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DEPUTY CLERK OF COURT

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER: 499-737

DIVISION: D

J. ROBERT WOOLEY, AS
ACTING COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA

VERSUS

AMCARE HEALTH PLANS OF LOUISIANA, INC.

FILED: _____
DEPUTY CLERK

Filed on Behalf of - State of Louisiana - State Pays No Court Costs
La. R.S. 13:4521

**EMERGENCY MOTION TO RESCIND AND/OR STAY
THE COURT'S ORDER ENTERED ON JUNE (DATED JULY) 25, 2012
REQUIRING AmCare-LA TO FILE ALL OUTSTANDING TAX RETURNS
BY AUGUST 15, 2012
AND FOR EXPEDITED CONSIDERATION
AND INCORPORATED MEMORANDUM**

NOW INTO COURT, through undersigned counsel comes, James J. Donelon, Commissioner of Insurance for the State of Louisiana as Liquidator for AmCare Health Plans of Louisiana, Inc. In Liquidation, through the Court-appointed Deputy Receiver, Marlon Harrison ("AmCare-LA"), who requests that this honorable Court rescind its order entered on June 25, 2012 (but dated July 25, 2012) in this matter, which order reads as follows:

IT IS ORDERED that all interested parties appear and show cause on the 17th day of September, 2012 at 1:00 p.m. why AmCare-LA should not be ordered to file any and all outstanding tax returns on [interest on all allowed and approved claims of the policyholders, subscribers, members, providers] or before August 15, 2012, to aid the Court in determining whether or not there remains an outstanding liability of \$9,000,000 + as represented in pleadings heretofore filed herein.
Baton Rouge, Louisiana this 25th day of July, 2012.

for the following reasons:

- 1) Am-Care-LA shows that state and federal income tax returns cannot realistically be filed prior to a ruling of this Court as to the pending Re-Urged Motion for Reconsideration of AmCare-LA's Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds and/or Motion for New Trial, and/or Rule to Show Cause Why AmCare-LA Should Not Be Granted Authority to Pay Interest on All Allowed and Approved Claims as the amount of the judicial interest to be paid to the AmCare-LA policyholders, members, subscribers, and providers, as well as to general creditors and late file claims (all previously approved by the Court) is critical to assessing AmCare-LA's tax liability, all has been fully reported to the Court in pleadings filed herein as well as in monthly and quarterly reports filed with the Court, which are not made part of the record of these proceedings.

