

**McMANIMON, SCOTLAND & BAUMANN, LLC**

75 Livingston Avenue, Suite 201

Roseland, New Jersey 07068

(973) 622-1800

Anthony Sodono, III (007631990)

Sari B. Placona (108842014)

*Counsel to Brian W. Hofmeister, Independent Receiver*

**FILED**

SEP 16 2025

**Hon. James M. DeMarzo, P.J.Ch.**  
Morris/Sussex County

In Re:

LIQUIDATION AND DISSOLUTION OF  
AFFILIATED PHYSICIANS AND  
EMPLOYERS MASTER TRUST D/B/A  
MEMBER HEALTH PLAN NJ

Petitioner.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION - MORRIS COUNTY

DOCKET NO. MRS-C-111-22

**ORDER AUTHORIZING THE RETENTION OF  
ENVIRONMENTAL LITIGATION GROUP, P.C., AS  
SPECIAL COUNSEL TO THE INDEPENDENT RECEIVER**

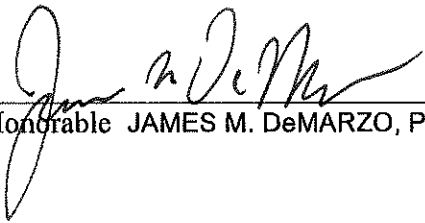
**THIS MATTER** having been presented to the Court by McManimon, Scotland & Baumann, LLC ("MSB"), counsel for the Independent Receiver, Brian W. Hofmeister (the "Independent Receiver" or "Receiver") for the above-captioned Petitioner, seeking relief by way of Motion (the "Motion"); and the Motion having been served upon all known creditors and parties in interest by United States first class regular mail pursuant to *R. 1:1-2*; and the Court having considered the submissions in support and opposition, if any; and for good cause shown;

**IT IS** on this 16th day of September 2025;

1. **ORDERED** that proper notice has been provided to all creditors and parties in interest; and it is further
2. **ORDERED** that the Independent Receiver be and is hereby authorized to employ Environmental Litigation Group, P.C. ("ELG"), as special counsel on the terms and conditions set

forth in the Agreements annexed as Exhibits A and B to the Independent Receiver's Certification submitted herewith; and it is further

3. **ORDERED** that ELG, MSB, and the Independent Receiver shall receive a contingency fee of forty percent (40%) in connection with the Contingency Fee Agreement – ELG shall receive 82.5% of the contingency fee and MSB/Independent Receiver shall share 17.5%.

  
Honorable JAMES M. DeMARZO, P.J.Ch.

STATEMENT OF REASONS ATTACHED

**SUPERIOR COURT OF NEW JERSEY**

**Chancery Division - Morris County**

**Docket No: MRS-C-111-22**

**In re:**

**Liquidation and Dissolution of Affiliated Physicians and Employers Master Trust d/b/a  
Member Health Plan NJ ("APEMT")**

**STATEMENT OF REASONS**

**I. INTRODUCTION**

Before the Court is the Independent Receiver's Motion seeking entry of an order authorizing retention of Environmental Litigation Group, P.C., ("ELG") as special counsel to the Independent Receiver to prosecute potential civil claims on behalf of APEMT related to alleged insulin-related overcharges. The Department of Banking and Insurance ("the Department") objects, raising both procedural and substantive concerns. The Receiver has filed a reply addressing the opposition.

**II. PROCEDURAL HISTORY AND SERVICE**

Following confirmation of APEMT's Subchapter V Plan for Liquidation in the United States Bankruptcy Court for the District of New Jersey on March 21, 2022, a judgment of the Superior Court was entered on November 10, 2022, appointing Brian W. Hofmeister as Independent Receiver to oversee dissolution and liquidation of APEMT, with the authority to continue executing the bankruptcy plan, pursue relevant litigation and employ professionals as necessary.

Consistent with these mandates, the Independent Receiver, through his counsel McManimon, Scotland & Baumann, LLC ("MSB"), filed the instant Motion and supporting certification on January 16, 2025, seeking relief to retain ELG, on a contingency basis, as special counsel to investigate and prosecute APEMT's potential civil claims regarding insulin pricing. Service of the motion, supporting documents, and certification of service was effected by regular mail, postage prepaid, on all parties as shown on the comprehensive service list appended to the moving papers.

Following the Court's usual notice requirements, the Motion was duly scheduled for hearing and opportunity for written opposition provided to all interested parties. Unfortunately, at counsel's request the motion was adjourned numerous times.

