

Cause No. _____

**TEXAS DEPARTMENT OF
INSURANCE**

Plaintiff

v.

**BRIGHT HEALTHCARE
INSURANCE COMPANY OF
TEXAS**

Defendant

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IN THE DISTRICT COURT

TRAVIS COUNTY TEXAS

455TH, DISTRICT COURT

_____ **JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION,
APPLICATION FOR ORDER APPOINTING LIQUIDATOR,
AND REQUEST FOR PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

The Texas Department of Insurance (Plaintiff), through the Office of the Attorney General of Texas, complains of Defendant Bright Healthcare Insurance Company of Texas (Defendant) as follows:

I. DISCOVERY LEVEL

1. Plaintiff intends to conduct discovery, if necessary, under Level 2 of Texas Rules of Civil Procedure 190.

II. NATURE OF SUIT

2. This suit is brought at the request of the Texas Commissioner of Insurance (Commissioner) under Texas Insurance Code¹ Chapter 443, the Insurer

¹ All statutory references are to the Texas Insurance Code unless otherwise indicated.

Receivership Act. Specifically, Plaintiff seeks an order appointing the Commissioner as Liquidator of Defendant under Section 443.151 *et seq.*

3. Plaintiff further seeks a permanent injunction under Section 443.008(a), restraining Defendant from conducting business, except as directed by the Liquidator, and restraining other parties from taking any actions against Defendant or its property.

4. Plaintiff further seeks to recover from Defendant all fees, taxes, fines, penalties, and forfeitures provided by law, subject to the provisions of the Insurer Receivership Act.

5. Plaintiff further seeks to recover from Defendant reasonable attorneys' fees and court costs incurred in this action and all the fees, taxes, fines, penalties, and forfeitures provided by law for the acts complained of herein.

III. DEFENDANT

6. Defendant is operating under a certificate of authority issued by the Texas Department of Insurance and is subject to Chapter 443. Defendant is a "covered person," as defined by Section 443.003.

7. Defendant waived citation and service of process and consented to the entry of an order of liquidation under Section 443.057(20) and a permanent injunction under Section 443.008(a).

IV. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under Section 443.005 and the Texas Constitution, Article IV, Section 22.

9. Venue is proper in Travis County, Texas, under Sections 443.005(g) and 443.051.

V. EXHIBITS

10. Exhibit 1: Defendant's Year End 2022 Annual Statement

11. Exhibit 2: Defendant's Q2 2023 Quarterly Statement

12. Exhibit 3: Commissioner's Order granting Defendant's certificate of authority

13. Exhibit 4: The Centers for Medicare & Medicaid Services Summary Report on Permanent Risk Adjustment Transfers for the 2022 Benefit Year

14. Exhibit 5: Corporate documents for Bright Healthcare Insurance Company of Texas authorizing consent.

VI. FACTS

15. Defendant was organized as Bright Healthcare Insurance Company of Texas and licensed on May 25, 2021, under Chapter 841 as a domestic insurance company authorized to write health and accident insurance in Texas only. On August 30, 2021, Defendant was authorized to operate as a health maintenance organization in Texas under Chapter 843. Defendant exclusively operates as a health maintenance organization and began offering health plans in 2022.

16. Defendant is wholly owned by Bright Health Management, Inc., a Delaware entity, which is wholly owned by Bright Health Group, Inc., a Delaware entity. Bright Health Group, Inc. is 33% owned by New Enterprise Associates, 10% owned by Bessemer Venture Partners, 15% owned by Cigna Corporation, and 42% owned by other shareholders who individually own less than a 10% interest. On June 24, 2021, Bright Health Group, Inc. made a public stock offering and started trading under the symbol “BHG” on the New York Stock Exchange. Defendant’s affiliated insurance companies are licensed and operate in other states.² See Exhibit 1 at TDI_000121.

17. Congress passed the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. 18001 *et seq.*, in 2010 to provide affordable healthcare to uninsured and underinsured individuals and small businesses. The ACA established a health insurance exchange (Exchange) where qualified health insurers could list their health plans. Consumers can access the Exchange to shop and compare among the available health plan listings. The ACA contains a risk adjustment transfer (RAT) feature that transfers funds from participating insurers with lower risk enrollees to participating insurers with higher risk enrollees.

