

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

In the Matter of

The Liquidation of  
HEALTH REPUBLIC INSURANCE OF NEW  
YORK, CORP.

CLAIMANT: Zaglossus Investors, LLC

INDEX NO. 450500/2016

**STIPULATION AND  
ORDER**

**Assigned to Justice:  
Hon. Carol R. Edmead**

WHEREAS, pursuant to the Court's Order dated December 23, 2021, Dkt No. 196 ("Order"), on February 17, 2022, Claimant Zaglossus Investors, LLC ("Zaglossus") filed an Addendum to Objection to Notice of Determination in this matter relating to an August 6, 2021 Addendum to Proof Claim filed by Zaglossus (together, the "Supplemental Claim and Objection");

WHEREAS, Zaglossus and the Liquidator litigated the Supplemental Claim and Objection to resolution before Justice Anthony J. Carpinello, pursuant to the procedures set out in the Order at Paragraphs 3(c)-(k);

WHEREAS, Justice Carpinello issued a Report of Referee, dated August 8, 2022, attached hereto as Exhibit A ("Report");

WHEREAS, the Liquidator seeks an order confirming and approving the Report pursuant to the Order, Paragraph 3(i);

WHEREAS nothing in the Report affected, addressed, or modified in any way any orders or findings unrelated to the Supplemental Claim and Objection, including not modifying in any way Zaglossus's entitlement to payment on any other Proof of Claim filed in this case which Proof of Claim was not addressed, modified, or affected by the Supplemental Claim and Objection or the Report; and

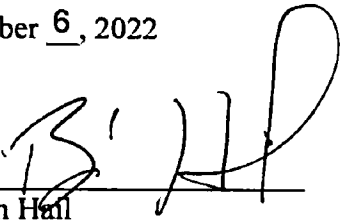
WHEREAS, Zaglossus does not object to an order confirming the Report.

IT IS HEREBY STIPULATED AND AGREED [AND ORDERED], by and through undersigned counsel for the parties, as follows:

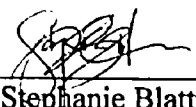
1. The Supplemental Claim and Objection is resolved, and the Report is hereby confirmed and approved.

Dated: October 6, 2022

By:

  
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By:

  
Stephanie Blattmachr  
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Superintendent and Agent of the  
Liquidator of Health Republic  
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**SO ORDERED:**

Dated 10/12/2022

  
HON. CAROL R. EDMED, J.S.C.  
J.S.C.

Justice Carol Edmead, J.S.C.

# EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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**Index No. 450500/2016**

**MARIA VULLO,**

**Plaintiff,**

**- v -**

**HEALTH REPUBLIC INSURANCE OF NEW YORK CORP.,**

**Defendant.**

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**Report of Referee**

By order of the New York State Supreme Court, Justice Carol Edmead, dated December 23, 2021, the undersigned was appointed as Referee to hear and report on the claim of Zaglossus Investors, LLC, filed in the above referenced matter. Counsel for the parties have stipulated that since the dispute involves only a question of law, it can be determined on paper submissions alone. The matter having been fully submitted and counsel having engaged in oral argument on July 28, 2022, the undersigned Referee renders the following report.

In this proceeding, claimant, Zaglossus Investors, LLC, contests a January 14, 2022 determination by the Acting Superintendent of Financial Services, in her capacity as Liquidator of Health Republic Insurance of New York Corp. which rejected its request for interest in the total amount of \$40,882,868.61 on previously filed health insurance provider claims. The Liquidator's rejection was based upon New York Insurance Law Section 7434 (b) which expressly prohibits the payment of interest on such claims. Her

determination derives from the fact that the claimant's insurer, Health Republic Insurance of New York Corp., was declared insolvent in 2016 and as the Acting Superintendent of Financial Services, she was appointed Liquidator of the insurer's assets pursuant to Article 74 of the New York Insurance Law.

