Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #014

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinion(s) handed down on the **27th day of April, 2020** are as follows:

BY Crain, J.:

2019-C-00514 JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC. VS. 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)

We granted this writ to determine whether the Louisiana Commissioner of Insurance, as rehabilitator of a health insurance cooperative, in an action arising out of an agreement between the cooperative and a third-party contractor, is bound by an arbitration clause in that agreement. We find the Commissioner not bound by the arbitration clause.

REVERSED AND REMANDED.

Retired Judge James H. Boddie, Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

Weimer, J., concurs and assigns reasons.

04/27/20

SUPREME COURT OF LOUISIANA

No. 2019-C-00514

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

VS.

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

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

CRAIN, J.[1]

We granted this writ to determine whether the Louisiana Commissioner of Insurance, as rehabilitator of a health insurance cooperative, in an action arising out of an agreement between the cooperative and a third-party contractor, is bound by an arbitration clause in that agreement. We find the Commissioner not bound by the arbitration clause.

BACKGROUND

The facts critical to resolving this issue are not disputed. The Louisiana Health Cooperative, Inc. ("LAHC"), a health insurance cooperative created in 2011 pursuant to the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 *et seq.* (2010), entered an agreement with Milliman, Inc. for actuarial and other services. By July 2015, the LAHC was out of business and allegedly insolvent.

Louisiana Insurance Commissioner James J. Donelon ("Commissioner"), through the Deputy Commissioner of Financial Solvency, filed suit in the Nineteenth

[1] Retired Judge James Boddie, Jr., appointed Justice ad hoc, sitting for Justice Clark.

Judicial District Court seeking a permanent order of rehabilitation relative to the LAHC. The district court entered an order confirming the Commissioner as rehabilitator and vesting him with authority to enforce contract performance by any party who had contracted with the LAHC.

The Commissioner then sued multiple defendants in the Nineteenth Judicial District Court, asserting claims against Milliman for professional negligence, breach of contract, and negligent misrepresentation. According to that suit, the acts or omissions of Milliman caused or contributed to the LAHC's insolvency.

Milliman responded by filing a declinatory exception of lack of subject matter jurisdiction, arguing the Commissioner must arbitrate his claims pursuant to an arbitration clause in the agreement between the LAHC and Milliman.[2] The Commissioner contended he is not bound by the arbitration clause and, pursuant to Louisiana Revised Statutes 22:257(F), exclusive jurisdiction for the claims against Milliman rests in the Nineteenth Judicial District Court.[3]

The district court denied Milliman's exception. The court of appeal reversed, treating Milliman's exception as an exception of prematurity and sustaining it, thus requiring the Commissioner to arbitrate his claims. *Donelon v. Shilling*, 2017-1545 (La. 2/28/19), 2019 WL 993328 (unpublished).

The Commissioner now makes several arguments for reversing the court of appeal. He argues a choice-of-law provision dictates that New York law applies,

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[2] Section 4 of the agreement provides "any dispute arising out of or relating to the engagement of Milliman by [the LAHC] … will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association." We note that the American Arbitration Association administers the case, but the applicable arbitration law is the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) because the FAA applies to all arbitrations "involving [interstate] commerce." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995). Milliman is domiciled in Washington and the LAHC in Louisiana; therefore, interstate commerce is involved.

[3] Louisiana Revised Statutes 22:257(F) provides:

> The commissioner is specifically empowered to take over and liquidate the affairs of any health maintenance organization experiencing financial difficulty at such time as he deems it necessary by applying to the Nineteenth Judicial District Court for permission to take over and fix the conditions thereof. The Nineteenth Judicial District Court shall have exclusive jurisdiction over any suit arising from such takeover and liquidation. The commissioner shall be authorized to issue appropriate regulations to implement an orderly procedure to wind up the affairs of any financially troubled health maintenance organization.

which law prohibits enforcement of arbitration agreements in contracts with insolvent insurers in either liquidation or rehabilitation. If state law applies, the Commissioner avers it reverse preempts the Federal Arbitration Act pursuant to the McCarran-Ferguson Act, 15 U.S.C. §§ 1011, *et. seq.* He also asserts the Nineteenth Judicial District Court has exclusive jurisdiction, points to policy reasons to distinguish himself, as rehabilitator, from the LAHC when enforcing the contract, and contends the court of appeal incorrectly applied the direct-benefits estoppel doctrine to enforce the arbitration clause.

