

Cause No. BV204523

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

AMCARE HEALTH PLANS
OF TEXAS, INC. and
AMCARE MANAGEMENT, INC.

200th JUDICIAL DISTRICT

ORDER OF REFERENCE TO MASTER

I. FINDINGS

This case is a delinquency proceeding brought against an insurance company pursuant to TEX. INS. CODE ANN. art. 21.28. Insurance receiverships are inherently exceptional cases requiring expert review by the Receivership Court. Article 21.28 imposes a duty on the Receivership Court to direct and approve numerous complex actions during the course of the delinquency proceeding. Therefore, in order to provide the requisite judicial supervision of this proceeding, the Court finds that it is necessary to appoint a master herein under Rule 171 of the Texas Rules of Civil Procedure. The Court further finds that both the State of Texas and the Receiver for the Defendant insurer have consented to the appointment of a master, and that the Receiver has consented to the payment of the master's reasonable fees and expenses from the assets of the receivership estate.

II. APPOINTMENT

Tom Collins, State Bar No. 04619800, 708 Rio Grande, Suite 200, Austin, Texas 78701, (512) 474-2744, is hereby appointed master. He is not an attorney for any party. He is not related to any party. He is qualified by education and experience to serve as a master.

III. POWERS

The master shall make recommendations to the Court regarding all matters presented to the Court in the receivership proceeding, except as provided herein. Such matters referred to the master for recommendation include, but are not limited to, the following:

VL5232PG192

1. Applications for authority to suspend the filing of monthly reports to the Court pursuant to TEX. INS. CODE ANN. art. 21.28 §2(a);
2. Applications regarding the vesting of the Receiver's title to the property and assets of the insurer pursuant to TEX. INS. CODE ANN. art. 21.28 §2(b);
3. Applications to fix rights and liabilities pursuant to TEX. INS. CODE ANN. art. 21.28 §2(c);
4. Applications for authority to conduct the business of the insurer pursuant to TEX. INS. CODE ANN. art. 21.28 §2(e);
5. Applications to dispose of property, settle claims, or sell or dispose of the charter or license of the insurer pursuant to TEX. INS. CODE ANN. art. 21.28 §2(g);
6. Applications regarding the filing of claims, including, but not limited to, establishing claims filing deadlines and the manner of notice pursuant to TEX. INS. CODE ANN. art. 21.28 §3(a);
7. Applications to approve late filed claims pursuant to TEX. INS. CODE ANN. art. 21.28 §3(b);
8. Applications regarding objections to claims presented to the Receiver pursuant to TEX. INS. CODE ANN. art. 21.28 §3(h) of the Code;
9. Applications to approve claims pursuant to TEX. INS. CODE ANN. art. 21.28 §4(c);
10. Applications for issuance of subpoenas pursuant to TEX. INS. CODE ANN. art. 21.28 §4(d);
11. Applications to make distributions pursuant to TEX. INS. CODE ANN. art. 21.28 §8;
12. Applications to declare unclaimed funds as abandoned pursuant to TEX. INS. CODE ANN. art. 21.28 §8(i);
13. Applications for orders directing the disposition of funds collected pursuant to TEX. INS. CODE ANN. art. 21.28 §8A;
14. Applications to extend, close and reopen receiverships pursuant to TEX. INS. CODE ANN. art. 21.28 §9;
15. Applications regarding the maintenance, storage or disposal of records pursuant to TEX. INS. CODE ANN. art. 21.28 §§11(d) and (e);
16. Objections to reports of expenses of the Receiver or Special Deputy Receiver submitted pursuant to TEX. INS. CODE ANN. art. 21.28 §12(b);
17. Final reports submitted pursuant to TEX. INS. CODE ANN. art. 21.28 §12(c);

VL5232PG193

18. Any other specific questions referred by the Court.

Hearings on Temporary Restraining Orders and Temporary Injunctions pursuant to TEX. INS. CODE ANN. art. 21.28 §§4(a) and (b) are not referred to the master for recommendation under this order.

IV. PROCEEDINGS

With regard to any question referred to the master by the Court, the parties must proceed before the master. The master in his discretion may refer any matter back to the District Judge for decision.

