

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**

**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**

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 shows that, since this Court's per curiam of March 30, 2012 suspending the March 20 minute entry in this matter, no written judgment has been signed by the Court and/or entered into the record as maintained by the East Baton Rouge Parish Clerk of Court as to the AmCare-LA request for authority for payment of judicial interest from the date of liquidation on November, 12, 2002 through the date of payment of the principal amounts of all the allowed and approved claims in Class 2, Class 5 and Class 6.

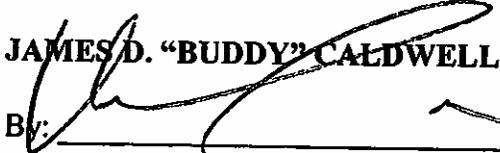
Since this issue has been pending since December 2011, AmCare-LA again requests that the Court set a hearing in this matter to reconsider the previously filed Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds, and/or grant a new trial on said motion, and/or to set a hearing to show cause why AmCare-LA should not be granted authority to pay judicial interest on all allowed and approved claims from the date of liquidation on November 12, 2002 until payment of the principal amount of all the allowed and approved claims in Class 2, Class 5 and Class 6, all as more fully explained in the memorandum in support, which is attached hereto and incorporated

herein.

WHEREFORE, AmCare-LA prays that a hearing be set in this matter and that after due consideration that AmCare-LA be granted authority to pay judicial interest on all allowed and approved claims, previously approved by this Court, from the date of liquidation on November 12, 2002, until payment of the principal amounts on all Class 2, Class 5 and Class 6 claims, and for all other appropriate relief.

Respectfully submitted,

**JAMES D. "BUDDY" CALDWELL**

By: 

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

NINETEENTH JUDICIAL DISTRICT COURT  
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FOR THE STATE OF LOUISIANA

VERSUS

AMCARE HEALTH PLANS OF LOUISIANA, INC.

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

**MEMORANDUM IN SUPPORT OF 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**

MAY IT PLEASE THE COURT:

AmCare-LA requests that the Court reconsider its prior ruling(s) and minute entries and/or grant AmCare-LA a new trial on the issues raised and grant the AmCare-LA's request for authority to pay judicial interest from the date of liquidation, November 12, 2002, on all the allowed and approved claims, which includes Class 2, Class 5, and Class 6, which is estimated to be 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, for the following reasons:

**A. AmCARE-LA MAINTAINS THAT JUDICIAL INTEREST SHOULD BE PAID FROM THE DATE OF LIQUIDATION ON NOVEMBER 12, 2002**

It is the position of AmCare-LA that judicial interest is owed to the AmCare-LA creditors with approved and allowed claims from the date of liquidation on November 12, 2002 through the date of payment of the principal amount of the claims

To date, there has been no order entered by the Court as to the payment of interest on the allowed and approved claims of Class 2, Class 5 and Class 6. Because of the Court's prompt action in permitting the payment of the Class 2 claims in 2011, interest does not continue to accrue on the majority of the AmCare-LA allowed and approved claims. However, the payment of interest on the Class 2 claims is required by statute prior to the payment of any amounts on the

Class 5 (general creditors) and Class 6 (late filed ) claims. While this Court entered an order on January 12, 2012, permitting the payment of the principal amounts of the Class 5 and Class 6 claims, no checks have been cut because of the unresolved matter of payment of interest on the Class 2 claims.<sup>1</sup>

**1. The Insurance Code Contemplates the Payment of Interest**

AmCare-LA requests that this Court grant AmCare-LA the authority to pay the judicial interest owed on all the claims previously allowed and approved by the Trial Court from the date of liquidation, November 12, 2002, 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 is the case with AmCare-LA, 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. 1<sup>st</sup> Cir. 4/9/08) \_\_ So. 2d \_\_, where the Court held that the Louisiana Insurance Code specifically contemplates the payment of interest

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<sup>1</sup> 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 AmCare-LA 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 claims of AmCare-LA employees were previously approved by the Court as \$-0-. Class 5 includes claims under AmCare-LA policies for unearned premiums or other premium refunds and the claims of general creditors in the filed amount of \$3,170,012.21. The Class 5 claims of the AmCare-LA general creditors and the Class 6 claims of late filed claims was authorized by judgment of the trial court but payment is not permitted by statute until interest is paid on the Class 2 claims. La. R.S. 22: 2027.

on allowed claims.<sup>2</sup>

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. 22:2027 specifically contemplates the payment of interest on the allowed and approved claims where resources permit, as is the case here.