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- 2) AmCare-LA shows that filing state and federal income tax returns prior to this Court's ruling allowing the payment of judicial interest on all allowed and approved claims from the date of liquidation on November 12, 2002 to present would require later amending tax filings in the event the Court does not accept AmCare-LA's recommendation that judicial interest be paid on all allowed and approved claims from the date of liquidation on November 12, 2002 until paid, would require AmCare-LA to file incomplete and incorrect tax returns, increasing the administrative costs to the estate, all has been fully reported to the Court in pleadings filed herein as well as in monthly and quarterly reports filed with the Court, which are not made part of the record of these proceedings.
- 3) AmCare-LA shows that filing state and federal tax returns prior to a determination as to whether or not a surplus of funds exists, prior to determination of payment obligations to allowed and approved claimants, prior to a determination of the expenses of administration, prior to a determination as to pending issues affecting AmCare-LA assets and liabilities would require the filing of incorrect and incomplete tax returns, in contravention of IRS policy that a receiver should not file a federal return for an estate unless he/she under penalties of perjury can declare that he/she has examined the return and accompanying schedules and statement for the tax and to the best of his knowledge and belief, it is true, correct, and complete, raising critical and important criminal, (civil) personal liability issues for a receiver who files a return that to the best of the receiver's knowledge is not true, correct, or complete.
- 4) AmCare-LA shows that the Internal Revenue Services has a minimum eighteen (18) month processing period to challenge a federal tax filing before the signer can be released because the IRS must fully examine and be satisfied with the return, thus filing a return by August 15, 2012 grants no advantage as the eighteen (18) month review period begins in September and would not end until seventeen (17) months later.
- 5) AmCare-LA shows that in the event a tax return is prematurely filed by August 15, 2012 for the 2011 tax year ending December 31, 2011 and it is later determined that a refund is due, AmCare-LA would then need to take steps to see that all funds are properly refunded.
- 6) AmCare-LA shows that any later ruling by the Court, such as the ruling contemplated in the Court's minute entry of March 12, 2012 with the payment of judicial interest from the date of the Louisiana Supreme Court ruling on April 1, 2012, (which ruling was later rescinded in a minute entry of March 30, 2012) permitting the payment of interest on the allowed and approved claims of the AmCare policyholders, members, subscribers, providers, and creditors, may increase AmCare-LA's federal and state tax liability, requiring the filing of amended tax returns and increasing the administrative costs to AmCare-LA, all has been fully reported to the Court in pleadings filed herein as well as in monthly and quarterly reports filed with the Court, which are not made part of the record of these proceedings.
- 7) AmCare-LA shows that AmCare-LA has consistently provided the Court with information explaining that should AmCare-LA be required by the Internal Revenue Service to file consolidated tax returns with the former parent company, such as were filed through 2001, there is a possibility that a net operating loss carryforward of approximately \$9 million tax deduction would be lost to AmCare-LA as an allowed tax deduction, which is currently carried on the books of AmCare-LA as a liability, all has been fully reported to the Court in pleadings filed herein as well as in monthly and quarterly reports filed with the Court, which are not made part of the record of these proceedings.
- 8) AmCare-LA shows that AmCare-LA has consistently provided the Court with information that the determination as to AmCare-LA's ability to record as a liability for purposes of a tax deduction the approximate \$9 million net operating loss carryforward by filing a separate AmCare-LA federal tax return is one that can be challenged by the Internal Revenue Service for as little as eighteen months and as long as thirty-six months after the filing of the AmCare-LA 2011 federal tax return, and is not a decision to be made by AmCare-LA, all has been fully reported to the Court in pleadings filed herein as well as in monthly and quarterly reports filed with the Court, which are not made part of

the record of these proceedings.

- 9) AmCare-LA shows that the Court's ruling is on the order of a sua sponte mandamus.¹ The decision as to how and when to file tax returns involves discretion and evaluation, particularly, where, as here, authority has been sought for months as to the AmCare-LA recommendation that judicial interest should be paid on all allowed and approved claims from the date of liquidation on November 12, 2002 until paid, and the Court has consistently resisted this recommendation, apparently with the goal of reserving AmCare-LA funds for entities such as Southern University Law Center, Louisiana Leadership Institute, Children's Medical Network, St. Jude's Cancer Treatment Center, Boys Hope/Girls Hope, Debbie Allen School, and The Greater Baton Rouge Food Bank, as per this Court's minute entry of March 16, 2012.
- 10) The Court's action in ordering AmCare-LA to prematurely file tax returns violates separation of powers and interposes the judiciary into the administration of the AmCare-LA estate as the judicial branch is prohibited from infringing on the inherent powers of the executive branch to apply and enforce the law, and in the case of insurance company receiverships to conduct the business of the estate. La. R.S. 22:2006; Louisiana Constitution, Article II, section 2 and Article IV, section 1. It is fundamental to the constitutional regime of separation of powers that one branch shall not exercise its powers in a manner that limits or deprives another branch of its ability to perform its constitutional functions. *Hoag v. State of Louisiana*, 2004-857 (La. 12/1/04) 889 So. 2d 1019. The Court attempts to invoke the power of the judiciary to compel another branch of government to perform or act. *Id.*
- 11) Nothing in the Louisiana Insurance Code grants authority for the Court on its own motion to order AmCare-LA to file a tax return, when AmCare-LA has determined that other issues must be resolved prior to the filing of tax returns, which will impact AmCare-LA's tax liability, chief among them, the payment of judicial interest from the date of liquidation on November 12, 2002 until paid on all allowed and approved AmCare-LA claims, as issue which has been before the Court for months.
- 12) AmCare-LA shows that there is no pending motion before the Court as to the filing of the AmCare-LA 2011 income tax returns and thus the Court's sua sponte order does not comport with the provisions of the Louisiana Insurance Code.
- 13) AmCare-LA shows that the Court set a hearing on this matter on September 17, 2012, over a month past the Court ordered AmCare-LA to file tax returns by August 15, 2012, putting AmCare-LA in the position of having to act without hearing and an opportunity to be heard as to the Court's order.
- 14) AmCare-LA notes that the Court ordered personal service to attorney Dennis Blunt and Attorney Domoine Rutledge, neither of whom have any relationship to AmCare-LA and neither of whom were appointed by the Attorney General in the AmCare-LA matter, with no explanation as to why such service was required by the Court. La. R.S. 22:2017 and La. R.S. 22: 2018.

