

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 651,069

SECTION 22

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

VERSUS

TERRY S. SHILLING, et al.

PEREMPTORY EXCEPTION OF PRESCRIPTION

Pursuant to article 927(A)(1) of the Louisiana Code of Civil Procedure, Defendant Group Resources Incorporated ("GRI") asserts a Peremptory Exception of Prescription seeking dismissal of the tort claims asserted against GRI by Plaintiff James J. Donelon. On its face, Plaintiff's tort claim against GRI, which is supported only by conclusory allegations of fact and law that cannot be accepted as true, has prescribed. GRI is entitled to dismissal of all tort claims against it with prejudice.

WHEREFORE, Defendant Group Resources Incorporated prays that, after due proceedings had, this Court uphold the peremptory exception of prescription and dismiss all of tort claims against GRI with prejudice.



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FILED
EAST BATON ROUGE PARISH, LA

2017 FEB 13 PM 2:55

DEPUTY CLERK OF COURT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Peremptory Exception of Prescription has been served upon all counsel of record by email and/or by placing same in the United States Mail, postage prepaid and properly addressed, this 13th day of February, 2017.



W. BRETT MASON

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

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RULE TO SHOW CAUSE

Considering the Preemptory Exception of Prescription filed by Defendant Group
Resources Incorporated;

IT IS HEREBY ORDERED that Plaintiff, James J. Donelon, show cause on the
___ day of _____ at ___ a.m./p.m. why the Preemptory Exception of Prescription
should not be granted as prayed for herein.

BATON ROUGE, LOUISIANA, this ____ day of February, 2017.

JUDGE

PLEASE SERVE:

Plaintiff, James J. Donelon, Commissioner of Insurance
for the State of LA, in his capacity as Rehabilitator of LA Health Cooperative, Inc.
Through his counsel of record
J.E. Cullens, Jr.
12345 Perkins Road, Bldg.. 1
Baton Rouge, LA 70810

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MEMORANDUM IN SUPPORT OF PEREMPTORY EXCEPTION OF PRESCRIPTION

Defendant Group Resources Incorporated ("GRI") respectfully submits this Memorandum in Support of its Peremptory Exception of Prescription seeking dismissal of Plaintiff's tort claim against GRI. The Petition contains no factual allegations as to how, when or under what circumstances GRI purportedly committed the torts Plaintiff has alleged. Indeed, Plaintiff attributes the purported negligence and gross negligence not only to GRI but to two other defendants as well, and fails to specify which defendant is responsible for each act alleged, and when. All three defendants performed work for Louisiana Health Cooperative, Inc. ("LAHC") at least two years or more before Plaintiff filed this lawsuit. Thus, because Plaintiff cannot show that prescription was interrupted or suspended, Plaintiff's wholly conclusory negligence claims against GRI are time-barred on their face, and should be dismissed with prejudice.

I. FACTUAL BACKGROUND

This lawsuit arises out of the dissolution of LAHC. LAHC was the Consumer Operated and Oriented Plan, or "CO-OP," created to expand the number of health insurance plans available through Louisiana's health insurance exchange under the Patient Protection and Affordable Care Act. LAHC was formed in 2011, and was licensed to operate as a health maintenance organization by the Louisiana Department of Insurance in 2013. And, as Plaintiff, Louisiana Insurance Commissioner James J. Donelon ("Plaintiff"), admits in his Petition for

Damages¹, LAHC "failed miserably" from the start.² Indeed, Plaintiff avers that just three months after its policy enrollment roll-out, LAHC described its own system of processing enrollment, eligibility, and claims handling as "broken."³

Thus, in mid-2014, LAHC fired its original third party administrator, CGI Technologies and Solutions, Inc. ("CGI"), and hired GRI in its place, to right the ship. However, on July 1, 2015 — before GRI could fix LAHC's "broken" system, which had already been operating dysfunctionally long before GRI was brought on board — the Louisiana Department of Insurance suggested to LAHC that it should voluntarily wind down its operations over the remainder of the 2015 plan year. Less than one week later, LAHC's board of directors voted to do just that. On September 1, 2015, Plaintiff filed a Petition for Rehabilitation. *See* Petition for Rehabilitation, attached hereto as Exhibit A. Three weeks later, on September 21, 2015, the order of receivership was made permanent, and LAHC was placed under the direction and control of Plaintiff, as Rehabilitator, and Billy Bostick, as Receiver. *See* Order of Receivership attached hereto as Exhibit B.

After LAHC was placed in receivership, Plaintiff waited nearly a year before it filed this lawsuit on August 31, 2016, ultimately naming GRI as one of twelve defendants who allegedly *all* caused LAHC's "miserable" failure, "from its inception," due to their gross negligence.⁴ Yet in more than 100 paragraphs of factual allegations — including one paragraph with more than 40 subparts — Plaintiff is unable to allege negligence on GRI's part with anything more than conclusory allegations that are entirely devoid of material detail.⁵ Indeed, Plaintiff provides factual specificity for only one out of more than 50 separate allegations purporting to set forth the ways in which GRI acted negligently.⁶ Even there, the facts alleged are too sparse to convey any specific understanding of the purported negligence being alleged.⁷

Furthermore, in its third cause of action, Plaintiff asserts tort claims for negligence and gross negligence against three defendants, including GRI, without providing *any*

¹ As used herein, "Petition" means Plaintiff's First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial, filed November 29, 2016. However, to the extent necessary, this Exception objects also to Plaintiff's original Petition for Damages and Jury Demand, filed August 31, 2016.

² Petition, ¶ 18.

³ Petition, ¶ 45.

⁴ Petition, ¶¶ 18-22.

⁵ *See* Petition, ¶¶ 65-73.

⁶ *See* Petition, ¶¶ 47-52, 65-73.

⁷ *See* Petition, ¶ 52(ff).

particulars as to how, when, where, or by which defendant the purported negligence occurred.⁸ All three of the defendants implicated performed work for LAHC two years or more before this lawsuit was filed.

II. LAW AND ARGUMENT

A. Plaintiff's Negligence Claims Are Subject to the One-Year Prescriptive Period for Torts.

All delictual actions, including actions for negligence and gross negligence, are subject to a liberative prescription of one year. La. Civ. Code art. 3492; *see also Milbert v. Answering Bureau, Inc.*, 2013-0022 (La. 06/28/13), 120 So. 3d 678, 684 ("A lawsuit asserting general negligence must be filed within one year from the day injury or damage is sustained."); *F.D.I.C. v. Barton*, 96 F.3d 128, 133 (5th Cir. 1996) ("Article 3492 provides a one-year prescriptive period for delictual action, including actions for gross negligence.").

The prescriptive period begins to run from the day the injury or damage is sustained. La. Civ. Code Art. 3492. The Louisiana Supreme Court has defined injury or damage as being sustained "when [the injury or damage] has manifested itself with sufficient certainty to support accrual of a cause of action." *Cole v. Celotex Corp.*, 620 So. 2d 1154, 1156 (La. 1993). Thus, prescription commences (or injury or damage is sustained) when a plaintiff obtains actual or constructive knowledge of facts that he or she is a victim of a tort; constructive knowledge includes knowledge that might excite attention or put a reasonable person on guard to call for inquiry. *Campo v. Correa*, 01-2707 (La. 6/21/02), 828 So. 2d 502, 510-11; *Medical Review Panel Proceeding of Poche v. Bloom*, 02-1502 (La. App. 4 Cir. 12/11/02), 834 So. 2d 600, 602-03; *Lambert v. Associated Catholic Charities*, 02-0817 (La. App. 4 Cir. 03/12/03), 842 So. 2d 1149, 1151-52. And, a plaintiff is "deemed to know that which he could have learned from reasonable diligence." *Ned v. Union Pac. Corp.*, 2014-1310 (La. App. 3 Cir. 04/15/15), 176 So. 3d 1095, 11030.

In this lawsuit, Plaintiff asserts tort claims against GRI based on allegations of negligence and gross negligence.⁹ Louisiana law is clear that those claims are subject to the one-year prescriptive period established by article 3492 of the Louisiana Civil Code. Thus, to the extent Plaintiff's tort claims are based on actions or occurrences that resulted in injury sustained on or before August 31, 2015, those claims have prescribed.

⁸ See Petition, ¶¶ 65-73.

⁹ See Petition, ¶¶ 65-73.

B. The Allegations of the Petition Cannot be Accepted as True for the Purposes of Determining the Issue of Prescription.

The Petition contains no factual particularity regarding when GRI's allegedly tortious acts occurred. Because allegations of time are material, the allegations of the Petition have not been properly pled. Plaintiff's allegations of negligence and gross negligence on GRI's part cannot be accepted as true.

Generally, when an exception of prescription is decided in the absence of any evidence, the exception "must be decided based upon the facts alleged in the petition, which must be accepted as true." *Kirby v. Field*, 2004 1898 (La. App. 1 Cir. 9/23/05), 923 So. 2d 131, 135 (citing *Mitchell v. Terrebonne Parish Sch. Bd.*, 2002-1021 (La. App. 1 Cir. 4/2/03), 843 So. 2d 531, 533). However, this rule "applies only to properly-pleaded material allegations of fact, as opposed to allegations deficient in material detail, conclusory factual allegations, or allegations of law."¹⁰ *Id.* That is because a "petition must set forth the material facts of the transaction or occurrence that is the subject matter of the litigation." *Id.*; La. Code Civ. Proc. art. 891. And, "[f]or the purpose of testing the sufficiency of a pleading, allegations of time and place are material." *Id.*; La. Code Civ. Proc. art. 860.

In *Kirby v. Field*, for example, the First Circuit affirmed this Court's dismissal of a plaintiff's malpractice claims against his physician, and found that sustaining the physician's peremptory exception of prescription was proper, even where the plaintiff's allegations were, technically, uncontroverted, because they lacked particular allegations of time and, thus, suffered from a "significant deficiency in factual particularity." As a result of that deficiency, the court determined that the allegations of the petition "cannot be accepted as true for the purpose of determining the issue of prescription." *Kirby*, 923 So. 2d at 136.

