

**IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

Mary Taylor, Ohio Superintendent of  
Insurance, in her Capacity as Liquidator of  
DayMed Health Maintenance Plan, Inc.,

Plaintiff,

vs.

DayMed Health Maintenance Plan, Inc.

Defendant.

Case No. 99CVH03-01866

Judge John F. Bender

**MOTION FOR APPROVAL OF LIQUIDATOR'S FINAL PERIODIC ACCOUNTING  
FOR THE PERIOD OF JANUARY 1, 2011 TO MARCH 31, 2011 AND FINAL REPORT  
OF INDEPENDENT AUDITORS FOR THE YEARS ENDED  
MARCH 31, 2011 AND JUNE 30, 2010**

Plaintiff, Mary Taylor in her capacity as Liquidator of DayMed Health Maintenance Plan, Inc. ("DayMed"), moves this Court for an Order approving the Final Statement of Receipts and Disbursements for the period January 1, 2011 to March 31, 2011, as set forth in the attached Exhibit A, and the Final Report of Independent Auditors for the years ended March 31, 2011 and June 30, 2010, as set forth in the attached Exhibit B. A Memorandum in Support is attached.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2011 OCT 20 PM 1:29  
CLERK OF COURTS-CV

Respectfully submitted,

MIKE DEWINE  
Attorney General State of Ohio

By Special Counsel:  
KEGLER, BROWN, HILL & RITTER, CO. L.P.A.

By:  \_\_\_\_\_

Richard W. Schuermann, Jr. (0032546)

John P. Brody (0012215)

Daniel J. Bennett (0079932)

65 East State Street, Suite 1800

Columbus, Ohio 43215

Telephone: (614) 462-5400

rschuermann@keglerbrown.com

jbrody@keglerbrown.com

*Attorneys for Mary Taylor, in her capacity as  
Liquidator of DayMed Health Maintenance Plan,  
Inc.*

## MEMORANDUM IN SUPPORT

On March 24, 2011, this Court entered an Order granting the Liquidator's Application for an Order Terminating Liquidation Proceedings, discharging the Liquidator, closing DayMed bank accounts and closing this liquidation estate effective March 31, 2011 (the "Closing Order"). Pursuant to R.C. 3903.46(A), the Closing Order requires the Liquidator to file for post-closure approval of a final accounting and a final auditor report. This Motion requests approval of the Liquidator's Final Statement of Receipts and Disbursements for the period January 1, 2011 to March 31, 2011, as set forth in the attached Exhibit A (the "Final Periodic Accounting") and the Final Report of Independent Auditors for the years ended March 31, 2011 and June 30, 2010, as set forth in the attached Exhibit B (the "Final Audit Report").

### **I. The Final Accounting**

On March 4, 1999, this Court entered a Liquidation Order declaring DayMed Health Maintenance Plan, Inc., ("DayMed") insolvent and appointing the Ohio Superintendent of Insurance as Liquidator. The Liquidation Order authorized and directed the Liquidator to liquidate the assets of DayMed in accordance with the laws of Ohio under the continuing jurisdiction of this Court. As part of the liquidation, and pursuant to the Order of Liquidation and Ohio Revised Code Chapter 3903, the Liquidator collects, where reasonable, all debts and moneys due to DayMed, and makes payment of necessary expenses. The Liquidation Order and R.C. 3903.21(A)(4) further provide, in pertinent part, that the Liquidator may:

pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer.

The Liquidation Order and Section 3903.18(E) of the Ohio Revised Code also require the Liquidator to submit periodic accountings to the Court throughout the pendency of the liquidation proceeding. Such accountings may assist the Court in monitoring the progress and

status of the liquidation, and in particular, the receipts and disbursements in the DayMed liquidation proceedings. Prior to this motion, the Liquidator filed periodic accountings with this Court throughout the course of the liquidation, all of which this Court approved.

