

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

SUIT NO.: 651,069 SECTION: 22

Versus :

19<sup>TH</sup> JUDICIAL DISTRICT COURT

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, MILLIMAN, INC., BUCK :  
CONSULTANTS, LLC. AND :  
TRAVELERS CASUALTY AND :  
SURETY COMPANY OF AMERICA :

PARISH OF EAST BATON ROUGE

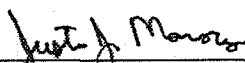
STATE OF LOUISIANA

**PEREMPTORY EXCEPTIONS OF NO RIGHT AND NO CAUSE OF ACTION AND  
DILATORY EXCEPTION OF VAGUENESS AND AMBIGUITY FILED BY  
WARNER L. THOMAS, IV AND WILLIAM A. OLIVER**

NOW INTO COURT, through undersigned counsel, come Defendants, Warner L. Thomas, IV and William A. Oliver, who hereby file these Peremptory Exceptions of No Right and No Cause of Action and Dilatory Exception of Vagueness and Ambiguity.

WHEREFORE, for the reasons explained in the attached Memorandum in Support, Thomas and Oliver pray that these Exceptions be maintained, and for all other relief to which they are entitled in law in equity.

Respectfully submitted,

  
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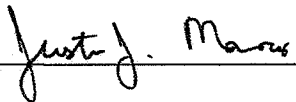
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Warner L. Thomas, IV and William A. Oliver*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon all counsel of record by placing same in the United States Mail, postage prepaid and properly addressed, on this 17<sup>th</sup> day of February, 2017.

  
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**DEFENDANTS' MEMORANDUM IN SUPPORT OF EXCEPTIONS**

Defendants, Warner L. Thomas IV and William A. Oliver, respectfully submit this Memorandum in Support of their peremptory exceptions of no right of action and no cause of action and dilatory exception of vagueness or ambiguity of the petition.

**PRELIMINARY STATEMENT**

Plaintiff has filed a haphazard Petition and Amended Petition riddled with conclusory statements of law and fact and no discernible theory of liability against Messrs. Thomas and Oliver for breaches of fiduciary duty connected to their service as independent directors on the Board of Directors of the Louisiana Health Cooperative, Inc. (the "LAHC"). A cursory review of the pleadings demonstrate that Plaintiff failed to plead the necessary elements of standing and proper procedure and the adequacy of facts that must be alleged to bring claims for breach of fiduciary duty.<sup>1</sup>

Claims for breach of fiduciary duty against directors and officers typically belong to the corporation for which they serve because those breaches damage the corporation. When the corporation does not assert such claims against its own officers and directors, shareholders can bring those claims derivatively on behalf of the corporation. The LAHC is a non-profit corporation established pursuant to the Patient Protection and Affordable Care Act (the "ACA") to provide health insurance to individuals in Louisiana. The policy-holders were the equivalent

<sup>1</sup> This also holds true for the other defendants identified as "D&O Defendants" in the Amended Petition who, unlike Messrs. Thomas and Oliver, were corporate officers.

of shareholders of the LAHC and they have the right to assert claims for damages to the corporation on behalf of the corporation.

The Commissioner has no statutory authority to directly assert claims that belong to the LAHC. He is simply stepping into the shoes of the LAHC's members and must follow the process outlined in the Louisiana Business Corporation Act (the "LBCA") and the Louisiana Code of Civil Procedure to bring a derivative action on behalf of the LAHC against the D&O Defendants. He has not done so. Even if he does do so, at the end of the day the LAHC suffered no damage. The only party that suffered damage was the Federal Government, who provided all of the funds used to capitalize the LAHC through two loans that have not been repaid. For those reasons, discussed at length below, the Court should grant Messrs. Thomas and Oliver's peremptory exception of no right of action.

The Commissioner also failed to state a cause of action for breach of fiduciary duty. He has not adequately pleaded facts showing that the directors and officers, normally entitled to the presumption embedded in the business judgment rule that they have made decisions on an informed basis and in the good faith belief that they are in the best interest of the corporation, have breached their fiduciary duties of loyalty or care to the corporation.

Even if the Commissioner had pleaded adequate facts giving rise to a claim for breaches of the fiduciary duty of care, and he has not, the D&O Defendants cannot be held liable for those breaches because of the exculpatory provision in the LAHC's Articles of Incorporation absolving the LAHC's directors and officers from liability for breach of the fiduciary duty of care. There is statutory exculpation for directors and officers who did not receive compensation. Neither Messrs. Thomas nor Oliver received any compensation for their service as directors of the LAHC. This leaves the Commissioner having to plead that Messrs. Thomas and Oliver (and all of the D&O Defendants) had a conflict of interest impairing their ability to serve the LAHC, engaged in self-dealing or acted in bad faith thus breaching their fiduciary duties of loyalty. And he has not done so.

The Commissioner has not alleged any of the D&O Defendants had a conflict-of-interest or engaged in self-dealing. The closest he comes to alleging a breach of loyalty is alleging that the D&O Defendants did not act in good faith. Louisiana requires fact pleading so the Commissioner must set forth particularized facts. Yet, the "factual" allegations he alleges to state that claim consist merely of conclusory statements of law and fact wholly inadequate to

stating a claim that the D&O Defendants acted in bad faith. Aside from being inadequate as allegations of fact, the Commissioner attributes all of the alleged misconduct to all of the D&O Defendants, a scenario that is simply not possible.

The Commissioner conflates the duties of officers, directors and employees alleging that Messrs. Thomas and Oliver were responsible for supposed misconduct that had nothing to do with their responsibilities as directors. Much of the supposed misconduct, if it happened at all (which it did not), was the responsibility of either the LAHC executives or lower level employees. Moreover, Messrs. Thomas and Oliver's tenure on the Board only overlapped for ten months. Yet the Commissioner insists that Messrs. Thomas and Oliver are liable for the supposed misconduct of the LAHC's Board when they were not serving on the Board. That theory is absurd. For those reasons, the Court should grant Messrs. Thomas and Oliver's peremptory exception for no cause of action.

At the very least though, the Court should grant Messrs. Thomas and Oliver's exception of vagueness and ambiguity of the Petition as the Commissioner has failed to craft a Petition that allows Messrs. Thomas and Oliver to mount a defense.

### **BACKGROUND**

Ochsner Health System, Louisiana's largest hospital system and one of the largest private employers in the state of Louisiana, established the LAHC in accordance with the ACA that authorized the creation of consumer operated health insurance cooperatives to offer health insurance plans on the exchange markets established by the ACA. 24 co-ops were established pursuant to the ACA. 23 of those began offering health insurance plans beginning January 1, 2014. Only 5 co-ops remain in business.

These co-ops were non-profit business organizations structured so that the policy-holders were the owners of the organization (the equivalent of the shareholders of a for-profit corporation). *See* LAHC Articles of Incorporation, attached as Exhibit A. Unlike shareholders in a for-profit corporation, the policy-holder members did not invest in the LAHC. Instead, they merely paid the premiums on their policies. The LAHC was capitalized entirely by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") with a Start-Up Loan of \$12,426,560 and a Solvency Loan of \$52,614,100.

Amended Complaint ¶ 17.