There is a similar "significant deficiency in factual particularity" here. Plaintiff sets forth hundreds of paragraphs of factual allegations in his Petition. Yet, particularly regarding the allegations asserted in support of his tort claims against GRI, Plaintiff sets forth *no material facts* of the transaction or occurrence — the purported negligence and gross negligence — that is the basis for those claims. Instead, Plaintiff merely recites a litany of unsupported

¹⁰ Louisiana courts have recognized that "[t]his rule is a parallel to that employed in the determination of a peremptory exception of no cause of action, where only the 'well-pleaded' allegations of fact are accepted as true." *Kirby*, 923 So. 2d at 135, n.5 (citing *Ramey v. DeCaire*, 03-1299 (La. 3/19/04), 869 So. 2d 114, 118). The Louisiana Supreme Court has made clear that "[t]he adjective 'well-pleaded,' of course, refers to properly-pleaded allegations conforming to the system of fact pleading embodied in the Louisiana Code of Civil Procedure," and "[a]llegations deficient in the factual particularity required to establish a cause of action are not 'well-pleaded.'" *Id.*

factual and legal conclusions devoid of any particularity whatsoever, including (notably for the purpose of this exception) particular allegations stating *when* the allegedly negligent actions took place, or when LAHC may have become aware of their purported effect. For example, in paragraph 70, Plaintiff avers that GRI and two additional defendants "negligently and wholly failed to perform their obligations in a reasonable, competent, and professional manner." Yet Plaintiff sets forth no particular instances demonstrating how, when or under what circumstances GRI (or either of the other two defendants, for that matter) purportedly did so.

And, paragraph 70 is not the exception. Indeed, *all* of Plaintiff's allegations of GRI's negligence are devoid of factual particularity.¹¹ Plaintiff's Petition may be verbose, but it still lacks allegations of fact. The facts that *are* alleged have not been properly pleaded, and they should not be accepted as true for the purpose of deciding this exception.

C. The Face of the Petition Demonstrates that Plaintiff's Tort Claims Against GRI Have Prescribed.

Ordinarily, the party pleading prescription bears the burden of proving the claim has prescribed. *Jonise v. Bologna Bros.*, 2001-3230 (La. 6/21/02), 820 So. 2d 460, 464; *Kirby v. Field*, 2004 1898 (La. App. 1 Cir. 9/23/05), 923 So. 2d 131, 135. However, when the face of the petition reveals that the plaintiff's claim has prescribed, the burden shifts to the plaintiff to demonstrate prescription was interrupted or suspended. *Id.* (citing *Moses*, 788 So. 2d at 1177); *Pratt v. La. State Med. Ctr. in Shreveport*, 41,971 (La. App. 2 Cir. 2/28/07), 953 So. 2d 876, 879 ("When an action appears to have prescribed on the face of the petition, the plaintiff bears the burden of establishing facts which would interrupt or suspend prescription."); *Campo*, 828 So. 2d at 508 ("[I]f prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show that the action has not prescribed.").

Here, the face of the Petition reveals that Plaintiff's tort claims against GRI have prescribed. In his third cause of action, Plaintiff alleges gross negligence and negligence against three defendants: CGI; its former management consultant, Beam Partners, LLC ("Beam"); and GRI. Plaintiff alleges that all three defendants (1) "negligently failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts," (2) "negligently . . . failed to perform their obligations in a reasonable, competent, and professional manner," (3) "wantonly failed to provide a sufficient number of adequately trained personnel," and (4) "wantonly failed to cause LAHC to accurately process and pay health

insurance claims in a timely manner at the correct health insurance rates and amounts."¹² However, Plaintiff does not specify which of those allegations is attributable to which defendants, based on what conduct, under what circumstances, and, most importantly for this inquiry, when.

Indeed, as discussed above, Plaintiff provides *no material facts* to support these allegations. Thus, it is impossible to know what Plaintiff has alleged, and against whom. Perhaps this is by design, since if any of Plaintiff's allegations resulted in damage or injury that was sustained on or before August 31, 2015, the tort claims based on those allegations have prescribed.

Both CGI and Beam performed all of their work for LAHC prior to mid-2014¹³ — more than two years before this lawsuit was filed and one year before August 31, 2015. The contract between GRI and LAHC began on July 1, 2014¹⁴, more than one year before August 31, 2015. Undeniably, to the extent Plaintiff bases its tort claims against GRI on GRI's allegedly negligent decision to take the LAHC contract rather than "decline . . . a job that was outside of its capabilities,"¹⁵ the purported negligence *necessarily* occurred even before that. Accordingly, to the extent Plaintiff's tort claims are based on actions that resulted in injury of which Plaintiff gained actual or constructive knowledge prior to August 31, 2015, those claims, on their face, have prescribed.

Of course, Plaintiff's conclusory, unsupported allegations make it impossible to discern when, during more than three years before this lawsuit was filed, any of the other actions of which he complains took place, or what, if any, damage they caused. These are not "properly-pleaded material allegations of fact," and they cannot be accepted as true. Accordingly, on the face of the Petition, Plaintiff's tort claims have prescribed, and they should be dismissed.

Even the dozens of allegations asserted to support Plaintiff's breach of contract claim against GRI, which are incorporated into Plaintiff's tort claims by reference, cannot remedy this fatal defect. In its contract claim, Plaintiff sets forth 42 distinct factual allegations¹⁶

¹¹ See Petition, ¶¶ 47-52, 65-72.

¹² See Petition, ¶¶ 69-72.

¹³ Petition, ¶¶ 11-12.

¹⁴ See Petition, ¶ 45.

¹⁵ See Petition, ¶ 47, 51(c).

¹⁶ Though these allegations have been asserted in support of Plaintiff's contract claim, they purport to show GRI's gross negligence, and do not reference specific provisions of the contract. Thus, it is unclear whether or how these allegations of negligence are intended to support Plaintiff's tort claim in addition to his

that purportedly show the ways in which GRI negligently breached its contract with LAHC.¹⁷ Yet, *once again*, Plaintiff's allegations are not "properly-pleaded material allegations of fact." Rather, *once again*, they are wholly unsupported and conclusory allegations of both fact and law. Indeed, of the 42 discrete allegations, *only one* provides a temporal reference, and even it lacks the factual support required to provide even the most basic understanding of what Plaintiff alleges to have occurred.¹⁸ Thus, it is impossible to determine when, during the course of GRI's relationship with LAHC, these purported infractions occurred, or resulted in injury.

Furthermore, Plaintiff's overarching complaint regarding GRI's contract duties appears to be that GRI was "grossly negligent" in "declin[ing to take] on a job that was outside of its capabilities," and "deci[ding] to serve as LAHC's TPA."¹⁹ Though Plaintiff, once again, fails to affix a date to this purported infraction, it cannot be disputed that GRI's decision to enter into a contract to serve as LAHC's third party administrator and its failure to decline the job necessarily took place on or before July 1, 2014, the effective date of its contract, and more than two years before Plaintiff brought this suit.²⁰ Accordingly, to the extent this allegation is intended to support Plaintiff's tort claims against GRI, it only supports that those tort claims, on their face, have prescribed.

Because it is clear from the face of the Petition that Plaintiff's tort claims have prescribed, the burden shifts to Plaintiff to demonstrate that prescription was interrupted or suspended. *See Kirby*, 923 So. 2d at 135. He cannot.

D. Plaintiff Cannot Avoid Prescription.

Plaintiff attempts to avoid the effect of prescription by alleging that neither he nor LAHC (prior to the receivership) knew, had reason to know, or could have known of the defendants' purported negligence.²¹ Plaintiff also attempts to avoid the effect of prescription by claiming that GRI's allegedly negligent actions constitute a continuing tort, which continued until GRI's services were terminated by LAHC.²² Both arguments fail.

contract claim. Out of an abundance of caution, because Plaintiff's contract and tort claims appear to be muddled, GRI has addressed these contract allegations in this Exception.

¹⁷ Petition, ¶ 51.

¹⁸ *See* Petition, ¶ 51(ff).

¹⁹ *See* Petition, ¶¶ 47, 51(c).

²⁰ *See* Petition, ¶ 48.

²¹ Petition, ¶ 139.

²² Petition ¶ 140.

1. The Doctrine of *Contra Non Valentem* Does Not Apply.

In paragraph 139 of the Petition, Plaintiff alleges, again in entirely conclusory fashion supported by *no facts*, that: (1) LAHC was "adversely dominated" by the defendants, who concealed the bases for the causes of action now being asserted; (2) Plaintiff did not discover these causes of action until well after the receiver was appointed and LAHC was investigated; (3) Plaintiff had "no ability" to bring these actions prior to receiving the receivership orders; and (4) none of the creditors, claimants, policyholders or members of LAHC knew or had any reason to know of these causes of action until after LAHC was placed in receivership.

Without calling it such, Plaintiff invokes the Louisiana jurisprudential doctrine of *contra non valentem*, under which prescription may be suspended. Louisiana courts recognize four instances where *contra non valentem* is applied to prevent the running of prescription: (1) where there was some legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action; (2) where there was some condition coupled with the contract or connected with the proceedings which prevented the creditor from suing or acting; (3) where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action; and (4) where the cause of action is not known or reasonably knowable by the plaintiff, even though this ignorance is not induced by the defendant. *Carter v. Haygood*, 2004-0646 (La. 01/19/05), 892 So. 2d 1261, 1268.

Each one of Plaintiff's four allegations corresponds with one of the four circumstances in which courts will suspend prescription based on *contra non valentem*. But — once again — the Petition sets forth *no facts* to support those allegations. Plaintiff alleges no facts to support the allegation that GRI, or any defendant, concealed *anything* from Plaintiff or LDI; no facts to support the contention that, apparently, nobody involved with LDI or the LAHC receivership understood LAHC's circumstances for more than a year; and no facts to support the allegation that any defendant "adversely dominated" LAHC. Indeed, Plaintiff admits in the Petition that LAHC knew its processes were "broken" just three months into operation.²³ Surely, by the time LAHC decided to stop doing business in July 2015, LAHC knew, or could have known after reasonable diligence, that it may have causes of action against its administrators.