18. Defendant participated in the Exchange in 2022. Defendant is not authorized to participate in the Exchange in 2023.

² Arizona, California, Colorado, Florida, Georgia, Illinois, New Mexico, New York, North Carolina, Ohio, Tennessee, and South Carolina. See Exhibit 1 at TDI_000121.

19. Defendant incurred a RAT obligation because of its participation in the Exchange in 2022. The Centers for Medicare & Medicaid Services (CMS) reports the Defendant's RAT obligation is over \$719 million. See Exhibit 4 at [Page 32 of PDF Bright Texas' ID is 98312]. Defendant reached an agreement with CMS for the repayment of the RAT fee over 18 months at 11.5% interest. Defendant paid an initial \$630 million dollars on or about September 15, 2023. Interest only payments are due each month with the principal amount due at the end of the 18 months.

20. Since its licensure in Texas, Defendant relied on capital contributions from its parent, Bright Health Group, Inc. to meet its financial obligations. For the year ending December 31, 2021, Defendant received \$32 million from its parent. For the year ending December 31, 2022, Defendant received \$175 million from its parent. Exhibit 1 at TDI_000034.

21. Defendant filed its 2022 Annual Statement with the Commissioner on March 20, 2023, which reported the Defendant's financial condition as of December 31, 2022. Defendant's 2022 Annual Statement is attached as Exhibit 1.

22. Defendant subsequently filed its 2023 second quarter financial statement with the Commissioner on August 16, 2023, which reported the Defendant's financial condition as of June 30, 2022. This statement is attached as Exhibit 2.

23. Section 841.054 requires Defendant to have capital stock in an amount of at least \$700,000 and surplus in an amount of at least \$700,000 for a total

minimum capital and surplus of \$1.4 million. Defendant's capital and surplus as of June 30, 2023, was negative \$25,157,146 (\$25,157,146), which was below the minimum required of \$1.4 million. *See* Exhibit 2 at TDI_000168, line 33, column 3. *See also* Exhibit 2 at TDI_000176, Note 1, stating that it was not in compliance with the capital and surplus requirements as of June 30, 2023. Defendant's 2022 Annual Statement also reported that it was not in compliance with the requirement of \$1.4 million. *See* Exhibit 1 at TDI_000029.

24. Section 443.004(a)(12) provides that an insurer is impaired if it does not have admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under the Insurance Code. Defendant is impaired because its total liabilities as of June 30, 2023, were \$740,489,491, (*see* Exhibit 2 at TDI_000168, line 24, column 3), exceeding its admitted assets of \$715,332,345 and its required minimum surplus of \$700,000. *See* Exhibit 2 at TDI_000167, line 26, column 3.

25. Section 443.004(a)(13) provides that an insurer is insolvent if it does not have admitted assets at least equal to all its liabilities. Defendant is insolvent because its total liabilities as of June 30, 2023, were \$740,489,491, (*see* Exhibit 2 at TDI_000168, line 24, column 3), exceeding its admitted assets of \$715, 332,345. *See* Exhibit 2 at TDI_000167, line 26, column 3.

VII. GROUNDS FOR ORDER OF LIQUIDATION

26. The following grounds exist to place Defendant into liquidation, pursuant to Section 443.057:

- (a) Grounds exist under Section 443.057(1), as the Defendant is impaired, as defined in Section 443.004(a)(12). Defendant does not have “admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under this code.”
- (b) Grounds exist under Section 443.057(2), as the Defendant is insolvent, as defined in Section 443.004(a)(13). Defendant does not have admitted assets equal to its liabilities.
- (c) Grounds exist under Section 443.057(20), as the Defendant’s board of directors has consented to the entry of an order of liquidation.

27. Pursuant to Section 443.058, “[i]f any of the grounds provided in Section 443.057 are established, the receivership court shall grant the petition and issue the order of rehabilitation or liquidation requested in the petition.”

VIII. APPOINTMENT OF LIQUIDATOR

28. Section 443.151(a) provides that an order of liquidation must appoint the Commissioner as the Liquidator. Pursuant to Section 443.151 *et seq*, Plaintiff requests that this Court issue an order appointing the Commissioner as Liquidator

of Defendant and grant the Commissioner all powers under the statutes and the common law of the state of Texas, including but not limited to Section 443.151 *et seq*, to conduct the business of the Defendant, and take any other actions as the Commissioner deems necessary. Pursuant to Section 443.008(m), Plaintiff further requests that the Liquidator not be required to file a bond.