ANALYSIS

We must determine whether the Commissioner can be compelled to arbitrate pursuant to an arbitration clause in an agreement to which he is not a party. Critical to this determination is the source of the Commissioner's authority to enforce the contract. To the extent the source is statutory, private parties have a limited ability to contractually interfere.

Louisiana Constitution Article IV, Section 11, provides, "There shall be a Department of Insurance, headed by the commissioner of insurance. The department shall exercise such functions and the commissioner shall have powers and perform duties authorized by this constitution or provided by law." The drafters of the constitution chose to leave the task of defining the powers and duties of the Commissioner to the legislature. *See Wooley v. State Farm Fire & Cas. Ins. Co*., 2004-882 (La. 1/19/05), 893 So. 2d 746, 767, ("Ultimately, [the 1973 Constitutional Convention delegates] voted not to designate any powers and duties in the constitution and to allow the legislature to specify the Commissioner's powers and duties.") The legislature then enacted, in Chapter 9 of the Insurance Code, the Louisiana Rehabilitation, Liquidation, Conservation Act ("RLCA"), La. R.S. 22: 2001, *et seq.*, comprehensively setting forth the Commissioner's rights and obligations relative to insolvent insurers.

Louisiana Revised Statutes 22:2008[4] and 2009[5] generally give the Commissioner the right to enforce the contracts of an insolvent insurer. Louisiana Revised Statutes 22:2004(A) governs where the Commissioner may bring an action to enforce such contracts, providing, in pertinent part: "[a]n action under this Chapter brought by the commissioner of insurance, in that capacity, or as conservator, rehabilitator, or liquidator may be brought in the Nineteenth Judicial District Court for the parish of East Baton Rouge or any court where venue is proper under any other provision of law."[6]

This suit related to the contract between the LAHC and Milliman is "an action brought under [the RLCA]" by "the commissioner of insurance . . .as rehabilitator." The plain language of Louisiana Revised Statutes 22:2004(A) grants authority for the Commissioner to bring such an action in the Nineteenth Judicial District Court or any *court* where venue is proper. The statute permits the Commissioner to choose where and how to litigate an action. By using the permissive "may," the statute does not foreclose the option of arbitration, if provided in a contract, but effectively delegates the choice to the Commissioner. We hold that Louisiana Revised Statutes

[4] Louisiana Revised Statutes 22:2008 provides in pertinent part:

> A. After a full hearing, which shall be held by the court without delay, the court shall enter an order either dismissing the petition or finding that sufficient cause exists for rehabilitation or liquidation and directing the commissioner of insurance to take possession of the property, business, and affairs of such insurer and to rehabilitate or liquidate the same as the case may be. The commissioner of insurance shall be responsible on his official bond for all assets coming into his possession. The commissioner of insurance and his successor and successors in office shall be vested by operation of law with the title to all property, contracts, and rights of action of the insurer as of the date of the order directing rehabilitation or liquidation.

[5] Louisiana Revised Statutes 22:2009 provides in pertinent part:

> A. Upon the entry of an order directing rehabilitation, the commissioner of insurance shall immediately proceed to conduct the business of the insurer and take such steps towards removal of the causes and conditions which have made such proceedings necessary as may be expedient.

[6] Louisiana Revised Statutes 22:2004 is titled "Venue." An arbitration clause has been characterized by this court as a type of venue selection clause. See *e.g. Hodges v. Reasonover*, 2012-0043 (La. 7/2/12), 103 So.3d 1069, 1076 ("An arbitration clause does not inherently limit or alter either party's substantive rights; it simply provides for an alternative venue for the resolution of disputes.")

22:2004(A) is an express grant of authority for the Commissioner to bring this suit in court, rather than arbitration.

