILIATED PHYSICIANS AND EMPLOYERS MULTIPLE TRUST

FILED WITH THE SUPERIOR COURT OF NEW JERSEY
MORRIS COUNTY

INITIAL INTERIM STATUS REPORT SUBMITTED BY

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INDEPENDENT RECEIVER

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1.0 APEMT'S ORGANIZATIONAL HISTORY

BACKGROUND AFFILIATED PHYSICIANS AND EMPLOYERS MASTER TRUST ("APEMT")

On or about September 12, 2003 a trust agreement for *Affiliated Physicians Multiple Employer Trust* ("**APMET**" or "Debtor") was executed by and among participating member(s) and participating member organizations in the medical services community. **APMET** was a self-funded multiple employer welfare arrangement ("**MEWA**"), organized as a 501(c)(9) tax exempt organization of the Internal Revenue Code and in accordance with **NJSA 17B:27C-1**, et seq. to transact business in the State of New Jersey under the regulation authority of the New Jersey Department of Banking and Insurance ("**NJ DOBI**").

APMET, as a **MEWA**, also qualified under multiple sections of the Internal Revenue Code, where multiple employers join together to self-insure the welfare benefits of their employees. **APMET** was subject to the provisions of the Employers Retirement Income Security Act ("**ERISA**") of 1974, as amended. **APMET** was registered as a **MEWA** with the United States Department of Labor ("**DOL**") through an annual **M1** filing. **APMET's** effective date for enrollment began January 1, 2004. From September 12, 2003 through June 2011, the **APMET** Agreement had amendments approved by the Board of Trustees ("**Board**"). Included in these amendments were provisions for the addition of new sponsor medical service organizations; the participation by their employees and/or Physician Independent Practice Associations ("**IPAs**"); and other employer groups affiliated with medical service organizations.

On or about June 1, 2011, **APMET** added the *Employers Association of New Jersey* as a sponsor to the **MEWA**. A **Master Trust** structure was formed with two (2) separate Sub Trusts. The **Master Trust** was now called the *Affiliated Physicians and Employers Master Trust* ("**APEMT**") and was no longer a not-for-profit trust. The amended agreement allowed an individual group trust to become a member of **APEMT** by completing a detailed application and approval at the sole and exclusive discretion of **APEMT's** Board of Trustees ("**Board**").

Notwithstanding the regulatory role of **NJ DOBI**, under New Jersey state law, a "self-funded multiple employer welfare arrangement, like **APMET/APEMT** is not an insurance company or insurer…." N.J. Stat 17B:27C-8(a).

APEMT'S EXPANSION WITH OTHER SPONSOR ASSOCIATIONS/ORGANIZATIONS

In 2013, **APEMT** partnered with **CentraState Healthcare System** to offer a community based program to employers in the greater Freehold, New Jersey area. In 2018 **APEMT** partnered with **BioNJ**, a nonprofit bio pharma association dedicated to supporting its membership of pharmaceutical and related employers. In March 2020, **APEMT** partnered with **New Jersey State Chamber of Commerce** ("**NJSCC**"), which represents all types of employers in the state ranging from solo proprietors to Fortune 500 companies. All business transactions between **APEMT** and the various Sponsoring Associations/Organizations received favorable comments and approval from **NJ DOBI.**

Tables 1A & 1B highlight the number of Employers (**Members**) enrolled in **APEMT** benefit plans as of April 2020. The data identifies membership in **APEMT** by each Sponsoring Association/Organization, by number of Employers (**Members**) enrolled, and the group size determined by the number of enrolled **Participants** by Employer group. As of April 2020 (Pre Covid-19 Pandemic), **APEMT** serviced 3,699 Members that covered approximately 37,731 Participants ("**Covered Lives**").

Tables 1A & 1B Employer Groups and Enrollees by Sponsor Association

Active Groups Affiliation Summary	# Groups	% Groups	# Employees	% Employees	# Members	% Members
BioNJ	2	0.05%	17	0.09%	49	0.13%
Chamber of Commerce - GMCC	55	1.49%	310	1.61%	580	1.54%
Chamber of Commerce - HCC	6	0.16%	14	0.07%	23	0.06%
Chamber of Commerce - JCC	13	0.35%	61	0.32%	86	0.23%
EANJ	2466	66.67%	14125	73.26%	27551	73.02%
Medical - Dental Provider	26	0.70%	48	0.25%	122	0.32%
Medical - Professional Services	1020	27.58%	4250	22.04%	8422	22.32%
MSNJ - Physician	34	0.92%	231	1.20%	461	1.22%
Physician - HUMC Medical/Dental Staff	3	0.08%	87	0.45%	131	0.35%
Physician - IPA of North Jersey	74	2.00%	137	0.71%	306	0.81%
Grand Total	**3,699**		**19,280**		**37,731**	

Active Groups By Affiliation	Total Groups 1 to 2 Enrolled	Total Groups 3 to 10 Enrolled	Total Groups 11 to 24 Enrolled	Total Groups 25 to 50 Enrolled	Total Groups 51 to 100 Enrolled	Total Groups 101+ Enrolled
BioNJ		1	1			
Chamber of Commerce - GMCC	32	13	1	3		
Chamber of Commerce - HCC	3	3				
Chamber of Commerce - JCC	6	6	7			
EANJ	1389	751	210	95	15	5
Medical - Dental Provider	23	3				
Medical - Professional Services	722	223	42	24	9	1
MSNJ - Physician	19	9	3	3		
Physician - HUMC Medical/Dental Staff	1	1			1	
Physician - IPA of North Jersey	59	15				
Grand Total	**2254**	**1025**	**264**	**125**	**25**	**6**

2.0 APEMT's IMPAIRED FINANCIAL CONDITION

NJ DOBI COMMUNICATIONS & ACTIONS REGARDING APEMT'S FINANCIAL CONDITION

On December 4, 2020, there was a meeting with **NJ DOBI** Commissioner's Office (the "**Department**") and representatives from **APEMT's** Board of Trustees ("**Board**") to discuss the rapid deterioration of the financial performance and consequential instability of **APEMT**. The **Department's** critical concerns was **APEMT's** liquidity and the Plan's surplus, and risk based capital ("**RBC**") deterioration. As of October 31, 2020, **APEMT's** surplus had deteriorated $10.5 million during a recent four-month period, decreasing from $15.5 million on June 30, 2020 to $5.0 million as of October 31, 2020. **APEMT's** surplus was deemed by the **Department** to be inadequate. The **Department** highlighted **APEMT's** liquidity as of September 30, 2020 was at 61.3%.