**III. FACTUAL SUMMARY**

The gist of the Receiver's application is that APEMT, as a self-funded welfare benefit plan, may have suffered significant monetary loss as a result of inflated insulin prices allegedly engineered by insulin manufacturers and pharmacy benefit managers ("PBMs"). It is asserted that recent multi-district litigation (MDL No. 3080, pending before Hon. Brian R. Martinotti,

D.N.J.) provides an avenue to recover substantial sums for similarly situated healthcare payors, and that prompt participation is necessary due to the complexity and progress of the MDL, and risk that delay could forfeit APEMT's ability to participate in any recoveries.

Receiver seeks leave to retain ELG (in association with MSB) for prosecution of such claims on a 40% contingency fee basis, with ELG to assume a leadership role given its appointment to the MDL's steering committee, and MSB to assist as local counsel with historic knowledge of APEMT's circumstances.

The Department's opposition asserts: (1) the Motion lacks sufficient legal authority under the New Jersey MEWA Act to pursue this litigation as part of the court-supervised dissolution, (2) the 40% contingency fee is excessive and unexplained, and not shown to be reasonable under RPC 1.5, and (3) the Receiver fails to sufficiently address (a) the rationale for selecting out-of-state ELG over NJ-based counsel, (b) APEMT's role in the MDL and the risks/costs, and (c) disclosure obligations to members and beneficiaries.

In reply, ELG (through Daniel Snyder) and the Receiver assert that participation in the MDL is urgent and appropriate, that ELG's unique leadership position and prior MDL experience are highly beneficial, and that a 40% fee is justified by the substantial risk, complexity, and typicality of such fee arrangements in large MDL proceedings.

#### IV. LEGAL STANDARD

1. **Authority of the Receiver:** Under N.J.S.A. 17B:27C-11 and the court's November 10, 2022, judgment, the Independent Receiver is authorized to effectuate and administer liquidation, and is vested with the powers "set forth in the Bankruptcy Court's 'Expansion of Powers and Confirmation Orders'". Rule 4:53-1 and the March 17, 2023, order further confirm that the Receiver may "employ an attorney... if the court determines that such employment is necessary to the proper conservation and administration of the estate".
2. **Standard for Retention of Professionals:** Retention is appropriate upon a showing that the professional's services are necessary or beneficial to the orderly administration of the estate (see R. 4:53-1).
3. **Reasonableness of Fees:** The reasonableness of a contingent fee is governed by RPC 1.5(a), requiring consideration of time, labor, novelty, skill, fee custom, amount involved, results, experience, and risk. Contingency fees exceeding standard limits must be justified as a matter of fact and law, with full disclosure to affected parties.; A.W. by B.W. v. Mt. Holly Twp. Bd. of Ed., 453 N.J. Super. 110 (App. Div. 2018)].
4. **Burden of Proof:** As this is a fiduciary administration, the moving party bears the burden to demonstrate necessity, reasonableness, benefit to the estate, and compliance with all relevant professional standards.

## **V. ANALYSIS**

### **A. Authority to Initiate MDL Participation**

The Department contends that the MEWA Act is focused on dissolution and claim resolution, does not authorize, expressly or impliedly, pursuit of new claims/civil actions in the name of a dissolved plan, and views the class-action claim as extraneous to the closing of APEMT's affairs. However, the Confirmation Order and subsequent Superior Court judgment expressly adopt the Bankruptcy Court's orders ("Expansion of Powers and Confirmation Orders"), which empower the Receiver to "pursue recovery of any avoidance actions ... as well as such other claim which the bankruptcy estate may pursue apart from the collection of assessments" (Ex. 2, Bankr. Ct. Order, para. 5). The stated purpose of the Receiver's post-confirmation authority includes reporting obligations, oversight, and, explicitly, the pursuit of avoidable or third-party claims designed to benefit the estate.

Vendor selection and retention of counsel is subject to court approval, and the March 17, 2023, Order (affirming the retention of professionals) does not limit the execution of such duties so long as the court deems the employment "necessary to the proper conservation and administration of the estate." The Court finds the language of both the Bankruptcy and State court orders sufficiently broad to permit pursuit of litigation, including the MDL claim, where justified as appropriate for estate administration and potential recovery for creditors/members as recovery may add to the available recoveries of those entitled to the same.

### **B. Necessity and Benefit to Estate**

The Receiver has identified (backed by reply certification of Daniel Snyder) that there is a substantial, non-speculative possibility APEMT suffered damages due to alleged insulin overcharges, in an amount potentially ranging to millions of dollars, and that these claims are subject to coordination and management in MDL No. 3080 (which carries consolidation deadlines, leadership selection, and consequences for payors who do not timely assert claims). Participation in the appropriate MDL track would serve the interests of maximizing estate assets, which is a primary receiver function. The risk that delay will bar recovery (practically or procedurally) is credible and not contradicted by the objector.