Furthermore, by order dated October 11, 2016 the New York State Supreme Court established a procedure for the adjudication of claims against the insolvent insurer. That procedure provided, inter alia, that all claims of health care providers (such as claimant's assignors) would be allowed (or disallowed) by the Liquidator on a rolling basis and that determinations would be sent to the providers via Notices of Determination. Thereafter, the providers would have 60 days from the date of the Notices of Determination to appeal in the event they disagreed with same. That said order also provided that if providers failed to appeal by said deadline, they would be "forever barred from disputing those determinations."

Claimant purchased approximately \$66.6 million in health care provider claims which were among the approximately \$218 million Class two claims approved by the Court on March 29, 2019. Subsequently, however, on August 6, 2021, claimant filed an "Addendum to Proof of Claim" whereby it sought over \$40 million in interest on its previously allowed claims. Claimant's request was based on New York Insurance Law Section 3224-a (the "Prompt Pay Law") which requires health insurers to pay undisputed claims within 30 to 45 days of receipt.

Claimant's request for interest on its allowed claims must be rejected for a number of reasons, two of which shall be discussed herein. Firstly, the provisions of Section 3224-a of the Insurance Law are simply inapplicable to the Liquidator. That section defines the time within which claims "for health care services rendered by health care providers" shall be paid by "insurer[s]". Once an insurer is judicially found to be insolvent, however, it is dissolved and its existence is terminated. "An order of liquidation terminates the distressed insurer's existence, and the Superintendent (of Insurance) "for all practical purposes takes the place of the insolvent insurer"" (Dinallo v DiNapoli, 9 NY3d 94, 98 [2007]). The Liquidator is clearly not a health insurer under Article 32 of the Insurance Law.



For its part, claimant cites Matter of Liquidation of Union Indem. Ins. Co. of New York (92 NY2d 107 [1998]) and In re Liquidation of Ideal Mut. Ins. Co. (243 AD2d 348 [1<sup>st</sup> Dept. 1997]) both of which are distinguishable. In the latter, the Appellate Division expressly found the provisions of Insurance Law Section 7434 (b), (which as aforesaid, prohibits interest on claims in liquidation proceedings) inapplicable. However, in that case, the claimant was not seeking interest by reason of a delay in the payment of its claim by the liquidator. Rather, it was seeking interest on the underlying judgement, an element of its claim which it had been judicially awarded and which was included in the first instance as part of the claim filed against the liquidator. The former case is also distinguishable because its allowance of post liquidation interest was based on the existence of a Security Fund, an asset separate and apart from the assets of the insolvent insurer. Indeed, the Court of Appeals explicitly noted in that case that the Superintendent of Insurance, as administrator of the Security Fund was “a role distinct from that as Liquidator” (Matter of Liquidation of Union Indem. Ins. Co. of New York, supra at 114).

There is another, equally compelling reason why claimant’s interest claim must be rejected. Claimant’s “Addendum to Proof of Claim” was simply filed too late. If it felt it was entitled to interest on its health provider claims, it (or its assignors) should have timely appealed from the Notices of Determination per the Court’s order of October 11, 2016. This it did not do. Final resolution of the parties’ conflicting arguments in this regard requires an analysis of the legal effect of “bar dates”, which are often contained in Statutes of Repose. Such statutes are best understood by comparison with their related cousins, Statutes of Limitation.

A Statute of Limitation has been defined as a procedural bar to a cause of action (see Yonkers Contracting Co., Inc. v. Port Auth. Trans-Hudson Corp., 93 NY2d 375 [1999]). The theory being that the passage of the applicable time period does not extinguish the substantive right, rather, it merely suspends the remedy of a lawsuit. As a predicate, a Statute of Limitation can only begin to run after a cause of action accrues. The expiration of a Statute of Limitation must be asserted by the defendant as a defense to a claim, and if it fails to do so in a timely fashion, it can be waived (see Weinstein, Korn, Miller, New York Civil Practice, CPRL, 2<sup>nd</sup> edition, para. 201.05[1]). A Statute of Limitation can also be extended by agreement between the parties or, under certain circumstances, by equitable considerations, such as tolling or a discovery

rule.