On December 9, 2020, the **Department** issued a letter as a follow-up to the December 4, 2020 meeting, documenting the **Department's** request for a Corrective Action Plan ("**CAP**"), approved by the Board, to be received within thirty (30) days or by January 7, 2021. The **CAP** was to eliminate **APEMT's** financial inadequacy within ninety (90) days of the **CAP** implementation date, as required by *N.J.S.A. 17B:27C-9(b)* and *N.J.A.C. 11:4-56.8*. The **Department** noted in their communication with **APEMT** that *N.J.S.A. 17B:27C-9(b)* does not contemplate approval of the **CAP** by the **Department** but rather, the law simply states that the **CAP** must correct **APEMT's** financial deficiency within ninety (90) days.

On January 6, 2021, the **Department** received **APEMT's CAP** documentation with supporting exhibits and projections. On January 14, 2021, the **Department** sent an email advising **APEMT** that their **CAP** submission was deficient because **APEMT's** financial impairment would not be cured within the prescribed ninety (90) period cited in *N.J.S.A. 17B:27C-9(b).* In the same communication the **Department** requested additional information on a proposed $5 million surplus note between **APEMT** and Aetna Life Insurance Company ("**AETNA**").

On March 1, 2021, the **Department** issued **APEMT** a follow-up request to provide interim business and financial reporting information. On March 2, 2021, the **Department** and representatives from **APEMT** and **AETNA** met to discuss the **Department's** problematic terms with the proposed **AETNA** surplus note; the **Department's** general requirements for any capitalization agreement; and the **APEMT's** financial projections. After an exchange of information with the **Department** regarding the proposed **AETNA** surplus note, the **Department** concluded the purported surplus note was viewed as a *Debt Agreement* by the **Department**. Therefore, the proposed **AETNA** contribution would not be treated as a capital contribution but rather additional debt to **APEMT**.

On May 6, 2021 the **Department** sent a letter to **APEMT** advising the time period had expired under *N.J.S.A. 17B:27C-9(b)* for **APEMT** to implement a **CAP** to correct the financial deficiency. Under the authority of *N.J.S.A. 17B:27C-10* to correct the financial inadequacy, state regulation authorized the **Department** to revoke **APEMT's**' certificate of registration. The **Department** requested **APEMT** to immediately cease writing new business and provide a plan

to minimize the impact of this result on **APEMT's Members** on a going forward basis and requested the **Trustees** consent to the revocation of **APEMT's** certificate of registration. The **Department** requested **APEMT** submit their plan by May 24, 2021, which had to include:

- A timeline for nonrenewing and terminating the **APEMT** health plans, including adequate notice to Employers (**Members**) enrolled in the benefit plans;
- Draft of communications with **Members** for advance review by the **Department**; and
- Draft of communications to **Members** concerning the contingent liability of each **Member**.

Sometime in late June 2021, the **Department** sent to **APEMT** a letter revoking the 2020 and 2021 *Certificate of Registration* and the **Department** also advised their Certificate of Registration was not renewed for 2022.

ACTIONS BY APEMT BOARD OF TRUSTEES ("BOARD") MAY 2021

APEMT's Executive and Finance Committee ("**E&F Committee**") met on May 7, 2021 to discuss with their General Counsel, William Megna, Esq., and the Board's Plan Administrator, Concord Management Resources ("**CMR**"), Commissioner of **NJ DOBI's** revocation of **APEMT's** certificate of registration. The **E&F Committee** discussed options available to comply with the **Department's** requests identified in the letter. The **Department** requested the Board of Trustees ("**Board**") to voluntarily surrender its certificate of registration. The **E&F Committee** requested that the General Counsel and **CMR** provide additional information and a proposed response for the **Department** to be reviewed by the full **Board** scheduled for May 10, 2021.

APEMT's Board met on May 10, 2021 to further discuss their options and ensure **APEMT** had ceased writing any new business; an assessment formula was being prepared for **Members**; and whether the **Board** would voluntarily surrender **APEMT's** certificate of registration. During this meeting, the **Board** was advised that a $5 million capital infusion from **AETNA** would not be sufficient to put **APEMT** in compliance with the required **RBC** requirements. The **Board** also discussed the wind-down plan requested by the **Department** which needed to be submitted by May 24, 2021.

Between May 6, 2021, and May 19, 2021, **APEMT** attempted to persuade NJ DOBI to work with them to recapitalize **APEMT** and avoid a "wind down". When efforts to negotiate a resolution with **NJ DOBI** failed, on May 24 , 2021 the law firm of Genova Burns, representing **APEMT**, filed for bankruptcy protection under Subchapter V of Chapter 11 of the Bankruptcy Code, Case No. 21-14286-MBK, and the **APEMT** bankruptcy was assigned to the Honorable Michael B. Kaplan.

On May 25, 2021, the Office of the United States Trustee appointed Brian W. Hofmeister to serve as the Subchapter V Trustee (the "**Trustee**").

On June 10, 2021, shortly after the Chapter 11 filing, **APEMT** sent all Employers (**Members**) a notice of the Chapter 11 filing and of **APEMT's** efforts to keep the business alive. Shortly thereafter, **APEMT** received a notification by **NJ D0BI** that it would not be renewing

APEMT's Certificate of Registration. Accordingly, **APEMT** wrote to all **Members**, by letter dated July 13, 2021, to advise that **APEMT** was ceasing to write new business and beginning an orderly wind down. In the **Board's** correspondence to **Members**, **APEMT** advised all Members that during the next few weeks, **APEMT** will work with its actuary and advisors to determine the necessary assessments that would be requested for each **Member** enrolled in APEMT's Plans at any time since January 1, 2020.

On or about August 10, 2021, each **Member** was notified by the **Board** of their legal obligation to pay an assessment (the "**August 2021 Assessment**") in accordance with *the State of New Jersey Title 17B – Insurance Section 17B:27C-7d*. The **APEMT Board** also advised each **Member** that the **August 2021 Assessment** would be used to pay all outstanding claims and expenses of **APEMT**.

3.0 INSTRUCTIONS FROM FEDERAL AND STATE COURTS

Expansion of Powers By the Bankruptcy Court for the SubChapter V Trustee

Pursuant to Orders issued by the United States Bankruptcy Court, the Honorable Michael B. Kaplan, Chief Judge (hereafter "**Judge Kaplan** or **The Court**"), dated November 15, 2021, the "*Expansion of Powers Order*", and the March 21, 2022 Order confirming the **Debtor's** SubChapter V Plan for Liquidation pursuant to 11 U.S.C. §1191(a), referred to as the "*Confirmation Order*", the United States Bankruptcy Court expanded the **Trustee's** powers and authority to conduct an examination as to the underlying cause(s) of the insolvency of **APEMT** (the "**Debtor**") and to identify any potential claims or causes of action that could be pursued on behalf of the **Debtor's** estate.