### **C. Selection of ELG and 40% Contingency Fee**

1. **Selection of ELG:** The Department challenges the engagement of an out-of-state firm at a high contingency rate without documented diligence regarding alternative, possibly lower-cost, New Jersey class/MDL counsel. However, ELG is uniquely positioned as a member of the MDL leadership's steering committee for the Self-Funded Payer Track. In MDL practice, such appointments often yield greater ability to influence outcomes for client groups. The Court finds the Receiver's rationale (ELG's leadership role, prior complex MDL experience, MDL-specific expertise, and association with MSB for New Jersey-specific issues and APEMT history) to be persuasive, and the record reflects a

reasonable exercise of discretion in seeking to maximize APEMT's prospects in the MDL context.

2. **Contingency Fee Reasonableness:** The Department argues that the 40% fee is per se excessive and not sufficiently explained, cautioning that such fees "cannot per se be deemed 'reasonable'" However, the reply certification details that:
  - A.) The fee is customary for complex, high-risk, multi-district contingency litigation ("MDL actions are aggressively litigated for years, often requiring thousands of attorney hours ... without such a fee, attorneys would be deterred from taking on high-risk, high-cost litigation..." (reply, ¶14.c-e);
  - B.) The fee compensates for both the risk of non-recovery and the substantial time/expertise outlays demanded by RICO and similar claims in the MDL context;
  - C.) The Receiver, MSB, and ELG will advance all costs, and APEMT bears nothing unless a recovery is achieved;
  - D.) Common benefit costs are customarily paid out of the contingency fee pool for all MDL plaintiffs.

RPC 1.5 controls, and the Appellate Division has emphasized that arrangements exceeding standard tort fee caps are not per se invalid, so long as they are fully disclosed, justified, and reasonable under the circumstances. The record supports a finding that in this context, the 40% fee is within customary market parameters and justified by the unique legal/financial risks and complexity of the MDL. The fee is to be shared 82.5% to ELG and 17.5% to MSB/the Receiver, as is customary for the allocation of work and leadership responsibilities.

**D. Disclosure and Member Noticing:** There is no suggestion in the record of any failure to serve notice on required parties. The motion, certification, and supporting brief, together with service lists, reflect notice to APEMT and all creditors/members/parties in interest, as well as service by regular mail on all identified parties, as set forth in the appended service list.

Regarding ongoing member disclosure, the Receiver's status reports indicate (and the Court expects to enforce) continued communication with members and other estate beneficiaries regarding significant developments, including potential claims recovery activity. (Seventh Interim Status Report, §7.0).

**E. Other Department Objections:** The Department seeks greater specifics on the nature of the MDL claims, potential risks, and process for keeping members apprised, but these matters can and should be addressed by continued reporting, compliance with MDL CMO requirements, and membership outreach already required by the Court's prior orders. The application does not obligate APEMT or the Court to proceed with the litigation if further investigation reveals the claim is impractical, as the retainer expressly contemplates withdrawal if no viable claim is found.

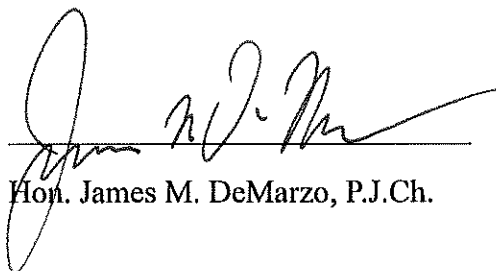
## **VI. CONCLUSION & ORDER**

Having considered the record as a whole, the Court finds:

- 1.) The Receiver has shown by a preponderance of the evidence that retention of ELG (and MSB) as special counsel on the terms proposed is necessary and appropriate to conserve and administer the estate for the benefit of creditors/members;
- 2.) The purposes of the MEWA Act and prior orders are sufficiently broad to permit pursuit of MDL claims to maximize recovery;
- 3.) The 40% contingency fee, in this context, is not per se unreasonable under RPC 1.5, is sufficiently justified, and the arrangement includes safeguards for review of actual time/costs upon settlement (or court review, if appropriate);
- 4.) All required parties have been served and will continue to be apprised as warranted of major litigation developments.

**Accordingly, the Motion is GRANTED.**

The Receiver is authorized to engage Environmental Litigation Group, P.C., as special counsel, and McManimon, Scotland & Baumann, LLC as local counsel, on the terms and conditions set forth in the record. Any recovery obtained will be subject to further application to the Court for approval before distribution and subject to member/party notice and review.



Hon. James M. DeMarzo, P.J.Ch.