

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**

RECOMMENDATION AS TO PAYMENT OF INTEREST ON AmCare-LA CLAIMS

AmCare-LA is pleased to recommend that judicial interest be paid on the principal amounts of all allowed and approved claims of AmCare-LA from the date of liquidation on November 12, 2002. The principal amounts of the allowed and approved claims follows:

Class Two Principal Amount (policyholders and providers) (paid)	\$6,036,734.34
Class Five Principal Amount (general creditors) (not yet paid)	\$ 339,551.75
Class Six Principal Amount (late filed) (not yet paid)	\$ 181,094.90
NOD Claims Principal Amount (not yet paid) ¹	\$2,188,191.12

AmCare-LA has successfully litigated and recovered funds sufficient to pay all costs of the administration of the AmCare-LA estate, all federal and state taxes due, earlier payment of the principal amount of the Class Two claims of \$6,036,734.34, and funds sufficient to pay the principal amounts of the Class Five, Class Six, and NOD claims. As previously reported to the Court, AmCare-LA has recovered sufficient funds and currently has on hands additional funds which are sufficient to pay the principal amounts of the Class Five, Class Six, and NOD Claims and judicial interest from the date of liquidation on November 12, 2002 for the Class Two, Class Five, and Class Six claims.

¹ With the Court's approval Notices of Determination were sent to those AmCare-LA claimants whose claims appeared on the books and records of AmCare-LA, were previously adjudicated by AmCare-LA, and recommended for and previously approved and allowed by the Court, and which form part of the basis for the award of funds in the Health Net, Inc. litigation. The NOD AmCare-LA claimants had not previously filed proofs of claim with AmCare-LA but were mailed notice of the amount determined by AmCare-LA to be owed. Those who responded accepting the AmCare-LA determination of their claims are included in the amount recommended for payment to the NOD Claimants in the amount of \$2,188,191.12.

The AmCare-LA recovery of funds presents a unique opportunity to both the Commissioner of Insurance and the Court to make the AmCare-LA whole with the payment of interest for the period they have waited for payment of their legitimate claims, from 2002 to present.

REASONS FOR RECOMMENDATION

Given the extensive history of this case through the trial court, the First Circuit Court of Appeal and the Louisiana Supreme Court, AmCare-LA is unable to reasonably and prudently make any recommendation to the Court other than the payment of judicial interest on all allowed and approved AmCare-LA claims from the date of liquidation until payment of the principal amounts of the claims.

A. Judicial Award of Interest on the Allowed and Approved AmCare-LA Claims

On November 4, 2005, the trial court entered judgment in favor of AmCare-LA. The Court specifically ruled that AmCare-LA proved that AmCare-LA creditors sustained compensatory damages of \$9,511,624.19, which is the amount of all the then allowed and approved AmCare-LA claims, including the Class 2, 5, and 6 claims, as well as the adjudicated and approved anticipated claims for which Notices of Determination were recently sent, together with *judicial interest from the date of judicial demand*. The Court's judgment reduced the compensatory award by 30% to \$6,658,136.93. However, as to contractual damages based on the parental guarantee, the Court awarded an additional \$9,511,624.19, *plus judicial interest from the date of judicial demand*, not to be reduced by comparative fault. The Court's judgment clearly contemplated that AmCare-LA would collect judicial interest on the allowed and approved claims of the AmCare-LA claimants.

Following the decision of the First Circuit Court of Appeal, the matter was heard and decided by the Louisiana Supreme Court, which rendered its opinion on April 1, 2011. The Supreme Court noted that the trial court awarded AmCare-LA compensatory damages of \$9,511,624.19 reduced by 30% to \$6,658,136.93, and an additional and separate amount of \$9,511,624.19 on the contractual claim under the parental guarantee, all plus judicial interest from the date of judicial demand. The Supreme Court ruled that the contractual damage claim would be reduced to \$2 million.