²³ See Petition, ¶ 45.

Further, it is well settled that the doctrine of *contra non valentem* only applies in "exceptional circumstances." *Renfro v. State*, 2001-1646 (La. 02/26/02), 809 So. 2d 947, 953 (citing La. Civ. Code art. 3467, Official Revision Comment (d); *State ex rel. Div. of Admin. v. McInnis Brothers Construction, Inc.*, 97-0742 (La. 10/21/97), 701 So. 2d 937, 940). The Louisiana Supreme Court has made clear that *contra non valentem* "will not exempt the plaintiff's claim from the running of prescription if his ignorance is attributable to his own willfulness or neglect; that is, a plaintiff will be deemed to know what he could by reasonable diligence have learned." *Renfro*, 809 So. 2d at 953 (citing *Corsey v. State Dept. of Corrections*, 375 So. 2d 1319, 1322 (La. 1979)).

In other words, "[i]f an opportunity is afforded to a party to know and to learn about a certain matter bearing on his interest and he fails or refuses to profit by it, if he closes his eyes to the notice spread before him and shuts his ears to oral information directly imparted to him, the law will hold him as bound by the same, and as fully notified as if he had taken thorough personal cognizance at the time of the information imparted and of the notice given." *Hospital Serv. Dist. No. 1 v. Alas*, 94-897 (La. App. 5 Cir. 06/28/95), 657 So. 2d 1378, 1383 (quoting *Bory v. Knox*, 38 La. Ann. 379 (La. 1886)).

Plaintiff was afforded ample opportunity "to know and to learn" about the facts alleged in this lawsuit at least as early as mid-2014 — he cannot now, sincerely, claim that he had no knowledge of the causes of action asserted herein until LDI filed this lawsuit on August 31, 2016. By that time, LAHC had already been in receivership for one year. Surely, during that year, LDI and Plaintiff, "by reasonable diligence," understood that the purported bases for the causes of action asserted here existed. Moreover, LDI had regulatory oversight of LAHC since it issued LAHC a license to operate as an HMO in 2013. Certainly, Plaintiff does not intend to suggest that as LDI's Commissioner, he had no knowledge, whether actual or constructive, of LAHC's operational problems before LDI placed LAHC into receivership. For several years, the implementation of the Affordable Care Act was one of the most watched processes in the country, not only within the insurance industry, but also by the public at large. For the Commissioner of Insurance, now, to imply that he was not monitoring LAHC's progress and operations simply makes no sense. Indeed, the fact of LAHC's receivership alone indicates that Plaintiff was, at the very least, alerted to the possibility of a lawsuit for at least one year before suit was filed. Accordingly, the argument that the facts alleged in this case were not "reasonably

knowable" by Plaintiff, and that Plaintiff was legally unable to bring this lawsuit before it did, rings hollow. This is not the "exceptional" type of situation in which *contra non valentem* may be applied to save a plaintiff from the effects of prescription, and the tort claims against GRI should be dismissed.

2. Plaintiff Has Not Alleged a Continuing Tort.

In order to allege a continuing tort, a plaintiff must allege both continuous action and continuous damage. *Thomas v. State Employees Group Benefits*, 2005-0392 (La. App. 1st Cir. 3/24/06), 934 So. 2d 753, 758. "If the 'operating cause' of the damage is discontinuous in nature, even if the damage is continuous, the continuing tort theory is inapplicable, and 'prescription runs from the date that knowledge of such damage was apparent or should have been apparent to the injured party.'" *Id.* (quoting *Crump v. Sabine River Auth.*, 98-2326 (La. 6/29/99), 737 So. 2d 720, 726). And, to properly plead a continuing tort, the plaintiff must plead "material allegations of fact, as opposed to allegations deficient in material detail, conclusory factual allegations, or allegations of law." *Wilson v. Bd. of Supervisors of La. State Univ. Agric. & Mech. College*, 2014-0074, at **12-13, (La. App. 1 Cir. 04/08/16), 2016 La. App. Unpub. LEXIS 101 (citing *Kirby*, 923 So. 2d at 135).

Because Plaintiff's allegations against GRI are supported by *no facts*, it is impossible to discern whether *any* of GRI's allegedly negligent actions are purported to be continuing, whether in action *or* in effect. To support its claim that GRI's negligence was continuing, Plaintiff summarily avers, in a single statement, that GRI's allegedly tortious actions "continued until its services were terminated by LAHC in May 2016."²⁴ This one, unsupported allegation does not support Plaintiff's continuing tort theory. Indeed, this conclusory statement does not even meet the *pleading* requirements necessary to maintain a continuing tort claim. Even if this allegation could be accepted as true (it cannot), and even if it did allege continuing damage (it does not), it sets forth no material facts even identifying the operating cause of the purported continuing tort. Plaintiff cannot rely on his single, unsupported, conclusory statement of law to save his time-barred tort claims from dismissal.

If a plaintiff asserts a suspension or interruption of prescription, he bears the burden of proof as to that assertion. *Kirby*, 923 So. 2d at 135. Yet, once again, Plaintiff asserts *no facts* to support his conclusory assertions that the doctrines of *contra non valentem* and

²⁴ Petition, ¶ 140.

continuing tort save his tort claims from the effect of prescription. Plaintiff cannot meet its burden to prove that prescription was suspended or interrupted, and the tort claims against GRI should be dismissed.

CONCLUSION

The Petition contains no factual allegations as to how, when or under what circumstances GRI purportedly committed the torts Plaintiff alleges. Indeed, Plaintiff attributes the purported negligence and gross negligence not only to GRI, but to two other defendants, whose involvement with LAHC ended in mid-2014 — more than two years before Plaintiff filed this lawsuit. Thus, on its face, Plaintiff's tort negligence claim against GRI, which is supported entirely by conclusory allegations of fact that cannot be accepted as true, has prescribed. Plaintiff's wholly conclusory negligence claims against GRI are time-barred on their face, and should be dismissed.



W. Brett Mason, #22511
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One American Place, Ste. 1150
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Telephone: (225) 490-8912
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Attorneys for Defendant Group Resources Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Memorandum in Support of Peremptory Exception of Prescription has been served upon all counsel of record by email and/or by placing same in the United States Mail, postage prepaid and properly addressed, this 13th day of February, 2017.



W. BRETT MASON

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

versus

TERRY S. SHILLING, GEORGE G.
CROMER, WARNER L. THOMAS, IV,
WILLIAM A. OLIVER, CHARLES D.
CALVI, PATRICK C. POWERS, CGI
TECHNOLOGIES AND SOLUTIONS,
INC., GROUP RESOURCES
INCORPORATED, BEAM PARTNERS,
LLC, AND TRAVELERS CASUALTY
AND SURETY COMPANY OF
AMERICA

SUIT NO. 651069 DIVISION

SEC. 22

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

PETITION FOR DAMAGES
AND JURY DEMAND.

NOW INTO COURT, through undersigned counsel, comes James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, who respectfully represents:

JURISDICTION AND VENUE

1.

This Court has jurisdiction over this dispute involving Louisiana Health Cooperative, Inc., ("LAHC") a Louisiana Nonprofit Corporation that holds a health maintenance organization ("HMO") license from the Louisiana Department of Insurance, is domiciled, organized and doing business in the State of Louisiana, and maintains its home office in Louisiana.

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DEPUTY CLERK OF COURT

2.

This Court has jurisdiction over all of the named Defendants because each of them has transacted business or provided services in Louisiana, has caused damages in Louisiana, and because each of them is obligated to or holding assets of Louisiana Health Cooperative, Inc.



3.

Venue is proper in this Court pursuant to the provision of the Louisiana Insurance Code, including La. R.S. 22:257, which dictates that the Nineteenth Judicial District Court has exclusive jurisdiction over this proceeding and La. R.S. 22:2004, which provides for venue in this Court and Parish, as well as other provisions of Louisiana law.

PARTIES

4.

Plaintiff

The Plaintiff herein is James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick ("Plaintiff").

5.

Louisiana Health Cooperative, Inc. ("LAHC") is a Nonprofit Corporation incorporated in Louisiana on or about September 12, 2011. LAHC was organized in 2011 as a qualified nonprofit health insurer under Section 501(c)(29) of the Internal Revenue Code, Section 1322 of the Patient Protection and Affordable Care Act of 2010, the Louisiana Nonprofit Corporation Law, and Louisiana Insurance Law.

6.

A Petition for Rehabilitation of LAHC was filed in the 19th JDC, Parish of East Baton Rouge, on September 1, 2015; on September 1, 2015, an Order of Rehabilitation was entered, and on September 21, 2015, this Order of Rehabilitation was made permanent and placed LAHC into rehabilitation and under the direction and control of the Commissioner of Insurance for the State of Louisiana as Rehabilitator, and Billy Bostick as the duly appointed Receiver of LAHC.

7.

Plaintiff has the authority and power to take action as deemed necessary to rehabilitate LAHC. Plaintiff may pursue all legal remedies available to LAHC, where tortious conduct or breach of any contractual or fiduciary obligation detrimental to LAHC by any person or entity has been discovered, that caused damages to LAHC, its members, policyholders, claimants, and/or creditors.

Defendants

Named Defendants herein are the following:

D&O Defendants

a. **TERRY S. SHILLING** ("Shilling"), an individual of the full age of majority domiciled in the State of Georgia. Shilling was the Chief Executive Officer, President and Director of LAHC, from 2011 until approximately 2013.

b. **GEORGE G. CROMER** ("Cromer"), an individual of the full age of majority domiciled in the State of Louisiana. Cromer was the Chief Executive Officer of LAHC after Shilling, from 2013 until approximately August 2015.

c. **WARNER L. THOMAS, IV** ("Thomas"), an individual of the full age of majority domiciled in the State of Louisiana. Thomas was a Director of LAHC from 2011 until approximately January 2014.

d. **WILLIAM A. OLIVER** ("Oliver"), an individual of the full age of majority domiciled in the State of Louisiana. Oliver was a Director of LAHC from 2011 through 2015.

e. **CHARLES D. CALVI** ("Calvi"), an individual of the full age of majority domiciled in the State of Louisiana. Calvi was the Executive Vice President and Marketing Officer of LAHC from 2014 until approximately August 2015.

f. **PATRICK C. POWERS** ("Powers"), an individual of the full age of majority domiciled in the State of Louisiana. Powers was the Chief Financial Officer and Treasurer of LAHC from 2014 until approximately April 2015.