This holding is consistent with the purpose and spirit of the RLCA. The Commissioner is a protector of public interests, and the legislature designed the statutory scheme to ensure the protection of such interests. Louisiana Revised Statutes 22:2(A)(1) provides, in pertinent part: "Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases. Pursuant to the authority contained in the Constitution of Louisiana, the office of the commissioner of insurance is created. It shall be the duty of the commissioner of insurance to administer the provisions of this Code." The Commissioner's role is aptly described in *LeBlanc v. Bernard*, 554 So. 2d 1378, 1381 (La. App. 1 Cir. 1989), *writ denied*, 559 So. 2d 1357 (La. 1990):

> The Commissioner of Insurance as rehabilitator or liquidator owes an overriding duty to the people of the State of Louisiana. The *raison d'etre* of his office is because the insurance industry is "affected with the public interest." La. R.S. 22:2. Any duties imposed upon that office, therefore, must be performed with the public interest foremost in mind. The Commissioner's responsibilities as rehabilitator or liquidator include, additionally, protection of the policyholders, creditors, and the insurer itself. *Republic of Texas Savings Assoc. v. First Republic Life Ins. Co.*, 417 So. 2d 1251, 1254 (La. App. 1 Cir.) *writ denied*, 422 So.2d 161 (La. 1982).

This court has previously held that defendant, as rehabilitator, "does not stand precisely in the shoes of First Republic." *Id.*

Also supportive of our interpretation is Louisiana Revised Statutes 22:2004(C), which provides: "If an action is filed in more than one venue, the court *shall consolidate* all such cases into one court where venue is proper." Both this statutory requirement for consolidation and the Commissioner's authority to enforce contracts in the venue of his choice promote the efficient and cohesive management of the affairs of insolvent insurers, which is a matter of substantial public interest.

The Commissioner urges that Louisiana Revised Statutes 22:257(F) vests "exclusive jurisdiction" for this action in the Nineteenth Judicial District Court.

However, this statute applies only to the "*takeover and liquidation* of a health maintenance organization." The subject suit arises from the rehabilitation of the LAHC, not its liquidation.[7] Nevertheless, Louisiana Revised Statutes 22:257(F) does support our view of the RLCA as a comprehensive statutory scheme facilitating the Commissioner's management of insolvent insurers. Specifically, the statute aligns with Louisiana Revised Statutes 22:2009, which allows the Commissioner to convert a rehabilitation proceeding to liquidation when he deems it necessary. Thus, the Commissioner may choose the Nineteenth Judicial District Court to bring an action as rehabilitator, then convert from rehabilitation to liquidation where the Nineteenth Judicial District Court's jurisdiction is mandatory. Louisiana Revised Statutes 22:2004(C)'s use of "one court" likewise facilitates the transition between these different types of receivership.

The ability of the Commissioner to seek to enjoin interference with rehabilitation proceedings is also part of the statutory scheme and reinforces the Commissioner's authority to choose a court as the forum to proceed. Louisiana Revised Statutes 22:2006 grants the court "jurisdiction over matters brought by . . . the commissioner of insurance . . .to issue an injunction." Louisiana Revised Statutes 22:2007(D) then provides, "The court having jurisdiction over a proceeding under this Chapter [the RLCA] shall have the authority to issue such orders, including injunctive relief, as appropriate, for the enforcement of this Section [delinquency proceeding or any investigation related to the insolvency proceeding]." An arbitrator is not typically empowered to issue injunctive relief. *Horseshoe Entm't v. Lepinski*,

[7] As part of a comprehensive statutory scheme relating to the management of insolvent insurers, the legislature has purposefully distinguished between "liquidation" and "rehabilitation." Thus, Louisiana Revised Statutes 22:257(F) does not directly apply to the commissioner as rehabilitator. This legislative distinction is evidenced in Louisiana Revised Statutes 22:2008 (providing for the suspension of prescription when the commissioner seeks a rehabilitation order, but interruption if he seeks an order of liquidation); Louisiana Revised Statutes 22:2009 (providing for the commissioner of insurance to immediately proceed to conduct the business of the insurer as rehabilitator and also providing for the conversion from rehabilitation to liquidation when necessary*)*; Louisiana Revised Statutes 22:2010 (providing for the commissioner to proceed to liquidate the property, business, and affairs of the insurer.)