On its September 2011 formation, the LAHC's Board of Directors consisted of four members, two of whom are named in this lawsuit, Warner L. Thomas IV, the Chief Executive Officer of Ochsner Health System, who was an outside director and Terry Shilling, who also served as the Chief Executive Officer of the LAHC. In September 2012, three other members joined the Board, including William Oliver, the other outside director named in this lawsuit. In July 2013, Mr. Thomas resigned his Board position and Mr. Shilling resigned his position as CEO and member of the LAHC's Board. *See* Selected Minutes of the Meeting of LAHC's Board of Directors, attached as Exhibit B. Before Mr. Shilling's departure, the LAHC hired Greg Cromer, a member of the Louisiana House of Representatives, as CEO. *Id.* He took Mr. Shilling's seat on the Board. *Id.* The Commissioner wrote a recommendation letter on Mr. Cromer's behalf to the LAHC's Board before his hiring. *See* May 13, 2013 Letter from James J. Donelon to the Board of Directors of the LAHC, attached as Exhibit C. Pat Powers was the last of the D&O Defendants to join the LAHC. He did so in January 2014. Both Messrs. Oliver and Cromer continued to serve on the Board (and Mr. Cromer as CEO) until the LAHC went into receivership in September 2015. *Id.* Mr. Powers left the LAHC in April of that year.

## LAW AND ARGUMENT

### **I. THE COMMISSIONER HAS NO RIGHT TO BRING AN ACTION FOR BREACH OF FIDUCIARY DUTY.**

"The peremptory exception of no right of action questions whether the party against whom it is asserted has an interest in judicially enforcing the right alleged against the exceptor." *Recovery Dev. Group, L.L.C. v. Nat'l Baptist Convention of Am., Inc.*, 2010-1086, p. 11 (La. App. 4 Cir. 4/20/11), 63 So. 3d 1127, 1132-33. "In examining an exception of no right of action, a court should focus on whether the particular plaintiff has a right to bring the suit while assuming that the petition states a valid cause of action for the same person." *J-W Power Co. v. State ex. rel. Dep't. of Revenue & Taxation*, 2010-1598, pp. 7-8 (La. 3/15/11), 59 So. 3d 1234, 1239. "The exception of no right of action questions whether the plaintiff in the particular case is a member of the class of persons that has legal interest in the subject matter of the litigation." *Id.*

#### **A. The Commissioner's Claims Are Derivative In Nature**

Shareholders do not have a personal right to recover for acts that cause damage to a corporation in which they own shares. *Joe Conte Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 95-1630 (La. App. 4 Cir. 2/12/97), 689 So. 2d 650. If the shareholder, but not the

corporation, suffers a loss, that loss is considered a direct loss to the shareholder, and the shareholder may have a right to sue individually. *Sun Drilling Prods. Corp. v. Rayborn*, 00-1884 (La. App. 4 Cir. 10/31/01), 798 So. 2d 1141, 1154. Yet, courts have held that a shareholder complaint about excessive corporate compensation, as alleged here, is a derivative claim. *Hebert v. Blanchette*, 2008-957, p. 5 (La. App. 3 Cir. 2/4/09); 2 So. 3d 1259, 1262.

In *Hebert*, the Louisiana Third Circuit considered the claim of a shareholder who complained that the “defendants granted themselves large bonuses and/or salaries to zero out all profits.” 2 So. 3d at 1260. The plaintiff further complained that the defendants received the corporate profits through “disguised dividends” in which he should have participated as a shareholder. *Id.* Despite the plaintiff’s characterization of these injuries as personal, the Court of Appeal held that the shareholder had no standing to bring the cause of action because the corporation suffered the harm and, thus, the claim was derivative in nature. *Id.* at 1262.

Here, the Commissioner asserts claims that the D&O Defendants injured the corporation. Indeed, paragraph 38 of the Amended Petition lists damages as the damages suffered by LAHC, not the Commissioner or any member. As explained by the *Hebert* court, the injuries complained of belong to LAHC, and accordingly are derivative in nature.

**B. The Commissioner Has Failed To Take the Proper Procedural Steps To Bring a Derivative Claim**

The Commissioner has failed to take the proper procedural steps to bring a shareholder derivative claim. Section 1-741 of the Louisiana Business Corporation Act contains the standing requirements for derivative suits:

**A.** A shareholder may not commence or maintain a derivative proceeding unless the shareholder satisfies all of the following conditions:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

**B.** A shareholder who meets the requirements of Subsection A of this Section may file a derivative proceeding to enforce a right of the corporation, but only after the shareholder satisfies the requirements of R.S. 12:1-742.<sup>2</sup>

La. R.S. 12:1-741.

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<sup>2</sup> As discussed in Section II below, when interpreting the Louisiana Non-Profit Corporation Act (the “LNPCA”), courts in this state look to the Louisiana Business Corporation Act (the “LBCA”) and the old Louisiana Business Corporation Law (the “LBCL”) for guidance when the LNPCA provides none.

A plaintiff that meets these qualifications then must take all of the following steps before bringing a claim on behalf of a corporation:

- (1) Allege that the plaintiff meets the standing requirements of R.S. 12:1-741.
- (2) Allege either that the plaintiff made demand upon the corporation at least ninety days before the filing of the petition as required by R.S. 12:1-742 or that the plaintiff made the demand and, for reasons alleged in the petition, the filing of the petition before the expiration of the ninety-day period complies with R.S. 12:1-742.
- (3) Join as defendants the corporation and the obligor on the obligation sought to be enforced.
- (4) Include a prayer for judgment in favor of the corporation and against the obligor on the obligation sought to be enforced.
- (5) Be verified by the affidavit of the plaintiff or his counsel.

La. R.S. § 12:1-742.1.

The Commissioner has taken none of these steps.<sup>3</sup> Accordingly, the Court must dismiss the claims for breach of fiduciary duty against the D&O Defendants.

**C. Outside of the Derivative Action, the Commissioner Lacks Authority to Bring Suit for Breaches of Fiduciary Duty**

The Louisiana Insurance Code provides a comprehensive statutory scheme for the liquidation and/or rehabilitation of insurers. *Brown v. Associated Ins. Consultants, Inc.*, 97-1396, p. 6 (La. App. 1 Cir. 6/29/98), 714 So. 2d 939, 942. Courts have held that the scheme is “exclusive in scope.” *Id.* (citing *LeBlanc v. Bernard*, 554 So. 2d 1378, 1383 (La. App. 1 Cir. 1989)). Nothing in the Insurance Code gives the Commissioner the authority to bring a suit for breaches of fiduciary duty.

La. Rev. Stat. § 22:2010 provides the duties that the Commissioner has as the liquidator of an insurance company. The statute does not provide for the filing of a suit for breaches of fiduciary duty against the directors and officers of the insurer. While the insurance code gives the Commissioner the right to recover fraudulent transfers and preferences, those claims are not equivalent to the claims of the Commissioner in this Petition. *See* La. Rev. Stat. §§ 22:2020 – 2024.

Accordingly, the Commissioner does not have an independent statutory right to bring these breaches of fiduciary duty claims. While the law vests the Commissioner with “all rights

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<sup>3</sup> *See also* La. Code Civ. P. arts. 611-617 (containing the same requirements for derivative suits).



of action of the insurer” after the entry of an order of liquidation, those rights only inure to the benefit of the Commissioner as the receiver of the company. *See* La. Rev. Stat. § 22:2008. In other words, the Commissioner may only assert those claims derivatively on behalf of the corporation as a whole, and not in his individual capacity. To the extent that the Commissioner refuses to file a derivative action, his claim must be dismissed.

**D. The Company Did Not Suffer Any Injury From any Breach of Fiduciary Duty**

CMS provided the entirety of the funding that capitalized the LAHC. No money was invested by the members, officers or directors of the company. As such, any losses sustained by the company for alleged misconduct falls entirely on the lenders and not on the company. In other words, the only entity that lost any money is the lender, *i.e.*, the federal government. Accordingly, because the federal government is the only entity that sustained a loss, the Commissioner, acting on behalf of the company, did not suffer compensable damages. The Code of Federal Regulations confirms CMS is the proper party to bring an action stemming from failure to repay a CMS loan: “Loan recipients that fail to make loan payments consistent with the repayment schedule or loan modification or workout approved by CMS will be subject to any and all remedies **available to CMS** under law to collect the debt.” 45 C.F.R. § 156.520 (2017). Emphasis added.