**2. Both This Court's Judgment and the Judgment of the Louisiana Supreme Court Provide for the Payment of Judicial Interest to the AmCare Claimants**

On November 4, 2005, this Court ruled that AmCare-LA and its creditors sustained losses of \$9,511,624.19:

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff sustained its burden of proving by a preponderance of the evidence that the Louisiana HMO or its creditors sustained losses totaling \$9,511,624.19; defendant Health Net, Inc. is contractually liable unto plaintiff for this full amount which shall not be reduced through any allocation of fault to any other entity; and accordingly, judgment is hereby rendered in favor of plaintiff, the Louisiana HMO, in the amount of \$9,511,624.19, plus judicial interest according to Louisiana law from the date of judicial demand in this action until paid. ...

That amount was reduced thirty (30%) due to the fault of others to \$6,658,136.93. A copy of this Court's judgment is attached as **Exhibit A**.

On April 1, 2011, the Louisiana Supreme Court upheld this Court's ruling of November 4, 2005, in *J. Robert Wooley as Commissioner of Insurance for the State of Louisiana v. Thomas S. Lucksinger, et al.*, 2009-584, 485, 586 (La. 4/1/11) 61 So. 3d 507. The Louisiana Supreme Court decision on April 1, 2011 p. 42, stated:

After considering the allocation of fault, the district court awarded the Louisiana HMO compensatory damages in the amount of \$6,658,136.93, plus judicial interest from the date of judicial demand until paid. Emphasis added.

*Wooley v. Lucksinger*, 2009-584, 485, 586 (La. 4/1/11) 61 So. 3d 507. In its DECREE, the Supreme Court stated:

2. The court of appeal's ruling on liability for the tort claims of the Louisiana and Oklahoma Receivers is reversed and the district court's judgment on the liability for the tort claims of the Louisiana and Oklahoma Receivers is reinstated; ... *Id.*

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<sup>2</sup> 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.*

The "compensatory damage" award was based on the allowed and approved claims previously approved by this Court in 2005. See also, the Louisiana Supreme Court recognition in its opinion of April 1, 2011 of the trial court's award of \$9,511,624.10 without reduction on the AmCare-LA parental guaranty (contract claim), though that award was reduced to \$2 million by the Supreme Court opinion, page 43:

The district court rendered judgment in favor of the Louisiana HMO, and against Health Net, in that amount, plus judicial interest from the date of judicial demand until paid on the contract claim. Emphasis added. *Id.*

Both this Court and the Louisiana Supreme Court awarded AmCare-LA damages based on the allowed and approved claims of the AmCare-LA policyholders, members, subscribers, and creditors from the date of judicial demand. That award of interest should be passed on to the AmCare creditors with allowed and approved claims.

**3. Louisiana Law Requires the Payment of Judicial Interest On Contract Claims, Even Where the Contract is a Contract of Insurance**

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. 5<sup>th</sup> 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. 1<sup>st</sup> Cir. 2/18/2000) 753 So. 2d 369.<sup>3</sup> The AmCare-LA claimants sought recovery based on a contract of insurance, a health maintenance organization

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<sup>3</sup> 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. 5<sup>th</sup> 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).

certificate of coverage.

The decision of the First Circuit Court of Appeal in the case of *Brown v. Associated Insurance Consultants*, 2007-1577, 1578, 1579 (La. App. 1<sup>st</sup> 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.

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).

Where interest is contemplated, but not stated, AmCare-LA suggests that the interest due is legal interest from the date payment was due, the liquidation date of November 12, 2002.

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 recommends to the Court that judicial interest be paid on all the allowed and approved claims from that date, November 12, 2002.