¹ Mandamus is an extraordinary remedy, which must be used sparingly by the court and only to compel action that is clearly provided by law. *Allen v. St. Tammany Parish Police Jury*, 96-0938 (La. App. 1st Cir.2/14/97), 690 So.2d 150, 153, writ denied, 97-0599 (La.4/18/97), 692 So.2d 455. Mandamus will not lie in matters in which discretion and evaluation must be exercised. *Allen*, 690 So.2d at 153. The remedy is not available to command the performance of an act that contains any element of discretion, however slight. *Fire Protection District Six v. City of Baton Rouge Department of Public Works*, 2003-1205, p. 3 (La. App. 1st Cir.12/31/03), 868 So.2d 770, 772, writ denied, 2004-0299 (La.4/08/04), 870 So.2d 270.

- 15) AmCare-LA shows that the Commissioner of Insurance is charged with the responsibility for administration of the AmCare-LA estate, not the Court, and is directed by statute, La. R.S. 22:2010, to liquidate the property, business and affairs of the insurer, and the June (July) 25, 2012 order of this Court oversteps the Court's authority. The Court is not charged with the administration of the AmCare-LA estate and lacks authority to order the filing of tax returns.
- 16) AmCare-LA shows that it is detrimental to the AmCare-LA estate to proceed with filing federal and state income tax returns prior to a determination of the AmCare-LA liability for judicial interest from the date of liquidation, because filing tax returns before the Court rules on the issue presently before the Court as to the payment of judicial interest from the date of liquidation on November 12, 2002 is premature, will not provide an accurate accounting of the estate to the state and federal government, will require AmCare-LA resources and personnel causing additional, unnecessary, and burdensome expense, to the prejudice of AmCare-LA policyholders, members, subscribers, providers and creditors.

AmCare-LA remains very concerned with the Court's reluctance to grant the recommendation that judicial interest on all allowed and approved claims be paid from the date of liquidation on November 12, 2002 until paid, as the primary focus and reason for creation of the AmCare-LA estate is for the benefit of the AmCare-LA policyholders, members, subscribers, providers and creditors, who have waited nearly ten years for justice and to be made whole. AmCare-LA has shown that there are ample funds available for the payment of judicial interest from the date of liquidation until paid to all allowed and approved claims of policyholders, members, subscribers, providers and creditors. There is no legal reason, no moral reason, and no ethical reason why judicial interest should not be paid. AmCare-LA is a liquidation estate of a failed insurance company. As the Court is aware, it is generally the case in an insurance company liquidation that there are insufficient funds available in insurance liquidation estates to pay even a portion of the principal amount of the policyholder claims. It is rare, and likely unprecedented, for a failed insurance company estate to have sufficient funds to not only pay 100% of the principal amount of the policyholder claims, but also to have sufficient funds to pay interest on the policyholders claims, to make each allowed policyholder claim to be made whole. That is the goal of AmCare-LA and it is without doubt in the best interest of the AmCare-LA policyholders who have been denied their legitimate claims payments for nearly ten years, since September, 2002.

AmCare-LA is not an ongoing operation - it is a liquidation estate. There is absolutely no legitimate reason for the Court to attempt to "reserve" AmCare-LA funds. Those funds should be paid to AmCare-LA policyholders and creditors. The money collected in the lawsuit against

Health Net, Inc. was collected for the benefit of the AmCare policyholders, members, subscribers, providers and creditors and should be paid to them.