**II. THE COMMISSIONER HAS FAILED TO STATE A COGNIZABLE CLAIM FOR BREACH OF FIDUCIARY DUTY.**

The Commissioner supports his claims for breach of fiduciary duty against the D&O Defendants solely by citing conclusory statements of fact and law that in no sense adequately state a claim for breach of fiduciary duty. A cause of action, when used in the context of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So. 2d 1234, 1238 (La. 1993). The peremptory exception of no cause of action tests the legal sufficiency of the petition, by determining whether the law affords a remedy on the facts alleged in the pleading. *Id. at 1235*. The Court accepts as true **only** well-pleaded facts. *See MD Care, Inc. v. Angelo*, 95-2361 (La. App. 4 Cir. 3/20/96), 672 So. 2d 969, 970. In deciding a no cause of action exception, courts disregard allegations that are no more than conclusions. *Delta Bank & Trust Co. v. Lassiter*, 383 So. 2d 330, 336 (La. 1980). The plaintiff's petition “must set forth the ultimate material facts on which the cause of action is based,” and it

is “insufficient for a petition to simply state factual conclusions without setting forth the facts which support the conclusions.” *Kahn v. Jones*, 95-259 (La. App. 3d Cir. 11/2/95), 664 So. 2d 700, 704-705. Accordingly, courts properly disregard allegations that are “no more than factual conclusions.” *Id.*; *see also Butler v. Reeder*, 93-764 (La. App. 5 Cir. 3/16/94), 635 So. 2d 1206, 1207; *Saxena v. Saxena*, 518 So.2d 1098, 1100 (La. App. 5 Cir. 1987). In other words, Louisiana requires fact pleading and the Commissioner has failed to plead sufficient facts to bring a cause of action for breach of fiduciary duty.

**A. The Law Presumes that in Making a Business Decision, the Directors of a Corporation Act on an Informed Basis, in Good Faith and in the Honest Belief that the Action Taken is in the Best Interests of the Company**

The LNPCA requires that directors of non-profit corporations “discharge the duties of their respective positions in good faith and with that diligence, care, judgment, and skill which ordinary prudent men would exercise under similar circumstances in like positions.” La. R.S. 12:226(A). Because the case law surrounding the LNPCA is underdeveloped, “Louisiana’s Business Corporation Laws, La. Rev. Stat. 12:1 et seq., may be referred to for guidance in [the Court’s] interpretation [of the LNPCA]. *See* Official Comment to 226 (‘Provisions relating to nonprofit corporations have been conformed generally to those relating to business corporations’).” *Mary v. Lupin Found.*, 609 So. 2d 184, 187 (La. 1992); *see also White v. St. Elizabeth B.C. Bd. of Dir.*, No. 43, 329 (La. App. 2 Cir. 6/4/08), 986 So. 2d 202, 206 (courts “may seek guidance from cases interpreting similar provisions of Louisiana’s Business Corporation Law” in interpreting the LNPCA).<sup>4</sup>

The definition of fiduciary duties in the non-profit corporation law is identical to the definition of fiduciary duties in the LBCL. Courts in the state have long recognized that embedded in this definition of a corporate director’s fiduciary duties is the business judgment rule. *See Pool v. Pool*, 16 So. 2d 132, 134-35 (La. App. 1 Cir. 1943). This rule does not permit courts to second-guess the business judgment of a board of directors except in very limited circumstances. A board must be accorded that deference because the business judgment rule puts corporate decision-making firmly in the control of the board of directors—not stockholders (in this case, members) or courts. Thus, the business judgment rule includes a legal *presumption*

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<sup>4</sup> Effective January 1, 2015, Louisiana adopted the LBCA. Act. No. 328, §§ 1, 7, 2014 La. Acts. The New LBCA replaces the former LBCL that was in effect until January 1, 2015, all but nearly seven months of the existence of the LAHC. The fiduciaries’ duties outlined in the LBCA do not materially differ from those in the LBCL and LNPCA and the LBCA did not abrogate any of the previous law in the state regarding the fiduciary duties of directors of corporations.

that directors make business decisions on an informed basis, in good faith and in the honest belief that their decisions are in the best interests of the company. *See id.*; *Watkins v. N. Am. Land & Timber Co.*, 31 So. 683, 686 (La. 1902); *Percy v. Millaudon*, 8 Mart. (n.s.) 68, 74, 78 (La. 1829). To overcome this legal presumption, the Commissioner has the burden of pleading facts that show the directors breached either the fiduciary duty of care or loyalty. *See* La. Rev. Stat. § 12:91(E); *Watkins*, 31 So. at 686.

**B. The Directors and Officers May Not Be Held Liable For Breaches of the Fiduciary Duty of Care**

In addition to imposing a presumption of good faith on the business judgment of corporate officers and directors, Louisiana law permits corporations to limit its officers and directors of liability for damages except in extreme situations. La. Rev. Stat. § 12:24(C)(4)<sup>5</sup> provides that a corporation's articles of incorporation may include a "provision eliminating or limiting the personal liability of a director or officer to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director or officer . . ." LAHC's Articles of Incorporation, filed with the Louisiana Secretary of State and attached as Exhibit A, include a limitation of liability.<sup>6</sup> Specifically, Article XII provides as follows:

No Director or Officer shall be personally liable to the Corporation for monetary damages for any action taken, or for any failure to take any action after these Articles of Incorporation are effective, as a Director that constitutes a breach of a duty of care, or any other duty, except for liability:

- (a) For any appropriation, in violation of his or her duties, of any business opportunity of the Corporation;
- (b) For acts or omissions which involve intentional misconduct or a knowing violation of law;
- (c) For types of liability set forth in the Louisiana Nonprofit Corporation Law § 12:226.

LAHC's exculpatory provision means that LAHC's directors and officers are entitled to dismissal unless the Commissioner has pleaded facts to support the conclusion that the directors committed intentional misconduct or knowingly violated the law. The Commissioner has not alleged facts to state a non-exculpated claim.

<sup>5</sup> The LNPCA grants the same rights to a nonprofit corporation as a for-profit corporation to include in its Articles of Incorporation an exculpatory clause. La. Rev. Stat. § 12:203(C). Directors of 501(c)(3)'s, such as the LAHC, that receive no compensation for their services, like Messrs. Thomas and Oliver, also receive statutory exculpation for all claims that do not arise out of the director's "willful or wanton misconduct." La Rev. Stat. § 9:2792.1.

<sup>6</sup> This Court can take judicial notice of LAHC's publically filed Articles of Incorporation. Indeed, in Delaware, if a corporation has an exculpatory provision in its articles of incorporation under Del. Code tit 8, § 102(b)(7) (substantively the same as La. Rev. Stat. § 12:24(C)(4)), the Delaware courts take cognizance of it because "application of the exculpatory clause would lead to dismissal unless the Plaintiffs have successfully pleaded a failure to act loyally (or in good faith), which would preclude reliance on the . . . provision. *In re Morton's Restaurant Gr., Inc. S'holder Litig.*, 74 A.3d 656, 664 (Del. Ch. 2013).

**C. The Commissioner Failed to Adequately Plead That Messrs. Thomas and Oliver Breached Their Fiduciary Duty of Loyalty**

A classic case of a breach of the fiduciary duty of loyalty involves allegations of a corporate director or officer acting in his or her own best interests instead of the corporation's either because the director or officers had a conflict of interest or engaged in self-dealing. *See Stone ex rel. AmSouth Bancorp v. Ritter*, 911 A.2d 362, 370 (Del. 2006).<sup>7</sup> Absent that, a plaintiff can plead that a corporate officer or director breached the duty of loyalty by acting in bad faith. *See id.* The Commissioner has failed to plead any breach of the duty of loyalty.