Judge Kaplan's "*Expansion of Powers and Confirmation Orders*" directed the **Trustee** to complete the examination of the **Debtor** from the period of January 1, 2016 through December 31, 2020 (the "**Exam Period**") and to analyze the financial and operational conditions of the **Debtor** leading up to the bankruptcy filing May 25, 2021. The **Exam Period** of five (5) years was to determine if the **Debtor's** financial impairment at year-end 2020 was caused by the additional medical services required by enrollees due to the Covid-19 Pandemic or was the **Debtor** in an impaired financial condition prior to March 2020.

Implementation of Confirmed Plan By the Debtor ("APEMT")

Pursuant to the Bankruptcy *Confirmation Order*, **APEMT** was also obligated to "seek relief from the State Superior Court pursuant to N.J. Stat. § 17B:27C-11 of the MEWA Act and its related provisions (the "**State Court Proceeding**") for the liquidation and dissolution of the **Debtor** under the supervision of the State Superior Court in the county in which the self-funded multiple employer welfare arrangement has it principal office. The **Debtor's** principal office is located in Morris County, New Jersey.

Appointment of Independent Receiver By State Superior Court

On November 10, 2022, the Honorable Frank J. DeAngelis, J.S.C., in the Superior Court of New Jersey, Law Division of Morris County, issued the following judgment regarding the Liquidation and Dissolution of the **Debtor/APEMT**:

- Appointed Brian W. Hofmeister as **Independent Receiver** to oversee the dissolution and liquidation of **APEMT** in accordance with New Jersey **MEWA** statute *17B:27C-11 Rehabilitation, Liquidation, Conservation, Dissolution*;
- Authorized the **Independent Receiver** to continue to execute **APEMT's** Bankruptcy Plan;
- Authorized the **Independent Receiver** to take all action necessary to enact and comply with the Plan and Confirmation Order entered in **APEMT's** Bankruptcy Case;

- "So Authorized" the relief granted in the Plan and Confirmation Order including, but not limited to, **APEMT's** Post-Confirmation Operations;
- Authorized the **Independent Receiver** to continue pursuing claims on behalf of the APEMT as set forth in the Bankruptcy Court's "*Expansion of Powers and Confirmation Orders*";
- Authorized the **Independent Receiver** and **APEMT** (respectively) to retain attorneys, consultants, accountants, and other specialists as necessary, and pay those professionals from **APEMT's** assets;
- Authorized the waiver of any Board requirements for the **Independent Receiver**; and
- Such other relief that the State Superior Court may deem equitable.

4.0 SubChapter V Trustee Examination Report

SubChapter V Trustee Examination Report to the US Bankruptcy Court

On June 23, 2022 the **SubChapter V Trustee**, Brian W. Hofmeister, submitted his *Examination Report* to the United States Bankruptcy Court. The **Trustee's** report identified potential claims or causes of action on behalf of the **Debtor**. The **Trustee's** examination included a review and analysis of the **Debtor's** governance, operations, the manner in which its business was conducted during the examination period, and a determination of the **Debtor's** financial condition year end for each of the years previously identified.

All phases of the examination were conducted to determine compliance with generally accepted statutory accounting standards, and with the applicable insurance laws and regulations promulgated by the State of New Jersey, specifically **NJSA § 17B:27C-1**, et seq. and U.S. Department of Labor and the Employee Retirement Income Security Act of 1974 ("**ERISA**").

Incorporated into the **Trustee's** Examination procedures were the following:

1. Review and examine the **Debtor's** actuarial certifications and rate filings issued by the **Debtor's** consulting actuaries, Windsor Strategy Partners, LLC ("**Windsor**") for each of the years examined.

2. Review and examine the **Debtor's** corporate records for five (5) years that included the organizational structure, master trust agreement, sponsor association contracts, and Board of Trustees meeting minutes and corporate records.

3. Review and examine the **Debtor's** financial records, including financial statements, surplus and risk based capital reports, stop-loss programs, claims administration and reporting.

4. Review and examine the **Debtor's** audited financial statements and annual report filings with the Department of Labor ("**DOL**"), Form 5500.

5. Review and examine **Debtor** contracts, payments, and any reconciliation reports required by contract(s).

6. Review and examine the **Debtor's** request for proposals ("**RFPs**") for Medical Claims Administration and Prescription services.

7. Review and examine **Debtor's** claim audits for third party administrator claims paid by QualCare/Cigna and Aetna Life and Health Insurance Company ("**AETNA**").

8. Review and examine **Debtor's** communications with Members and Plan Participants in accordance with state and federal requirements for a licensed **MEWA**.

9. Review and examine **Debtor's** books and records regarding the Affordable Care Act Health Information Tax ("**HIT**").

10. Review New Jersey Department of Banking and Insurance ("**NJ DOBI**") audit

report and communications to and from the **Debtor** from 2016 through 2021.

11. Review U.S. Department of Labor ("**DOL**") audit report and communications to and from the **Debtor** from 2016 through 2021.

12. Review and examine the **Debtor's Plans**, **Plan** participation contracts and **Plan** documents; sales and marketing contracts and information; contracts with brokers, vendors and professionals providing services from 2016 through 2020.

13. Review and examine books and records regarding the Covid-19 surcharge and assessments levied against Members enrolled from January 1, 2020 to December 31, 2021.

5.0 EXAMINATION FINDINGS BY ACTUARY

The **SubChapter V Trustee** retained Merlinos & Associates, a Davies Company ("**M&A**"), to complete an actuarial examination of the actuarial services provided by **Windsor** for the Plan years 2016 to 2020. As identified by **M&A** the two (2) Actuarial Standards of Practice (**ASOPs)** most applicable to the bankruptcy analysis were <u>ASOP 5</u> - *Incurred Health and Disability Claims*, and <u>ASOP 8</u> - *Regulatory Filings for Health Benefits, Accident & Health Insurance, and Entities Providing Health Benefits*. Incorporated into the **M&A'** examination procedures was the review of the **Debtor's** actuarial certifications and rate filings issued by **Windsor** for each of the years examined. **Windsor** updated plan rates on a quarterly basis. All rate filings for the **Debtor's** health plans were submitted to **NJ DOBI** for continuous review and approval.

M&A has identified in their examination reports that **Windsor** had three (3) rating deficiencies in their methodologies in setting rates for the **Debtor** from 2016 through 2020. Specifically, the rating deficiencies discussed in detailed in the **M&A** examination reports are:

1. Use of medical trend rates that were too low;
2. Consistent unfavorable development of incurred claim estimates; and
3. Rating methodology not adjusting for changes in average contract size.

For the deficiencies identified in Items #1 and #2, only medical claims were impacted; whereas, both medical and prescription (pharmacy) claims were impacted in Item #3. For all three (3) deficiencies identified, the rate impact would be mitigated by the presence of significant administration and stop loss expenses in the rating formula.

Windsor's rate impact would vary by quarter, but conservatively **M&A** estimates that each rating cycle prepared by **Windsor**, beginning with the 2016 rating cycle, rate increases should have been higher by an amount that ranged between 4% and 8%. The exact deficiency amount would vary by quarter. The rating deficiency would not compound, but rather the impact was that the **Debtor's** rates were consistently lower than they should have been.