On October 6, 2010, this Court approved the Liquidator's final report of claims filed in the DayMed liquidation and authorized the Liquidator to make a final pro rata distribution of the remaining assets of DayMed in the total amount of Eight Million Two Hundred Twenty Six Thousand Six Hundred Sixty One and 17/100 Dollars (\$8,226,661.17) to Classes 1, 2, 3, 4 and 5 on their allowed claims ("the Final Distribution Order"). The Court's Final Distribution Order approving the final distribution of DayMed's estate assets approved, as part of the Class 1 (administrative expense) final distribution, the Liquidator's reserve of \$118,197.99 to pay administrative expenses related to closing the DayMed estate. As set forth in the Final Distribution Order and subsequent Closing Order, there are three (3) general categories of closing-related administrative expenses for which the reserve was made:

- (1) Administrative expenses that were already incurred at the time the Final Distribution Order was entered, but were not yet paid at the time of the Final Distribution Order. These administrative expenses were paid prior to entry of the Closing Order entered on March 24, 2011 (which, among other things, closed the DayMed bank accounts, closed the DayMed estate and discharged the Liquidator from her prior authority). Thus, these administrative expenses were paid by the DayMed estate from DayMed bank accounts using the reserve. Consequently, they are included in the attached Final Periodic Accounting.
- (2) Other administrative expenses that were not yet incurred as of the time of the Final Distribution Order, but that the Liquidator knew would be both incurred and paid during the time the final distribution of DayMed assets was underway (while the distribution checks were clearing), and thus prior to entry of the Closing Order. Because this category of expenses was also paid prior to entry of a final Closing Order by the DayMed estate from DayMed bank accounts using the reserve, this category of expenses is also included in the attached Final Periodic Accounting.
- (3) Administrative expenses related to closing the DayMed estate that were not incurred or paid as of the time of the Final Distribution Order, but that the Liquidator knew would be both incurred and paid after entry of both the Final Distribution Order and the Closing Order. Expenses related to the preparation and filing of the Final Accounting and Final Audit Report attached to this Motion are classic examples of this third category of closing-related "future" administrative expenses for which a reserve must be made prior to or as part of making a

final distribution to claimants below Class 1. The DayMed estate does not pay this category of expense from DayMed bank accounts because this category of administrative expenses is not incurred or paid until after the Liquidator is discharged and the DayMed bank accounts are closed pursuant to the final Closing Order. Instead, upon entry of the Closing Order and a part of the closing of the bank accounts, DayMed pre-pays the remaining reserve to another estate, LMI Insurance Company ("LMI"), for its administration and payment of these remaining DayMed expenses<sup>1</sup>. Consistent with long standing administrative operating procedures approved in the LMI Liquidation Case, the post-liquidation closing obligations of DayMed were transferred through a prepayment of the remaining DayMed court-authorized reserve, to LMI. Therefore, this category of expenses is not included in the attached Final Periodic Accounting.

On March 16, 2011, the Liquidator filed an application requesting that this Court enter the Closing Order pursuant to R.C. 3903.46 and related sections. As noted above, on March 24, 2011, this Court entered the Closing Order granting the Liquidator's Application, discharging the Liquidator, closing this liquidation estate effective on or about March 31, 2011 and terminating this case. The Liquidator's Final Periodic Accounting for DayMed for the period January 1, 2011 to March 31, 2011, as set forth in the attached Exhibit A, is hereby submitted for approval as the final submission pursuant to the Closing Order.

