

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

APPLICATION FOR APPROVAL OF FEES AND EXPENSES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Jean Johnson, Special Deputy Receiver of AmCare Health Plans of Texas, Inc., and AmCare Management, Inc., (the "SDR" and "AmCare," respectively), and files this *Application for Approval of Fees and Expenses* (the "Application"), and in support thereof would respectfully show the Court as follows:

I. BACKGROUND

1.1 AmCare was placed in receivership in this proceeding on December 16, 2002. The Court entered a Permanent Injunction and Order Appointing Permanent Receiver on January 21, 2003, appointing the Texas Commissioner of Insurance as Permanent Receiver. The Receiver designated Jean Johnson as SDR of AmCare on December 23, 2002. Pursuant to TEX. INS. CODE 21.28 § 2(b), Mike Geeslin succeeded José Montemayor as Receiver of AmCare on June 7, 2005.

1.2 The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with the Interim Supplemental Order of Reference to Master.

II. STATUTORY AUTHORITY

2.1 Effective September 1, 2005, proceedings brought under ~~TEX. INS. CODE art. 21.28~~ became governed by TEX. INS. CODE Chapter 21A. The SDR is authorized to file this Application

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TRAVIS COUNTY, TEXAS

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pursuant to TEX. INS. CODE § 21A.015, which provides for the approval of the SDR's expenses and compensation by the Court. Under § 21A.154 (a), the SDR has all the powers of the Receiver, unless specifically limited by the Receiver.

III. BASIS FOR APPLICATION

3.1 TEX. INS. CODE § 21A.015(c)(1) requires the Receiver to submit an application for the approval of the terms of compensation of an SDR or contractor when the Receiver reasonably expects that the total amount of compensation to be paid over the course of the proceeding will exceed Two Hundred Fifty Thousand Dollars (\$250,000), or such another amount established by the Court. In addition, TEX. INS. CODE § 21A.015 (d) permits the Receiver, at his discretion, to submit an application to approve any compensation, anticipated expenses, or incurred expenses not described by Subsection (c)(1).

3.2 The compensation for the SDR (and certain contractors) has already exceeded \$250,000, and additional fees will be incurred through the remainder of this proceeding. In addition, it is anticipated that a number of the SDR's contractors will be paid less than \$250,000 for the duration of this proceeding. The SDR requests the Court to approve such rates for the SDR and all of its contractors pursuant to TEX. INS. CODE § 21A.015 (c)(1) and § 21A.015 (d). The rates for compensation for the SDR and its contractors are shown on Exhibit A, which is attached hereto and incorporated by reference. These rates have been approved by the Receiver in accordance with TEX. INS. CODE § 21A.154(a).

3.3 TEX. INS. CODE § 21A.015(c)(2) also requires the Receiver to submit an application for the approval of any anticipated expense not otherwise covered under § 21A.015(c)(1) in excess of Twenty-Five Thousand Dollars (\$25,000), or another amount established by the Court.

3.4 The SDR filed a lawsuit in Texas and intervened in lawsuits in Louisiana against Health Net, Inc.; PricewaterhouseCoopers, LLP; Proskauer Rose, L.L.P.; AmCareco, Inc. and the officers and directors of AmCareco and its affiliates. The Receivers for AmCare Health Plans of Oklahoma, Inc., and AmCare Health Plans of Louisiana, Inc., are also plaintiffs in the litigation. Settlements totaling \$14,000,000 have been reached with PricewaterhouseCoopers, LLP; Proskauer Rose, L.L.P.; AmCareco, Inc., and the officers and directors of AmCareco, Inc., and its affiliates. The Texas, Oklahoma and Louisiana receivership courts have approved the settlements and the SDR anticipates that these settlements will be finalized and funded in the near future. The SDR tried the Louisiana case to a jury in June, 2005, and obtained a judgment against Health Net, Inc., in excess of \$100,000,000. The Oklahoma and Louisiana cases were tried to the court at the same time but the court has not yet entered its judgment. Both Texas and Health Net, Inc., will appeal the jury award. The Texas case against Health Net, Inc., is still pending with a trial date of February 27, 2006.

3.5 The SDR and the Receivers for Oklahoma and Louisiana entered into a Receivers' Agreement that provides, among other things, for the estates to share the recoveries and expenses of the above described litigation. To date, the SDR has incurred litigation expenses in excess of Twenty-Five Thousand Dollars (\$25,000). Because of the complexity of the litigation, the SDR anticipates that it will incur additional litigation expenses in excess of Twenty-Five Thousand Dollars (\$25,000) on a regular basis until the litigation is completed. Through the course of the litigation, it has frequently been necessary to pay such expenses on an expedited basis and the SDR anticipates that this necessity will continue. Requesting court approval for such expenses in advance will be burdensome, and impede the administration of this proceeding. Therefore, the SDR respectfully requests this Court to establish an One Hundred Thousand (\$100,000) minimum

threshold for Court approval of an expense incurred in the litigation described above under TEX. INS. CODE § 21A.015 (c)(2).