TPA Defendants

a. **CGI TECHNOLOGIES AND SOLUTIONS, INC.** ("CGI"), a foreign corporation believed to be domiciled in Delaware with its principal place of business in Virginia. From approximately March 2013 to approximately May 2014, CGI served as the Third Party Administrator of LAHC. CGI contracted with and did work for LAHC in Louisiana.

b. **GROUP RESOURCES INCORPORATED** ("GRI"), a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From

approximately May 2014 to approximately May 2016, GRI served as the Third Party Administrator of LAHC. GRI contracted with and did work for LAHC in Louisiana.

11.

Beam Partners, LLC

a. BEAM PARTNERS, LLC ("Beam Partners"), a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From prior to LAHC's incorporation in 2011 through approximately mid-2014, Beam Partners developed and managed LAHC. Beam Partners contracted with and did work for LAHC in Louisiana.

12.

Insurer Defendant

a. TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("Travelers"), a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to LAHC that provide coverage for claims asserted herein.

DEFINED TERMS

13.

As used herein, the following terms are defined as follows:

1. "D&O Defendants" shall refer to and mean those directors and officers of LAHC named as defendants herein, specifically: Terry S. Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, and Patrick C. Powers.
2. "TPA Defendants" shall refer to and mean those third party administrators hired by LAHC to oversee, manage, and otherwise operate LAHC named as defendants herein, specifically: CGI Technologies and Solutions, Inc. and Group Resources Incorporated.
3. "Insurer Defendant" shall refer to and mean those insurance companies named herein which provide insurance coverage for any of the claims asserted herein by LAHC against any of the defendants named herein, including: Travelers Casualty and Surety Company of America ("Travelers").
4. "LDOI" shall refer to and mean the Louisiana Department of Insurance.
5. "CMS" shall refer to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

FACTUAL BACKGROUND

14.

The Patient Protection and Affordable Care Act ("ACA") established health insurance exchanges (commonly called "marketplaces") to allow individuals and small businesses to shop for health insurance in all states across the nation. To expand the number of available health insurance plans available in the marketplaces, the ACA established the Consumer Operated and Oriented Plan ("CO-OP") program. The ACA further directed the Secretary of Health and Human Services to loan money to the CO-OP's created in each state. Beginning on January 1, 2014, each CO-OP was allowed to offer health insurance through the newly minted marketplaces for its respective state. A total of 23 CO-OP's were created and funded as of January 1, 2014. State regulators, like the Louisiana Department of Insurance ("LDOL"), have the primary oversight of CO-OP's as health insurance issuers.

15.

In Louisiana, the CO-OP created and funded pursuant to the ACA was Louisiana Health Cooperative, Inc. ("LAHC"); a Louisiana Nonprofit Corporation that holds a health maintenance organization ("HMO") license from the LDOL. Incorporated in 2011, LAHC eventually applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") totaling more than \$65 million. Specifically, according to the 2012 Loan Agreement with LAHC, the Louisiana CO-OP was awarded a Start-up Loan of \$12,426,560, and a Solvency Loan of \$52,614,100. Pursuant to the ACA, these loans were to be awarded only to entities that demonstrated a high probability of becoming financially viable. All CO-OP loans must be repaid with interest. LAHC's Start-up Loan must be repaid no later than five (5) years from disbursement; and LAHC's Solvency Loan must be repaid no later than fifteen (15) years from disbursement.

16.

From the start, because of the gross negligence of the Defendants named herein, LAHC failed miserably. Before ever offering a policy to the public, LAHC lost approximately \$8 million in 2013. While projecting a modest loss of about \$1.9 million in 2014 in its loan application to CMS, LAHC actually lost about \$20 million in its first year in business. And although LAHC projected turning a modest profit of about \$1.7 million in 2015, it actually lost more than \$54 million by the end of that year.

17.

Not only did LAHC lose a tremendous amount of money, but, from its inception, LAHC was unable to process and manage the eligibility, enrollment, and claims handling aspects of the HMO competently. Almost every aspect of LAHC's eligibility, enrollment, and claims handling process was deficient, resulting in numerous unpaid claims, untimely paid claims, and erroneously paid claims.

18.

By July 2015, only eighteen months after it started issuing policies, LAHC decided to stop doing business. The LDOJ placed LAHC in rehabilitation in September 2015, and a Receiver, Billy Bostick, was appointed by this Court to take control of the failed Louisiana CO-OP.

19.

The various parties who created, developed, and managed LAHC (i.e., the Defendants named herein) completely failed to meet their respective obligations to the subscribers, providers, and creditors of this Louisiana HMO. From the beginning of its existence, LAHC was completely ill-equipped to service the needs of its subscribers (i.e., its members / policyholders), the healthcare providers who provided medical services to its members, and the vendors who did business with LAHC. As described in detail herein, the conduct of the Defendants named herein went way beyond simple negligence. For instance, when the LDOJ took over the operations of LAHC, the CO-OP had a backlog of approximately 50,000 claims that had not been processed. Because of Defendant's gross negligence, as of December 31, 2015, LAHC had lost more than \$82 million.

20.

As set forth herein, Defendants are liable to Plaintiff for all compensatory damages caused by their actionable conduct.

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CAUSES OF ACTION

Count One: Breach of Fiduciary Duty (Against the D&O Defendants and Insurer Defendant)

21.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

22.

The D&O Defendants owed LAHC, its members, and its creditors, fiduciary duties of loyalty, including the exercise of oversight as pleaded herein, due care, and the duty to act in good faith and in the best interest of LAHC. The D&O Defendants stand in a fiduciary relation to LAHC and its members and creditors and must discharge their fiduciary duties in good faith, and with that diligence, care, judgment and skill which the ordinarily prudent person would exercise under similar circumstances in like position.

23.

At all times when LAHC was insolvent and/or in the zone of insolvency, the D&O Defendants owed these fiduciary duties to the creditors of LAHC as well.

24.

The conduct of the D&O Defendants of LAHC, as pled herein, went beyond simple negligence. The conduct of the D&O Defendants constitutes gross negligence, and in some cases, willful misconduct. In other words, the D&O Defendants did not simply act negligently in the management and supervision of and their dealings with LAHC, but the D&O Defendants acted grossly negligently, incompetently in many instances, and deliberately, in other instances, all in a manner that damaged LAHC, its members, providers and creditors.

25.

The D&O Defendants knew or should have known that Beam Partners was unqualified and unsuited to develop and manage LAHC.

26.

The D&O Defendants knew or should have known that GRI was unqualified and unsuited to develop and manage LAHC.

27.

The failure of the D&O Defendants to select a competent TPA, negotiate an acceptable contract with GRI, and manage and oversee Beam Partners, CGI, and GRI's conduct, constitutes

gross negligence on the part of the D&O Defendants that caused LAHC to hire other vendors and/or additional employees, in effect, to either do work and/or fix work that should have been competently done by Beam Partners, CGI, and/or GRI, resulting in tremendous additional and unnecessary expenses and inefficiencies to LAHC which played a significant role in LAHC's failure.

28.

The D&O Defendants breached their fiduciary obligations in the following, non-exclusive, ways:

- a. Paying excessive salaries to LAHC executives in relation to the poor, inadequate, or non-existent services rendered by them to LAHC and/or on its behalf;
- b. Paying excessive bonuses to LAHC executives in relation to the poor, inadequate, or non-existent services rendered by them to LAHC and/or on its behalf;
- c. Grossly inadequate oversight of LAHC operations;
- d. Grossly inadequate oversight of contracts with outside vendors, including CGI and GRI;
- e. Lack of regularly scheduled and meaningful meetings of the Board of Directors and management; the few board meetings that took place (one in 2012; four in 2013; six in 2014; and one in 2015), generally lasted about an hour;
- f. Gross negligence in hiring key management and executives with limited or inadequate health insurance experience;
- g. Gross failure to protect the personal health information of subscribers; unauthorized disclosure of subscribers' personal health information; for example, in February 2014, an incorrect setting within LAHC's document production system caused 154 member ID cards to be erroneously distributed;
- h. Gross failure to issue ID cards to members accurately and timely;
- i. Gross failure to pay claims timely (if at all);
- j. Gross failure to bill premiums accurately and timely;
- k. Gross failure to properly calculate member out-of-pocket responsibilities resulting in members being over-billed for their portion of services rendered by providers;
- l. Gross failure to collect premium payments timely (if at all);
- m. Gross failure to process and record the effective dates of policies accurately or consistently;
- n. Gross failure to process and record the termination dates of policies accurately or consistently;
- o. Gross failure to process invoices correctly and timely;
- p. Gross failure to determine and report eligibility of members accurately;
- q. Gross failure to have in place and/or to implement a financial policy or procedure to verify check register expenditures;