## **II. The Final Audit Report**

One of the Liquidator's primary responsibilities is the marshaling of assets of the DayMed liquidation estate, for ultimate distribution to the liquidation estate's policyholders and creditors pursuant to R.C. Chapter 3903, under the supervision of this Court. In the process of marshaling assets, the Liquidator routinely receives and deposits cash and purchases and sells various investment securities. In order to record this activity, the Liquidator built an internal accounting department capable of tracking costs and recoveries and generating basic financial

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<sup>1</sup> The Liquidator administers and accounts for the administrative holdback pursuant to the long standing Administrative Operating Procedure updated and approved most recently on December 21, 2010 in the LMI Liquidation Case, Case No. 00CVH03-2431 (the "updated AOP"). The updated AOP was filed beginning on December 16, 2010 in all active cases that were not in the process of closing. Because the final distribution in this case was completed in October 2010 and this case was closing, the updated AOP was not separately filed in this case. The process set forth in the updated AOP for Closed Estates has been in place since the early 1990s.

reports. The cash and investment security balances are reported by the Liquidator to this Court in the periodic accountings mentioned above.

In July of 1991, the Liquidator determined that it was in the best interests of all of the Ohio liquidation estates to hire an independent auditing firm to perform an annual audit of the Liquidator's internal controls relating to cash receipts and disbursements and the purchase and sale of investment securities in order to ensure the integrity of the Liquidator's accounting system. Pursuant to the Administrative Operating Procedure Updated Effective January 1, 2011 (*see* footnote 1, *supra*), the retention of independent auditors is reassessed no less frequently than every five years, and modified based on upon responses to requests for proposals (RFPs). The last RFP was issued in 2011. As a result of the responses received from several public accounting firms, the Liquidator modified her previous retention and engaged Maloney + Novotny LLC to perform the audit. The Liquidator requested the auditing firm to render an opinion in its audit report as to the propriety of the information presented in the Final Periodic Accounting, as it was the Liquidator's intention to file the report with this Court to demonstrate the integrity of the Final Periodic Accounting.

Maloney + Novotny LLC has completed its audit of the statements of cash and invested assets of DayMed as of March 31, 2011 and June 30, 2010 and the related statements of cash receipts and cash disbursements for the years ended March 31, 2011 and June 30, 2010. Maloney + Novotny LLC issued the Final Audit Report containing its audit findings which opines that the Liquidator's financial statements present fairly, in all material respects, both the cash and invested assets of DayMed at March 31, 2011 and June 30, 2010 and cash receipts and cash disbursements for the years ended March 31, 2011 and June 30, 2010. By this Motion, the Liquidator also seeks this Court's approval of the Final Audit Report, which is filed pursuant to the Closing Order.

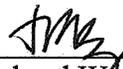
**III. Conclusion**

For the reasons set forth above, the Liquidator respectfully requests that this Court enter an Order approving the attached Final periodic Accounting and Final Audit Report.

Respectfully submitted,

MIKE DEWINE  
Attorney General State of Ohio

By Special Counsel:  
KEGLER, BROWN, HILL & RITTER, CO. L.P.A.



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Richard W. Schuermann, Jr. (0032546)  
John P. Brody (0012215)  
Daniel J. Bennett (0079932)  
65 East State Street, Suite 1800  
Columbus, Ohio 43215  
Telephone: (614) 462-5400  
rschuermann@keglerbrown.com  
jbrody@keglerbrown.com  
dbennett@keglerbrown.com  
*Attorneys for Mary Taylor, in her capacity as  
Liquidator of DayMed Health Maintenance Plan, Inc.*

**EXHIBIT A**  
**Final Periodic Accounting**  
**January 1, 2011 to March 31, 2011**

Liquidator of DayMed Health Maintenance Plan, Inc.  
Statement of Receipts and Disbursements  
For the Period 01/01/11 to 03/31/11