**1. The Commissioner Does Not Allege that Any of the LAHC's Directors or Officers Had a Conflict of Interest or Engaged in Self-Dealing**

At no point does the Commissioner allege that any of LAHC's directors or officers, including Messrs. Thomas and Oliver, had any kind of conflict of interest or engaged in any self-dealing during their service on the LAHC's Board. Accordingly, to state a claim for breach of the duty of loyalty, the Commissioner must plead facts showing Messrs. Thomas and Oliver acted in bad faith.

**2. The Commissioner Failed to Adequately Plead Facts that Messrs. Thomas and Oliver Acted in Bad Faith**

The duty to act in good faith is not a separate duty from the duty of loyalty, but rather a subspecies of that duty. *Id.* A breach of the duty of good faith requires a plaintiff to demonstrate "1) where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation; 2) where the fiduciary acts with the intent to violate applicable positive law; or 3) where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006).

The Commissioner does not plead facts showing that Messrs. Thomas and Oliver had a conflict of interest or engaged in self-dealing, so they cannot have acted with a purpose other than that of advancing the best interests of the LAHC. Furthermore, the Commissioner did not plead any facts suggesting that Messrs. Thomas and Oliver intentionally violated a known applicable law. All that is left for the Commissioner is to plead facts showing that Messrs. Thomas and Oliver consciously disregarded their duties. This is known as an oversight or

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<sup>7</sup> Louisiana courts routinely look to Delaware precedents in matters of corporate law because "Delaware is recognized as a leader in the field of corporation law." *Armand v. McCall*, 570 So.2d 158, 160 (La. App. 3 Cir. 1990); *see also Judson v. Davis*, 2004-1699 (La. App. 1 Cir. 6/29/05); 916 So.2d 1106, 1120-21.

*Caremark* claim (after the Delaware case that originally described it) and “is possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.” *Stone*, 911 A.2d at 372.

Plaintiffs can base an oversight claim on two theories – one, that liability arises from a board decision that causes loss or “the unconsidered failure of the board to act in circumstances in which due attention, would arguably have prevented the loss.” *In re Caremark Intern. Inc. Deriv. Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996); (“Oversight duties under Delaware law are not designed to subject directors, even expert directors, to personal liability for failure to predict the future and to properly evaluate business risk.”). To bring a claim that a board decision that caused loss to the corporation rises to the level of bad faith, it is not enough for a plaintiff to allege that directors made a “wrong ... ‘stupid’ ... ‘egregious’ or ‘irrational’” decision. *Id.* Rather, a plaintiff must show that the decision-making **process** (not the decision itself) employed by a board was either irrational or not employed in a good faith effort to advance corporate interests. *Id.* Alternatively, to bring a claim that board inaction that caused a loss rises to a level of bad faith, a plaintiff must show that directors did not “attempt in good faith to assure that [an adequate] reporting system [was] in place” to ensure directors stay reasonably informed of the operations of the corporation. *See id.* at 970.

That said, to bring a claim under either of these theories, it is not enough to show that a corporation lost money. A corporation’s loss of money, even a loss that leads to bankruptcy, does not mean that corporate directors acted in bad faith. Courts are clear that:

“... it is tempting in a case with such staggering losses for one to think that they could have made the ‘right’ decision if they had been in the directors’ position. This temptation, however, is one of the reasons for the presumption against an objective review of business decisions by judges, a presumption that is no less applicable when the losses to the Company are large.”

*In re Citigroup Inc. Sh’holder Litig.*, 964 A.2d 106, 131 Del. Ch. 2009).

Instead, to properly allege that corporate directors acted in bad faith, a plaintiff must plead particularized facts from which it is reasonably inferable that the Board consciously disregarded its duties. *See Melbourne Mun. Firefighters’ Pension Trust Fund, ex. rel. Qualcomm, Inc. v. Jacobs*, 2016 WL 4076369 at \*9 (Del. Ch. Aug. 1, 2016); What a plaintiff must do is allege such things as “red flags” that a board had knowledge of but consciously disregarded in either making a decision or in failing to act that ended up causing damage to the corporation. *See Jacobs*, 2016 WL 4076369 at \*9. Plaintiff has done nothing of the sort and

instead has filed a haphazard Petition and Amended Petition that does not distinguish between the directors, officers and employees, confuses the responsibilities of those positions and, in any event, is simply a collection of conclusory statements of fact and law.

The Plaintiff names six “D&O Defendants,” four of whom were corporate officers. Messrs. Thomas and Oliver served on the Board together for ten months (Mr. Thomas departed the Board in July 2013, Mr. Oliver departed the Board at the time the LAHC entered into receivership in September 2015). The remaining four D&O Defendants also served as officers (and in the case of Messrs. Shilling and Cromer, Inside Directors) at different times overlapping either with Mr. Thomas or Mr. Oliver. The Amended Petition does not specify which D&O Defendants are responsible for the alleged breaches of duty. It is simply not possible for Messrs. Thomas and Oliver to be held liable for all of the supposed misconduct identified by the Commissioner when they served together for only ten months. It should not require explanation that a director cannot be liable for an alleged breach of fiduciary duty when he or she was not serving on the Board.

Secondly, the Plaintiff confuses the responsibilities of directors, executives and employees of a corporation. Directors direct, executives manage - these are different activities. *See Caremark*, 698 A.2d at 968 (Del. Ch. 1996) (“Legally, the board itself will be required only to authorize the most significant corporate acts or transactions: mergers, changes in capital structure, fundamental changes in business, appointment and compensation of the CEO, etc. ... ordinary business decisions are made by officers and employees deeper in the interior of the organization.”). The Amended Petition does not address this important distinction. The Commissioner’s failure to make particularized allegations regarding which D&O Defendants are alleged to have engaged in the conduct summarily outlined in the Amended Petition, leaves the Court without any means to assess the liability of the D&O Defendants. Instead, the Amended Petition mixes up directorial duties with executives’ duties and with much lower level employees’ duties and lumps these distinct activities together. Much of the conduct described by the Commissioner involves decisions and responsibilities outside the scope of the responsibilities of a corporate director (and are, in any event, simply conclusory statements of fact). *See* Amended Petition ¶¶ 31(d), 31(g-hh) and 31(ll). As outside directors, Messrs. Thomas and Oliver cannot alone be held liable for any conduct related to obligations that are those of officers or employees of the corporation. Rather, the Commissioner must allege that they were aware of

misconduct by management, consciously disregarded that misconduct and this caused loss to the LAHC. The Commissioner did not do so.

What the Plaintiff has done here is engage in group pleading. Louisiana, however, requires fact pleading. A plaintiff must identify the misconduct he or she claims each individual has engaged in. *Sunlake Apartment Residents v. Tonti Dev. Corp.*, 522 So. 2d 1298, 1305 (La. App. 5 Cir. 1988). Group pleading is generally disfavored, if not outright prohibited by courts, particularly when a plaintiff accuses a defendant of intentional misconduct. *See e.g., Southland Sec. Corp. v. INSpire Ins. Sol., Inc.*, 365 F.3d 353, 364-65 (5th Cir. 2004) (prohibiting plaintiff from engaging in group pleading in bringing a securities fraud claim).