- r. Gross failure to have in place and/or to implement a financial policy or procedure to verify credit card expenditures; for example, in or around October to November 2013, a VP of IT Operations at LAHC, Larry Butler, misused his LAHC credit card by incurring more than \$35,000 in charges, the vast majority of which were personal expenses, on a corporate account with limits of \$5,000;
- s. Gross failure to have in place and/or to implement a financial policy or procedure to verify sponsor invoices;
- t. Gross failure to have in place and/or to implement policies and procedures regarding operational, financial, and compliance areas (such as background checks, corrective action plans, procurement, contract management, and financial management) before engaging in meaningful work and offering insurance coverage to the public;
- u. Gross failure to understand, implement, and enforce the applicable "grace period" pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1260.31, *et. seq.*;
- v. Gross failure to record and report LAHC's claims reserves (IBNR) accurately;
- w. Gross failure to report and appoint agents and brokers;
- x. Gross failure to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately;
- y. As of March 2014, LAHC described its own system to process enrollment, eligibility, and claims handling as a "broken" process;
- z. Grossly negligent to choose GRI to replace GGI, went from the frying pan into the fire; GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its members, providers, and creditors;
- aa. Erroneously terminating coverage for fully subsidized subscribers;
- bb. Failing to provide notice to providers regarding member terminations and lapses due to non-payment of premiums;
- cc. Failing to provide notice (delinquency letters) to subscribers prior to terminating coverage;
- dd. Failing to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data;
- ee. Failing to collect binder payments on-time;
- ff. Failing to terminate members when binder payments were not received;
- gg. Failing to correct ambiguities in the GRI contract(s);
- hh. Failing to select qualified vendors;
- ii. Failing to select qualified management;
- jj. They knew or should have known, prior to the public rollout of LAHC in January 2014, that LAHC would not be a viable HMO, and yet they proceeded to offer policies and services to the public and members knowing that LAHC would fail;
- kk. They caused and/or allowed LAHC to misrepresent the financial condition and viability of LAHC to the LDGI, the federal government, its member, its creditors, and the public, thereby allowing LAHC to remain in operation much longer than they

should and would otherwise have, adding additional members and incurring additional claims and debt;

- ll. They knowingly paid excessive salaries, professional service fees, and consulting fees, as alleged herein, without receiving appropriate value to LAHC;
- mm. They failed to implement internal controls that would have prevented the gross waste and damages sustained by LAHC as a result of their gross negligence;
- nn. They concealed LAHC's true financial condition and insolvency and artificially prolonged LAHC's corporate life beyond insolvency all to the detriment of LAHC, its members, and its creditors;
- oo. They grossly mismanaged LAHC's affairs;
- pp. They grossly failed to exercise oversight or supervise LAHC's financial affairs;
- qq. They failed to operate LAHC in a reasonably prudent manner;
- rr. They failed in their duty to operate LAHC in compliance with the laws and regulations applicable to them; and
- ss. Other acts of gross negligence as may be later discovered.

29.

The D&O Defendants also breached their fiduciary duty of loyalty, due care, and good faith by allowing, if not fostering, individuals with conflicts of interest to influence, if not control, LAHC, all to the detriment of LAHC, its members, providers, and creditors.

30.

Because of the grossly negligent conduct of the D&O Defendants, LAHC was woefully not prepared to for its roll-out to the public on January 1, 2014.

31.

By approximately March 2014, just three (3) months after its ill-advised roll-out, the D&O Defendants compounded an already bad situation by deciding to replace CGI with GRI as TPA. At this point, the D&O Defendants should have either exercised appropriate oversight and management to reform CGI's grossly inadequate performance, or the D&O Defendants should have terminated the Agreement with CGI and found a suitable TPA, or the D&O Defendants should have ceased operations altogether. Instead, the D&O Defendants made matters worse by hiring a TPA that was even less qualified and less prepared than CGI for the job: GRI.

32.

To further damage the struggling LAHC, in approximately mid-2014, the D&O Defendants decided to switch healthcare provider networks from Verity Healthnet, LLC ("Verity") to Primary

Healthcare Systems ("PHCS"). Once again, the D&O Defendants' conduct constitutes gross negligence that further damaged LAHC, its members, providers, and creditors.

33.

The D&O Defendants, in breaching both their duty of loyalty and duty of care, showed a conscious disregard for the best interests of LAHC, its members, providers and creditors.

34.

As a direct and proximate result of the gross negligence and foregoing failures of the D&O Defendants to perform their fiduciary obligations, LAHC, its members, its providers and its creditors have sustained substantial, compensable damages for which the D&O Defendants and the Insurer Defendant are liable, and for which Plaintiff is entitled to recover in this action.

35.

The compensable damages caused by the D&O Defendants' grossly negligent conduct, if not willful conduct, include, but are not limited to:

- a. damages in the form of all losses sustained by LAHC from its inception (i.e., they should have never started LAHC in the first place);
- b. damages in the form of lost profits (i.e., the amount LAHC would have earned, if any, but for their conduct);
- c. damages in the form of excessive losses (i.e., the difference between the amount LAHC would have lost, if any, and the amount LAHC did lose, because of their conduct);
- d. damages in the form of deepening insolvency (i.e., the damages caused by their decision to prolong the corporate existence of LAHC beyond insolvency);
- e. damages in the form of all legitimate debts owed to creditors of LAHC, including but not limited to those unpaid debts owed to health care providers who delivered services to members of LAHC, any debts owed to members of LAHC that were not paid, and the debt owed to CMS (both principal and interest) as a result of LAHC's gross negligence as pled herein;
- f. disgorgement of all excessive salaries, bonuses, profits, benefits, and other compensation inappropriately obtained by them;
- g. damages in the form of all excessive administrative, operational, and/or management expenses, including:
 - i. Untimely payment of member and provider claims;
 - ii. Incorrect payment of member and provider claims;
 - iii. Increased interest expense due to incorrect and/or untimely claims payments;
 - iv. Increased expenses due to incorrect and/or untimely claims payments;
 - v. Incorrect and/or untimely payment of agent/broker commissions;
 - vi. Inaccurate and/or untimely collection of premium due for health coverage;

- vii. Increased expenses for services from LAHC vendors other than the third party administrator;
 - viii. Increased expenses for provider networks and medical services;
 - ix. Loss of money due to LAHC from the Center for Medicare and Medicaid Services ("CMS") for risk adjustments;
 - x. Fines incurred for failure to have agents/brokers properly appointed; and
 - xi. Inability to repay the millions of dollars loaned to LAHC by the federal government.
- h. all costs and disbursements of this action, including all compensable litigation expenses.

36.

The Insurer Defendant is liable to the Plaintiff jointly, severally and *in solido* with the D&O Defendants to the extent of the limits of its respective policies of insurance, for the following reasons:

- a. Travelers Casualty and Surety Company of America issued a Private Company Directors and Officers Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of \$3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;
- b. Travelers Casualty and Surety Company of America issued a Managed Care Errors and Omissions Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of \$3,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;

**Count Two: Breach of Contract
(Against the TPA Defendants and Beam Partners)**

37.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

CGI

38.

On or about February 15, 2013, LAHC and CGI entered into an Administrative Services Agreement ("Agreement") whereby CGI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Agreement. A true and correct copy of the Agreement and all exhibits is attached hereto and incorporated herein by reference as "Exhibit 1."

39.

Under the terms of the Agreement, CGI represented and warranted, *inter alia*, that "CGI personnel who perform the services under the Agreement shall have the appropriate training, licensure and or certification to perform each task assigned to them" and that "CGI will make a good faith effort to maintain consistent staff performing the delegated functions" for LAHC.

40.

Under the terms of the Agreement, CGI was, among other things, obligated to:

- a. Function as a Third Party Administrator for LAHC;
- b. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.
- c. Accurately process and pay claims for covered services provided to LAHC's members by providers;
- d. Competently perform all of those tasks set forth in the Agreement, including Exhibit 2 thereto, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclean claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and
- e. Competently perform all of those task expected and required of a Third Party Administration, whether specified in the Agreement or not.

41.

CGI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

- a. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;
- b. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;
- c. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;
- d. Failed to provide proper notice (delinquency letters) to subscribers prior to terminating coverage; and
- e. Other acts of gross negligence as may be later discovered.

42.

As of March 2014, just three (3) months after its roll-out, LAHC described the system designed and implemented by CGI to process enrollment, eligibility, and claims handling, as a "broken" process. Indeed, the conduct of CGI, as described herein in detail, goes well beyond simple negligence; almost every facet of the system designed and implemented by CGI as a third party administrator of LAHC was a failure. CGI's conduct, as described herein in detail, constitutes gross negligence.

43.

CGI's breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

GRI

44.

GRI was not qualified to render the services as a third party administrator ("TPA") that LAHC needed to be successful. Rather than decline taking on a job that was outside of its capabilities, GRI wrongly agreed to replace CGI and serve as TPA for LAHC. GRI's decision to serve as LAHC's TPA constitutes gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors. But for GRI's gross negligence, most of LAHC's substantial, compensatory damages would have been avoided.

45.

In or about July 2014, LAHC and GRI entered into an Administrative Services Agreement whereby GRI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Administrative Services Agreement. The Administrative Services Agreement had an effective date of July 1, 2014. The Administrative Services Agreement was amended both in September 2014 and December 2014. A true and correct copy of the Administrative Services Agreement and all amendments and exhibits are collectively referred to as the "Agreement" and are attached hereto, incorporated herein by reference and designated as "Exhibit 2."

46.

Under the terms of the Agreement, CGI represented and warranted that "GRI personnel who perform or provide the Delegated Services specified services under this Agreement shall

possess the appropriate authorization, license, bond and certificates, and are full and appropriately trained, to properly perform the tasks assigned to them."

47.

Under the terms of the Agreement, GRI was, among other things, obligated to:

- a. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.
- b. Accurately process and pay claims for covered services provided to LAHC's members by providers;
- c. Competently perform all of those tasks set forth in the Agreement, including Exhibit A-1 thereto, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclear claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and
- d. Competently perform all of those tasks expected and required of a Third Party Administration, whether specified in the Agreement or not.

48.

