

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**

**MOTION FOR RECONSIDERATION OF THE RECEIVER'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 THE RECEIVER SHOULD NOT BE
GRANTED AUTHORITY TO PAY INTEREST ON ALL
ALLOWED AND APPROVED CLAIMS**

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 Receiver, Michael Adams ("AmCare-LA"), who requests that the Court set a hearing in this matter to reconsider the previously filed Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds, and/or grant a new trial on said motion, and/or to set a hearing to show cause why the Receiver should not be granted authority to pay interest on all allowed and approved claims, all as more fully explained in the memorandum in support, which is attached hereto and incorporated herein. A copy of the Court's Judgment of January 3, 2012 denying the Receiver's Motion "on showing made" is attached hereto and incorporated herein as **Exhibit A**.

WHEREFORE, the Receiver prays that a hearing be set in this matter and that after due consideration that the Receiver be granted authority to pay interest on all allowed and accrued claims previously approved by this Court, and for all other appropriate relief.

Respectfully submitted,

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Attorneys for JAMES J. DONELON

Commissioner of Insurance for the State of Louisiana as

Liquidator of AmCare Health Plans of Louisiana, Inc.

NINETEENTH JUDICIAL DISTRICT COURT
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**MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION
OF THE RECEIVER'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 THE RECEIVER SHOULD NOT BE
GRANTED AUTHORITY TO PAY INTEREST ON ALL
ALLOWED AND APPROVED CLAIMS**

MAY IT PLEASE THE COURT:

On or about December 22, 2011, the AmCare-LA Receiver filed a Third Ex Parte Motion For Authority to Make a Partial Distribution in order to pay interest accrued on the claims of the policyholders, subscribers, members, providers, and general creditors of AmCare-LA approved and allowed by this honorable Court in June 2005. That motion and its attachments are incorporated herein by reference. That motion detailed the history of the claims process established and approved by this Court for the payment of claims. On January 3, 2012, this honorable Court denied that motion "on showing made." A copy of the judgment is attached hereto and incorporated herein as **Exhibit A**.

The Receiver requests that the Court reconsider its prior ruling and/or grant the Receiver a new trial on the issues raised in that motion and/or set a rule to show cause why the Receiver should not be granted authority to pay interest on all allowed and approved claims, which the Receiver shows is Three Million Five Hundred Ninety Seven Thousand Ninety Three (\$3.597.093) Dollars as of December 31, 2011, with interest still accruing on the principal

As the Court well knows, the AmCare-LA estate was without sufficient resources to pay the approved and allowed claims due to the pendency of the appeal and subsequent Louisiana Supreme Court writ of the suit involving Health Net, Inc., which was concluded by judgment of the Louisiana Supreme Court on April 1, 2011. Funds were subsequently collected from Health Net, Inc. in payment of that judgment in an amount to begin the claims payment process.

The Court previously approved the payment of the Class 2 claims of AmCare-LA policyholders, members, subscribers, and providers by judgment dated October 4, 2011. The Receiver previously filed a motion for authority to pay the Class 5 (general creditors) and Class 6 (late filed claims) claims on November 22, 2011, and is awaiting the Court's ruling on that motion. Once payment of the principal amount is made on the Class 5 and 6 claims, interest will no longer accrue on those claims.¹

The Receiver requests authority to pay the interest owed on all the claims previously allowed and approved by this Court based on the requirement of La. R.S. 22:2027 (formerly La. R.S. 22:748) that all allowed claims be paid in full with interest where resources permit, as follows:

- B. Proofs of claim may be filed subsequent to the date specified, but, no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said day, have been paid in full with interest

¹ The Court approved the filing and amounts of 2,683 proofs of claim representing 57,951 claims, of which 2317 were found to be timely filed, and 366 were determined to be untimely, in the following amounts, subject to minor adjustments:

- | | | |
|----|---------------------|--|
| 1) | Class 1 | administrative claims continue to be paid as incurred. |
| 2) | Class 2 | \$6,038,491.08 plus interest |
| 3) | Class 3 and Class 4 | \$-0- |
| 4) | Class 5 | \$339,551.75 |
| 5) | Class 6 | \$181,094.90 |

All Class 1 claims for the Commissioner's current costs and expenses of administration continue to be paid as incurred and there are sufficient funds to pay the future costs of administration. The Court has granted the Receiver the authority to pay the principal amount of the Class 2 claims and that process is in progress. The Class 3 claims of the federal government and the Class 4

The decision of the First Circuit Court of Appeal in the case of *Brown v. Associated Insurance Consultants*, 2007-1577, 1578, 1579 (La. App. 1st Cir. 4/9/08) __ So. 2d __, the Court held that the Louisiana Insurance Code specifically contemplates the payment of interest on allowed claims.²

Without citation to authority, O'Keefe argues that interest is not a component of a timely filed claim because the insurance liquidation articles do not specifically allow for interest payments. We can find no support for this proposition, and La. R.S. 22:748 **specifically contemplates the payment of interest on claims.** *Id.* (Emphasis added).

The Receiver submits that the interests on the allowed and approved claims accrued as of December 31, 2011 is Three Million Five Hundred Ninety Seven Thousand Ninety Three (\$3,597,093) Dollars, as follows:

- 1) Interest on the Class 2 claims of policyholders, subscribers, members, and providers calculated from the date of liquidation, November 12, 2002, through the date of distribution of the checks for payment previously approved by this Court, September 29, 2011, on the principal amount of \$6,037,478.49 is Three Million Three Hundred Six Thousand Six Hundred Thirty Six (\$3,306,636.00) Dollars and is no longer accruing.
- 2) Interest on the Class 5 claims of general creditors as of December 31, 2011, on the principal amount of \$339,551.75 is One Hundred Eighty Nine Thousand Four Hundred Twenty Eight (\$189,428.00) Dollars and **is continuing to accrue** as the principal payment has not yet been made.
- 3) Interest on the Class 6 claims of late filed claimants as of December 31, 2011, on the principal amount of \$181,094.90 is One Hundred One Thousand Twenty Nine (\$101,029.00) Dollars and **is continuing to accrue** as the principal payment has not yet been made.

The total interest accrued as of December 31, 2011 is Three Million Five Hundred Ninety Seven Thousand Ninety Three (\$3,597,093) Dollars and interest continues to accrue on the principal amount of the Class 5 and Class 6 claims.

The Receiver has completed the process of paying the principal amount of all allowed Class 2 claims of policyholders, subscribers, members, beneficiaries, insureds, and providers. The Receiver is preparing to pay the principal amount of all allowed Class 5 and Class 6 claims upon court approval. The AmCare-LA Receiver requests authority from this Court under the provisions of LSA-R.S. 22:2027 and 22:2034 (formerly La. R. S. 22:748 and 22:755) to pay the interest owed on all allowed and approved Class 2, Class 5 and Class 6 claims from the date of

liquidation of November 29, 2002 through the date of payment of the principal amount of the Class 2, Class 5 and Class 6 claims at the rate allowed as judicial interest.

The Receiver has on hand, as of this date, cash or cash equivalent sufficient to pay the Class 1 administrative costs of the estate, and the proposed interim distribution of funds to all Class 5 and Class 6 claimants, as well as to pay judicial interest on the claims of all Class 2, Class 5 and Class 6 claimants as outlined above

For all these reasons, as well as the reasons set out in the previously filed Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds, the Receiver requests that the Court set a hearing in this matter to show cause why this Court should not confirm the authority of the Receiver to pay interest on all the allowed and approved claims of the Class 2, Class 5 and Class 6 claimants, policyholders, subscribers, members, providers and creditors of AmCare Health Plans of Louisiana, Inc. In Liquidation.

Respectfully submitted,

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Attorneys for JAMES J. DONELON

Commissioner of Insurance for the State of Louisiana as
Liquidator of AmCare Health Plans of Louisiana, Inc.