The Supreme Court specifically rejected Health Net's claim that the trial court's award of \$9.5 million included claims for which proofs of claim had not yet been filed (the "NOD Claims"), finding that even though proofs of claim had not been filed, the claims were validly on the books of AmCare-LA and would be addressed in the claims process, as is now the case. The Supreme Court reinstated the trial court's rulings in favor of AmCare-LA for the AmCare-LA claimants to be paid the amount of the claims with interest from the date of judicial demand.

Given this history and the prior rulings of the trial court and the Louisiana Supreme Court affirming judgment in favor of AmCare-LA with interest from the date of judicial demand, it is clear that AmCare-LA is in fact compelled to recommend that judicial interest be paid on the principal amounts of the allowed and approved claims of the AmCare-LA claimants. AmCare-LA follows this Court's guidance as to the judicial interest due to AmCare-LA claimants on the principal amounts of their claims.

B. This Court's Ruling and the Ruling of The Louisiana Supreme Court Awarding Judicial Interest on the AmCare-LA Claims is Law of the Case

In 2005 this Court ruled that AmCare-LA was entitled to collect the full amount due for the allowed and approved claims of the AmCare-LA claimants plus judicial interest, which ruling was reinstated and affirmed by the Louisiana Supreme Court in 2011. That decision is now law of the case as to the payment of the allowed and approved claims of the AmCare-LA claimants.

The "law of the case" doctrine generally refers to the binding effect of trial court and/or appellate court rulings during later stages of the same case. *Arceneaux v. Amstar Corp.*, 2010-2329 (La. 7/1/11) 66 So. 3d 438. The Louisiana Supreme Court has cited the policy reasons behind this doctrine as being "(1) avoiding relitigation of the same issue; (2) promoting consistency of result in the same action; and (3) promoting efficiency and fairness to the parties by affording a single opportunity for the argument and decision of the matter at issue." *Id.*; *Day v. Campbell-Grosjean Roofing & Sheet Metal Corporation*, 260 La. 325, 256 So.2d 105, 107 (1971).

This Court's prior ruling awarding both the principal amount of the claims of the AmCare-LA claimants plus judicial interest was clearly without error, as the Louisiana Supreme Court ruled. There is nothing to suggest that there is any new evidence tending to show that this Court's prior decision as to judicial interest was patently erroneous or that payment of judicial

interest on the claims which formed the basis of this Court's 2005 ruling and the Louisiana Supreme Court's 2011 affirmation of that ruling will produce an unjust result. *State v. Gillet*, 99-2474 (La. App.4th Cir.5/10/00), 763 So.2d 725.

This Court should not ignore and/or reconsider its prior findings in determining that judicial interest is owed on the claims of the AmCare-LA claimants. *Spine Diagnostics Center of Baton Rouge, Inc. v. Louisiana State Board of Nursing*, 2008-813 (La. App. 1st Cir. 12/23/08) 4 So. 2d 854, writ denied, 09-144 (La. 4/13/09) 5 So. 3d 163; *Dixie Savings and Loan Association*, 99-154 (La. App. 5th Cir. 7/27/99) 751 So. 2d 911, writ denied, (La. 12/10/99).

Not one AmCare-LA claimant, or any other person or entity, has filed any opposition to challenge the AmCare-LA recommendation as to payment of judicial interest on the allowed and approved claims.

D. Louisiana Law Requires the Payment of Judicial Interest On Insurance Contracts

Louisiana Civil Code article 2000 provides for damages for delay in performance in payments of money at an agreed upon rate, or, where there is no rate specified, at the rate of legal interest fixed by La. R.S. 9:3500. See also, *Willwoods Cemetery v. Essex Insurance Company*, 09-651 (La. App. 5th Cir. 4/13/10) 33 So. 3d 1102, writ denied, 2010-1338 (La. 10/15/2010), 45 So. 3d 1111; *Alerion Bank v. LIGA*, 98-2897 (La. App. 1st Cir. 2/18/2000) 753 So. 2d 369.² The AmCare-LA claimants sought recovery based on a contract of insurance, a health maintenance

² The law is clear that legal interest is recoverable on debts arising ex contractu from the time they become due, unless otherwise stipulated. Louisiana Civil Code article 2000; *Rivnor Properties v. Herbert O'Donnell, Inc.*, 633 So.2d 735, 749 (La. App. 5th Cir. 1/12/94). In *Alexander v. Burroughs Corp.*, 359 So.2d 607, 613 (La.1978), the Supreme Court stated:

One of the incidents of the obligations of contracts is that the one who violates those obligations is liable for damages "which the other party has sustained by his default." La. C.C. art. 1930 [now C.C. art. 1994]. Damages are due "from the moment" of an active violation of a contract (La. C.C. art. 1932 [now C.C. art. 2015]) and from "the time that the debtor has been put in default" when the breach has been passive. La. C.C. art. 1933 [now C.C. art. 1989]. A debtor may be put in default "either by the commencement of a suit, by a demand in writing" or in other ways. La. C.C. art. 1911 [now C.C. art. 1991]. The damages due for delay in the performance of an obligation to pay money are called interest. La. C.C. art. 1935 [now C.C. art. 2000].

See also, *Southern Marine Sales, Inc. v. Matherne*, 05-181 (La. App. 5th Cir. 11/29/05) 915 So. 2d 1042, writ denied, 06-177 (La. 4/24/06), 926 So. 2d 545; *Lamson Petroleum, Corp. v. Hallwood Petroleum, Inc.*, 01-1201 (La. App. 3d Cir. 3/20/02) 814 So. 2d 596, affirmed en banc, (La. App. 3d Cir.01-1201, 38 (La. App. 3d Cir. 12/31/02) 843 So. 2d 424 (interest runs from the date the monies became due).

organization certificate of coverage. In the absence of any showing that the insurance contracts provided a rate of interest, payment of interest at the legal interest rate is mandated.

To be “made whole”, a claimant must receive the value of the money owed to them, as well as the cost of the loss of that money over time, which is interest. Whether in tort or contract, the AmCare-LA claimant’s “time value of money” (interest) is due as an essential part of their claims.³ Louisiana Civil Code art.2000 recognizes that legal interest, the “time value of money,” is part of the damages for the delay in payment of sums justly due. *Newman Marchive Partnership, Inc. v. City of Shreveport*, 42,073 (La. App. 2d Cir. 8/22/07) 962 So. 2d 1075, writ denied, 2006-1040 (La. 6/23/06) 930 So. 2d 983. See also, *Orillion v. Crawford*, 2005-559 (La. App. 1st Cir. 5/7/07) 964 So. 2d 950 and 26 So. 3d 149 (interest serves as compensation to an injured party for the lost time value of money, citing Louisiana Civil Code art. 2000; *Corbello v. Iowa Production*, 2002-0826 (La.2/25/03), 850 So.2d 686. AmCare-LA claimants can be made whole with the payment of legal interest on their allowed and approved claims.

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 __, interpreting La. R.S. 22:748 (now La. R.S. 22:2027), states that the Louisiana Insurance Code specifically contemplates the payment of interest on allowed claims at the “legal rate”.

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).

La. R.S. 22: 2013 provides that the rights of the estate creditors, policyholders, and members are fixed as of the date of entry of an order of liquidation. Thus, AmCare-LA logically recommends that interest be paid on the allowed and approved AmCare-LA claims at the legal interest rate from the date payment was due on th insurance contract claims, which is the liquidation date of November 12, 2002. AmCare-LA claimants have waited since then to receive the payments due to them since 2002.

³ In cases ex delicto and ex contractu, interest is awarded to make an injured party whole by compensating that party for the time-value of money to which that party was entitled. *McLaughlin v. Hill City Oil Company/Jubilee Exxon*, 97-577 (La. App. 3d Cir. 10/8/97), 702 So.2d 786, writ denied, 97-2797 (La.2/13/98), 706 So.2d 994.

The payment of judicial interest on the allowed and approved claims comports with the liquidator's obligation to act in the best interests of the AmCare claimants as required by La. R.S. 22:2005 (B), and La. R.S. 2011

D. The Louisiana Insurance Code Requires the Payment of Interest Prior to Payment of Principal on Lower Priority Claims

La. R.S. 22:2027 (formerly La. R.S. 22:748) requires that all allowed claims of higher priority claims be paid in full *with interest* prior to the payment of the principal amounts of lower priority claims, 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.**

See also, 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 __, where the Court held that the Louisiana Insurance Code specifically contemplates the payment of interest on allowed claims.⁴

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).

