

GV 204523

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

TOLLING AGREEMENT

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, Jean Johnson, Special Deputy Receiver under contract to the Permanent Receiver of Amcare Health Plans of Texas, Inc. and Amcare Management, Inc., and presents to this Court a Tolling Agreement between the Special Deputy Receiver and Proskauer Rose LLP.

Respectfully submitted,

BRIAN E. RIEWE, P.C.
1801 South MoPac, Suite 300
Austin, Texas 78746
Telephone: 512/236-9955
Facsimile: 512/236-9966

Brian E. Riewe
State Bar No. 16915600

Gregory C. Douglass
State Bar No. 06049200

By: Brian E. Riewe

Attorneys for the Special Deputy Receiver

FILED

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Umarini Rodriguez Hernandez

DISTRICT CLERK

TRAVIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document was forwarded via electronic mail to the following persons on this the 28th day of April 2004.

Mr. James Kennedy, **Attorney for the Receiver**
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Brian E. Riewe

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BRIAN E RIEWE PC

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TOLLING AGREEMENT

AGREEMENT ("this Agreement") made as of March 1, 2004 by and between Proskauer Rose LLP ("Proskauer") and Jean Johnson, Special Deputy Receiver of AmCare Health Plans of Texas, Inc. ("AmCare Texas") and AmCare Management, Inc. ("AmCare Management") ("the Receiver").

WHEREAS, in a transaction that closed in May 1999, Proskauer Rose LLP ("Proskauer") asserts that it represented only AmCareco, Inc. ("AmCareco Parent") in connection with the AmCareco Parent's acquisition of 100% of the stock of Foundation Health, a Texas Health Plan, Inc, which changed its name to AmCare Texas, as well as 100% of the stock of two other health maintenance organizations from Foundation Health Systems, Inc. and Foundation Health Corporation.

WHEREAS, in 2003 AmCare Texas was declared insolvent by the Commissioner of Insurance of the State of Texas and placed under court supervision in a liquidation proceeding under Texas Insurance Code, article 21.28 and bearing the caption *State of Texas v. AmCare Health Plans of Texas, Inc. and AmCare Management, Inc.*, pending in the 200th Judicial District of Travis County, State of Texas ("the Proceeding").

WHEREAS, the Receiver is charged with investigating potential claims that may exist on behalf of AmCareco Texas and AmCare Management ("Debtor Claims").

WHEREAS, among the Debtor Claims that the Receiver is obligated to investigate are any possible claims against Proskauer ("Proskauer Claims"). The Receiver represents that her investigation has not yet proceeded far enough to make a determination whether or not there are any Proskauer Claims.

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WHEREAS, the Receiver and Proskauer wish to avoid unnecessary litigation with respect to any possible Proskauer Claims pending the completion of the Receiver's investigation.

WHEREAS, the Receiver has requested that Proskauer agree to toll the running of all Limitations Defenses (as that term is defined below) pending further investigation of the Debtor Claims, and Proskauer has agreed to do so, all on terms and conditions provided below.

NOW THEREFORE, the Receiver and Proskauer agree as follows:

1. All statutes of limitations and other time-based limitations or defenses (whether arising under law, equity, statute, court rule or otherwise, and however denominated) applicable to any and all of the Proskauer Claims ("Limitations Defenses") shall be, and hereby are, tolled from March 1, 2004 to and including March 1, 2005. Nothing provided in this paragraph 1 shall be deemed to revive any Proskauer Claims barred by any Limitations Defense before March 1, 2004. The Receiver, however, does not admit that any Limitations Defenses has commenced running or has expired as of March 1, 2004.

2. Nothing provided in this Agreement shall be construed as an admission or acknowledgement (a) that Proskauer was ever engaged by AmCare Texas or AmCare Management to render any legal services or that Proskauer ever in fact rendered any legal services to AmCare Texas and/or AmCare Management, except for certain limited services provided to AmCare Texas in connection with its acquisition of certain member contracts and related assets from Sierra Health and Life Insurance Company, Inc. and Texas Health Choice, L.C. or (b) as a waiver of any defense, other than Limitation

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Defenses, that Proskauer may have to any Proskauer Claim, including jurisdictional defenses of any kind or (c) a waiver by the Special Deputy Receiver of her right to prove that Proskauer was engaged and did provide other, additional legal services to AmCare Texas or AmCare Management.

3. Each of the parties to this Agreement represents and warrants that it has the right, power and legal authority to execute this Agreement, and that it constitutes a binding and enforceable obligation of the party so representing and warranting.

4. All notices or other communications to a party required or permitted hereunder will be in writing and delivered to such party at the following address therefor or such other address as may hereafter be specified by such party by notice to the other party in writing:

<p>TO: the Receiver</p> <p>c/o Gregory C. Douglass, Esq. Brian E. Riewe, P.C. 1801 South MoPac Expressway, Suite 300 Austin, Texas 78746</p>	<p>TO: Proskauer</p> <p>Dale A. Schreiber, Esq. Proskauer Rose LLP 1585 Broadway New York, New York 10036</p> <p>With a copy to Robert A. Kafin, General Counsel Proskauer Rose LLP 1585 Broadway New York, New York 10036</p>
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5. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No provision of this Agreement may be amended or changed or its enforcement waived except by a writing duly signed by or behalf of the party to be charged therewith.

BRIAN E RIEWE PC
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6. This Agreement shall be construed by any tribunal having jurisdiction over any dispute relating to, or arising from, its terms as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

7. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the principles of conflict of laws thereof.

8. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Special Deputy Receiver and Proskauer have executed this Agreement as of the date first above written:

Jean Johnson, Special Deputy Receiver

By:  _____

Date: 4/13/04

Proskauer Rose LLP

By: Dave Schaub

Date: 4/14/04

Brian E. Riewe
briewe@riewelaw.com

Gregory C. Douglass
gdouglass@riewelaw.com

April 28, 2004

Via Hand Delivery

Honorable Amalia Rodriguez-Mendoza
Travis County District Clerk
Travis County Courthouse
Austin, Texas 78701

Re: Cause No. GV-204523; *State of Texas v. AmCare Health Plans of Texas, Inc. and AmCare Management, Inc.*; In the 200th Judicial District Court of Travis County, Texas.

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing are two Tolling Agreements between 1) the Special Deputy Receiver of AmCare Health Plans of Texas, Inc. and AmCare Management, Inc. and Foundation Health Corporation, Foundation Health Systems, Inc., and HealthNet, Inc. and 2) the Special Deputy Receiver of AmCare Health Plans of Texas, Inc. and AmCare Management, Inc. and Proskauer Rose LLP. I am also enclosing copies of these filings, which I would appreciate you file-marking and returning to the carrier.

By copy of this letter, I am providing a copy of this filing to the other interested parties herein.

If you have any questions relating to this filing, please do not hesitate to contact my office.
Thank you for your attention to this matter.

Sincerely,

Brian E. Riewe

Brian E. Riewe

Enclosure
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cc: Mr. Tom Collins, via hand delivery
All Parties on Certificate of Service, via e-mail