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

NUMBER: 499-737

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J. ROBERT WOOLEY, AS
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FOR THE STATE OF LOUISIANA

VERSUS

AMCARE HEALTH PLANS OF LOUISIANA, INC.

FILED: _____

DEPUTY CLERK

ORDER

Considering the Motion for Reconsideration of the Receiver'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 the Receiver Should Not Be Granted Authority to Pay Interest on All Allowed and Approved Claims,

IT IS ORDERED that all interested parties appear and show cause on the 6 day of Feb., 2012 at 1:00 o'clock p.m. why the Receiver should not be granted authority to pay interest on all allowed and approved claims of the policyholders, subscribers, members, providers and creditors of AmCare Health Plans of Louisiana, Inc. In Liquidation, which the Receiver shows is Three Million Five Hundred Ninety Seven Thousand Ninety Three (\$3,597,093) Dollars as of December 31, 2011, with interest still accruing on the principal amount of the Class 5 and Class 6 claims.

Baton Rouge, Louisiana, this 12 day of Jan., 2011.

Spencer Clark
JUDGE, DIVISION D

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 foregoing Motion for Reconsideration of the Receiver'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 the Receiver Should Not Be Granted Authority to Pay Interest on All Allowed and Approved Claims, and the Court finding that the relief requested should be permitted and that the payment authorized is in the best interests of AmCare Health Plans of Louisiana, Inc. In Liquidation, and its policyholders, members, subscribers, creditors, providers, and the public,

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Reconsideration of the Receiver'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 the Receiver Should Not Be Granted Authority to Pay Interest on All Allowed and Approved Claims be and same hereby is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Receiver's authority to pay interest accrued on the allowed and approved claims, including the Class 2, Class 5 and Class 6 claims, from the date of liquidation of November 29, 2002 through the date of payment of the principal amount, which as of December 31, 2011 is calculated at Three Million Five Hundred Ninety Seven Thousand Ninety Three (\$3,597,093) Dollars, as well as the

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court recognizes the authority of the Receiver to take such actions and to expend such funds as may be necessary to implement this judgment.

Baton Rouge, Louisiana, this ____ day of _____, 2011.

JUDGE, DIVISION D

NINETEENTH JUDICIAL DISTRICT COURT
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STATE OF LOUISIANA

NUMBER: 499-737

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

VERSUS

AMCARE HEALTH PLANS OF LOUISIANA, INC.

FILED: _____

DEPUTY CLERK _____

JUDGMENT

Considering the foregoing Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds, and the Court finding that the relief requested should be permitted and that the partial distribution is in the best interests of AmCare-LA, and its policyholders, members, subscribers, creditors and the public,

IT IS ORDERED, ADJUDGED AND DECREED that the Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds filed on behalf of AmCare Health Plans of Louisiana, Inc. In Liquidation be and same hereby is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Receiver's authority to pay interest owed on all allowed Class 2, Class 5 and Class 6 claims from the date of liquidation of November 29, 2002 through the date of payment of the principal amount of the Class 2, Class 5 and Class 6 claims at the rate allowed as judicial interest be and same hereby is confirmed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court recognizes the authority of the Receiver to make a partial distribution to satisfy the interest owed on all allowed Class 2, Class 5 and Class 6 claims from the date of liquidation of November 29, 2002 through the date of payment of the principal amount of the Class 2, Class 5 and Class 6 claims at the rate allowed as judicial interest, and to take such actions and to expend such funds as may be necessary, in the sole discretion of the Receiver, to implement the third partial distribution plan.

Baton Rouge, Louisiana, this 3 day of Jan, 2012

James Clark
JUDGE, DIVISION D

19TH JUDICIAL DISTRICT
EAST BATON ROUGE PARISH, LA.
FILED
2011 DEC 22 PM 1:12
DEPUTY CLERK & REGISTER FOR
DOUG WELBORN
CLERK OF COURT E.B.A. PARISH

Denied
Shirley
W. H. D.