	CASH	SECURITIES	TOTAL
Balance at 12/31/10	31,305.26	23,610.36	54,915.62
<b>RECEIPTS</b>			
Investment Proceeds Money Market (Note 1)	23,610.36	(23,610.36)	0.00
Interest/Dividend Income	1.71	0.00	1.71
Voided Class 2 & 5 Distribution checks	31,075.04	0.00	31,075.04
	<u>54,687.11</u>	<u>(23,610.36)</u>	<u>31,076.75</u>
<b>TOTAL RECEIPTS</b>	<b>54,687.11</b>	<b>(23,610.36)</b>	<b>31,076.75</b>
<b>DISBURSEMENTS</b>			
<b>Salaries:</b>			
Chief Deputy Liquidator	2,187.15	0.00	2,187.15
Deputy Liquidators	1,867.56	0.00	1,867.56
Employee Wages, Taxes, & Benefits (Note 2)	15,049.45	0.00	15,049.45
Legal Expense	23.40	0.00	23.40
Unclaimed Funds to Ohio Division of Unclaimed Funds Class 2, 4 & 5	43,570.58	0.00	43,570.58
General Operating Expense (Note 3)	23,294.23	0.00	23,294.23
	<u>85,992.37</u>	<u>0.00</u>	<u>85,992.37</u>
<b>TOTAL DISBURSEMENTS</b>	<b>85,992.37</b>	<b>0.00</b>	<b>85,992.37</b>
Balance at 03/31/11	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
	A	AB	

(A) Excluding \$0.00 Held by States.  
(B) Bonds Carried at Amortized Value.

Note 1: The captions "Investment Proceeds in Money Market" or "Investment Purchases in Money Market" represent the difference between total money market sales and purchases for the reporting period.

Note 2: This amount may have fluctuated over the last period due to changes in COBRA mandated by The American Recovery and Reinvestment Act of 2009, which reduced the cost of the COBRA health insurance premium remitted by eligible former employees. The reduced cost of COBRA results in an initial higher payment of COBRA premiums by the employer, subject to a later credit on their payroll FICA tax.

Note 3: Accountants Fees of \$222.22 are comprised of \$222.22 in Audit Fees, there were no Tax Preparation Expenses this period.

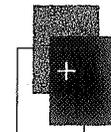
**EXHIBIT B**

**Final Audit Report for the  
Years Ended March 31, 2011 and June 30, 2010**

**OFFICE OF THE OHIO  
INSURANCE LIQUIDATOR  
DAYMED HEALTH MAINTENANCE PLAN,  
IN LIQUIDATION**

**FINANCIAL REPORT**

**MARCH 31, 2011 and JUNE 30, 2010**



maloney+novotny<sub>LLC</sub>

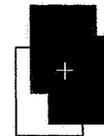
OFFICE OF THE OHIO INSURANCE LIQUIDATOR  
DAYMED HEALTH MAINTENANCE PLAN,  
IN LIQUIDATION

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1111 Superior Avenue | Suite 700 | Cleveland, Ohio 44114-2540  
P 216.363.0100 F 216.363.0500 w maloneynovotny.com



maloney+Novotny<sup>LLC</sup>

Lynda G. Loomis  
Chief Deputy Liquidator  
Office of the Ohio Insurance Liquidator  
DayMed Health Maintenance Plan, in Liquidation

Independent Auditors' Report

We have audited the accompanying statement of cash and invested assets arising from cash transactions of DayMed Health Maintenance Plan, in Liquidation ("Estate") as of March 31, 2011, and the related statement of cash receipts and cash disbursements for the period then ended. These financial statements are the responsibility of the Estate. Our responsibility is to express an opinion on these financial statements based on our audit. The Estate's 2010 statement of cash and invested assets was audited by other auditors whose report dated November 22, 2010 expressed an unqualified opinion.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statements were prepared to present the financial statements of DayMed Health Maintenance Plan, in Liquidation pursuant to the accounting practices prescribed or permitted by the Office of the Ohio Insurance Liquidator and the Franklin County, Ohio Common Pleas Court, described in Note 1, and are not intended to be a complete presentation of the Company's assets and liabilities.

In our opinion, the financial statements referred to above present fairly, in all material respects, the cash and invested assets arising from cash transactions of DayMed Health Maintenance Plan, in Liquidation as of March 31, 2011, and the related statement of cash receipts and cash disbursements for the period then ended, on the basis of accounting described in Note 1.