29. Plaintiff further requests that, pursuant to Section 443.151(a), this Court issue an order finding that all of Defendant's property of any kind or nature, wherever situated, whether real, personal, or mixed, and whether held in Defendant's name or for Defendant's benefit, including but not limited to cash, accounts, funds, stocks, bonds, statutory deposits (including deposits made by Defendant with any agency of a state or the federal government), trust funds, letters of credit, safe deposit boxes, notes, books, records, documents, furniture, equipment, real estate, retainages and retainers, and rights or causes of actions of any kind, including, but not limited to, accounts receivables, contract rights, premiums, insurance and reinsurance proceeds, and all licenses held by Defendant, be vested in the Liquidator.

IX. STAY OF PROCEEDINGS

30. Pursuant to Section 443.008(c), the commencement of this proceeding operates as a stay against the commencement or continuation of a judicial, administrative, or other action or proceeding or process against Defendant or its property. Further, pursuant to Section 443.008(d), the commencement of this proceeding operates as a stay with respect to certain actions against insureds of Defendant for 90 days after the date of the order appointing the Liquidator, or such further time ordered by this Court. Plaintiff requests that this Court enter any additional stays under Section 443.008(a) as may be necessary.

X. PERMANENT INJUNCTION

31. This Court may grant injunctive relief as necessary or appropriate to carry out the provisions of the Insurer Receivership Act pursuant to Section 443.008(a). Plaintiff requests that this Court enter a permanent injunction pursuant to Section 443.008(a) to carry out the provisions of Chapter 443. Section 443.052(c) provides that when a petition seeking receivership prays for injunctive relief, the petition must be verified but does not need to plead or prove irreparable harm or inadequate remedy at law.

32. Plaintiff would show that, unless enjoined by this Court, Defendant will continue to operate its business in a manner that would not be in the best interest of its policyholders, members, creditors, or the public. Therefore, Plaintiff requests that this Court enter an order enjoining Defendant's current and former officers, directors,

underwriters, managers and employees, including, but not limited to, Jeff Craig and Jay Matushak; owners and affiliates, including but not limited to, Bright Health Group, Inc.; Bright Health Management, Inc., Bright Health Services, Inc., Bright Health Company of Arizona, Bright Health Insurance Company of Colorado, Bright Health Insurance Company of New York, Bright Health Insurance Company of Tennessee, Bright Health Insurance Company of Ohio, Inc., Bright Health Insurance Company of Illinois, Bright Health Insurance Company of Florida, Bright Health Company of Georgia, Bright Health Company of North Carolina, Bright Health Company of South Carolina, Bright Health Company of California, Inc., Universal Care Inc. d/b/a Brand New Day, Central Health Plan of California, Inc., True Health New Mexico, Inc., Bright HealthCare Company of Florida, Inc., NeueHealth Partners Texas RBE, LLC, NeueHealth Networks of Texas, Inc., NeueHealth Partners LLC, local recording agents, managing general agents, agents, third party administrators, representatives, associates, servants, adjusters, attorneys, including but not limited to, Mitchell, Williams, Selig, Gates & Woodyard, PLLC, Maynard Nexsen PC, accountants and those acting in concert with them, from conducting business on behalf of Defendant, except as directed by the Liquidator, and from wasting, transferring, selling, assigning, canceling, concealing, claiming, hypothecating, or disposing of, in any manner, any of Defendant's property. Plaintiff further requests that this Court order Defendant and Defendant's agents to cooperate with the Liquidator as required by Section 443.010.

33. Plaintiff would further show that all financial institutions and depositories, including, but not limited to, U.S. Bank Interstate (including, but not limited to accounts ending in 1272, 1264, and 0659), and any other parties that receive actual notice, should be enjoined from taking unauthorized actions in connection with Defendant's property. Plaintiff therefore requests that this Court issue an order pursuant to Section 443.008(a) enjoining any parties from releasing, transferring, concealing, withdrawing, allowing to be withdrawn, or affecting, in any manner, any of Defendant's property, including any fiduciary accounts held for the benefit of Defendant, as further described herein, or other asset to the credit of Defendant on deposit with them or in their possession, except as authorized by the Liquidator or the Liquidator's designees, and that such parties be ordered to produce and deliver to the Liquidator or the Liquidator's designees such assets, money, deposits, or other items they have in their custody.