No payments of principal can be made to the lower priority AmCare-LA claimants until such time as interest is paid on each higher priority claim. And in the *Brown* case, the Court noted that the rate to be paid to the claimants was to be "legal interest." *Id.*, p. 8. Thus the precedent for the payment of interest at the legal rate where funds are available has been previously addressed and permitted.

D. There Is a National Trend To Award Judicial Interest in Insurance Liquidation Cases

A brief review of the receivership provisions and case law for liquidation of insolvent insurance companies shows that there is a clear trend toward the award of judicial interest on allowed claims:

⁴ The First Circuit in the *Associated Insurance Consultants* case also recognized that former La. R.S. 22: 755 (G) - now La. R.S. 22:2034 (G) provides a procedure to be followed in the event of a surplus of funds after the payment in full of all allowed claims. *Id.*

1) States Where Interest Is Not Specifically Allowed by State Statute But Where the Courts Approve Payment of Interest

Two states, Missouri and Illinois, have statutory provisions remarkably similar to Louisiana's statutes on priority and payment of claims except for the absence of one phrase ("with interest"). A copy of the relevant provisions of both states are attached - Missouri R.S. 351.1186⁵ and 215 ILCS (Ch. 73, par. 817) 205. The Illinois statute, Section 208 - Time to file claims, appears to track La. R.S. 22:2027 - Time to file claims, except that Louisiana prohibits payment to lower priority classes until the claims of higher priority classes have been paid in full "with interest," while the Illinois statute does not require the payment of interest prior to payment of lower priority classes.

In the Illinois case of *In Re Liquidation of Pine Top Insurance Co.*, 1-00-2740 (Ill App. 1st Dis. (5/10/01) 749 N. E. 2d 2011, the court permitted the payment of interest on allowed claims at the "legal rate" of 9% over the objection of the receiver. The Court relied on a 1900 case in which creditors in Class 6 were paid the principal and interest on their allowed claims to the detriment of the Class 7 creditors. The court stated that "the claim embraces the interest on it as well as the principal" as "statutory interest is a mere incident to the principal thing, attaching to it, and not separate from it..."

The Louisiana statute, by contrast with both Illinois and Missouri, provides:

- 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, proof of which have been filed before said date, have been paid in full **with interest**.
La. R..S. 22:2037.

But even absent the express statutory language permitting the payment of interest on allowed claims, the Missouri Supreme Court ruled that statutory language which permits the liquidator to "compound, compromise or in any other manner negotiate" the amount of claims, permits the Liquidator to "set the terms by which properly submitted claims will be paid", which authorizes the receiver to request and the Court to approve payment of interest on those claims. Missouri R.S. 375.1220. The comparable Louisiana statute, La. R.S. 22:2034(E) permits the liquidator to declare a

⁵ The Missouri priority statute, Missouri R. S. 351.1186 as to the distribution of assets provides, in pertinent part:

- ... 4. **After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed under an approved liquidation plan.**

dividend out of the funds and specify what claims, if any, are entitled to priority of payment and “direct the manner in which dividends shall be paid.”

In the case of *Wenzel v. Holland-America Insurance Company Trust*, SC81862 (S. Ct. MO 3/21/00) 13 S. W. 3d. 643 (en banc), the Missouri Supreme Court held that the language in the Missouri liquidation statute which permitted the liquidator to fix the amount of claims was sufficient to support the receiver’s request to pay interest on the alleged claims, citing Missouri R.S. 375:1220. The court found that this interpretation of the statutory language was in keeping with the “legislative intent that the receiver’s general duty is to review and settle claims in a fair manner on behalf of the insolvent insurer.”