3.6 TEX. INS. CODE art. 21.28, §12(b) previously required the SDR to file an itemized report of the prior month's expenses, which was submitted to the Court for approval. As TEX. INS. CODE art. 21.28 was repealed effective September 1, 2005, a report of expenses for August, 2005 has not been filed under this provision. The SDR therefore requests authority under TEX. INS. CODE § 21A.015 (d) for approval of the expenses incurred in August, 2005 attached hereto as Exhibit B. The SDR also requests that this Court enter an order finding that the *Standing Order Regarding Compliance with Tex. Ins. Code Art. 21.28, §12(b)* has no force or effect by operation of law.

3.7 TEX. INS. CODE § 21A.015(g) provides that on a quarterly basis, or as otherwise provided by this Court, the Receiver shall submit to the Court a summary of expenses incurred during the period. The SDR requests the Court to establish quarterly reporting periods that coincide with the State of Texas fiscal year beginning on September 1, 2005. The SDR further requests that such reports be filed by the 15th day of the month following the end of the quarterly reporting period.

PRAYER

WHEREFORE PREMISES CONSIDERED, the SDR respectfully requests this Court to grant this Application, and grant such further relief to which it may show itself to be justly entitled.

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

APPLICANT'S NOTICE OF SUBMISSION

Pursuant to the terms of the Amended Order of Reference to Master entered by the District Court in this cause, the *Application for Approval of Fees and Expenses* is hereby set for written submission before the Special Master, Tom Collins, on **October 3, 2005**.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least seven (7) calendar days before the submission date.
2. A copy of any objection shall be served by such date on:
 - (a) Special Master's Docket Clerk, Mrs. Jean Sustaita, Texas Department of Insurance, 333 Guadalupe, Hobby Tower III, 5th Floor, Room 550, Austin, Texas (*by hand delivery*); or MC-305-1D, P.O. Box 149104, Austin, Texas 78714-9104 (*by mail*).
 - (b) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The objecting party shall coordinate with opposing counsel and the Docket Clerk at (512) 463-6450 to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
5. Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.
6. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least (3) calendar days before the submission or hearing date.

original signed by

Brian E. Riewe

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 19th day of September 2005.

Mr. Tom Collins, Special Master
Texas Department of Insurance
333 Guadalupe St., Tower III,
5th Floor, MC-305-1C
Austin, Texas 78714

Pat Harris
Harris County Medical Society
1515 Hermann Drive
Houston, Texas 77004
Email: pat_harris@hcms.org

Mr. James Kennedy, Attorney for the Receiver
Texas Department of Insurance
333 Guadalupe, Tower I
8th Floor, MC-110-1A
Austin, Texas 78701
Email: james.kennedy@tdi.state.tx.us

Mr. Mike Johnston, Atty-Hermann Memorial
Ms. Margaret A. Pollard, Atty-St. Luke's Episcopal
Sullins Johnston Rohrbach & Magers, P.C.
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Email: mjohnston@sjrm.com
Email: mpollard@sjrm.com

Ms. Leanne Foster, Attorney for the Receiver
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Austin, Texas 78701
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Ms. Sue Buser, Attorney for Louisiana Receiver
Martinez & Buser, L.L.C.
1518 Highway 30 East
Gonzales, Louisiana 70737
Email: sbuser@eatel.net

Ms. Joan Lackorn, Liquidation Oversight
Texas Department of Insurance
333 Guadalupe St., Tower III
5th Floor, MC-305-1C
Austin, Texas 78701
Email: joan.lackorn@tdi.state.tx.us

Mr. Billy Bostick, OK-Deputy Assistant Receiver
3530 Forest Lane, Suite 300
Dallas, Texas 75234-7910
Email: billy.bostick@bccg.com

Mr. Thomas S. Lucksinger
President, Amcareco, Inc.
The SLI Group
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Austin, Texas 78701
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Email: kcarrigan@csant.com

Mr. Charles Bailey, General Counsel
Texas Hospital Association
6225 US Hwy 290 E.
Austin, Texas 78723
Email: cbailey@tha.org

Southwest Imaging and Interventional
Specialists f/k/a Dallas Radiologists
Attn: T. Raymona Meeks
7515 Greenville Ave., Suite 710
Dallas, Texas 75231
Email: rmeeks@siis.md

Kaner Medical Group
Attn: Dana Fannin
P.O. Box 210429
Bedford, Texas 76088-7429
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SienaCampus
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Glendale, California 92103
Email: JBuck@CHW.edu