M&A concludes the **Debtor** consistently had statutory underwriting losses from 2016 to 2020 with the exception of 2017, which had an exceedingly small gain. Statutory underwriting losses from 2018 to 2020 totaled $24.9 million.

<u>*Debtor's Financial Impairment and Estimated Damages*</u>

M&A identified the **Windsor** rating deficiencies from 2016 – 2020 were a significant cause of the **Debtor's** financial impairment. **M&A** stated that if **Windsor** had utilized different pricing assumptions that address the methodology inadequacies identified above, then quarterly rate increases would have been higher, which would have placed the **Debtor** in a stronger surplus position. The **M&A** reports also note any increase in the **Debtor's** health rates would have likely resulted in lower Plan enrollment. **Table 2** is the **M&A** damages modeling, which illustrates a ten (10) and twenty (20) per cent decrease in enrollment. to help calculate the range in the financial damages incurred by the **Debtor** from 2016 - 2020**.**

Table 2 Merlinos and Associates ("M&A") Estimated Damages

Affiliated Physicians and Employers Master Trust
Claims Damage Estimate - All Damage Components
Exhibit 4

Year	Member Months	Claim Differential ($)	Enrollment Adjusted (10% to 20%) Damages - Low	Damages - High
2017	431,867	4,897,773	3,918,219	4,407,996
2018	527,242	19,471,617	15,577,294	17,524,455
2019	438,561	14,398,181	11,518,545	12,958,363
2020	453,071	11,958,759	9,567,007	10,762,883
2021	206,716	4,691,811	3,753,449	4,222,630
Total		55,418,142	44,334,513	49,876,327

The M&A table above highlights the estimated range of financial damages to the **Debtor** for the years stated from a low of **$44,334,513** to a high of **$49,876,327**.

M&A Response Whether Covid-19 Caused the Debtor's Financial Impairment?

Covid-19 medical services for the **Debtor's Plan Participants** did not cause the financial impairment of **APEMT**. **M&A** did recognize the **Debtor's** surplus was so deteriorated before the Covid-19 Pandemic; therefore, the **Debtor** ("**APEMT**") could not survive the additional testing and medical expenses incurred due to the Covid-19 Pandemic. **M&A** concluded Covid-19 claims were material enough that they caused the **Debtor's** financial performance to be worse than it otherwise would have been in the absence of the Covid-19 Pandemic.

Identified Potential Claims Against Windsor and Other Professional(s)

A. The **Independent Receiver** is continuing to investigate and pursue potential claim(s) against **Windsor** on behalf of the **APEMT** as follows:

1. *Unfavorable Development of the Incurred Medical Claim Estimates*. **M&A's** range of estimated damages for this item is between $20,944,246 to a high of $23,562,276, depending on the enrollment loss of ten (10) or twenty (20) percent.

2. *Use of Medical Trend Rates That Were Too Low*. **M&A's** range of estimated damages for this item is between $18,023,039 to a high of $20,275,918, depending on the enrollment loss of ten (10) or twenty (20) percent.

3. *Rating Methodology Did Not Adjust For Changes In Average Contract Size*. **M&A's** range of estimated damages is a low of $5,367,229 to a high of $6,038,133 depending on the enrollment loss of ten (10) or twenty (20) percent.

4. *Professional Fees Paid to Windsor.* Requested detailed information from **Windsor** regarding the additional services requested by the **Debtor's** Board that required the annual payment cap to be removed from the **Windsor** contract, thereby the **Debtor's** payments to **Windsor** increased by approximately $1.8 million dollars from 2016 to 2020.

B. The **Independent Receiver** is also continuing to investigate and pursue potential claims against Definitive Insurance Management Services ("**Definitive**") and Megna Law Firm ("**Megna Law**"), which served as the **Debtor's** contracted General Counsel from 2011 through 2021, who demonstrated potential claims of negligence by allowing a **Trustee** to mispresent the **Debtor's** Finance and Audit Committee reporting to the **Board** for the approval of an amended contract for **Windsor** in September 2015.

6.0 OTHER EXAMINATION FINDINGS AND ACTIONS

A. The **Debtor's** records showed a ***Restated Capitalization and Compensation Agreement*** ("***Restated Agreement***") in 2019 between Employers Association of New Jersey ("**EANJ**"), a Sponsor Association, and the **Debtor.** Pursuant to the ***Restated Agreement***, **EANJ** was required to maintain records for all marketing expenses it incurred concerning the solicitation of members for **APEMT**, and, for so long as the ***Restated Agreement*** remained in effect, **EANJ** was required to submit to the **Debtor**, in a format agreed to by the Parties, quarterly reports as to **EANJ's** actual marketing expenses, and there would be an annual reconciliation of **EANJ's** actual expenses against the marketing fees previously paid by **APEMT** to **EANJ**. The period of reconciliation in accordance with this ***Restated Agreement*** was from 2011 through December 2020. To date, however, **EANJ** has failed to adequately provide a reconciliation of actual expenses.

1. The **Independent Receiver** is now investigating potential claims against **EANJ** on behalf of the **APEMT** for the unsupported marketing expenses paid to **EANJ** by **APEMT**. Based on the **Independent Receiver's** current investigation, the amount of the potential claim is **$960,407**.

2. The **Independent Receiver** is also continuing to investigate and potentially pursue potential claims against the public accounting firm Withum, Smith & Brown ("**Withum**") for the following:

(i) Not verifying Board approval for the **EANJ's** amended ***Capitalization and Compensation Agreement Amendments*** executed in 2012 and 2016**;**

(ii) Not disclosing to the **Board,** the **ERISA** violations in the original ***Capitalization and Compensation Agreement*** executed in 2011, Amendments in 2012 and 2016;

(iii) Not accurately reporting on the Federal Form 5500 Annual Report, reporting years 2015 – 2020, that **EANJ** is a 'party-of-interest' receiving marketing fees from the **Debtor**; and

(iv) Not reporting to the **Debtor's Board** that the 2019 and 2020 Audited Financial Statements and the *Marketing Fee Reconciliation* between **EANJ** and the **Debtor** was not completed.

3. The **Independent Receiver** is continuing to investigate and potentially pursue claims against the Megna Law Firm ("**Megna**") whose principal, William Megna, Esq., contracted with the **Debtor** as General Counsel from 2003 to May 24, 2021 for the following:

(i) Not advising the **Debtor's** Board of Trustees in September 2019 to contact the Department of Labor's ("**DOL**") to comply with **ERISA** guidelines to voluntarily self-correct the violations of the *Sponsor Association*, receiving a marketing fee and the conflict of the **Trustees** who served on the **Debtor's Board**;

(ii) Not including the *Amended **EANJ** Capitalization Agreements* of both 2012 and 2016 on the **Board** Agendas for approval;

(iii) On behalf of the **Debtor,** not ensuring the necessary follow-up between **EANJ** and **Debtor** regarding the reconciliation requirements of the *2019 Restated Capitalization Agreement*;
(iv) Agreeing to an amendment of the **Windsor** contract that removed the cap on Windsor's fees; and
(v) Not notifying the Plan Administrator/Manager to meet with **EANJ** to establish a process for the **EANJ** reconciliation reporting.