This report is intended solely for the information and use of the Office of the Ohio Insurance Liquidator and the Franklin County, Ohio Common Pleas Court and is not intended to be and should not be used by anyone other than these specified parties.

*Maloney + Novotny LLC*

Cleveland, Ohio  
October 7, 2011

OFFICE OF THE OHIO INSURANCE LIQUIDATOR  
DAYMED HEALTH MAINTENANCE PLAN,  
IN LIQUIDATION

STATEMENTS OF CASH AND INVESTED ASSETS

March 31, 2011 and June 30, 2010

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	<u>2011</u>	<u>2010</u>
Cash	\$ -	\$ 39,580
Invested assets	<u>-</u>	<u>8,186,971</u>
	<u>\$ -</u>	<u>\$8,226,551</u>

The accompanying notes are an integral part of these financial statements.

OFFICE OF THE OHIO INSURANCE LIQUIDATOR  
DAYMED HEALTH MAINTENANCE PLAN,  
IN LIQUIDATION

STATEMENT OF CASH RECEIPTS AND CASH DISBURSEMENTS

Period Ended March 31, 2011

CASH AT JULY 1, 2010	\$ 39,580
<b>CASH RECEIPTS</b>	
Investment proceeds from money market funds	1,954,792
Investment proceeds from bonds	6,163,000
Interest and dividend income (including interest paid on bonds)	131,783
Voided Class 2, 3, 4 & 5 distribution checks	43,571
Proceeds from settlement	100,000
Total cash receipts	<u>8,393,146</u>
<b>CASH DISBURSEMENTS</b>	
Salaries, wages and employee benefits	81,649
Professional fees	26,744
Final distribution - Class 2 claims - loss/loss adjustment expense - non Insurance Guarantee Association (IGA)	714,388
Final distribution - Class 3 claims - federal government	958
Final distribution - Class 4 & 5 claims - employee	189,417
Final distribution - Class 5 claims - general creditors - non IGA	7,321,903
Employer portion Class 4 & 5 payroll taxes paid on employee wage claims	14,961
Unclaimed funds to Ohio Division of Unclaimed Funds - Class 2, 4 & 5	43,571
General and administrative expenses	39,135
Total cash disbursements	<u>8,432,726</u>
CASH AT MARCH 31, 2011	<u>\$ -</u>

The accompanying notes are an integral part of these financial statements.

OFFICE OF THE OHIO INSURANCE LIQUIDATOR  
DAYMED HEALTH MAINTENANCE PLAN,  
IN LIQUIDATION

NOTES TO FINANCIAL STATEMENTS

**Note 1. Background and Basis of Presentation**

Ohio Revised Code Chapter 3903 contains the Insurers' Supervision, Rehabilitation and Liquidation Act (the "Act"). The Act governs all aspects of an insurance company's rehabilitation or liquidation (sometimes referred to as receivership) resulting from insolvency.

When the Ohio Superintendent of Insurance, as regulator, determines that an Ohio-domiciled insurer is insolvent or is operating in a financially hazardous manner, the Superintendent files a Complaint in the Franklin County, Ohio Common Pleas Court ("Liquidation Court") for a court order placing the company into rehabilitation or liquidation. If the Court agrees with the Complaint, the Court enters a rehabilitation or liquidation order appointing the Superintendent of Insurance in the separate fiduciary capacity of Rehabilitator or Liquidator ("receiver") of the company, empowered to act on behalf of the creditors of the estate to secure, marshal and eventually rehabilitate or liquidate the company's assets.

DayMed Health Maintenance Plan, Inc. was ordered into liquidation on March 4, 1999 by the Liquidation Court and the Ohio Superintendent of Insurance was appointed as its Liquidator, and it became DayMed Health Maintenance Plan, Inc., in Liquidation (the "DayMed Estate").

