

GV 204523

<p><b>THE STATE OF TEXAS</b></p> <p>v.</p> <p><b>AMCARE HEALTH PLANS OF TEXAS, INC. and AMCARE MANAGEMENT, INC.</b></p>	<p>§ § § § § §</p>	<p><b>IN THE DISTRICT COURT OF</b></p> <p><b>TRAVIS COUNTY, TEXAS</b></p> <p><b>200th JUDICIAL DISTRICT</b></p>
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**MOTION TO APPROVE FURTHER INTERIM DISTRIBUTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Jean Johnson, Special Deputy Receiver (“SDR”) under contract to the Permanent Receiver of AmCare Health Plans of Texas, Inc., and AmCare Management, Inc., (hereinafter collectively referred to as “AmCare”), who files this Motion to Approve Further Interim Distribution (“the “Motion”). In support of this Motion the SDR would respectfully show the Court the following:

**THE RELIEF SOUGHT BY THIS MOTION**

1. This is a motion that requests the Court to issue an order which authorizes a further interim distribution of Class 10 interest payments to those holders of approved proofs of claims in priority classes 2-8. The funds proposed to be distributed shall be the sum of \$ 16,972,563.75. These sums will raise the interim interest distribution from 65% to 98.3% of the approved interest amount.

**I. BACKGROUND**

2. Pursuant to Article 21.28 of the Texas Insurance Code (hereinafter the “Code”), now codified as Chapter 443 of the Code, this Court placed AmCare in temporary receivership on

December 16, 2002, and appointed Jose Montemayor Temporary Receiver. On January 21, 2003, the receivership was made permanent and Jose Montemayor was appointed as Permanent Receiver. Subsequent Texas Commissioners of Insurance Mike Geeslin, Eleanor Kitzman and Julia Rathgeber served as Receiver prior to the appointment of the current Texas Commissioner of Insurance, David Mattax, as Receiver.

3. Jean Johnson was appointed as SDR on December 23, 2002, and she is fully authorized to file this Motion pursuant to Section 443.154 of the Code.

4. During the course of this receivership, the SDR succeeded through extensive litigation in securing substantial recoveries for distributions to claimants. The SDR has previously made distributions to approved claimants of the principal amount of their claims, and an initial distribution of a portion of the approved interest amounts of their claims.

5. The Court issued an order which approved payment principal claims to creditor Classes 3 through 8 and payment of 65% of the Class 10 interest claims on September 30, 2013. This followed an earlier order of December 12, 2012 approving a plan for interest on allowed claims pursuant to Texas Insurance Code Section 443.301.

6. TEX. INS. CODE §443.301 provides for the payment of interest as priority Class 10 according to a plan for the payment of interest. The original plan of payment of interest contemplated a first interim distribution amount followed by a final payment upon closing. The SDR planned to withhold all other sums until the time of closing, in light of various IRS deadlines that had not yet elapsed.

7. The SDR continued to file the appropriate paperwork with the Internal Revenue Service to seek prompt assessment of any tax issues as to prior tax years, including 2011, 2012, 2013 and 2014.

8. On January 21, 2016, the SDR received a letter from Brook Bowen, an Operations Manager, Exam Field Support of the Internal Revenue Service that confirmed that “[t]he statute of limitations expired on tax year 2011, so we can’t make an assessment”.

9. The SDR now moves the Court to permit distribution of sums which were previously being reserved until the 2011 tax year was resolved. This will permit a substantial distribution to approved claimants. The SDR submits her Affidavit in support of this motion. This affidavit explains the situation and recommends the proposed relief.

10. The proposed order submitted with this motion authorizes the distribution.

## **II. AUTHORITY**

11. This Court has jurisdiction over the subject matter of this Motion pursuant to Chapter 443 of the Code.

12. Under Section 443.154(a) of the Code, the SDR has all the powers of the Receiver, unless specifically limited by the Receiver. Section 443.301 of the Code provides in pertinent part for the distribution of funds.

## **III. ANALYSIS AND RECOMMENDATION**

13. The SDR has now cleared one tax hurdle, which permits the distribution of funds formerly held in reserve. The motion before the Court will maintain a smaller reserve, but permit an immediate substantial distribution.

14. The SDR recommends the requested relief as being in the best interest of the AmCare receivership estate and its claimants.

15. This Motion is supported by the Affidavit of Jean Johnson, attached hereto as Exhibit "A" and incorporated herein for all purposes.

#### **IV. NOTICE**

16. The SDR sent notice of the submission of this Motion to all known parties of interest, as shown on the Certificate of Service. As stated above, the Certificate of Service includes all who have requested to be placed on the Certificate of Service. The SDR will also post this Motion on its website located at [www.amcaretexasreceiver.com](http://www.amcaretexasreceiver.com).

#### **V. RELIEF REQUESTED**

Based on the foregoing, the SDR respectfully requests the following:

1. The Court enter an order authorizing an additional Class 10 interest distribution to bring the interest percentage disbursed from 65% up to 98.3%.
2. The Court grant SDR all other just and equitable relief.

Respectfully submitted,

**Wisener Nunnally Roth, L.L.P.**

Original signed by

By: \_\_\_\_\_

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*Attorneys for Jean Johnson, Special Deputy  
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AmCare Management, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all interested parties in accordance with Tex. Ins. Code §443.007(d) and the Rehabilitation Order this the 25<sup>th</sup> day of March, 2016.

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Original signed

Michael Roth

# Exhibit A



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

**AFFIDAVIT OF JEAN JOHNSON IN SUPPORT OF  
THE SDR'S MOTION TO APPROVE FURTHER INTERIM DISTRIBUTION**

Came before me, a notary public, Jean Johnson, Special Deputy Receiver ("SDR") under contract to the Permanent Receiver of AmCare Health Plans of Texas, Inc., and AmCare Management, Inc., who, being duly sworn, did subscribe and swear that:

1. I am Jean Johnson. I am the SDR under contract to the Permanent Receiver of AmCare Health Plans of Texas, Inc., and AmCare Management, Inc. (hereinafter collectively referred to as "AmCare"). I have personal knowledge of the facts to which I attest. I obtained my knowledge in my role as SDR. I have read the foregoing motion and recommend that the Court grant this motion. I recommend that the Court approve a further interim distribution to increase the percentage of the Class 10 distribution from 65% to 98.3 % of the approved Class 10 interest claims.

Original signed by

\_\_\_\_\_  
Jean Johnson

Subscribed and sworn to on this 24 day of March, 2016, by Jean Johnson, before me, a notary public.

Original signed by

\_\_\_\_\_  
Notary Public