The remaining allegations that arguably concern the duties of directors of the LAHC are conclusory statements wholly inadequate to support a claim that Messrs. Thomas and Oliver acted in bad faith. *See* Amended Petition ¶¶ 31(a-c), 31(e-hh), 31(gg-kk), 31(mm). The Commissioner's allegations directed at director conduct can be roughly grouped into six categories: that the Board (1) paid management "excessive" salaries and bonuses, (2) provided inadequate oversight, (3) hired inadequate management, (4) knew LAHC would fail, (5) misrepresented LAHC's financial condition, or (6) failed in their duty to operate LAHC in accordance with the law. Aside from the fact that these are conclusory statements of fact or law wholly inadequate to state any claim for relief in Louisiana, they particularly fail to state a claim for lack of oversight by LAHC's Board. None of these amount to factual allegations that LAHC's Board did not approach its decision-making process in the good faith belief they were acting in the best interests of LAHC or that their process was irrational. Nor do these allegations come close to stating a claim that LAHC's Board did not make a good faith effort to inform themselves about the operations of LAHC.

In fact, in some instances these statements are contradicted by publically known facts and in other cases are unbelievable. Two examples are revealing. First, the Commissioner himself signed a letter to the LAHC Board praising Mr. Cromer and recommending that LAHC's Board hire him as CEO. It is incredible for the Commissioner to praise LAHC's last CEO before his appointment and now accuse him of being incompetent all along. Second, the Plaintiff's claim that the "D&O Defendants" knew from the start that the LAHC would fail, yet proceeded to operate it anyway in an unlawful fashion is absurd. It makes no sense to suggest the Board operated a company sure to fail needlessly exposing themselves to liability for no purpose. At

the same time, the Plaintiff requests damages related to lost profits from a company he insists was set up to fail. The fact that the Plaintiff makes these allegations in light of their obvious falsity or absurdity beggars belief. The Commissioner has failed to take the most basic of steps to state a claim that Messrs. Thomas and Oliver or any of LAHC's directors and officers acted in bad faith. Accordingly, the Court should grant this exception for no cause of action.

**III. AT THE VERY LEAST, THE COMMISSIONER'S CLAIMS AGAINST MESSRS. THOMAS AND OLIVER ARE VAGUE.**

A court in Louisiana must grant a dilatory exception for vagueness and ambiguity when a Petition, even one which qualifies as stating a cause of action, fails to plead adequate facts to allow for defendants to prepare a defense. *Se. La. Univ. v. Cook*, 2012-0021 (La. App. 1 Cir. 9/21/12), 104 So. 3d 124; *Sunlake Apartment*, 522 So. 2d at 1305 ("The petition must set forth material facts upon which a cause of action is based; the allegations must be facts; conclusions of law or fact and evidentiary facts will not be considered."). This means the Commissioner must plead "sufficient substantial particulars" to allow defendants to address the merits of the claims. *Smart v. Gold, Weems, Bruser, Sues & Rundell*, 2006-1414 (La. App. 3 Cir. 4/4/07), 955 So. 2d 263, (holding that Petition containing allegations of misrepresentation and overbilling in legal malpractice case insufficient without alleging facts regarding the underlying representation).

In light of these standards, even if the Commissioner has stated a cause of action, which he has not, his Amended Petition is wholly inadequate in setting forth facts allowing defendants to address his claims. First, all 45 allegations made by the Commissioner to support his claim of breach of fiduciary duty are merely a collection of conclusory statements. For example, the Commissioner alleges the D&O Defendants provided "grossly inadequate oversight of LAHC operation," "gross failure to determine and report eligibility of members accurately" or "they grossly mismanaged LAHC's affairs."<sup>8</sup> Amended Petition ¶¶ 31(c), 31(p), 31(oo). The Amended Petition contains no factual allegations that support these statements. The Commissioner simply asserts them as self-evident. The remaining 42 allegations are no different.

Second, as discussed, the Commissioner has engaged in improper group pleading. The D&O Defendants served as officers and directors at different times, sometimes overlapping in their service, sometimes not. Yet, the Commissioner makes no attempt to inform defendants or

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<sup>8</sup> As stated before, directors direct; they do not manage; officers do.



the Court which defendants are allegedly responsible for the various instances of supposed misconduct described in the Amended Petition. They cannot all be responsible since, for example, the LAHC did not begin offering plans until 2014 (months after Mr. Thomas terminated his Board service). Mr. Thomas cannot be responsible for activities that occurred after he left the Board. Mr. Oliver cannot be held responsible for activities that occurred before he was on the Board. Simple due process demands that each D&O Defendant be apprised of his supposed misconduct and not be lumped in with others' supposed misconduct that with which he had no involvement. The Commissioner cannot finesse this state of affairs – or the many other ambiguities of the Amended Petition.

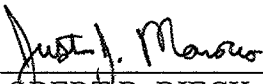
Third, as a corollary to the second point, much of the supposed misconduct described falls outside the purview of an outside director's responsibilities, yet the Commissioner makes no distinction between outside directors, management and ordinary employees.

This demonstrates that the breach of fiduciary duty allegations in the Amended Petition do not remotely rise to the level of "sufficient substantial particulars" allowing Messrs. Thomas and Oliver and the other D&O Defendants to mount a defense or allow the Court to address the merits of the claim. Accordingly, if the Court does not grant Messrs. Thomas and Oliver's peremptory exception of no cause of action, the Court should grant their dilatory exception of vagueness and ambiguity.

**CONCLUSION**

For these reasons, Messrs. Thomas and Oliver respectfully request the Court grant their peremptory exceptions of no right and/or no cause of action or, in the alternative, grant their dilatory exception of vagueness and ambiguity.

Respectfully submitted,

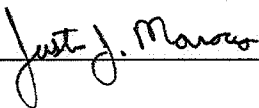
  
\_\_\_\_\_  
ROBERT B. BIECK, JR. (# 03066)  
JOSEPH J. LOWENTHAL, JR. (#8909)  
MARK A. MINTZ (# 31878)  
ALEXANDER N. BRECKINRIDGE V (#36155)  
JONES WALKER LLP  
201 St. Charles Ave., 49th Floor  
New Orleans, Louisiana 70170-5100  
Telephone: (504) 582-8202  
Fax: (504) 589-8202

DAVID M. KERTH (LA #25126)  
JUSTIN J. MAROCCO (LA #35226)  
Jones Walker LLP  
Four United Plaza, Fifth Floor  
8555 United Plaza Boulevard  
Baton Rouge, Louisiana 70809-7000  
Telephone: (225) 248-2048  
Facsimile: (225) 248-3048  
[jmarocco@joneswalker.com](mailto:jmarocco@joneswalker.com)

*Attorneys for Defendants,  
Warner L. Thomas IV and William A. Oliver*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon all counsel of record by placing same in the United States Mail, postage prepaid and properly addressed, on this 17<sup>th</sup> day of February, 2017.

  
\_\_\_\_\_

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	:	SUIT NO.: 651,069 SECTION: 22
Versus	:	19 <sup>TH</sup> JUDICIAL DISTRICT COURT
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, MILLIMAN, INC., BUCK CONSULTANTS, LLC. AND TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	:	PARISH OF EAST BATON ROUGE  STATE OF LOUISIANA

**RULE TO SHOW CAUSE**

Considering the peremptory exception of no right of action and no cause of action and dilatory exceptions of vagueness or ambiguity of the petition filed on behalf of Defendants, Warner L. Thomas IV and William A. Oliver;

**IT IS HEREBY ORDERED** that Plaintiff appear and show cause on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_ o'clock \_\_.m., as to why the Exceptions should not be maintained.