Statutes of Repose, on the other hand affect the underlying substantive right, not just the remedy, and operate to extinguish a cause of action after the passage of a stated period of time even if no cause of action has yet accrued. Thus, a Statute of Repose may bar a suit before a plaintiff discovers that it has a claim (see Ma v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 597 F.3d 84 [2<sup>nd</sup> Cir. 2010]). “[A] repose period can run to completion even before injury has occurred to a potential plaintiff, (thereby) extinguishing a cause of action before it even accrues” (P. Stolz Family Partnership LP v. Daum, 355 F.3d 92, 103 [2<sup>nd</sup> Cir. 2004]). Unlike Statutes of Limitation, equitable considerations play no role in calculating the time-bar effects of Statutes of Repose (*Id.*).

By enacting Insurance Law Section 7432 (b) which establishes a bar date for claims against insolvent insurers, the New York State Legislature has established a Statute of Repose. Furthermore, nothing in the Article 32 of the Insurance Law reflects a legislative intent to alter the effect of that Statute of Repose (compare Federal Housing Finance Agency v. UBS Americas, 712 F.3d 136 [2<sup>nd</sup> Cir. 2013] and F.D.I.C. v. Bear Stearns Asset Backed Secs. I, LLC, 92 F. Supp.3d 206 [S.D.N.Y. 2015]). Accordingly, claimant’s request for interest on its previously approved health insurance claims must be rejected for the additional reason that it is time-barred. The last possible date for approval (or disapproval) of claims was March 29, 2019, when such claims were finally adjudicated by court order. Claimant’s “Addendum to Proof of Claim” was not filed until August 6, 2021, well outside the 60 days for filing an appeal.<sup>1</sup>

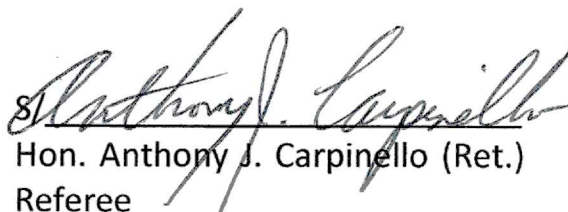
To the extent that the Liquidator proffers alternate arguments for rejection of claimant’s claim, they have not been addressed as academic. Claimant’s other arguments for approval of its claim, to the extent not discussed herein, have been reviewed and are rejected as without merit.

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<sup>1</sup> Claimant argues that the Liquidator is precluded from raising her time-bar argument for the first time before the Referee. However, the Liquidator’s Notice of Determination of Disallowance of claimant’s interest claim specifically recites that “[t]he Liquidator reserves the right to raise any other reasons in support of her denial of your claim(s) as further defenses arise in the adjudication process.”

Dated:

August 8, 2022

  
Hon. Anthony J. Carpinello (Ret.)  
Referee

**PAPERS CONSIDERED ON THE APPLICATION:**

1. Claimant's Memorandum of Law  
in Support of Its Objection to  
Notice of Determination dated  
May 13, 2022.
2. Liquidator's Memorandum of Law  
in Opposition to Claimant's  
Objection to Notice of  
Determination dated June 22,  
2022, with exhibits.
3. Claimant's Memorandum of Law  
in Further Support of Its Objection  
to Notice of Determination dated  
July 15, 2022.



**PROOF OF SERVICE BY E-Mail**

Re: In Re: Liquidation of Health Republic Insurance of New York, Corp. (AD-HOC)  
Reference No. 1425037326

I, Kathryn Silhan, not a party to the within action, hereby declare that on August 10, 2022, I served the attached ORDER: Report of Referee on the parties in the within action by electronic mail at New York, NEW YORK, addressed as follows:

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Parties Represented:  
Adrienne A. Harris (Liquidator of)  
  
Adrienne A. Harris (Liquidator of)

I declare under penalty of perjury the foregoing to be true and correct. Executed at New York, NEW YORK on August 10, 2022.

**/s/Kathryn Silhan**

Kathryn Silhan  
JAMS  
KSilhan@jamsadr.com