As is common with entities placed in fiduciary control, the Liquidator has prepared the accompanying financial statements on the cash-basis of accounting, whereby, the statement of cash and invested assets includes only cash transactions; consequently, all other assets and liabilities of the DayMed Estate are not included in the statement of cash and invested assets, and uncollected revenues and unpaid expenses are not included in the statement of cash receipts and cash disbursements. Changes in amortization of bond premiums and discounts are reflected in invested assets; however, these amounts are not reflected in the statement of cash receipts and cash disbursements as they are non-cash items. This is a comprehensive basis of accounting other than accounting principles generally accepted in the United States, and accordingly, the statements are not intended to present the financial position and results of operations in conformity with accounting principles generally accepted in the United States.

**Note 2. Order to Dissolve the DayMed Estate**

On March 24, 2011, the Court issued a Final Order Closing the DayMed Estate and terminating the liquidation case (the "Closing Order"). The Closing Order directed the DayMed Estate to submit unclaimed distributions of \$43,571 to the Ohio Department of Commerce, Division of Unclaimed Funds. The DayMed Estate distributed those funds on March 25, 2011.

OFFICE OF THE OHIO INSURANCE LIQUIDATOR  
DAYMED HEALTH MAINTENANCE PLAN,  
IN LIQUIDATION

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

**Note 2. Order to Dissolve the DayMed Estate (Continued)**

Assets remaining subsequent to March 24, 2011 were reserved (held-back) to pay administrative expenses related to the closure of the DayMed Estate. The Closing Order approved the Liquidator's pre-payment of the DayMed Estate's unpaid administrative expenses related to the closure of the DayMed Estate to LMI Insurance Company, in Liquidation ("LMI") upon closure of the DayMed case in exchange for the LMI Estate's assumption, administration and payment of the remaining administrative expense obligations of the DayMed Estate. The payment of \$36,298 and receipt of these funds were reported respectively in the DayMed Estate final accounting and the LMI periodic accountings, but the expenditure of them is not separately tracked, accounted for or reported pursuant to the provisions of paragraph 3 on page 8 of the Administrative Expense Operating Procedure applicable to Closed and Closing Estates that was updated and approved most recently beginning on December 21, 2010 in the LMI Liquidation Case, Case No. 00CVH03-2431 ("AOP"). The AOP is based upon the Liquidator's Accounting Department Internal Control for handling administrative costs and expenses for closing and closed Estates after a final distribution of assets to creditors, which dates back to 1995.

The Closing Order also ordered the DayMed Health Maintenance Plan to be dissolved pursuant to Ohio Revised Code Section 3903.20, which occurred on March 31, 2011 and all assets had been distributed.

**Note 3. Invested Assets**

Invested assets consist of those assets that are under the complete and direct control of the Liquidator and are being specifically held as investments.

Money market funds are recorded at cost, which approximates fair value, and bonds are recorded at amortized cost.

At March 31, 2011 and June 30, 2010, invested assets and their carrying values consisted of the following:

	2011 Carrying Value	2010 Carrying Value
Money market funds	\$ -	\$1,954,793
Bonds at amortized cost	-	6,232,178
	\$ -	\$8,186,971

OFFICE OF THE OHIO INSURANCE LIQUIDATOR  
DAYMED HEALTH MAINTENANCE PLAN,  
IN LIQUIDATION

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

**Note 4. Distributions**

On October 6, 2010, the Liquidation Court ordered the DayMed Estate to make a final pro rata distribution of assets to Class 2 through Class 5 claimants. On October 22, 2010, the DayMed Estate disbursed \$8,226,666 to Class 2, 3, 4 and 5 claimants.

**Note 5. Subsequent Events**

Management evaluates events occurring subsequent to the date of the financial statements in determining the accounting for and the disclosure of transactions and events that affect the financial statements. Subsequent events have been evaluated through October 7, 2011, which is the date that the financial statements were available to be issued. No material subsequent events were noted.