2) States Where Interest Is Permitted on Allowed Claims But the Rate of Interest Is Not Specified

Five states were located which, like Louisiana, now require the payment of interest on allowed claims, but do not specify the rate of interest to be used:

- Florida - Fla. Stat. Ch. 631.271 - priority of claims⁶
- Utah - Utah Code 31A-27a-701 - prior of distribution.⁷
- Texas - TX Ins. Sec. 443.301 - prior of distribution⁸
- Oklahoma - Okla Stat. 36-1927.1 - order of priority of distribution of claims⁹
- Connecticut - Conn. Gen. Stat. 38a-944 - priority of distribution.¹⁰

Florida, Connecticut, and Texas permit payment of interest according to the plan submitted by the Receiver. See below for further discussion of payment of interest in Texas. Oklahoma and Connecticut create a class for payment of interest but no rate is specified.

3) States Where Interest Is Permitted on Allowed Claims at the Legal Rate

Six of the state statutes located currently require by statute the payment of interest on allowed claims at the legal rate of interest where sufficient funds are available:

California California Insurance Code 1033- priority of distribution

⁶ Fla. Stat. Ch. 631.271 creates a Class 10 class for interest on allowed claims according to the terms of a plan to pay interest proposed by the liquidator and approved by the receivership court.

⁷ The Utah statute creates a Class 12 for interest on allowed claims for Classes 1 to 11 according to a plan proposed by the liquidator and approved by the receivership court.

⁸ The Texas statute creates a Class 10 interest class according to a plan proposed by the liquidator and approved by the receivership court.

⁹ The Oklahoma statute creates a Class 9 interest class but does not specify a rate.

¹⁰ Connecticut Gen. Stat. 38a-944 creates a Class 8 for interest on classes 1 to 7 but does not specify a rate.

New Mexico	New Mexico Insurance Code 59A-41-44 -priorities in distribution
Nevada	Nevada R.S. 696B.420 - order of distribution
New Hampshire	New Hampshire Insurance Code 402-C:44 - order of distribution
Wisconsin	Wisconsin Insurance Code 645.68 Order of distribution
Kentucky	Kentucky R.S. 304.33.430 Order of distribution
Ohio	The Ohio priority statute, R.C. Chapter 3903, was amended to prescribe legal interest after the Ohio Supreme Court ruled in 2010 that interest on allowed claims was not permitted under the then priority statute where the statute was silent as to the payment of interest. See <i>Hudson v. Petrosurance, Inc.</i> , 20081030 (Ohio 8/25/09) 919 N. E. 2d 214, <i>affirmed</i> , 2009-1816 (Ohio 9/29/10) 936 N.E. 2d 48.1 See Ohio Insurance Code 3903.42. Priority of Distribution, attached.

Each of these statutes create a priority “interest” class to be paid at the state’s “legal rate” of interest where funds are available.¹¹ The growing trend appears to be that in insurance receivership matters, legal interest on allowed and approved claims is the norm where funds are available for payment of claims.

4) States Where the Payment of Interest Is Expressly Prohibited

Two states, New York and Delaware, had an express prohibition against payment of interest on allowed claims:

New York	N.Y. SC Law 7434- Distribution of assets ¹²
Delaware	Delaware Code Title 18:5918 - Priority of certain claims ¹³

¹¹ See for example, Ohio Insurance Code 3903.42 Priority of distribution of claims:

The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

...

Class 9. Interest at the legal rate compounded annually on all claims in the classes prescribed in divisions (A) to (H) of this section, except for claims of the federal government, from the date of the order for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the interest or dividend is declared, according to the terms of a plan proposed by the liquidator and approved by the court supervising the liquidation. The liquidator, with the approval of the court, may make reasonable approximate computations of interest to be paid under this division.

¹² New York SC Law 7434 provides that no creditor is entitled to interest on any dividend by reason of delay in payment of such dividend. But see *In Re Liquidation of Union Indemnity Insurance Company of New York*, 1999-2589 (S. Ct. - App. 1st Dept 3/25/99) 687 N.Y. 2d 132, where the Court held that the rule that no interest is paid on receivership claims applies only to distributions of the proceeds of the property by the liquidator where the proceeds are insufficient to pay all creditors in full. The Court permitted the payment of interest at the higher “contractual rate” declining to reduce interest to the lower statutory rate applicable to judgments.