Ms. Traci L. Cotton, Attorney
The University of Texas System
Office of General Counsel
201 W. 7th Street
Austin, Texas 78701
Email: tcotton@utsystem.edu

original signed by

Brian E. Riewe

**Rates for Compensation For
AmCare Health Plans of Texas, Inc. in Receivership -R512 and
AmCare Management, Inc., in Receivership- R512**

Special Deputy Receiver and Staff:

Administrative Insurance Management Services, Inc. (HUB)

Special Deputy Receiver	\$ 110.00 per Hr.
Financial (Forensic)	\$ 100.00 per Hr.
Claims Systems	\$ 60.00 per Hr.
Claims Processing	\$ 40.00 per Hr.
Administration/Reporting	\$ 60.00 per Hr.
Claims/Management	\$ 80.00 per Hr.
Premium Billing/Claims	\$ 40.00 per Hr.
Data Tech/Cust. Svc Support	\$ 35.00 per Hr.
POC Tech /Records Ret	\$ 35.00 per Hr.
Claims Processing	\$ 40.00 per Hr.
POC/Claims Administrator	\$ 25.00 per Hr.
Clerical	\$ 25.00 per Hr.

Subcontractors:

Petrosewicz and Company, Inc. (HUB)

Financial	\$ 110.00 per Hr.
Accounting Asst.	\$ 60.00 per Hr.

Alexander, Charles and Associates, Inc. (HUB)

Claims/Subrogation	\$ 80.00 per Hr.
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Brian E. Riewe, P.C.

Attorney	\$ 150.00 per Hr.
Paralegal	\$ 75.00 per Hr.

George & Brothers, LLP

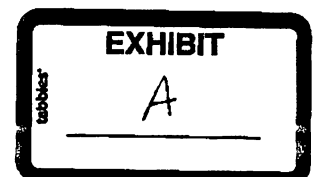
Case: Cause No. GN303897; *Jean Johnson as Special Deputy Receiver of AmCare Health Plans of Texas, Inc. vs. PricewaterhouseCoopers LLP, et al*; In the 250th Judicial District Court of Travis County, Texas.

*Contingency: 25% of first \$25 million
20% if excess of \$25 million & less than \$50 million
12% if excess of \$50 million

Wisener-Nunnally-Gold, LLP

Case: Cause No. GN303897; *Jean Johnson as Special Deputy Receiver of AmCare Health Plans of Texas, Inc. vs. PricewaterhouseCoopers LLP, et al*; In the 250th Judicial District Court of Travis County, Texas.

*Contingency: 25% of first \$25 million
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*The contingency fee is calculated on the net recovery (gross recovery – litigation expenses paid by the estate = net recovery)

McKernan Law Firm

Case: Cause No. GN303897; *Jean Johnson as Special Deputy Receiver of AmCare Health Plans of Texas, Inc. vs. PricewaterhouseCoopers LLP, et al*; In the 250th Judicial District Court of Travis County, Texas.

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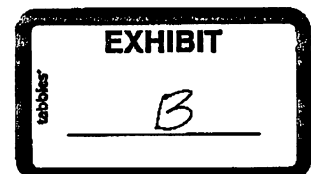
*The contingency fee is calculated on the net recovery (gross recovery – litigation expenses paid by the estate = net recovery)