It is the role of the Commissioner to administer the AmCare-LA estate, not the Court. The Court's legitimate role is to review the Commissioner's actions to determine if they comply with applicable law and to determine if they are in the best interests of the policyholders. It is not the Court's role to substitute its judgment for that of the Commissioner. There is no legitimate reason for the Court to order AmCare-LA to file tax returns by August 15, particularly where there are multiple unresolved issues that directly affect the ability to do so completely and correctly.

AmCare-LA once again calls upon the Court to rule on the pending motion for authority to pay judicial interest on all allowed and approved claims from the date of liquidation on September 23, 2002 so that the liability of AmCare-LA as to the interest to be paid can be fixed and the appropriate tax deduction for that liability can be calculated so that the appropriate tax filings can be made with a definitive amount for the deduction to be taken as to the appropriate interest deduction.

For all these reasons, AmCare-LA requests that the Court rescind the June (July) 25, 2012 order requiring the filing of tax returns by August 15, 2012. In the alternative, AmCare-LA asks for a stay of that order pending this Court's ruling on the recommendation of AmCare-LA that judicial interest be paid on all allowed and approved claims from the date of liquidation on November 12, 2002 until paid, which motion is presently pending before this Court.

WHEREFORE, AmCare-LA prays that this motion be granted and the Court's order of June (July) 25, 2012 be rescinded and/or stayed pending a ruling from the Court on the pending Re-Urged Motion for Reconsideration of AmCare-LA's Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds and/or Motion for New Trial, and/or Rule to Show Cause Why AmCare-LA Should Not Be Granted Authority to Pay Interest on All Allowed and Approved Claims from the date of liquidation on November 12, 2002 until paid, and for all other appropriate relief.

Respectfully submitted,

Attorneys for JAMES J. DONELON
Commissioner of Insurance for the State of Louisiana as
Liquidator of AmCare Health Plans of Louisiana, Inc. In Liquidation

BURGLASS & TANKERSLEY, LLC



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DEPUTY CLERK OF COURT

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER: 499-737

DIVISION: D

J. ROBERT WOOLEY, AS
ACTING COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA

VERSUS

AMCARE HEALTH PLANS OF LOUISIANA, INC.

FILED: _____

DEPUTY CLERK

ORDER

Considering the Emergency Motion to Rescind and/or Stay the Court's Order Entered on June (dated July) 25, 2012 Requiring AmCare-LA to File All Outstanding Tax Returns by August 15, 2012 and for Expedited Consideration,

IT IS ORDERED that all interested parties appear and show cause on the 6 day of August, 2012 at 1:00 o'clock p.m. why AmCare-LA's Emergency Motion to Rescind and/or Stay the Court's Order Entered on June (dated July) 25, 2012 Requiring AmCare-LA to File All Outstanding Tax Returns by August 15, 2012 and for Expedited Consideration should not be granted and this Court's order of June (July) 25, 2012 requiring AmCare-LA to file tax returns by August 15, 2012 should not be rescinded and/or stayed pending resolution of the recommendation that judicial interest be paid on all allowed and approved claims from the date of liquidation on November 12, 2002 until paid.

Baton Rouge, Louisiana, this 10 day of July, 2012.

Jamie Clark

JUDGE, DIVISION D

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DEPUTY CLERK OF COURT

Respectfully submitted,

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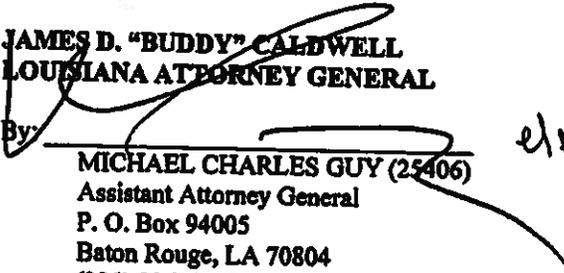
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