Also instructive is La. R.S. 22:1821, which requires payment of health insurance claims within thirty (30) days from the date upon which written notice and proof of claim are furnished to the insurer, subject to a penalty double the amount of the claim. See also, La. R.S. 22:1821 (D)(e), which makes the provision applicable to health maintenance organizations (HMOs).<sup>4</sup> AmCare-LA did not pay the health insurance claims of its policyholders, members and subscribers (the Class 2 claims) within 30 days of the dates of service.

AmCare-LA respectfully represents to the Court that the contemplated ruling, authorizing the payment of judicial interest from April 1, 2011 on the allowed and approved claims does not adequately serve the interests of the AmCare claimants as required by La. R.S. 22:2005 (B), and La. R.S. 2011.<sup>5</sup>

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<sup>4</sup> See also, La. R.S. 22:1832, which requires the payment of an otherwise valid electronic health care claims within forty five (45) days of receipt and payment of an otherwise valid non-electronic claim within sixty (60) days of receipt. Late payments to health care providers are subject to a lat payment adjustment of twelve (12%) per cent per annum on the amount due.

<sup>5</sup> AmCare-LA submits that the interests on the allowed and approved claims accrued from November 12, 2002 as of December 31, 2011 is Three Million Five Hundred Ninety Seven Thousand Ninety Three (\$3,597,093) Dollars, as follows:

**4. The Amount of Judicial Interest Due on the Allowed and Approved Claims is Within AmCare-LA's Ability to Pay This Amount**

AmCare-LA submits that the interests on the allowed and approved claims accrued from November 12, 2002 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 since November 12, 2002 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, which have not yet been paid pending resolution of the payment of judicial interest on the Class 2 claims.

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- 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 since November 12, 2002 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, which have not yet been paid pending resolution of the payment of judicial interest on the Class 2 claims.

As of December 31, 2011, and continuing through the present, AmCare-LA has assets available to pay the recommended judicial interest on the allowed and approved claims. AmCare-LA records show that cash on hand at December 31, 2011 was \$10,900 and that the payment of judicial interest from the date of liquidation estimated to be \$3.6 million, would leave a potential surplus of \$1.76 million after payment of all claims, interest, taxes, and administrative costs. A copy of the document introduced into the record of these proceedings by Michael Adams as to these figures is attached as **Exhibit A-1**.

Given the anticipated surplus of funds (subject to income tax credit for the AmCare-LA net operating loss carryforward credit) after payment of all expenses and judicial interest on all claims, AmCare-LA submits that it is in the best interest of the AmCare-LA its policyholders, members, subscribers, creditors, providers, and the public to pay judicial interest on all allowed and approved claims from the date of liquidation on November 12, 2002 through the date of payment of the principal amount of the claims.

**5. As an Added Benefit, the Payment of Judicial Interest Will Be Offset as a Tax Deduction**

The AmCare-LA recommendation to pay judicial interest on all allowed and approved claims from November 12, 2002 until paid is an expense that will be offset by a corresponding tax deduction. At the hearing on this matter conducted on February 6, 2012, AmCare-LA presented testimony from the AmCare-LA Deputy Receiver that demonstrated tax advice from two accounting professionals that any interest paid on the allowed and approved claims would be offset by a corresponding income tax deduction.<sup>6</sup> See **Exhibit E**.

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<sup>6</sup> The testimony from the February 6, 2012 hearing on this matter demonstrates the AmCare-LA position that any payment of interest is off-set by an income tax deduction:

- Q. All right, and would you mind telling the Court what you have come to understand would be the income tax implications of paying the interest on the allowed claims.
- A. Your Honor, I had a conversation with our CPA, Mr. Tim McKey and also with Greg Brodley (Bordlee - Sic), who is the CPA in the RRG office, and basically, I was told by both gentlemen that if interest were properly accrued and deducted, that would actually reduce our tax liability. Where as on the other hand, if interest was not paid, then naturally the twenty-eight percent would probably go up to thirty-two or even thirty-four percent because those - - there would not be the taxable deductions that the accrued interest would provide for.... Transcript, **Exhibit G**, pp. 11-12.
- A. ... Although the interest figure is a big number, there is a bigger picture - - there is something bigger at stake, which is the IRS. It creates income in the estate if we don't. We think it's in the best interest of these people who had to wait ten years to get their

At the hearing held on February 6, 2012 in the AmCare-LA matter, Michael Adams stated:

**We have to pay all the allowed claims in full with interest. Although the interest figure is a big number, there is a bigger picture - - there is something bigger at stake, which is the IRS. It creates income in the estate if we don't. We think it's in the best interest of these people who had to wait ten years to get their money to give them interest. It creates income for the estate if we don't pay the interest, and we have an IRS problem. We'd rather give the money to the claimants as opposed to pay the income tax on those funds later on. And so we encourage - - and I think the testimony of Mr. Harrison, whose been working on this daily, that it is, in our estimation, the best thing to do is to follow the reading of the statute which is we've already gotten Two, Five and Six approved. To get Six paid, we have to go back and pay interest to all the - - and that calculation is Three Million Dollars. And we have enough money in the coffers to do that, Judge. (Emphasis added). Exhibit E.**

There is ample testimony to show that any interest paid on the approved and allowed claims will be offset by an equal income tax deduction, lowering the amount of tax owed by AmCare-LA.

**6. There Was No Award of Punitive Damages to AmCare-LA**

In the transcript of this Court's oral ruling on March 12, 2012, **Exhibit G**, this Court stated:

The Court: All right. Well, the Court is going to allow interest at the legal rate, but because it has an element of the punitive damages, the Court is going to set that date at the date that the judgement became final by the Supreme Court, August 1, 2011.

Attorney: April 1, 2011.

The Court: April 1, 2011, that's the date that it became final.

In the minute entry of March 12, 2012, **Exhibit H**, this Court stated:

**With the matter regarding interest in the Class Two claims in this matter, the Court allowed interest at the legal rate but because it has an element of the punitive damages, the Court is going to set that date at the date the judgment became final on April 1, 2011. With the matter regarding interest in the Class Five and Six claims in this matter, the Court allowed the interest on those two claims based upon the legal rate and on the the date the judgment became final on April 1, 2011. Judgment to be signed accordingly.**

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money to give them interest. It creates income for the estate if we don't pay the interest, and we have an IRS problem. We'd rather give the money to the claimants as opposed to pay the income tax on those funds later on. And so we encourage - - and it think the testimony of Mr. Harrison, whose been working on this daily, that it is, in our estimation, the best thing to do is to follow our reading of the statute which is we've already gotten two, five and six approved. To get six paid, we have to go back and pay interest to all the - - and that calculation is three million dollars. And we have enough money in the coffers to do that, Judge. ... Transcript, **Exhibit G**, pp. 16-17.

Q. Mr. Harrison, could you explain in more detail your understanding of the tax implications if the three point six million dollars is not paid to the claimants as interest.

A. If it is not paid as interest our federal and state tax liability would be increased. Transcript, **Exhibit G**, p. 18.

AmCare-LA suggests that the funds of AmCare-LA have “no element of punitive damages.” The Louisiana Supreme Court decision goes to great lengths to justify the fact that no award of punitive damages was made to AmCare-LA. See *Wooley v. Lucksinger*, *supra*, pp. 187 to 191.<sup>7</sup> Any funds that AmCare-LA received because of a prior agreement with the other two AmCare estates was not based on punitive damages, but based solely on the entire amount of recovery from all sources, which when pooled lost all relationship to punitive damages.<sup>8</sup> The identity of the funds obtained by the three AmCare estates following the Supreme Court judgment was not preserved as to the punitive, compensatory, or contractual amounts awarded and collected.

## **B. HISTORY OF THE PLEADINGS FILED AND RULINGS OF THIS COURT**

As of the filing of this motion, no formal order or ruling has been entered into the record of these proceedings as to the request of AmCare-LA for authority to pay judicial interest on all allowed and approved claims from the date of liquidation, November 12, 2002, until paid in full. As the record now stands this Court’s ruling on the issue of the payment of judicial interest has been suspended since March 30, 2012. The history of the pleadings filed as to the request for authority to pay judicial interest on all allowed and approved claims of Class 2, Class 5 and Class 6 shows:

1. On or about December 22, 2011, AmCare-LA filed a motion for authority to pay judicial interest from the date of liquidation on November 12, 2002 on all the allowed and approved claims in the AmCare-LA liquidation. See Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds, **Exhibit B**. The motion was denied by the Court on January 3, 2012. See **Exhibit C**.