34. Plaintiff would further show that in order to avoid the dissipation or loss of Defendant's assets or records and prevent any creditors or claimants from obtaining any preferences in violation of the Insurer Receivership Act, an injunction should be issued against any and all parties asserting claims or causes of action of any kind against Defendant. Plaintiff therefore requests that this Court enjoin any parties from commencing or prosecuting any action against the Liquidator or Defendant, including, but not limited to, arbitration, administrative proceedings, lawsuits or appeals, and from obtaining any preference, judgment, attachment,

garnishment, lien or levy against the Liquidator, Defendant or Defendant's property, except by doing so as permitted by the Insurer Receivership Act. Plaintiff further requests that this Court order that the United States Postmaster deliver to the Liquidator any items addressed to Defendant.

XI. OTHER RELIEF

35. Plaintiff asks that this Court award it all fees, taxes, fines, penalties, and forfeitures allowed by law, and all investigative costs, court costs, and reasonable attorneys' fees, subject to the provisions of Chapter 443.

36. Plaintiff asks that this Court appoint a master under Texas Rule of Civil Procedure 171 to make recommendations to this Court about matters requiring this Court's approval under the Insurer Receivership Act.

37. Section 443.001(b) provides that the Insurer Receivership Act may not be interpreted to limit the powers granted to the Commissioner under other provisions of law. Plaintiff requests that this Court find that an order granting relief requested in this petition shall not be construed as a limitation of the Commissioner's powers granted under such provisions.

XII. CONCLUSION AND PRAYER

Plaintiff prays:

- a. that the Court grant the Application and the relief requested;
- b. that the Court enter a permanent injunction enjoining Defendant and Defendant's agents, financial institutions and depositories, and all other persons from taking any action in connection with Defendant's business and property, including any fiduciary accounts held for the benefit of Defendant, except as directed by the Liquidator, and from taking any action against Defendant or the Liquidator, except as permitted by the Insurer Receivership Act;
- c. that the Court immediately appoint the Commissioner as Liquidator to conduct Defendant's business and take charge of Defendant's property as described herein, and that the Liquidator be given all equitable powers under the statute and the common law of the state of Texas that authorize the appointment of a Liquidator;
- d. that the Court vest the Liquidator with title to Defendant's property;
- e. that the Office of the Attorney General be awarded all costs incurred in this proceeding, including, but not limited to,

reasonable attorneys' fees, investigative costs, and court costs,
subject to the provisions of the Insurer Receivership Act;

- f. that no bond be required of the Commissioner or the Liquidator;
and
- g. for all further relief, both general and specific, in law and in
equity, to which the Plaintiff may be entitled.

Dated November 15, 2023.

Respectfully submitted.

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Attorney General

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Chief, General Litigation Division

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/s/ Zachary L. Rhines
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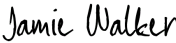
VERIFICATION OF JAMIE WALKER

STATE OF TEXAS §
TRAVIS COUNTY §

Before me, the undersigned notary, on this day personally appeared Jamie Walker, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. “My name is Jamie Walker. I am over 18 years of age, of sound mind, and capable of making this affidavit.

2. I have read the Plaintiff’s Original Petition, Application for Order Appointing Liquidator, and Request for Permanent Injunction. The facts stated in it are within my personal knowledge and are true and correct.”

DocuSigned by:

FE9D22E34E884A8...
Jamie Walker
Deputy Commissioner, Financial Regulation
for the Texas Department of Insurance

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on 11/13/2023. This notarial act was an online notarization.

Given under my hand and seal of office this the 13th day of November 2023.

DocuSigned by:

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Notary Public in and for
the State of Texas

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Karen Walters on behalf of Zachary Rhines

Bar No. 24116957

karen.walters@oag.texas.gov-inactive

Envelope ID: 81689562

Filing Code Description: Petition

Filing Description: PLAINTIFFS' VERIFIED ORIGINAL PETITION, APPLICATION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR INJUNCTIVE RELIEF, AND SUIT FOR DECLARATORY JUDGMENT

Status as of 11/17/2023 4:48 PM CST

Associated Case Party: TEXAS DEPARTMENT OF INSURANCE

Name	BarNumber	Email	TimestampSubmitted	Status
Zachary Rhines	24116957	zachary.rhines@oag.texas.gov	11/15/2023 4:54:18 PM	SENT