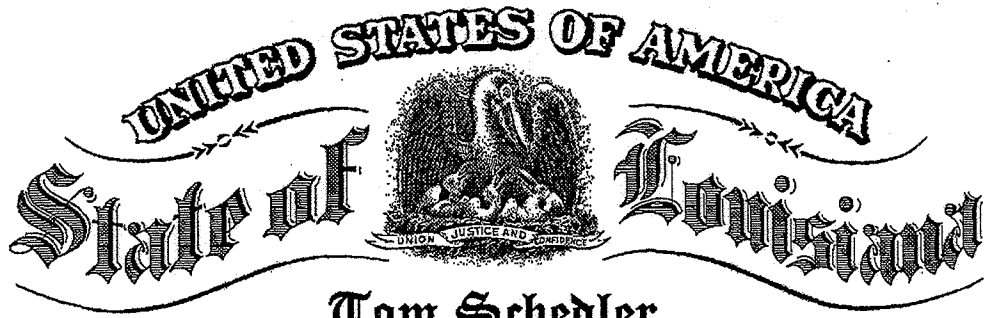
Baton Rouge, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

---

JUDGE, 19<sup>TH</sup> JUDICIAL DISTRICT COURT

**PLEASE SERVE:**

**James J. Donelon  
Commissioner of Insurance  
State of Louisiana  
Through Counsel of Record:  
J. E. Cullens, Jr., T.A.  
Edward J. Walters, Jr.  
Darrel J. Papillion  
David Abboud Thomas  
Jennifer Wise Moroux  
WALTERS, PAPIILLION, THOMAS, CULLENS LLC  
12345 Perkins Road, Bldg. One  
Baton Rouge, LA 70810**



**Tom Schedler**  
SECRETARY OF STATE

*As Secretary of State of the State of Louisiana, I do hereby Certify that*  
the attached document(s) of

**LOUISIANA HEALTH COOPERATIVE, INC.**

are true and correct and are filed in the Louisiana Secretary of State's Office.

40613300N ORIGF 9/12/2011 8 page(s)

In testimony whereof, I have hereunto set my  
hand and caused the Seal of my Office to be  
affixed at the City of Baton Rouge on,  
May 20, 2013

*Secretary of State*  
WEB 40613300N



Certificate ID: 10383926#JUL73  
To validate this certificate, visit the following  
web site, go to **Commercial Division**,  
**Certificate Validation**, then follow the  
instructions displayed.  
[www.sos.louisiana.gov](http://www.sos.louisiana.gov)

EXHIBIT A

**AUTHENTIC ACT OF**  
**ARTICLES OF INCORPORATION OF**  
**LOUISIANA HEALTH COOPERATIVE, INC.**

STATE OF LOUISIANA  
PARISH OF ORLEANS

BE IT KNOWN, that on this the 8<sup>th</sup> day of September, 2011 personally came and appeared before me, the undersigned Notary Public duly commissioned and qualified in and for the Parish and State aforesaid, and in the presence of the undersigned competent witnesses, personally came and appeared:

Alan Bayham  
Mark Gentry and  
Terry Shilling

All persons of the full age of majority and a majority of whom are residents of the State of Louisiana, all citizens of the United States of America and who, after being duly sworn, did declare unto me, Notary, and in the presence of the undersigned competent witnesses, that availing themselves of the provisions of the Louisiana Nonprofit Corporation Law and the Louisiana Insurance Law, respectively (Title 12, Chapter 2 and Title 22, Chapter 2, Section 243, Louisiana Revised Statutes of 1950), they do hereby organize themselves and their successors and assigns into a corporation in pursuance of that law under and in accordance with the following articles of incorporation:

**ARTICLE I**  
**NAME**

The name of the Corporation is: Louisiana Health Cooperative, Inc.

**ARTICLE II**  
**PURPOSES AND POWERS**

The purposes for which the Corporation is formed, the business and objectives to be carried on and promoted by it, and the powers granted to it, are as follows:

(a) The Corporation is irrevocably dedicated to and is organized and operated exclusively for charitable and social welfare purposes as a qualified nonprofit health insurer within the meaning of Section 501(c)(29) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 1322 of the Patient Protection and Affordable Care Act of 2010 (Pub. Law 111-148) (hereinafter, the "Act") and the Louisiana Nonprofit Corporation Law as any of these may be amended from time to time. The Corporation's primary purpose shall be to create and operate a Louisiana licensed health maintenance organization, operating as a "Qualified Non Profit Health Insurance Issuer" (also referred to as a "Cooperative Health Insurance Oriented Plan" or "Co-Op"), as defined in Section 1322(c) of the Act.

**APPROVED FOR RECORDATION**

Date: 9-12-2011

\_\_\_\_\_  
For the Commissioner of Insurance

(b) The Corporation is also authorized to own and/or operate any other business not prohibited by the Louisiana Nonprofit Corporation Law and consistent with Section 501(c)(29) of the Code, Section 1322 of the Act and the Louisiana Insurance Code. In carrying out its corporate purposes, the Corporation shall have all the powers allowed corporations by the Louisiana Nonprofit Corporation Law; provided, however, that the Corporation shall not have or exercise any power inconsistent with or prohibited by the provisions of this Article II.

(c) As limited by Section 501(c)(29) of the Code, it is expressly not the purpose of the Corporation and the Corporation is not empowered to participate or intervene in (including the publication or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office and no substantial part of its activities shall consist of lobbying or propaganda or otherwise attempting to influence legislation.

(d) Any other provision of these Articles of Incorporation to the contrary notwithstanding, the Corporation shall have no capital stock and no power to issue certificates of stock nor to declare dividends. Except as provided in Section 1322(c)(4) of the Act, no part of the net earnings of the Corporation shall inure to the benefit of any private shareholder or individual; and the Corporation shall not carry on any activities denied to a corporation described in Section 501(c)(29) of the Code.

**ARTICLE III**  
**DURATION**

The period of duration of this corporation is perpetual.

**ARTICLE IV**  
**REGISTERED OFFICE**

The address for the registered office for the Corporation is:

201 St. Charles Avenue, Suite 5100  
New Orleans, Louisiana 70170-5100

**ARTICLE V**  
**REGISTERED AGENT**

The name and address for the Registered Agent for the Corporation is:

Rudolph R. Ramelli, Esq.  
Jones, Walker, Waechter, Poitevent,  
Carrère & Denègre, L.L.P.  
201 St. Charles Ave, Suite 5100  
New Orleans, LA 70170-5100

**APPROVED FOR RECORDATION**  
Date: 9-12-2011  
[Signature]  
**For the Commissioner of Insurance**

**ARTICLE VI**  
**OWNERSHIP - MEMBERS**

The ownership of the Corporation shall be vested collectively in the Members, as defined in regulation 45 CFR §156.505 issued pursuant to the Act or any other regulations defining Member for purposes of the Act. No Member shall, by virtue of his or her membership, have any equity interest in the Corporation or right to distributions from the assets of the Corporation and no ownership shares shall be issued. The Members shall have all the voting rights accorded to members of a nonprofit corporation under Louisiana law and the requirements for Qualified Non Profit Health Insurance Issuers, as imposed by the Act and regulations promulgated under the Act. Members shall not have preemptive rights. No Member of the Corporation shall be personally liable for the debts of the Corporation.

**ARTICLE VII**  
**AUTHORIZED CAPITAL**

The Corporation is a nonprofit member corporation. It shall not issue stock. Its initial minimum fund shall be no less than \$3,000,000 for the issuance of a certificate of authority by the Louisiana Department of Insurance.

**ARTICLE VIII**  
**DIRECTORS**

The corporate powers, direction and administration of the corporation shall be vested in and exercised by a Board of Directors. The Board of Directors shall initially consist of the Formation Board, then replaced by the Operating Board, as described below. The Board of Directors shall have power to make, adopt, alter, amend or repeal the By-Laws of the corporation and have authority to exercise all such powers and to do all such other lawful acts and things which this corporation may do, unless prohibited from doing so by applicable laws, or by the Articles of Incorporation or by the By-Laws of this corporation. The Directors shall be elected and govern as follows:

**Formation Board:** During the period from the formation of the Corporation until the assumption of office of the Operating Board, the Corporation shall be governed by the Formation Board. The Formation Board shall be comprised of five individuals who shall serve one year terms beginning on the date of formation and ending on the date following the first election by voting members of the Operating Board, but no later than one year from the date the first Member is enrolled. The initial Directors shall constitute the Formation Board. Directors serving on the Formation Board shall be replaced by a vote of the majority of the remaining members of the Formation Board. The terms of all Formation Board Directors shall end following the assumption of office of the Operating Board. At all times that the Corporation is governed by the Formation Board, the bylaws and these Articles may be amended at any meeting of the Formation Board, by a majority vote.