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<sup>7</sup> The Supreme Court determined:

We find it clear from the district court’s oral reasons that she believed the punitive damages awarded by the jury on the claims of the Texas Receiver were adequate punitive damages for the entirety of Health Net’s actions. While in her November judgments she indicated that her findings warranted the imposition of punitive damages for the Louisiana and Oklahoma Receivers, upon consideration of a separate award and the agreement among the Receivers to share in any recovery, her ruling on the amount for such a separate award of punitive damages was \$0. ...

... We also hold the district court’s judgment denying the Oklahoma and Louisiana Receivers an award of attorneys fees and a separate award of punitive damages was supported by the record.

*Wooley*, *supra*, pp. 190 and 191.

<sup>8</sup> It must be possible to be able to put one’s hands on a specific thing and have the ability to separate it unimpaired from other things with which it may be associated or to which it may be attached. The identity of a thing is lost by uniting or commingling one movable with another movable. See *In re Exclusive Industries Corporation*, 41 B.R. 493 (Bankr. W. D. La.1984), citing *Phillips v. Conley*, 46 So.2d 650 (La. App. 2d Cir. 1950).

2. On or about January 5, 2012, AmCare-LA filed a 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. **Exhibit D.**
3. A hearing was held in the AmCare-LA matter on February 6, 2012. A transcript of the hearing is attached as **Exhibit E.** The matter was held open by the Court for further consideration at a hearing on February 9, 2012 and took the matter under advisement. A copy of the transcript of the February 9, 2012 hearing is attached as **Exhibit F.**
4. Another hearing was held in this matter on March 12, 2012. A copy of the transcript of that hearing is attached as **Exhibit G.** At that time, the Court ruled that the Court would allow interest at the legal rate, but because it has an element of the punitive damages, the Court was going to allow judicial interest from the date the Louisiana Supreme Court ruling in the Health Net suit on April 1, 2011, instead of from the date of liquidation on November 12, 2002. The Court also requested that a judgment be submitted to that effect, which was sent to the Court. A minute entry was made on March 12, 2012 to that same effect, a copy of which is attached as **Exhibit H.**
5. AmCare-LA thereafter filed a writ with the First Circuit Court of Appeal as to the Court's oral ruling.
6. On March 16, 2012, the Court entered a minute entry, a copy of which is attached as **Exhibit I,** which indicated the Court's intent to sign a ruling as to the payment of judicial interest from April 1, 2011. That minute entry further stated:

The Court has further considered additional interim orders with respect to filing of the income tax return, the opening of an additional period to determine whether there are late filed or prescribed claims, the setting aside of some reasonable sum for administrative costs in this proceedings, and the setting aside for distribution of surplus to entities for use to augment healthcare interest. ... The Court maintains the separation of power hereby orders that all sums herein held on behalf of the State be moved to the Registry of this Court. ...
7. On March 20, 2012, the Court again entered a minute entry as to the two applications for writs filed in the AmCare-LA matter, stating that the first application for writs was not filed and was not presented to the Court and that the Court had entered no order moving any sums into the Registry of the Court and any writ application was premature and unwarranted. A copy of the minute entry of March 20, 2012 is attached as **Exhibit J.**
8. On March 23, 2012, the First Circuit issued a ruling as to the writ related to the deposit of AmCare-LA funds into the registry of the Court stating that the writ was not considered and the stay requested was denied, which was entered into the records in the AmCare-LA liquidation on March 23, 2012, a copy of which is attached as **Exhibit K.**
9. On March 30, 2012, the Court entered a per curiam as to the March 12, 2012 minute entry, stating that the Court "hereby suspends its minute entry of March 12, 2012 staying expenditures except those that are absolutely necessary until further orders of this Court," and advising that further orders would be issued within the next several weeks. **Exhibit L.**
10. The record in the AmCare-LA liquidation shows that no action has been taken by the Court since March 30, 2012. See excerpt of the Court's docket sheet, **Exhibit M.**

## CONCLUSION

As no written judgment has been signed by the Court and/or entered into the record as to the AmCare-LA request for authority for payment of judicial interest from the date of liquidation on November, 12, 2002, AmCare-LA again 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 AmCare-LA should not be granted authority to pay judicial interest on all allowed and approved claims from the date of liquidation on November 12, 2002 until paid in full.