B. For the 2020 **ACA** Health Information Tax ("**HIT Tax**") the actuary **Windsor** did not consider the payment of the **HIT Tax** for 2020 when finalizing the initial 2020 **Plan** rates**. Windsor** did make adjustment to the 2020 Plan rates for new/renewed plans beginning April 2020. **M&A** has estimated 41% of the **Debtor's Members,** enrolled in **Plans** from January 1, 2020 to March 31, 2020, did not have a factor for the **HIT Tax** in their monthly health fee payments. Therefore, approximately $1.3 million of the estimated **HIT Tax** was not collected by **Member** health fees in 2020.

1. The **Independent Receiver** is continuing to investigate and pursue potential claims against **Windsor** on behalf of the **Debtor** for not properly accounting for the **HIT Tax** in the **Debtor's** first quarter 2020 health plan rates. The amount of this additional claim is $1.3 million**.**

2. The **Independent Receiver** is continuing to investigate and potentially pursue claims against **Withum** because at no time from 2014 through 2020 did **Withum** recommend to the **Debtor's** Board of Trustees to seek clarification from the U.S. Treasury and/or Internal Revenue Service regarding the definition of a 'covered entity' for the **ACA Section 9010 Assessment**, commonly referred to as the **HIT Tax** nor suggest the **Debtor** pay the tax with a 'reserving of rights'.

C. The Plan Administrator/Manager, in collaboration with the Actuary, prepared an annual budget for the **Debtor's Board** to review and approve on an annual basis. QualCare/Cigna ("**QC/Cigna**") prepared and submitted to the Board annual budgets for 2016, 2017 and 2018. QC/Cigna prepared monthly unaudited Financial Statements and Surplus/RBC reports to present to the **Board** for their review and approval. **Trustees** serving on the Finance and Audit Committee ("**F&A" Committee**) or Executive and Finance Committee ("**E&F Committee**") repeatedly asked the Plan Administrator at the time of financial reporting why the reserves were consistently in error from month to month, and why was the **Debtor** rarely meeting budget expectations each month. In addition, a loss reserving policy ("**LR Policy**") was prepared by **QM/Cigna** in 2016 and submitted to the Board for approval. The Board adopted the **LR Policy**. As the **Debtor's** financial condition was deteriorating, **QC/Cigna** should have consider recommending to the **Board** an outside consultant be contracted to review the **LR Policy** and **Windsor's** rate setting methodologies to determine if the reserving strategy and rate setting were appropriate for the Debtor's benefit plans.

1. The **Independent Receiver** is continuing to investigate and potentially pursue claims against **QC/Cigna** on behalf of the **Debtor** for not recommending the Board seek a second actuarial opinion for plan rates and the **LR Policy**.

While the recovery of **APEMT Members'** assessments has ensured the payment of all outstanding medical and prescription claims pursuant to the **Court** approved *Bankruptcy Plan*, the goal of any pursuit of claims would be to (i) cover any future shortfall for claim payments and (ii) to the extent all claims are paid, to reimburse **Members** who paid an assessment.

7.0 CURRENT STATUS APEMT'S BANKRUPTCY PLAN

Claims Administration and Outstanding Claims To Be Paid

The **Independent Receiver**, Brian W. Hofmeister, Esq., is pleased to report to the Court that as of January 26, 2023 there are **NO** medical and prescription claims requiring claim adjudication by **AETNA**, the **Debtor's** third party administrator ("**TPA**"). The **AETNA** January 26, 2023 Claim Report contains the following claim summary information as provided in Table 3:

- **Item 1:** Total Charges for zero (0) Claims Remaining for Adjudication **$0.**
- **Item 2:** **Debtor's** Funds Available with **AETNA** for Claim Payments **$246,329.34.**
- **Item 3:** Estimated **Debtor's** Funds Available **$246,329.34** to be returned to **APEMT.**

Table 3 AETNA Claim Report as of January 26, 2023

As of :	1/24/2023	1/25/2023	1/26/2023	
Total subscribers on the plan is:	0 EEs	0 EEs	0 EEs	
Total membership on the plan is:	0 members	0 members	0 members	
Aggregate liability exposure is:	($283,896.56)	($283,896.56)	($246,329.34)	2
Total outstanding Administration fee funding requests:	$0.00	$0.00	$0.00	1
Total outstanding Medical claims funding requests:	($283,896.56)	($283,896.56)	($246,329.34)	3
Total outstanding Rx funding requests:	$0.00	$0.00	$0.00	
Total held claims (by submitted charges):	$0.00	$0.00	$0.00	1
Pended inventory claims	$0.00	$0.00	$0.00	
Newly pended submitted claims	$0.00	$0.00	$0.00	
Number of claims on hold	0	0	0	

Run-Off Period for Submitting Medical and Prescription Claims

Effective January 1, 2022, there were no Members or Plan Participants enrolled in the medical and prescription benefits for the **Debtor.** **AETNA** processed all medical and prescription claims received from July 1, 2019 through December 31, 2022. January 1, 2022 through December 31, 2022 was described as the '*Claim Run-Off*' period by AETNA.

For any claim that was denied by **AETNA**, both the Provider and Plan Participant could appeal the claim adjudication decision by following the **Debtor's** appeal process described in the **Debtor's** Summary Plan Description ("**SPD**") and/or the **Plan's** explanation of benefit

("**EOB**") sent to the Provider and Plan Participant. In fact, the **Debtor** allowed Providers and Plan Participants to submit and/or appeal claims throughout 2022, also known as the 'Claim Run-Off Period'.

Medical and Prescription Claims Submitted To AETNA after December 31, 2022

Once the **Debtor's** medical and prescription claim runoff period ended December 31, 2022 the **AETNA** *Claims Administration System* was updated to show the run-off time period expired midnight December 31, 2022. Any medical or prescription claim received beginning January 1, 2023 will be handled by **AETNA** as follows:

- Any claim received electronically will automatically reject and generate edit **"PLAN STATUS ERROR - CANNOT PAY."**
- Any manual (non-electronic) claim received will receive an edit "**PLAN STATUS ERROR - CANNOT PAY.**"
- **AETNA** Provider/Member services will receive notification to indicate that the Claims runoff period has expired.
- Only those fourteen (14) claims identified in the January 3, 2023 claim report can be processed for payment by **AETNA,** as long as the Provider and/or Plan Participant provides the additional information requested for the previously paid or denied claim in accordance with **AETNA** prescribed timeline for submission of the additional information.