GRI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

- a. GRI failed to meet most, if not all, of the performance standards mandated by the Services Agreement of July 1, 2014;
- b. GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its member, providers, and creditors;
- c. GRI knew or should have known that it was unqualified to service the needs of LAHC;
- d. Pursuant to GRI's Service Agreement, GRI was responsible for critical processes that are typically covered by such a health insurance administrative service provider contracts, including the receipt and processing of member premium payments, the calculation and payment of broker commissions, and the process of managing calls into LAHC;
- e. GRI wholly failed to provide sufficient and adequately trained personnel to perform the services GRI agreed to perform under the Agreement;
- f. Failed to process and pay claims on a timely basis, resulting in interest payment alone in excess of \$600,000.00;
- g. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;
- h. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;

15

- i. Erroneously terminated coverage for fully subsidized subscribers (\$0 Invoices);
- j. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;
- k. Failed to timely process enrollment interface (ANSI 834) from CMS;
- l. Failed to accurately process enrollment interface (ANSI 834) from CMS;
- m. Failed to pass CMS data edits for CMS Enrollment Reconciliation Process;
- n. Submitted inaccurate data to the CMS Enrollment Reconciliation Process causing erroneous terminations;
- o. Failed to pass CMS data edits for Enrollment Terminations & Cancellations Interface (ANSI 834) to CMS;
- p. Failed to pass CMS data edits for Edge Server Enrollment Submissions to CMS;
- q. Failed to use standard coding for illustrating non-effectuated members (using years 1915 and 1900 as termination year);
- r. Failed to provide proper notice (delinquency letters) to subscribers prior to terminating coverage;
- s. Failed to invoice subscribers accurately when APTC changed;
- t. Failed to invoice subscribers for previously unpaid amounts (no balance forward);
- u. Failed to cancel members for non-payment of binder payment;
- v. Failed to cancel members after passive enrollment;
- w. Failed to administer member benefits (maximum out-of-pockets exceeded);
- x. Failed to pay interest on claims to providers;
- y. Failed to pay claims within the contractual timeframes;
- z. Failed to adjust claims after retroactive disenrollments;
- aa. Failure to examine claims for potential subrogation
- bb. Failed to maintain adequate customer service staffing and call center technology;
- cc. Failed to process APTC changes from CMS within an appropriate timeframe;
- dd. Failed to capture all claims diagnoses data from providers;
- ee. Failed to pass CMS data edits for Edge Server claims submissions to CMS;
- ff. Failed to load the 1,817 claims from the 4/29/16 and 5/2/16 check runs onto the EDGE Server;
- gg. Incorrectly calculated claim adjustments, especially as it pertains to a subscriber's maximum out-of-pocket limit;
- hh. Paid claims for members that never effectuated;
- ii. Failed to protect the personal health information of subscribers;

- jj. Failed to issue ID cards to members accurately and timely and without effective dates;
- kk. Failed to have in place and/or to implement a financial policy or procedure to verify credit card expenditures;
- ll. Failed to understand, implement, and enforce the applicable "grace period" pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1269.31, *et. seq.*;
- mm. Failed to record and report LAHC's claims reserves (IBNR) accurately;
- nn. Failed to report and appoint agents and brokers appropriately;
- oo. Failed to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately; and
- pp. Failed to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data.

49.

According to the Agreement, GRI was obligated to pay claims within the time frame required by applicable law; and if claims were paid untimely because of GRI's conduct, GRI "shall be responsible for paying any required interest penalty to Providers." Because of GRI's gross negligence and non-performance of its contractual obligations owed to LAHC, numerous claims were paid late and significant interest penalties were incurred and paid by LAHC. GRI is obligated to pay all such interest penalties.

50.

GRI's gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

Beam Partners

51.

Beam Partners was not qualified to render the services as a manager and developer and/or third party administrator ("TPA") that the start-up, LAHC, needed to be successful. Rather than decline taking on a job that was outside of its capabilities, Beam Partners wrongly orchestrated and agreed to manage, develop, and serve as TPA for LAHC from its inception. Beam Partner's decision to manage, develop, and effectively serve as LAHC's TPA constitutes gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors. But for Beam's gross negligence, all of LAHC's substantial, compensatory damages would have been avoided.

52.

Given that numerous individuals who either owned, managed and/or worked for Beam Partners, including Terry Shilling, Alan Bayham, Mark Gentry, Jim McElaney, Deborah Sidener, Jim Krainz, Jim Pittman, Michael Hartnett, Eric LeMarbre, Etosha McGee, Diana Pitchford, Darla Coates, were also involved with and managed LAHC from the beginning as officers, directors, and employees of LAHC, for all intents and purposes, Beam Partners was closely related to and acted as LAHC.

53.

From approximately September 2012 through May 2014, LAHC paid more than \$3.7 million in the form of consulting fees, performance fees, and expenses to Beam Partners.

54.

LAHC and Beam Partners, LLC entered into a Management and Development Agreement whereby Beam Partners agreed to perform certain management, administrative, and developmental services for LAHC in exchange for certain monetary compensation as set forth in the Management and Development Agreement. Warner Thomas, as Chair of the Board of Directors of LAHC, signed this Management and Development Agreement on October 8, 2012; Terry Shilling signed the Management and Development Agreement on behalf of Beam Partners, LLC, with an effective date of August 28, 2012. At this time, Terry Shilling was simultaneously the Interim CEO of LAHC and a member and owner of Beam Partners. This Agreement was amended at least twice. A true and correct of the Management and Development Agreement, all Exhibits thereto (with the exception of Exhibit 2, "Performance Objectives for Services", which is unavailable, Amendment 1, and Amendment 2), is attached hereto and incorporated by reference as "Exhibit 3."

55.

According to the terms of the Agreement, Beam Partners agreed to provide "services essential to the formation of the Cooperative and its application for CO-OP program loans," including training all directors, securing the requisite licensure from LDOL, developing a network of providers for LAHC, recruiting and vetting candidates for positions at LAHC, creating processes, systems, and forms for the operation of LAHC, and identifying, negotiating and executing administrative services for the operation of LAHC.

In short, Beam Partners agreed to transform the start-up LAHC into a well-organized, well-funded, and well-run HMO prior to January 1, 2014, the roll-out date of LAHC to the public. Beam Partners utterly failed to meet its contractual obligations owed to LAHC, and breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

- a. Failing to identify, select, and retain qualified third party contractors for LAHC, including but not limited to CGI and/or GRI;
- b. Failing to train all directors of LAHC regarding how to manage such an HMO;
- c. Failing to develop a network of providers for LAHC;
- d. Failing to recruit and adequately vet appropriate candidates for positions at LAHC;
- e. Failing to create adequate and/or functioning processes, systems, and forms for the operation of LAHC;
- f. Failing to identify, negotiate, and execute adequate and/or functioning administrative services for the operation of LAHC;
- g. Failing to report and provide LAHC with complete, accurate, and detailed records of its performance of all services provided to LAHC;
- h. Failing to adequately disclose conflict of interests regarding Beam Partners and LAHC to any regulatory authority;
- i. Failing to provide sufficient and adequately trained personnel to perform the services Beam Partners agreed to perform under the Agreement; and
- j. In general, by completely failing to have LAHC ready and able to meet its obligations to the public, members, providers, and creditors on or before the roll-out date of January 1, 2014.

The numerous failures of Beam Partners to perform its obligations owed to LAHC constitute gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors.

To the extent that Beam Partners made the decision to keep using CGI as TPA until it was too late, Beam Partners is grossly negligent in that it knew or should have known that CGI was unqualified to serve as TPA.

59.

To the extent that Beam Partners made the decision to replace CGI with GRI as TPA, Beam Partners is grossly negligent in that it knew or should have known that GRI was unqualified to serve as TPA.

60.

To the extent that Beam Partners made the decision to terminate the Verity contract, Beam Partners is grossly negligent in that it knew or should have known that terminating the Verity contract would be a substantial factor in causing LAHC to incur additional, unnecessary expense and, ultimately, to collapse.

61.

Beam Partners' gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

**Count Three: Gross Negligence and Negligence
(Against the TPA Defendants and Beam Partners)**

62.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

63.

CGI, GRI, and Beam Partners each had a duty to ensure that its personnel who performed services for LAHC were adequately and appropriately trained, licensed, and certified to perform the services and functions delegated by LAHC to each of them.

64.

CGI, GRI, and Beam Partners each had a duty to accurately process and pay claims on LAHC's behalf in a timely manner at the correct rates and amounts.

65.

CGI, GRI, and Beam Partners each had a duty to perform their obligations in a reasonable, competent, and professional manner.

66.

CGI, GRI, and Beam Partners each breached their duties in that it negligently failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts.

67.

CGI, GRI, and Beam Partners each breached their duties in that they negligently and wholly failed to perform their obligations in a reasonable, competent, and professional manner.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to provide a sufficient number of adequately trained personnel who had sufficient knowledge of the system program utilized by LAHC to process and pay health insurance claims at the correct rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

68.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct health insurance rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

69.

As a direct and proximate result of CGI's, GRI's, and Beam Partners' negligence or gross negligence, LAHC has incurred substantial, compensatory damages, which are recoverable herein by Plaintiff.

JURY DEMAND

70.

Plaintiff is entitled to and hereby demands a trial by jury on all triable issues.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, James I. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, prays and demands that the Defendants named herein, Terry S. Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, Patrick C. Powers, CGI Technologies and Solutions, Inc., Group Resources Incorporated, Beam Partners, LLC and Travelers Casualty and Surety Company of America, be cited to appear and answer, and that upon a final hearing of the cause, judgment be entered against Defendants and in favor of Plaintiff for all compensable damages in an amount reasonable in the premises, including:

- a. All compensatory damages allowed by applicable law caused by Defendants' actionable conduct;
- b. the recovery from Defendants of all administrative costs incurred as a result of the necessary rehabilitation and/or liquidation proceedings;
- c. all fees, expenses, and compensation of any kind paid by LAHC to the D&O Defendants, Beam Partners, CGI, and GRI;
- d. any and all equitable relief to which Plaintiff may appear properly entitled;
- e. all recoverable costs and litigation expenses incurred herein;
- f. all judicial interest;
- g. any and all equitable relief to which Plaintiff may appear properly entitled; and
- h. all further relief to which Plaintiff may appear entitled.