¹³ No interest is permitted on policyholder claims unless valid preliquidation judgments where the law or the insurance contract required payment of interest up to the date of liquidation.

5) Relevant Case Law in Other States

Cases on the subject of payment of interest in insurance company liquidations appears to be very sparse. The two cases below are cases in which interest payments were permitted:

- 1) *Koken v. Fidelity Mutual Life Insurance Co.*, (Pa. Commonwealth 8/29/06) 907 A. 2d 1149) (affirmed lower court ruling that all allowed claims would be paid principal and interest at the legal rate).
- 2) *In re Executive Life Insurance Co.*, B078462 (Cal. App. 2d 2/15/99) 32 Cal. App. 4th 344 (Court accepted the legal rate of 7% interest as the measure of compensation for detention of money as the appropriate measure earned by policyholders who received only interim payments of principal).

E. In the Related AmCare Liquidations in Both Texas and Oklahoma the Receivership Courts Have Approved the Payment of Interest

The AmCare-Texas Receiver filed a Motion to Approve Plan for Interest on Allowed Claims Pursuant to Texas Insurance Code Section 443.301, which creates the Class 10 interest class but does not provide a rate, on November 19, 2012, which plan was approved and ordered implemented on December 12, 2012. Copies of both the motion and the order were previously provided to the Court and are attached. The Receiver proposed to pay 10% simple interest on all the allowed and approved AmCare-TX claims, as this was the rate for judgments when the AmCare-TX Liquidation Order was signed, which the Court approved. The motion noted that the principal amounts of all the priority Classes 1 to 8 had previously been approved and were being paid. The Receiver's motion noted that the Texas Insurance Code did not supply a rate of interest but left the decision to the Receiver. The 10% interest rate was recommended because it is the same rate as paid on legal judgments on the date of AmCare-TX liquidation.¹⁴

NOT SURE ABOUT OKLAHOMA YET

G. AmCare-LA's Recommendation As to Payment of Judicial Interest Is Entitled to Great Deference

The Louisiana Insurance Code's provisions for receivership of insurance companies affords

¹⁴ See also *State of Texas v. Employers Casualty Company, Employers National Insurance Company, and Employers of Texas Lloyds*, case number D-1-GH-92-002133, District Court of Travis County, Texas, 353rd Judicial District, Specialty Deputy Receiver's Application to Approve Plan for Payment of Interest on Allowed Claims, in which the estate recommended and the receivership Court approved the payment of interest on all allowed and approved claims at the Treasury Safekeeping Trust Company interest rate at various dates for each year the company(ies) were in receivership. Copy attached.

the Commissioner to apply to the Courts for such relief “as the nature of the case and the interest fo the insurer’s policyholders, members, stockholders, creditors or the public may require. La. R.S. 22:2005. Upon entry of a liquidation order, the Insurance Commissioner is “vested by operation of law with the title to all property, contracts and rights of action” of the failed insurance company and the creditors rights are fixed as of the date of liquidation. La. R.S. 22:2008, 2010, and 2013 The Commissioner as Liquidator is given the exclusive right and authority to allow claims. La. R.S. 22:2010, 2017, and 2027. The power and authority of the Liquidator with respect to payment of claims, marshaling of assets, and protecting the interests of policyholders is well recognized.¹⁵

Given the Louisiana Insurance Code’s grant of authority to the AmCare-LA Liquidator, the Court must give great deference to the AmCare-LA Liquidator’s interpretation of its position as to payment of judicial interest on the allowed and approved claims of the AmCare-LA creditors.

Oakville Community Action Group v. Louisiana Department of Environmental Quality, 2005-1365, 1366 (La. App. 1st Cir. 5/5/06) 935 So. 2d175; *In the Matter of Recovery I, Inc.*, 93-0441 (La. App. 1st Cir.4/8/94), 635 So.2d 690, *writ denied*, 94-1232 (La.7/1/94), 639 So.2d 1169. The question now becomes whether the proposed action is unreasonable, which is clearly not the case here. *Recovery*, *supra*.