AmCare-LA has completed the process of paying the principal amount of all allowed Class 2 claims of policyholders, subscribers, members, beneficiaries, insureds, and providers and interest on the bulk of the approved and allowed claims is no longer accruing. However, interest continues to accrue on the Class 5 and Class 6 claims in the total principal amount of \$521,103.50, for which the Court has previously granted authority for payment in the principal amount, as these claims cannot be paid until the Class 2 claims of the policyholders, providers, members and subscribers are paid in full with interest. La. R.S. 22: 2027.

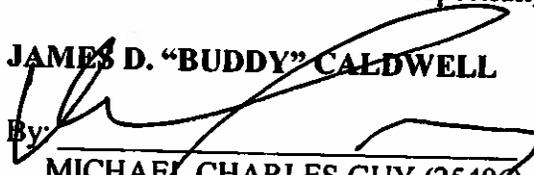
The AmCare-LA requests authority from this Court under the provisions of La. R.S. 22:2027 and 22:2034 (formerly La. R. S. 22:748 and 22:755) to pay the interest owed on all allowed and approved Class 2, Class 5 and Class 6 claims from the date of liquidation of November 29, 2002 through the date of payment of the principal amount of the Class 2, Class 5 and Class 6 claims at the rate allowed as judicial interest.

AmCare-LA 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 the principal amount of the Class 5 and Class 6 claims, as well as to pay judicial interest on the claims of all Class 2, Class 5 and Class 6 claimants.

For all these reasons, AmCare-LA requests that the Court set a hearing in this matter to show cause why this Court should not confirm the authority of AmCare-LA 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. A proposed judgment is attached.

Respectfully submitted,

**JAMES D. "BUDDY" CALDWELL**

By: 

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Liquidator of AmCare Health Plans of Louisiana, Inc. In Liquidation

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 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,

IT IS ORDERED that all interested parties appear and show cause on the \_\_\_ day of \_\_\_\_\_, 2012 at \_\_\_ o'clock a.m. why AmCare-LA 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 as of the date of liquidation on November 12, 2002 until paid in full, which AmCare-LA 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 \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
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

**JUDGMENT**

Considering the foregoing 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, 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 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 be and same hereby is GRANTED.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that AmCare-LA's authority to pay judicial 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 12, 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 authority to pay the interest continuing to accrue on the Class 5 and Class 6 claims through the date of payment of the principal amount of the Class 5 and Class 6 claims, at the rate allowed as judicial interest from the date of liquidation of November 12, 2002 until paid in full, be and same hereby is confirmed.

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

Baton Rouge, Louisiana, this \_\_\_\_ day of \_\_\_\_\_, 2012.

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JUDGE, DIVISION D

## EXHIBITS

- Exhibit A Final Judgment Regarding Louisiana Plaintiff (AmCare-LA) signed November 4, 2005
- Exhibit A-1 Supplement to February 6, 2012 Status Conference filed by Michael R. Adams on February 8, 2012
- Exhibit B Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds filed on December 22, 2011
- Exhibit C January 3, 2012 order denying on the showing made the Third Ex Parte Motion to Confirm Authority for Partial Distribution of Funds
- Exhibit D 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 filed on January 5, 2012
- Exhibit E Transcript of the hearing was held in the AmCare-LA matter on February 6, 2012.
- Exhibit F Transcript of hearing was held in the AmCare-LA matter on February 9 2012.
- Exhibit G Transcript of the hearing was held in the AmCare-LA matter on March 12, 2012.
- Exhibit H Minute entry of March 12, 2012
- Exhibit I Minute entry of March 16, 2012
- Exhibit J Minute entry of March 20, 2012
- Exhibit K First Circuit ruling of March 23, 2012 as to the writ related to the deposit of AmCare-LA funds into the registry of the Court, docket number 2012-0448
- Exhibit L Minute entry of March 30, 2012
- Exhibit M Docket sheet for the AmCare-LA liquidation from December 2011 to May 23, 2012