Respectfully submitted,

J. E. Cullens, Jr., T.A., La. Bar #23011
 Edward J. Walters, Jr., La. Bar #13214
 Darrel J. Papillion, La. Bar #23243
 David Abboud Thomas, La. Bar #22701
 Jennifer Wise Moroux, La. Bar #31368
**WALTERS, PAPILLION,
 THOMAS, CULLENS, LLC**
 12345 Perkins Road, Bldg One
 Baton Rouge, LA 70810
 Phone: (225) 236-3636
 Facsimile: (225) 236-3650

PLEASE WITHHOLD SERVICE AT THIS TIME

FILED August 31 2016
 Signed: Karen Pope
 Deputy Clerk

Certified True and Correct Copy
November 29 2016
Walter Papillion
 Deputy Clerk

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

NUMBER: 1041928 STATE OF LOUISIANA

DIVISION: SEC. 26

JAMES J. DONELON,
COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

LOUISIANA HEALTH COOPERATIVE, INC.

FILED: _____
DEPUTY CLERK

ORDER OF REHABILITATION AND INJUNCTIVE RELIEF

CONSIDERING the verified petition, and the law and the evidence entitling the Commissioner to the relief sought herein, and the Court being satisfied from the allegations therein and finding that the defendant named herein is an health maintenance organization as defined in and under Louisiana law and that the interests of creditors, policyholders, members, subscribers, enrollees, and the public will probably be endangered by delay, and the Court finding that the law and the evidence is in favor of granting the relief prayed for herein,

IT IS ORDERED, ADJUDGED AND DECREED that sufficient cause exists for the Rehabilitation of Louisiana Health Cooperative, Inc. ("LAHC").

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC shall be and hereby is placed into rehabilitation under the direction and control of the Commissioner of Insurance for the State of Louisiana (the "Commissioner"), subject to the further written orders of this Court and that the Commissioner be and hereby is appointed Rehabilitator and that Billy Bostick be and hereby is appointed Receiver of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner shall be and hereby is vested by operation of law with the title to all property, business, affairs, accounts, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and Twitter accounts), documents, claims files, records and other assets of LAHC as of the date of this order of rehabilitation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner, his agents and/or employees, shall be and hereby are directed to take possession and control of the property, business, affairs, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and

EBR3150272



Twitter accounts), documents, claims files, software, electronic data, e-mail, websites, books, records, accounts, copyrights, trademarks, patents, and all other assets of LAHC, including all real property, whether in the possession of LAHC or its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, or agents, and of the premises occupied by LAHC for its business, conduct all of the business and affairs of LAHC, or so much thereof as he may deem appropriate, manage the affairs of LAHC, and to rehabilitate same, until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC, its policyholders, subscribers, members, enrollees, officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, creditors, banks, savings and loan associations, and/or other entity or person acting for or on behalf of LAHC shall be and hereby are enjoined from disposing of the property, business, affairs, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and Twitter accounts), documents, claims files, software, electronic data, e-mail, websites, books, records, accounts, copyrights, trademarks, patents, and all other assets of LAHC, including all real property, and from the transaction of the business of LAHC, except with the concurrence of the Commissioner, until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to La. R.S. 22:2006, any and all persons and entities shall be and hereby are enjoined from obtaining preferences, judgments, attachments or other like liens or the making of any levy against LAHC, its property and assets while in the Commissioner's possession and control.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in accordance with La. R.S. 22:2036 the Commissioner shall be and hereby is immediately vested with and/or maintain the authority to enforce, for the benefit of LAHC policyholders, subscribers, members, and enrollees and LAHC, contract performance by any provider or other third party who contracted with LAHC, and for such other relief as the nature of the case and the interest of LAHC, LAHC's policyholders, subscribers, members, enrollees, creditors or the public may require.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner shall be and hereby is entitled to the right to enforce or cancel, for the benefit of the policyholders, subscribers, members, enrollees of LAHC, and LAHC contract performance by any party who had contracted with LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner shall be and hereby is entitled to permit such further operation of LAHC as he may deem necessary to be in the best interests of the policyholders, subscribers, members, and enrollees, and creditors of LAHC and the orderly rehabilitation of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all authority of all officers, directors, and managers of LAHC shall be and hereby is suspended and all authority of said officers, directors and managers be and hereby is vested in the Commissioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner and Receiver of LAHC and his assistants shall be and hereby are allowed and authorized to:

- a) Employ and authorize the compensation of accountants, clerks, and such assistants as he deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, as approved by the Court, out of the funds or assets of LAHC in the possession of the Commissioner and the Receiver or coming into LAHC's possession;
- b) Defend or not defend legal actions wherein LAHC or the Commissioner or Receiver is a party defendant, commenced prior to or subsequent to the entry of the order herein, without the authorization of the Court, except, however, in actions where LAHC is a nominal party, as in certain foreclosure actions and the action does not affect a claim against or adversely affect the assets of LAHC, the Commissioner or Receiver may file appropriate pleadings in his discretion;
- c) Commence and maintain all legal actions necessary, wherever necessary, for the proper administration of this rehabilitation proceeding;
- d) Collect all debts, which are economically feasible to collect and which are due and owing to LAHC;
- e) Take possession of all of LAHC's securities and certificates of deposit on deposit with any financial institution or any other person or entity, if any, and convert to cash so much of the same as may be necessary, in his judgment, to pay the expenses of administration of rehabilitation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any officer, director, manager, trustee, agent, adjustor, contractor, or third party administrator of LAHC and any person who possesses or possessed any executive authority over, or who exercises or exercised any control over any segment of LAHC's affairs shall be and hereby are required to fully cooperate with the Commissioner, the Receiver and his assistants, notwithstanding their dismissal pursuant to this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all attorneys employed by LAHC as of the date of the order entered herein shall, within ten (10) days notice of the order entered herein, report to the Receiver or Commissioner on the name, company, claim number and status of each file they are handling on behalf of LAHC. Said report shall also include an account of any funds received from or on behalf of LAHC. All attorneys described herein are hereby discharged as of the date of this order unless the Receiver or Commissioner retains their services in writing. All attorneys employed by LAHC who are in possession of litigation files or other material, documents or records belonging to or relating to work performed by the attorney on behalf of LAHC shall deliver such litigation files, material, documents or records intact and without purging to the Receiver notwithstanding any claim of a retaining lien, which, if otherwise valid, shall not be extinguished by such turn-over of documents.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that reinsurance amounts due to or payable by LAHC shall be remitted to, or disbursed by the Receiver at the Receiver's discretion and with the consent of the court where required by law. The Receiver shall handle reinsurance losses recoverable or payable by LAHC. All correspondence concerning reinsurance shall be between the Receiver and the reinsuring company or intermediary unless otherwise authorized by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any bank, savings and loan association, financial institution, and any other person or entity which has on deposit, including statutory deposits, in its possession, custody or control any funds, accounts and any other assets of LAHC, shall be and hereby is ordered to immediately transfer title, custody and control of all such funds, accounts, or assets to the Receiver, and instructed that the Receiver has absolute control over such funds, accounts and other assets. The Receiver may change the name of such accounts and other assets withdraw them from such bank, savings and loan association or other financial institution or take such lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association, or other financial institution, person or entity shall freeze or place a hard hold on, or exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Receiver's control without the permission of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any bank, savings and loan association, financial institution, and any other person or entity which has on deposit, in its possession, custody or control any funds, accounts and any other assets of LAHC, shall not be permitted to freeze or place a hard hold on, or exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the control of the Commissioner, the Receiver or his appointees without the permission of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any entity furnishing telephone, water, electric, sewage, garbage or trash removal services to LAHC shall maintain such service and transfer any such accounts to the Receiver as of the date of the order entered herein, unless instructed to the contrary by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon request by the Receiver, any company providing telephone services to LAHC shall provide a reference of calls from the number presently assigned to LAHC to any such number designated by the Receiver or perform any other services or changes necessary to the conduct of the receivership of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any data processing service which has custody or control of any data processing information and records, including, but not limited to, source documents, data processing cards, input tapes, all types of storage information, master tapes or any other recorded information relating to LAHC shall be and hereby are required to transfer custody and control of such records to the Commissioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the United States Postal Service shall be and hereby is directed to provide any information requested by the Receiver regarding LAHC and to handle future deliveries of LAHC's mail as directed by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner and his assistants shall be and hereby are authorized to conduct an investigation of LAHC and its subsidiaries and affiliates to uncover and make fully available to the Court the true state of LAHC's financial affairs. In furtherance of this investigation, LAHC, its subsidiaries, its affiliates, owners, officers, directors, managers, trustees, agents, employees, servants, adjustors, accountants, actuaries, attorneys, contractors, consultants, or third party administrators, LAHC shall make all books, documents, accounts, records and affairs, which either belong to or pertain to LAHC available for full, free and unhindered inspection and examination by the

Commissioner during normal business hours, Monday through Friday, from the date of the order entered herein. LAHC and the above-specified entities shall fully cooperate with the Commissioner, including, but not limited to, the taking of oral testimony under oath of LAHC and its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, and subsidiaries and any other person or entity who possesses any executive authority over, or who exercises any control over, any segment of the affairs of LAHC in both their official, representative, and individual capacities and the production of all documents that are calculated to disclose the true state of LAHC's affairs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC shall not engage in any advertising or solicitation whatsoever.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC, its members, subscribers, enrollees, and policyholders, officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, and any other partnership, company or entity controlled by same and/or other persons acting for or on behalf of LAHC, or subject to their control, and all other persons or entities who have access to, control or possession of the property, assets, and affairs of LAHC shall be and hereby enjoined:

- a) from disposing of or encumbering any of the property or assets of LAHC;
- b) from disposing of any records or other documents belonging of LAHC or relating to the business and affairs of the of LAHC;
- c) from the transaction of any business by, for, or on behalf of LAHC, including, but not limited to:
 - i) writing, issuance or renewal of any certificate of coverage, insurance policy, binder, or endorsement to an existing policy or certificate of coverage;
 - ii) payment of claims and of any policy or certificate of coverage benefits;
 - iii) incurring of any claim or loss adjustment expense;
 - iv) incurring of any debt or liability; and
 - v) interfering with the acquisition of possession by the exercise of dominion and control over the property of LAHC by the Commissioner or the Commissioner's conduct of the business and affairs of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all individuals and entities shall be and hereby are enjoined from instituting and/or taking further

action in any suits, proceedings, and seizures against LAHC, the Commissioner in his capacity as rehabilitator of LAHC, the Receiver, and any affiliates, subsidiaries, insurers, its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, or representatives of same, to prevent any preference, judgment, seizure, levy, attachment, or lien being rendered against LAHC, its estate and assets, and/or its members, subscribers, enrollees, and policyholders, the Commissioner in his capacity as rehabilitator and/or liquidator, the Receiver, any affiliates, subsidiaries, insurers, its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators of same, and the making of any levy against LAHC, its property or assets.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, except with the concurrence of the Commissioner or until further written order of this Court, all suits, proceedings, and seizures against LAHC and/or its respective members/enrollees/subscribers shall be and hereby are stayed in order to prevent the obtaining of any preference, judgment, seizure, levy, or lien, and to preserve the property and assets of LAHC, including, but not limited to, suits and proceedings and all litigation where:

- a) LAHC is a party;
- b) A member, subscriber, enrollee, policyholder or any other person who is named as a party to the litigation claims insurance coverage under any policy of insurance, subscriber agreement or certificate of coverage issued or assumed by LAHC;
- c) The litigation involves or may involve the adjudication of liability or determines any possible rights or obligations of any member, subscriber, enrollee, policyholder or person as to any insurance policy, subscriber agreement, or certificate of coverage issued or assumed by LAHC, or determines any possible future liability of LAHC with regard to any insurance policy, subscriber agreement or certificate of coverage issued or assumed by LAHC;
- d) LAHC would otherwise be obligated to provide a defense to any party in any court pursuant to any policy of insurance, subscriber agreement, or certificate of coverage issued or assumed by LAHC;
- e) The ownership, operations, management and/or control of LAHC is at issue; and
- f) Any party is seeking to create, perfect or enforce any preference, judgment, attachment, lien or levy against LAHC or its assets or against any member, subscriber, enrollee and/or policyholder of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any action in any suit or proceeding against the Commissioner in his capacity as Rehabilitator of LAHC, the Receiver, and/or the Attorney General of the State of Louisiana in his capacity as attorney for the

Commissioner in his capacity as rehabilitator of LAHC, and their representatives, agents, employees, or attorneys, when acting in accordance with this Order and/or as Rehabilitator, Receiver, or Deputy Receiver of LAHC are barred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there shall be no liability on the part of, and that no cause of action of any nature shall exist against the Commissioner in his capacity as Commissioner and/or regulator of LAHC, the Receiver and/or the Attorney General of the State of Louisiana in his capacity as attorney for the Commissioner as Commissioner and/or regulator of LAHC, and/or their assistants, representatives, agents, employees, or attorneys, for any action taken by them when acting in accordance with the orders of this Court and/or in the performance of their power and duties as Rehabilitator, Receiver, Commissioner and/or regulator of LAHC

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all participating and non-participating providers of LAHC shall be and hereby are enjoined from seeking to collect and/or collecting any amounts claimed as payment for services rendered to LAHC, its enrollees, members, subscribers, and policyholders from any said enrollee, member, policyholder and/or subscriber of LAHC, except for amounts that are member obligations as defined in the member agreement, including, but not limited to, co-payments, deductibles, and co-insurance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all individuals and entities shall be and hereby are enjoined from interfering with these proceedings, or with the Commissioner's possession and control; from interfering with the conduct of the business of LAHC by the Commissioner; from wasting the assets of LAHC, and from obtaining preferences, judgments, attachments or other like liens or the making of any levy against LAHC or its property and assets while in the possession and control of the Commissioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all premiums and all other debts and payables due to LAHC shall be paid to the Commissioner.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner shall be and hereby is permitted to notify every holder of a certificate of coverage, subscriber agreement, or contract of insurance issued by LAHC and every known provider and other creditor of LAHC of the order of rehabilitation and injunction entered herein within forty-five (45) days of the date of this order, notwithstanding the provisions of La. 22:2011.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all contracts between LAHC and any and all persons or entities providing services to LAHC and its policyholders, members, subscribers and enrollees shall remain in full force and effect unless canceled by the Receiver, until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner be and hereby is granted all legal and equitable relief as may be necessary to fulfill his duties as Rehabilitator and for such other relief as the nature of the case and the interests of LAHC's members, enrollees, subscribers, policyholders, providers and other creditors, or the public, may require, including but not limited to the Receiver's appointment and authorization to prosecute all action which may exist on behalf of LAHC members, subscribers, enrollees, policyholders, or creditors against any existing or former officer, director or employee of LAHC or any other person.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all contracts between LAHC and any and all persons or entities providing services to LAHC and its policyholders, members, subscribers and enrollees shall remain in full force and effect unless canceled by the Receiver, until further order of this Court.

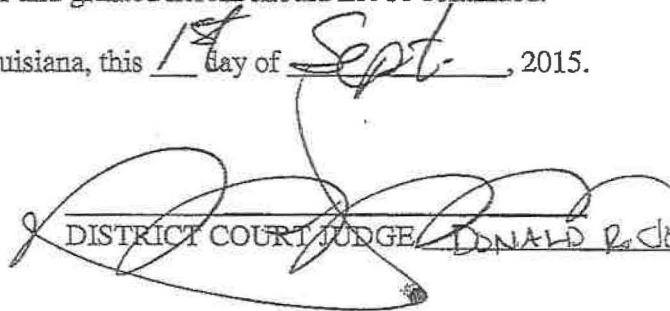
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner be and hereby is granted all legal and equitable relief as may be necessary to fulfill his duties as Commissioner and for such other relief as the nature of the case and the interests of LAHC's members, enrollees, subscribers, policyholders, providers and other creditors, or the public, may require.

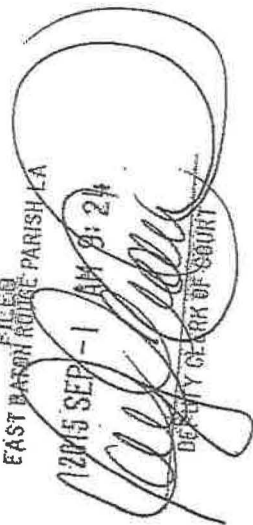
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Matthew Stewart, Norrie Falgoust, Jimmy Henry, and Rudy Babin be and hereby are appointed as Process Servers for service of all process and further pleadings on LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC and all interested persons appear and show cause on September 21, 2015 at 9:30 o'clock a. m. why this Court should not find, order and declare that sufficient cause exists for the rehabilitation of Louisiana Health Cooperative, Inc.; and further why this Court should not order and direct the Commissioner, his agents and/or employees to take and/or maintain possessions of all the affairs, property, business, books, records, claim files, account, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social

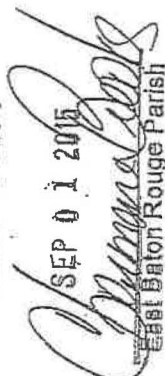
media (including, but not limited to Facebook and Twitter accounts), documents, claims files, software, electronic data, e-mail, websites, copyrights, trademarks, patents, and all other assets of LAHC, including all real property and the premises occupied by LAHC, whether in possession of LAHC or its officers, directors, employees, consultants, attorneys, agents, or any other person acting on their behalf to conduct their business and conserve the same according to law; and why the other relief prayed for and granted herein should not be continued.

Baton Rouge, Louisiana, this 1st day of Sept., 2015.


DISTRICT COURT JUDGE DONALD R. ROBINSON

EAST BATON ROUGE PARISH LA
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12 05 SEP - 1 AM 9: 24

DEPUTY CLERK OF COURT

CERTIFIED TRUE AND
CORRECT COPY

SEP 0 1 2015

East Baton Rouge Parish
Deputy Clerk of Court

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER: 641928

DIVISION: Sec 26

JAMCES J. DONELON,
COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA
VERSUS
LOUISIANA HEALTH COOPERATIVE, INC.

FILED: _____

DEPUTY CLERK

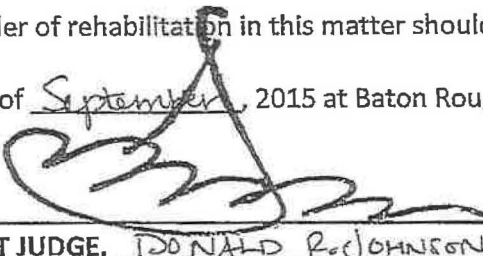
RULE TO SHOW CAUSE

Considering the foregoing verified Petition for Rehabilitation, Injunctive Relief and Rule to Show Cause filed herein and for cause shown:

IT IS HEREBY ORDERED that a Rule be issued herein directed to LAHC, ordering LAHC to appear and show cause on the 21st day of September, 2015 at 9:30 o'clock a.m., why the preliminary order of rehabilitation and injunctive relief entered in this matter on September 1, 2015 should not continue in effect and a permanent order of rehabilitation in the form of the preliminary order of rehabilitation in this matter should not be entered.

Signed this 1st day of September, 2015 at Baton Rouge, Louisiana.

FILED
EAST BATON ROUGE PARISH, LA
2015 SEP 1 AM 9:24
PLEASE SERVE
DEPUTY CLERK OF COURT


DISTRICT COURT JUDGE, DONALD P. JOHNSON

BY PRIVATE PROCESS SERVER APPOINTED BY COURT

LOUISIANA HEALTH COOPERATIVE, INC.
through its agent for service of process
Rudolph R. Ramelli, Esquire
Jones Walker Waechter Poitevent Carrere and Denegre
201 St. Charles Avenue, Suite 5100
New Orleans, LA 70170

2. George Gregory Cromer
Chief Executive Officer of Louisiana Health Cooperative, Inc.
3. William A. Oliver
Chairman of the Board and Board Member of Louisiana Health Cooperative, Inc.
4. Troy James Prevot
Board Member of Louisiana Health Cooperative, Inc.
5. Ann Davis Duplessis
Board Member of Louisiana Health Cooperative, Inc.
6. Michael Francis Hulefield
Board Member of Louisiana Health Cooperative, Inc.
7. Peter Charles November
Board Member of Louisiana Health Cooperative, Inc.

EBR3150271

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Deputy Clerk of Court