Subrogation Activities for Medical and Prescription Claims

Included in the **Debtor's** Master Services Agreement with **AETNA** are subrogation services which **AETNA** has sub-contracted to *The Rawlings Group* ("**Rawlings**"). **Rawlings** is responsible for these services and has provided status of sixty-four (64) claims they continue to litigate on behalf of **APEMT**. On a contingency basis **Rawlings** will collect thirty (30) percent of documented savings related to their subrogation activities. **Rawlings** provided a Subrogation Open File Report as of December 31, 2022, and the remaining sixty-four (64) claims have an estimated collection value of $987,692.91 as reported below:

Table 4 The Rawlings Company Summary Subrogation Report

Members Health Plan New Jersey
Subrogation Open File Report
as of December 31, 2022

Group Number	Member ID	Member Name	Patient Name	Date of Accident	File Type	Claims Paid	Activity Description	TRC Reference Number
		File Count: 2			Claims Paid:	$88,812.61		
Number of Open Files: 64					Total Claims Paid:	$987,692.91		

Purpose of Report:

This is a detailed listing, by patient, of all files currently being pursued as of the end of the current period. The claims paid amount is the accumulation of related claims at a point in time, that may change significantly as further information is gathered about the incident.

Upon inquiry the **Independent Receiver's Office** learned claim subrogation litigation activities may continue for up to ten (10) years. In the detailed claim listing the **Independent Receiver** has received, **Rawlings** has identified whether the subrogated claim is due to a car accident, at work or at home accident, or other circumstance where **APEMT** was not responsible for medical service payments. The **Independent Receiver** may consider a buy-out with **Rawlings** regarding those claims that are settled after the **Debtor** has formally been dissolved in Superior Court. In November 2022 **APEMT** received a payment for two (2) claims totaling $88,812.61 (less 30%) which was settled in October 2022.

Collection of Member Assessment

On or about August 10, 2021, each **Member** was notified by the **Board** of their legal obligation to pay an assessment (the "**August 2021 Assessment**") in accordance with *the State of New Jersey Title 17B – Insurance Section 17B:27C-7d*.

By filing for bankruptcy protection under Subchapter V of Chapter 11 of the Bankruptcy Code, and presenting a dissolution plan for **APEMT**, the SubChapter V **Trustee** was able to oversee the collection efforts of the Plan's August 2021 Assessment in accordance with *17B:27C-7d* as follows:

> ***7.d*** *In the event of a rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement, the court, pursuant to section 11 of this act, may assess the members in the amounts needed to pay all incurred but unpaid claims and all projected claims, together with the costs and expenses of collecting the assessments, a reasonable loading factor for uncollected assessments and the costs and expenses of the rehabilitation, liquidation, conservation or dissolution.*

The **APEMT Board** had advised each **Member** the **August 2021 Assessment** would be used to pay all outstanding claims and expenses of **APEMT,** and the **August 2021 Assessment** was calculated including the considerations specified in state regulation ***7.d*** above.

Calculation of the August 2021 Assessment

APEMT'S professional advisors created a detailed assessment projection model of the expected future of the **Plan** liabilities as **Members** terminated to determine the additional dollars needed to cover **APEMT's** liabilities as described in *17B:27C-7d.* The following were the assumptions used to create the assessment projection model**:**

- All members would terminate by July 31, 2021;
- Plan revenues were projected through July 31, 2021;
- Plan expenses were projected through the final settlement of **APEMT** liabilities on December 31, 2021;
- No further deterioration of claims experience;
- Calculated the assessment as the percentage of estimated health care fees for the period January 1, 2020 through July 31, 2021 reduced by an assumed percentage for uncollectable assessments (30% uncollectable);

- The assessment was set as the percentage of expected plan revenue required to bring the final assets of the plan to zero on December 31, 2021; and
- Individual plan participating employers ("**Members**") would be charged the assessment based on their actual "health care fees" paid to the plan during the period January 1, 2020 through July 31, 2021.

Collection of the "August 2021 Assessment"

The **August 2021 Assessment** levied against **APEMT Members** totaled $24,679,933.99. **APEMT's Board** had extended the deadline for payment of the **August 2021 Assessment** twice, first to October 15, 2021, and then to November 5, 2021. Through October 25, 2021 more than half of the **Members** that received the **August 2021 Assessment**, paid the assessment.

Since the commencement of **APEMT's** Chapter 11 Bankruptcy proceedings, **NJ D0BI** has requested assurance by **APEMT** that it would aggressively pursue assessments against its **Members**, so that all claims against and expenses of **APEMT** would be paid. **APEMT** has provided such assurance and has moved in an appropriate manner to seek recovery of assessments from its **Members** which included **APEMT** filing a plan of orderly liquidation (the "**Plan**") in the Chapter 11 Bankruptcy Case on August 20, 2021. Pursuant to Section 2.5 of the **Plan**, **APEMT** contemplated collecting the **August 2021 Assessment** from the **Members** and using those funds to continue to pay down outstanding medical and prescription claims awaiting funding with **AETNA**. By an order entered March 21, 2022, the Bankruptcy Court confirmed **APEMT's Plan**.

On March 17, 2022, **APEMT** retained SM Law, PC as special collections counsel for **APEMT**. In an effort to reduce the overall costs to **APEMT**, **SM Law** agreed to be retained on a contingency basis. This would ensure that the costs associated with the collection of the assessment from delinquent members would not be incurred by the members who timely paid their assessment.

Status of "August 2021 Assessment" Collection as of December 31, 2022

The table below shows the successful collection efforts of **APEMT**. By December 31, 2022 approximately seventy-six (76%) of the assessed dollars has been collected. These collections have been used to fund all medical and prescription claims for **Plan Participants** as adjudicated by **AETNA** and professional expenses incurred to date. Table 5 below provides an update on **APEMT's** assessment collections as of December 31, 2022.