The Court finds that it is necessary and proper for the master to regulate proceedings before him as specified by the Court pursuant to Rule 171 of the Texas Rules of Civil Procedure, and therefore adopts the following procedures of practice for the filing and hearing of any applications and objections thereto in this proceeding:

1. Any application within the terms of this Order must be served on the master, through his docket clerk, and on all interested parties as determined by the master. The master shall ensure that proper notice is given to all interested parties. The master may consider matters presented to him by submission or oral hearing, and shall establish a docket schedule for the submission and hearing of such matters.
2. The applicant must provide notice of the filing of an application to all interested parties at least fourteen (14) calendar days before the submission or oral hearing date, unless the master authorizes an expedited hearing of the application.
3. Any party responding or objecting to an application must file such response or objection with the Travis County District Clerk at least seven (7) calendar days before the submission or oral hearing date, unless the master authorizes an extension of the objection deadline. A copy of any objection shall be served by such date on the master, through his docket clerk, and on all interested parties, including those listed on the Applicant's Certificate of Service. The written objection must specify the basis for the objection, with references to and discussion of supporting legal authority. Unless the master determines that an oral hearing is not necessary, an objecting party shall

expeditiously coordinate with applicant's counsel and the master's docket clerk to obtain an oral hearing setting for argument on the Application and Objection, and shall serve a Notice of Oral Hearing on applicant's counsel and all interested parties, including those listed on the Applicant's Certificate of Service.

5. Any response to an objection must be filed with the Travis County District Clerk at least three (3) calendar days before the hearing date, and shall be served on the master, through his docket clerk, and on all interested parties, including those listed on the Applicant's Certificate of Service.
6. Any Acknowledgment of Notice and Waiver should be filed at least three (3) calendar days before the submission or hearing date.
7. At any oral hearing, the master may hear argument and testimony, and admit or exclude evidence as permitted under Rule 171 of the Texas Rules of Civil Procedure. Such authority shall include, without limitation, the exclusion of any argument or evidence that is not raised in a timely filed objection.
8. The master shall promptly report his recommendation to the Court, and submit a proposed order. Notice of the recommendation and order shall be provided by the master's docket clerk to the applicant and any party that has filed a written objection to the application. If any party objects to the master's recommendation, the party shall file its objection within ten (10) days and set a hearing before the judge on the central docket. A copy of any objection with notice of hearing shall be served on the master and all interested parties.
9. The master shall hear all applications in a hearing room at the Texas Department of Insurance designated for that purpose by the Commissioner of Insurance.

V. ASSISTANCE TO THE MASTER

The District Clerk, the Receiver, and any Special Deputy Receiver are ORDERED to provide reasonable clerical and other assistance the master deems necessary to perform his duties. Any such expenses shall be payable as a cost of administration, Class 1 priority, pursuant to TEX. INS. CODE ANN. art. 21.28 §8(a).

VI. COMPENSATION

The master shall be compensated for his time at \$150.00 an hour and shall be reimbursed for his costs up to \$500.00 per month. The master shall contemporaneously record the time worked on this delinquency proceeding, and shall monthly submit one certified statement of time and costs for all receivership proceedings. The master's statement shall be reported by the Receiver or the Special Deputy Receiver in the monthly statement of expenses submitted pursuant to TEX. INS. CODE ANN. art. 21.28 §12(b).

The Receiver, Special Deputy Receiver or any interested party may file any objection to any item in the master's statement with the court within ten (10) days and set a hearing before the judge on the central docket. A copy of the objection with notice of hearing shall be served on the master. If an objection is filed, the Receiver or Special Deputy Receiver may withhold payment for only time or costs in dispute. Items that are not subject to an objection shall be paid within thirty (30) days of approval pursuant to TEX. INS. CODE ANN. art. 21.28 §12(b). Items that are subject to an objection, which is overruled, shall be paid within thirty (30) days of the date on which the objection is overruled.

The master's statement shall be taxed as court costs and charged to the receivership estate. The Receiver or Special Deputy Receiver shall treat this taxable court cost as a cost of administration, Class 1 priority, pursuant to TEX. INS. CODE ANN. art. 21.28 §8(a).

SIGNED at Austin, Texas this 16th day of December, 2002.



DISTRICT JUDGE PRESIDING

VL5232PG196