Liquidation Oversight Standardized Attested 12 (b) Expenses

Company Name - R-512H

Month: August 2005

	Hours Billed	Rate	Fee	Total Fees	Total Expenses	Total Billed
SDR						
Administrative Insurance Management (AIMS)						
	SDR	83.77	110.00	9,214.70		
	SDR Travel		55.00	0.00		
SG	Accountant	7.89	60.00	473.40		
SG	Claims Supervisor	11.30	80.00	904.00		
	Claims Supervisor Travel		40.00	0.00		
CAA	Senior Claims Technician	30.70	60.00	1,842.00		
JH	Claims Technician		40.00	0.00		
DJ	Claims Technician	172.80	40.00	6,912.00		
LB	Claims Technician		40.00	0.00		
MA	Claims Technician		40.00	0.00		
AH	Claims Technician		40.00	0.00		
TT	Claims Technician		35.00	0.00		
MSM	Claims Technician	147.41	35.00	5,159.35		
BH	Claims Technician		35.00	0.00		
JJ	Claims Technician		25.00	0.00		
	Database Administrator		70.00	0.00		
TT	Records Technician, Senior	48.56	35.00	1,699.60		
tb	Clerical		35.00	0.00		
		502.43			26,205.05	116.19
						26,321.24
Subcontractors						
Brian E. Riewe, PC - Legal						
ber	Attorney	43.60	150.00	6,540.00		
gcd	Attorney	19.80	150.00	2,970.00		
jf	Paralegal	37.60	75.00	2,820.00		
	Legal Assistant		25.00	0.00		
	Credit for Prior Months Disallowed Expenses				12,330.00	86.64
						(375.00)
Alexander Charles & Associates, Inc. - Claims/Reinsurance						
	Claims/Reinsurance Manager	29.10	80.00	2,328.00		
	Claims/Reinsurance Manager Travel	0.00	37.50	0.00		
	Reinsurance Specialist	0.00	60.00	0.00		
	Reinsurance Specialist Travel	0.00	30.00	0.00		
	Administrative Specialist	0.00	35.00	0.00		
					2,328.00	0.00
Petrosewicz & Company, Inc. - Accounting						
	Accounting Manager	6.10	110.00	671.00		
	Accounting Manager-Travel		55.00	0.00		
	Senior Accountant	4.90	60.00	294.00		
					965.00	10.61
						975.61
Wisener Nunnally Gold, LLP - Outside Litigation Counsel						
				0.00	122,583.56	122,583.56
George & Brothers, LLP - Outside Litigation Counsel						
				0.00	7,335.90	7,335.90
McKernan Law Firm - Outside Litigation Counsel						
					75,914.09	75,914.09
Other Vendors/Expenses						
	ADT Security Services, Inc.				144.58	144.58
	Aegis Storage Solutions, LLC - Records Storage				5,968.00	5,968.00
	Bank of America - Bank Service Charges				3.00	3.00
	Lone Star Overnight				98.14	98.14
	Texas Treasury-Bank Charges				212.29	212.29
Liquidation Oversight Allocation						
	Liquidation Oversight Allocation				3,736.43	3,736.43
	Special Master's Fees				0.00	0.00
Total Attested Expenses for August 2005				41,828.05	215,834.43	257,662.48



Gross Expenses
Amcare Management, Inc. - R-512M
Month: August 2005

SDR	Hours Billed	Rate	Fee	Total Fees	Total Expenses	Total Billed
Administrative Insurance Management (AIMS)						
SDR	5.41	110.00	595.10			
SDR Travel		55.00	0.00			
SG Accountant	0.81	60.00	48.60			
SG Claims Supervisor		80.00	0.00			
Claims Supervisor Travel		40.00	0.00			
CAA Senior Claims Technician		60.00	0.00			
jh Claims Technician		40.00	0.00			
dj Claims Technician		40.00	0.00			
ah Claims Technician		40.00	0.00			
ma Claims Technician		40.00	0.00			
yt Claims Technician		40.00	0.00			
tt Claims Technician		35.00	0.00			
tb Claims Technician		35.00	0.00			
bh Claims Technician		35.00	0.00			
jj Claims Technician		25.00	0.00			
Database Administrator		70.00	0.00			
tt Records Technician, Senior	2.64	35.00	92.40			
tb Clerical	4.19	35.00	146.65	882.75	0.00	882.75
Subcontractors						
Brian E. Riewe, PC - Legal						
ber Attorney	0.00	150.00	0.00			
gcd Attorney	0.00	150.00	0.00			
jf Paralegal	0.00	75.00	0.00			
Legal Assistant	0.00	25.00	0.00	0.00	0.00	0.00
Alexandar Charles & Associates, Inc. - Claims/Reinsurance						
Claims/Reinsurance Manager	0.00	80.00	0.00			
Claims/Reinsurance Manager Travel	0.00	37.50	0.00			
Reinsurance Specialist	0.00	60.00	0.00			
Reinsurance Specialist Travel	0.00	30.00	0.00			
Administrative Specialist	0.00	35.00	0.00	0.00	0.00	0.00
Petrosewicz & Company, Inc. - Accounting						
Accounting Manager	1.50	110.00	165.00			
Accountant	0.90	60.00	54.00	219.00	0.80	219.80
Other Vendors/Expenses						
Aegis Storage Solutions, LLC - Records Storage					1,492.00	1,492.00
Bank of America - Bank Service Charges					3.00	3.00
Texas Treasury - Investment Fees					11.40	11.40
Liquidation Oversight Allocation						
Liquidation Oversight Allocation					250.00	250.00
Special Master's Fees					0.00	0.00
Total Gross Expenses for August 2005				1,101.75	1,757.20	2,858.95

BRIAN E. RIEWE, P.C.

ATTORNEYS & COUNSELORS AT LAW
SMITHVILLE • AUSTIN

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Gregory C. Douglass
Of Counsel
gdouglass@riewelaw.com

September 19, 2005

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.

Subject: **Application for Approval of Fees and Expenses**

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing is the Special Deputy Receiver's **Application for Approval of Fees and Expenses**. I am also enclosing a copy of this filing, 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,

original signed by

Brian E. Riewe

Enclosure
U:\3050\LT\Clerk.doc

cc: Mr. Tom Collins, via hand delivery
Remaining Certificate of Service, via e-mail