Table 5 "August 2021 Assessment" Collection as of 12/31/22

Row Labels	Sum of Health Plan Assessment	Sum of Receivable as of 2/28/22	Sum of Receivable as of 8/31/22	Sum of Receivable as of 12/31/22
COLLECTED BY ATTORNEY	$1,714,666.85	$1,627,738.05	$116,528.76	-$293.98
COLLECTED BY ATTORNEY - LAWSUIT	$1,389,489.90	$1,468,522.40	$1,031,780.31	$12,742.64
COLLECTED BY ATTORNEY - PAID LESS ATTORNEY FEE	$70,719.89	$69,543.05	$9,634.36	$6,106.74
COLLECTED BY ATTORNEY - PARTIAL PAYMENT MADE	$181,410.26	$180,755.52	$151,514.53	$66,343.10
COLLECTED BY ATTORNEY - PAYMENT PLAN	$316,580.05	$392,739.10	$318,382.80	$207,718.27
PAYMENT PLAN	$370,758.45	$309,869.65	$225,000.00	$134,490.78
PAYMENT PLAN- DEFAULTED	$105,710.47	$100,016.14	$89,550.13	$80,921.17
PAYMENT PLAN SELF IMPOSED	$51,302.07	$23,583.12	$20,755.39	$19,428.93
UNPAID	$4,920,369.44	$5,494,422.82	$5,451,479.35	$5,448,473.92
PAID	$15,558,926.61	$797,719.01	$51,889.55	-$23,558.25
Grand Total	**$24,679,933.99**	**$10,464,908.86**	**$7,466,515.18**	**$5,952,373.32**

Status Proofs of Claim Timely Filed in Bankruptcy Court

The deadline for filing a proof of claim in the Bankruptcy Court was August 2, 2021. The deadline for governmental claims to be filed in the Bankruptcy Court was November 22, 2021. To date, there are eighty-one (81) claims filed with the U.S. Bankruptcy Court. In the U.S. Bankruptcy Court, District of New Jersey, a proof of claim is "deemed allowed, unless a party in interest . . . objects" in accordance with 11 U.S.C. § 502(a). Section 502(b) of the Bankruptcy Code provides that:

> "the court, after notice and a hearing, shall determine the amount of [a] claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that . . . such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

The **Independent Receiver** is currently cross referencing claims submitted by Medical Providers, Plan Participants (Enrollees) and Employers with the **AETNA** claims database to determine the submitted proof of claim status. The table below summarizes claim status by category.

Table 6 Proof of Claim Category Status as of 12/31/22

Interested Party Category	Claim Status	Confirmation
BrainBuilders	In Litigation	In Mediation
Brokers	Unpaid	
Employees (Participants)	To Be Confirmed - Claims Adjudicated	In Reconciliation Process
Employers	To Be Confirmed - Claims Adjudicated	In Reconciliation Process
Medical Providers	To Be Confirmed - Claim Adjudicated	In Reconciliation Process
NJ & Federal Taxes	Paid	Yes
Vendors	All But One Vendor	Yes

BrainBuilders Proof of Claim and Related QualCare Adversary Proceeding

On July 30, 2021, BrainBuilders, LLC ("**BrainBuilders**"), filed a proof of claim (No. 23-1) in the amount of $6,882,870.00 (the "**BrainBuilders POC**") for "health care services provided to member-insured." [Claim No. 23-1] The **BrainBuilders POC** provided no further detail. On August 17, 2021, QualCare, Inc. ("**QualCare**"), **APEMT's** former third-party administrator,[1] filed this adversary proceeding (Adv. Pro. No. 21-14286) against **APEMT** and BrainBuilders seeking to disallow the **BrainBuilders POC** and preserve alleged reimbursement rights against **APEMT** (the "**QualCare Adversary**"). [Adv. Pro. 21-14286, ECF No. 1]

On October 1, 2022, BrainBuilders filed a motion to dismiss the **QualCare Adversary**. [2] [Adv. Pro. No. 21-14286, ECF No. 5] Also on October 1, 2021, BrainBuilders filed an amended proof of claim (No. 52-1) (the "**Amended BrainBuilders POC**"). [Claim No. 52-1] The Amended **BrainBuilders POC** includes minimal detail summarizing the amounts alleged to be due for

[1] QualCare provided services for both claim administration and operational administration.

[2] The motion to dismiss was later resolved by stipulation providing for the amendment of the BrainBuilders POC.

claims related to 31 patients, as well as a Declaration of Simon Nussbaum, Director of Finances of BrainBuilders (the "**Nussbaum Declaration**"). [Doc 52-1 Part 2].

It was not evident until the filing of the **Amended BrainBuilders POC** that BrainBuilders' proof of claim includes a dispute over medical claims processed by QualCare *and* Aetna Life Insurance Company ("**AETNA**").[3]

In the ordinary course, claims deemed valid by the medical claim processor (**QualCare** or **AETNA**) are first paid by the claim processor and then require immediate funding by **APEMT**. In this dispute over the sufficiency of payments made to BrainBuilders based upon the adjudication of medical claims by the respective claim administrator, **APEMT** is not in custody or control of the information it needs to understand the precise basis of BrainBuilders' allegations of underpayment (nor has that basis been explained by BrainBuilders). Similarly, **APEMT** is not responsible for the adjudication of those claims, so **APEMT** is not in possession of any information explaining the basis of any full or partial denial of those claims (nor has that basis been explained by BrainBuilders).

Both **QualCare** and BrainBuilders (the latter very recently) provided a significant production of documentation ordinarily exchanged between service providers and claim processors, including thousands of pages of medical notes and diagnoses. Ultimately, **QualCare** and **AETNA** were responsible for the timely adjudication of the claims. Upon information and belief, BrainBuilders is obligated to timely exhaust its administrative remedies (ie. appeals to the claim processor) for payment on services. Until the service provider and claim processor satisfy their obligations, **APEMT** is not obligated to fund any further requests. Furthermore, in the event any of BrainBuilders' claims were not properly adjudicated, **APEMT** is reserving its rights to recover against the respective claim processor for its failure to timely and adequately adjudicate the BrainBuilders claims.

APEMT recently learned that, in May of 2017, BrainBuilders filed a complaint against **AETNA** in the District Court of New Jersey (the "**2017 District Court Action**"). **APEMT** is not a party to that litigation. Due to various procedural circumstances and delays, including awaiting adjudication from the Third Circuit on similar issues in an unrelated case, the **2017 District Court Action** remained largely dormant until very recently. On August 15, 2022, BrainBuilders amended its complaint in the **2017 District Court Action**. BrainBuilders has not confirmed that the **2017 District Court Action** does not include a demand for recovery on claims included in the **Amended BrainBuilders' POC**.

Until **APEMT** can determine how and why the BrainBuilders claims were paid or denied in the manner and amounts in which they were paid or denied, **APEMT** is unable to determine whether further funding of any BrainBuilders claim is appropriate, or whether its rights pursuant to the respective service agreement with **QualCare** or **AETNA** have been violated.

[3] Prior to AETNA, QualCare served as the Debtor's third-party medical claim and operational administrator. Beginning in or around January of 2019, AETNA was retained to serve as APEMT's third-party claim administrator and Concord Management Services was retained to serve as APEMT's third-party operational administrator. The Amended BrainBuilders POC bifurcates its claim into those medical claims processed by QualCare ($3.1MM) and those processed by AETNA ($3.6MM).

APEMT 'Net Free' Cash Flow as of January 2, 2023

The following table shows **APEMT** has $1,435,579 cash on hand as of January 2, 2023.