**Operating Board:** The Operating Board shall be elected by a majority vote of the Members. The first election of the Directors to serve on the Operating Board shall be later than one year following the enrollment of the first Member. The majority of Directors

**APPROVED FOR RECORDATION**  
Date: 9-12-2011

  
\_\_\_\_\_  
For the Commissioner of Insurance

serving on the Operating Board shall be Members. The initial Operating Board shall consist of nine Directors; thereafter, the Operating Board may consist of between nine and fifteen Directors, as determined by the Board. Directors shall be elected for three year terms with one third of the Board replaced each year. The nominees receiving the majority of the votes cast shall be declared to be elected. Each Member of the Corporation shall be entitled one vote for each open Director position, which may be cast by the registered owner in person or by written proxy. The failure to hold an election timely shall not dissolve the Corporation, but the Directors in office shall hold over until an election is held. No representative of a health insurance issuer in existence on July 16, 2009, a trade association representing health insurers or a governmental entity or any subdivision or instrumentality thereof may serve as a Director. Vacancies on the Board of Directors shall be filled by the remaining members of the Board of Directors, except for vacancies created by an increase in the number of Directors, in which case the Members shall fill such vacancies at their next regular election.

**Initial Directors.** The initial Directors for the Corporation are:

Name	Address	Title / Term of Office
Terry Shilling	2451 Cumberland Parkway, Suite 3170 Atlanta, GA 30339	President/Chief Executive Officer Formation through January 1, 2014
Alan Bayham	300 Coquille Lane Madisonville, LA 70447	Treasurer Formation through January 1, 2014
Mark Gentry	139 Thoroughbred Avenue Montz, LA 70068	Secretary Formation through January 1, 2014
Warner Thomas	1514 Jefferson Highway New Orleans, LA 70121	Formation through January 1, 2014
Scott Posecai	1514 Jefferson Highway New Orleans, LA 70121	Formation through January 1, 2014

**ARTICLE IX  
OFFICERS**

The officers of the Corporation shall include a Chair, President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, if any, as the Board may determine from time to time. All officers must be duly elected Directors and appointed by the Board. No person may vote on matters subject to a vote of the officers unless that person has been duly elected. A person may hold more than one office at the same time, except that no person may hold the offices of Chair and Secretary at the same time. Each officer shall perform the duties incident to the respective office as specified in the Bylaws and such other duties as may be assigned to each of them by the Board.

**APPROVED FOR RECORDATION**

Date: 9-12-2011

\_\_\_\_\_  
For the Commissioner of Insurance



**ARTICLE X**  
**INDEMNIFICATION**

To the extent permitted by Louisiana Revised Statutes § 12:207(B)(11) or any other applicable law, the Corporation shall defend, indemnify and hold harmless each person who shall serve at any time hereafter as a Director or Officer of the Corporation from and against any and all claims and liabilities to which such person shall become subject by reason of his/her having heretofore or hereafter been a Director or Officer of the Corporation, or by reason of any action alleged to have been heretofore or hereafter taken or omitted by him/her as such Director or Officer for any loss, in whole or in part, for which no liability insurance applies, and shall reimburse each such person for all legal and other expenses reasonably incurred by him/her in connection with any such claim or liability; provided, however, that no such person shall be defended, indemnified against or be reimbursed for, any expense incurred in connection with any claim or liability based upon or attributable to such person gaining in fact any personal profit or advantage to which he/she was not legally entitled, or in connection with any claim or liability for willful misconduct.

**ARTICLE XI**  
**DISSOLUTION / LIQUIDATION**

If it becomes necessary to liquidate the affairs of this Corporation, the commissioner of insurance shall be notified and consulted and the liquidation shall be conducted in accordance with the provisions of the Louisiana Insurance Code and Section 501(c)(29) of the Code. Upon adoption of a plan of dissolution by the Corporation and after obtaining all required approvals, the Board of Directors shall, after paying or making adequate provision for the payment of all liabilities and obligations of the Corporation, dispose of all corporate assets in accordance with the Bylaws.

**ARTICLE XII**  
**LIMITATION OF DIRECTOR LIABILITY**

No Director or Officer shall be personally liable to the Corporation for monetary damages for any action taken, or for any failure to take any action after these Articles of Incorporation are effective, as a Director that constitutes a breach of a duty of care, or any other duty, except for liability:

- (a) For any appropriation, in violation of his or her duties, of any business opportunity of the Corporation;
- (b) For acts or omissions which involve intentional misconduct or a knowing violation of law;
- (c) For the types of liability set forth in the Louisiana Nonprofit Corporation Law § 12:226.

If the Louisiana Nonprofit Corporation Law is amended after approval of this Article XII to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be limited to be

Date: 9-12-2011  
[Signature]  
For the Commissioner of Insurance

eliminated or limited by this provision to the fullest extent then permitted by the Louisiana Nonprofit Corporation Law, as so amended. Any repeal or modification of this Article XII shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification.

**ARTICLE XIII**  
**AMENDMENT OF ARTICLES, OTHER CHANGES**

At all times the Corporation is governed by the Formation Board, these Articles of Incorporation may be amended by the majority vote of the Formation Board. At all times the Corporation is governed by the Operating Board, these Articles may be amended by vote of not less than two-thirds (2/3) of all Members present or represented by proxy (in person or by proxy) at a regular or special meeting of the Members of the Corporation called for that purpose. Not less than thirty (30) days written notice shall be given of such meeting, and the specific amendment to be considered shall be recited or summarized in the notice.

It is further provided that this Corporation may change the location of the Corporation's registered office or may change its registered agent and/or his/her address, or both, without amending these Articles of Incorporation, and such change of the Corporation's registered office, its registered agent, and/or its registered agent's address may be made by a resolution adopted by a vote of the majority of the Board of Directors. Thereafter, a copy of said resolution shall be filed with the Commissioner of Insurance for the State of Louisiana.

**ARTICLE XIV**  
**MEMBER'S CONSENT IN WRITING**

Consents in writing to corporate action may be signed by members having that proportion of the total voting power which would be required to authorize or constitute such action at a meeting of members at which all members of the Corporation were present, and such signed written consent shall have the same force and effect as if such action had been approved and passed at a duly called and convened meeting of the members of the Corporation at which a quorum was present.

**ARTICLE XV**  
**PROXIES**

Any member or Director absent from a meeting of the members or Board of Directors, respectively, or of any committee thereof, may be represented by any other member or Director, respectively, who may cast the absent member's or Director's vote according to his/her written instructions, general or special.