CONCLUSION

AmCare-LA shows that its recommendation for payment of judicial interest on the principal amount of all allowed and approved AmCare-LA claim from the date of liquidation until paid is reasonable and supported by the law and the evidence, as well as the prior rulings on this issue of both the trial court and the Louisiana Supreme Court in the award of damages for outstanding claims with interest at the legal rate. No opposition to the proposal has been filed and the matter has been before the Court since 2011. AmCare-LA’s recommendation is thus limited to following the prior

¹⁵ In Pennsylvania, the Courts have ruled that the Court defers to the authority of the Liquidator in performing statutory duties. *Colonial Assurance Co.*, 885 A. 2d 1078 (Pa. Commonwealth 2006); *Foster v. Monsour Medical Foundation*, 667 A. 2d 18 (Pa. Commonwealth 1995); *Vickodil v. Commonwealth Insurance Dept.*, 559 A 2d. 1010 (1989).

See also, *Commonwealth ex rel. Woodside v. Seaboard Mutual Insurance Co.*, 215 A 2d 673 (Pa. 1966)(the Pennsylvania Supreme Court ruled that liquidation does not halt the accrual of interest and that interest may be paid on claims if and when funds are available in the estate. Where there are sufficient funds available, creditors of the failed insurance company are entitled to interest on their claims to discharge the claims in full); *Foster v. Mutual Fire Insurance Co.*, 614 A. 2d 174 (Pa. 1992)(Insurance Commissioner has the authority as to payment of which accrues after a petition for liquidation has been filed).

dictates of this Court and the Louisiana Supreme Court in merely affirming these prior rulings by recommending that judicial interest be paid on the allowed and approved AmCare-LA claims.

The ultimate goal of every insurance company liquidation is to make the policyholders, members, subscribers, providers, and creditors whole. That goal is accomplished here with the payment of judicial interest on all allowed and approved claims of the AmCare-LA claimants. Until interest is paid on the Class 2 claims, no payment of principal or interest can be made to the Class 5 and Class 6 AmCare-LA claimants under Louisiana law. La. R.S. 22: 2027(B).

Because AmCare-LA was successful in recovering sufficient funds for payment of all allowed and approved claims and there are sufficient funds remaining to cover all past and future administrative expenses, and pay judicial interest to the AmCare-LA claimants who have now waited over 10 years to be made whole, the goal of the AmCare-LA liquidation is within reach and can be achieved with the recommended action of making payments of judicial interest from the date of liquidation on November 12, 2002. AmCare-LA is pleased to be in a position to recommend to the Court payment of:

- 1) judicial interest from the date of liquidation on November 12, 2002 be paid on the principal amount of the Class Two claims of the AmCare-LA policyholders, members, subscribers, and providers who have already been paid the principal amount of their claims in the amount of \$6,036,734.34;
- 2) the principal amount of the Class Five claims of general creditors in the amount of \$339,551.75, plus judicial interest from the date of liquidation on November 12, 2002;
- 3) the principal amount of the Class Six claims of the late filed claims in the amount of \$181,094.90, plus judicial interest from the date of liquidation on November 12, 2002; and
- 4) the principal amount of the NOD¹⁶ claims of the AmCare-LA claimants who failed to file a proof of claim, whose claims were included in the allowed and approved claims, and in the judgment of the trial court and the Louisiana Supreme Court in the Health Net, Inc. suit, and who accepted and returned the Notices of Determination sent by AmCare-LA in the amount of \$2,188,191.12.

¹⁶ With the Court's approval Notices of Determination were sent to those AmCare-LA claimants whose claims appeared on the books and records of AmCare-LA, were previously adjudicated by AmCare-LA, and recommended for and previously approved and allowed by the Court, and which form part of the basis for the award of funds in the Health Net, Inc. litigation. The AmCare-LA NOD claimants had not previously filed proofs of claim with AmCare-LA but were mailed notice of the amount determined by AmCare-LA to be owed. Those who responded accepting the AmCare-LA determination of their claims are included in the amount recommended for payment to the NOD Claimants in the amount of \$2,188,191.12.

Respectfully submitted,

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