Table 7 APEMT Cash Flow as of January 2, 2023

	Wed	Thu	Fri	Mon	Tue	Wed	Thu	Fri	Mon
	12/21/22	12/22/22	12/23/22	12/26/22	12/27/22	12/28/22	12/29/22	12/30/22	1/2/23
Opening Bank Balance	$ 397,801	$ 397,801	$ 354,669	$ 354,669	$ 354,669	$ 1,023,250	$ 1,023,250	$ 1,020,700	$ 1,020,700
ACH Payments	-	-	-	-	(131,419)	-	(2,550)	-	-
Operating Bank Balance	$ 397,801	$ 354,669	$ 354,669	$ 354,669	$ 1,023,250	$ 1,023,250	$ 1,020,700	$ 1,020,700	$ 1,020,700
Opening Bank Balance	$ 1,017,697	$ 1,017,697	$ 1,017,697	$ 1,017,697	$ 1,017,697	$ 217,797	$ 217,797	$ 217,797	$ 217,797
Lockbox Deposits					100				
ACH Payments									
MM Bank Balance	$ 1,017,697	$ 1,017,697	$ 1,017,697	$ 1,017,697	$ 217,797	$ 217,797	$ 217,797	$ 217,797	$ 217,797
TD Bank Balance (Op+Med)	$ 149	$ 149	$ 149	$ 149	$ 149	$ 149	$ 149	$ 149	$ 149
Outstanding Payments	(74,116)	(74,116)	(74,116)	(74,116)	(74,116)	(74,116)	(74,116)	(146,566)	(146,566)
Cleared Checks	-	43,131	-	-	131,419	-	2,550	-	-
Vendor Payments		(43,131)			(131,419)		(75,000)		
Broker Commissions									
Total O/S Payables	$ (74,116)	$ (74,116)	$ (74,116)	$ (74,116)	$ (74,116)	$ (74,116)	$ (146,566)	$ (146,566)	$ (146,566)
Available Cash	$ 1,341,531	$ 1,298,400	$ 1,298,400	$ 1,298,400	$ 1,167,080	$ 1,167,080	$ 1,092,080	$ 1,092,080	$ 1,092,080
NAP Cap Credit/Wire Line Credits		153,916			(158)	(75,086)	(1,779)	(17,291)	
Deferred Medical Fundings	$ 283,897	$ 437,813	$ 437,813	$ 437,813	$ 437,655	$ 362,569	$ 360,790	$ 343,499	$ 343,499
Net Free Cash Flow	$ 1,625,428	$ 1,736,213	$ 1,736,213	$ 1,736,213	$ 1,604,735	$ 1,529,650	$ 1,452,870	$ 1,435,579	$ 1,435,579

Workers Compensation Subrogation Activities for Covid-19 Paid Claims

In February of 2022, **APEMT** retained Shebell and Shebell, LLC., attorneys at law, to pursue the medical claim payment recoveries from their Member's workers compensation insurers in accordance with N.J.S.A. 34:15-31.11 and 34:15-31.12 ("**an Act**"). These laws were enacted by the Legislature on September 14, 2020 concerning "*essential workers*" who contracted Covid-19. These new Workers Compensation regulations took effect immediately and became retroactive to March 9, 2020. N.J.S.A. 34:15-31.12 created a '*rebuttable presumption*' that contraction of Covid-19 is work-related and is fully compensable by Workers Compensation insurers for all essential workers.

APEMT represented in their declaration to the U.S. Bankruptcy Court that 80% of the estimated Covid-19 inpatient admissions were Plan Participants who qualified as "*essential workers*" as prescribed by N.J.S.A. 34:15-31.11. Those ninety-two (92) essential workers who were hospitalized with Covid-19 were identified and sent to Shebell & Shebell to pursue workers compensation recoveries. In April 2022 recovery activities were initiated by Shebell & Shebell for all ninety-two (92) cases. As of today, sixty-seven (67) cases have been answered by the respondents, leaving the remaining twenty-five (25) cases pending Motions for Default against the workers compensation carrier/employer. Included in the respondent responses, seven (7) claims were dismissed because the respondent produced a patient (Participant) affidavit attesting that he/she did not contract Covid-19 in the workplace. As of this date, there is one (1) claim in the process of settlement and the settlement offer is $3,370.65.

APEMT Litigation Against U.S. Treasury for Health Insurance Tax Payments ("HIT Tax") for Tax Years 2015, 2016, 2018 and 2020

On July 26, 2021, **APEMT** initiated an adversary proceeding against the U.S. Treasury to recover $8,891,397.32 in health insurance tax payments ("**HIT Payments**") paid to the Internal Revenue Service ("**IRS**") for tax years 2015, 2016, 2018 and 2020. (See Adv. Pro. No. 21-01318-

MBK; Doc 1). **APEMT's** July 26, 2021 complaint was dismissed without prejudice to allow **APEMT** time to make a formal refund claim and wait the statutory 120 days for a response prior to bringing a § 505 action (See Adv. Pro. No. 21-01318-MBK; Docs 3 and 15). The **IRS** did not respond within the 120 time period and **APEMT** filed a subsequent complaint. (See Adv. Pro. No.: 22-01177). **APEMT** alleges in its complaint (the "**Complaint**") that it should not have been subjected to the Health Insurance Provider Fee (the "HIT Tax") under the Patient Protection and Affordable Care Act ("**Affordable Care Act**" or "**ACA**"), Pub. Law No., 111-148 § 9010, and is entitled to recover the **HIT Payments** made thereunder. After a hearing on the **IRS's** motion to dismiss certain counts in the Complaint, the **Court** partially granted the **IRS's** motion to dismiss **APEMT**'s claims for tax years 2015, 2016 and 2018, based principally on issues concerning the statute of limitations to bring refund requests. However, **APEMT's** claims for the recovery of the 2020 **HIT Payments** (in the amount of **$3,269,748.24**) survived. A mediation has been scheduled for mid-March 2023.

Motion to Expunge, Reduce, or Reclassify Proof of Claims in Bankruptcy Court

Section 502(b) of the Bankruptcy Code provides, in pertinent part that the court, after notice and a hearing, shall determine the amount of a claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amounts, except to the extent that (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured. 11 U.S.C. § 502(b)(1). In short, pursuant to applicable bankruptcy law, **APEMT** is permitted to object to claims filed in **APEMT's** Bankruptcy Case for which it has no obligation. **APEMT's Bankruptcy Plan** provides that "[**APEMT**] may object to the amount or validity of any Claim within 180 days of the Confirmation Date by filing an objection with the Bankruptcy Court and serving a copy of the objection on the holder of the Claim" (the "**Claims Objection Deadline**"). See Plan, section 2.3. That deadline has been extended to March 16, 2023. [Doc 534]

APEMT is investigating the scope and veracity of the claims filed against the estate. It is believed that the vast majority of the remaining claims are susceptible to expungement or reduction based on the payment of those claims by **AETNA** during the pendency of the Bankruptcy Case, and **APEMT's** funding of medical claims adjudicated by **AETNA**.