**APPROVED FOR RECORDATION**

Date: 9-12-2011

**ARTICLE XVI**

Incorporators The name and address of the Incorporators For the Commissioner of Insurance

Terry S. Shilling 2451 Cumberland Parkway, Suite 3170 Atlanta, GA 30339	Alan G. Bayham 300 Coquille Lane Madisonville, LA 70447	Mark A. Gentry 139 Thoroughbred Avenue Montz, LA 70068
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LOUISIANA HEALTH COOPERATIVE  
BOARD OF DIRECTORS MEETING  
JULY 9, 2013 – 2-3:30PM CDT

BOARD ACTIONS NEEDED					
AGENDA ITEM	ACTION NEEDED	CMS Review?	PRESENTER	AUTHOR	ATTACHMENT?
1. Approval of Minutes	Approval	No	Thomas	Shilling	
2. Election of Officers	Approval	No	Shilling	Bayham	
3. Financial Statements	Approval	No	Shilling	Sidener	Yes
4. Rest of Year Forecast	Review	No	Shilling	Sidener	Yes
5. Compliance /Credentialing	Approval	No	Shilling	Fisk	1
6. Board Level Policies	Approval	No	Shilling	Robin/Alan	
7. Delegated Activities	Approval	Yes	Shilling	Various	HI, Connection, etc.
8. Mississippi Expansion	Approval	Yes	Shilling	Hartnett	Task List
9. Status Updates Below	Review	No	Shilling	Various	Yes
10. Future Meeting Schedule	Approval	No	Thomas	Shilling	No
11. Adjournment					

STATUS UPDATES					
ITEM	ACTION NEEDED	CMS Review?	PRESENTER	AUTHOR	ATTACHMENT?
1. House Oversight Requests	Status	No		Fisk	Yes
2. Bingham Agreement / Bill	Status	No	Shilling	Fisk	Yes
3. First NBC Line of Credit	Status	Yes	Shilling	Sidener	No
4. NCOA Survey	Status	No	Shilling	Bayham	Yes
5. Board Subcommittees	Status	No	Shilling	Bayham	Yes
6. HMO License	Status	No	Shilling	Gentry	No
7. Rates and Products	Status	In Process	Shilling	Hartnett	Yes
8. Network Discussion	Status	No	Shilling	Bayham	Yes
9. CMS Milestones	Status	No	Shilling	Gentry	Yes
10. Marketing and Outreach	Status	No	Shilling	McHaney	Yes

EXHIBIT B

LOUISIANA HEALTH COOPERATIVE  
BOARD OF DIRECTORS MEETING  
JULY 9, 2013 – 2-3:30PM CDT

ATTACHMENT 1

Changes to the Compliance Plan, Credentialing Plan, Execution of Provider Agreements

RESOLVED, that the approved Compliance Plan is hereby amended to adopt the following changes:

- 1
- 2
- 3
- [[once the changes to the compliance plan are finalized, we add them here]]

2. RESOLVED that the attached LAHC Credentialing Plan is hereby adopted.

3. RESOLVED, that the Board recognizes the LAHC Loan Agreement with CMS requires the Board to monitor network development and provider agreements, hereby delegates its approval of individual hospital agreements, individual and group practitioner agreements and other individual and group provider contracts to the Chief Executive Officer, Chief Financial Officer, or the Vice President for Network Development.

**Louisiana Health Cooperative  
Minutes of the Board of Directors' Meeting  
July 9, 2013**

<b>Members Attending:</b>	Members Attending: Thomas, Oliver, Hulefeld, November			
<b>Guests Present:</b>	Guests: Cromer, Shilling			
<b><i>AGENDA ITEM</i></b>	<b><i>ACTION TAKEN</i></b>	<b><i>MOTION</i></b>	<b><i>Moved:</i></b>	<b><i>Seconded:</i></b>
<b>Minutes of 5/23/2013</b>	<b>Approved</b>	Minutes of the May 23, 2013 Board Meeting were reviewed and approved	Oliver	Hulefeld
<b>Election of Officers</b>	<b>Accepted</b>	Acceptance of the following changes in LAHC Board of Directors Membership and Executive Leadership: <ul style="list-style-type: none"> <li>- Resignation of Warner Thomas as Chair</li> <li>- Resignation of William Oliver as Secretary</li> <li>- Resignation of Scott Posecai as Treasurer</li> <li>- Resignation of Terry Shilling as Interim CEO</li> <li>- Resignation of Deborah Sidener as Interim CFO</li> <li>- Election of William Oliver as Chair of the Board</li> <li>- Election of Peter November as Secretary of the Board</li> <li>- Election of Greg Cromer as CEO</li> <li>- Election of Charles Gleason as CFO and Treasurer</li> </ul> All resignations and elections are effective as of the close of 7/9/13 meeting	Hulefeld	Thomas
<b>Financial Statements</b>	<b>Approved</b>	Financial Statements at 5/2013 approved as presented	Oliver	Hulefeld

**Louisiana Health Cooperative  
Minutes of the Board of Directors' Meeting  
July 9, 2013**

<b>Compliance / Credentialing</b>	<b>Approved</b>	Approval of the following Changes to the Compliance Plan, Credentialing Plan, Execution of Provider Agreements: 1) The Section entitled "Anonymous Reporting" is deleted in its entirety and replaced with...(see Attachment A05) 2) That the LAHC Credentialing Plan is hereby adopted 3) That the Board recognizes the LAHC Loan Agreement with CMS requires the Board to monitor network development and provider agreements, hereby delegates its approval of individual hospital agreements, individual and group practitioner agreements and other individual and group provider contracts to the Chief Executive Officer, Chief Financial Officer, or the Vice President for Network Development	Oliver	November
<b>Delegated Activities / Contracts</b>	<b>Approved</b>	Approval to proceed with contracting with the following delegated entities: - Health Integrated (for Medical Management Services) - The Connection (for Call Center Services) - Avtex (CRM software) - Private Exchange	Hulefeld	November
<b>Mississippi Expansion</b>	<b>Approved</b>	Approval to proceed with the filing of the Expansion Funding Request on 7/15/13 to include Rating Areas 4 and 5 in the Gulf Coast Region of Mississippi.	November	Hulefeld
<b>Meeting Schedule</b>	<b>TBD</b>			
<b>Status Updates</b>	The Board reviewed the activities of LAHC listed on the agenda			
<b>Board Requests</b>	The Board requested the following actions of LAHC management - List of Bank accounts including CD's as of 6/30 (Debby, Chuck) - Compensation of Board members (Greg, NASHCO Information) - Review Bylaws to confirm CFO can be treasurer of LAHC (Robin) - Understanding of bylaws relating to nominating committee (Robin write up) - Follow up regarding next meeting (Rene)			
<b>Adjournment</b>	<b>3:30 PM</b>			

**Louisiana Health Cooperative  
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July 9, 2013**



LOUISIANA DEPARTMENT OF INSURANCE  
JAMES J. DONELON  
COMMISSIONER

May 13, 2013

Board of Directors  
Louisiana Health Cooperative  
3445 N. Causeway Blvd., Suite 800  
Metairie, LA 70002

Dear Board Members:

It is my pleasure to recommend Representative Greg Cromer for the position of Chief Executive Officer of your Louisiana Health Cooperative. Representative Cromer has been a member of the Louisiana House of Representatives for the past six years and currently holds the leadership position of Chairman of the House Insurance Committee as well as a member of the board of directors for the state sponsored Louisiana Citizens Property Insurance Corporation for the past two years.

I have had the privilege of working with Representative Cromer on various insurance issues including current legislation to bring Louisiana into compliance with the Patient Protection and Affordable Care Act. He was instrumental in coordinating efforts to assist me in getting all interested parties together to address issues related to balance billing which I personally requested Representative Cromer to spearhead due to his well-respected leadership skills and his ability to manage complex and sensitive situations. I firmly believe it is because of these attributes that he was elevated to Chairman of the House Insurance Committee after only four years in the legislature.

Your selection of Representative Cromer as the Chief Executive Officer of the Louisiana Health Cooperative will no doubt strengthen the core foundation through which your organization will develop. Your time and consideration of this recommendation is appreciated.

With best wishes and warmest regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Donelon", written over a large, stylized flourish.

James J. Donelon  
Commissioner of Insurance

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EXHIBIT C