40,753 (La. App. 2 Cir. 3/8/06), 923 So. 2d 929, 936, *writ denied*, 2006-0792 (La. 6/2/06), 929 So. 2d 1259.

Both parties have argued extensively that the contract controls. Particularly, they contend resolution of the arbitrability issue hinges on the parties' contractual intent relative to an apparent conflict between a New York choice of law provision and the arbitration clause. However, to the extent the agreement seeks to alter a statutory right granted to the Commissioner, the parties' intent is not determinative. Where the legislature, through positive law, empowers the Commissioner to bring an action in court, private parties cannot contract to deprive him of that right. *See* La. C.C. art. 1971 (parties are free to contract for any object that is *lawful*, possible, and determined or determinable.)[8] The court in *Brown v. Associated Ins. Consultants, Inc.*, 97-1396 (La. App. 1 Cir. 6/29/98), 714 So. 2d 939, 942 noted:

> This statutory scheme for the liquidation and/or rehabilitation of insurers is comprehensive and exclusive in scope. . . .
>
> Moreover, any attempt. . . to enjoin the Commissioner (through the appointed liquidator) from performing his role as liquidator would clearly violate the exclusivity of the rehabilitation scheme provided by law.

Because Louisiana Revised Statutes 22:2004(A) grants the Commissioner the right to choose the forum for his action, a private agreement depriving him of that right, "would clearly violate the exclusivity of the rehabilitation scheme." *Brown*, 714 So.2d 942. Consequently, the parties' intent is not relevant and we pretermit any analysis of the allegedly conflicting provisions in the agreement.

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[8] *See also Louisiana Smoked Prod., Inc. v. Savoie's Sausage & Food Prod., Inc.*, 96-1716 (La. 7/1/97), 696 So. 2d 1373, 1380–81 ("In a free enterprise system, parties are free to contract except for those instances where the government places restrictions for reasons of public policy. The state may legitimately restrict the parties' right to contract if the proposed bargain is found to . . . contravene some . . . matter of public policy.") *See Bernard v. Fireside Commercial Life Ins. Co.*, 633 So. 2d 177, 185 (La. App. 1 Cir. 1993), ("Louisiana has enacted a statutory scheme specifically designed for insurance insolvency, which takes precedence over general law to the extent that the general law is inconsistent with the provisions or purpose of the comprehensive, statutory scheme.") By statutorily addressing insurance insolvency, general contract law is overridden to the extent it is inconsistent with the RLCA, or the purposes behind it. *Crist v. Benton Casing Serv.*, 572 So. 2d 99, 102 (La. App. 1 Cir. 1990), *writ denied*, 573 So. 2d 1143 (La. 1991).

Similarly, we find it unnecessary to address the doctrine of direct benefits estoppel and its effect on the Commissioner as a non-signatory to the agreement.[9] This jurisprudentially created type of estoppel is an equitable remedy. *Courville*, 218 So.3d at 148. Equitable remedies are only available in the absence of legislation and custom. La.Civ.Code art. 4. Because an express grant of authority exists in favor of the Commissioner, resort to equity is unwarranted. *See Gulf Refining Co.*, 171 So.2d 846, 854 (1936).

Our holding that Louisiana law allows the Commissioner to decline binding arbitration does not dispose of the issue entirely. We must now determine if the FAA, the applicable federal arbitration law, preempts Louisiana law, thus compelling arbitration. By operation of the Supremacy Clause in the United States Constitution, we acknowledge the FAA preempts inconsistent state law. 9 U.S.C. § 1, *et seq.*; U.S. Const. art. VI, Clause 2. Louisiana Revised Statutes 22:2004(A) is arguably inconsistent with the FAA, which favors arbitration. However, the Commissioner argues state law reverse preempts the FAA by virtue of the McCarran-Ferguson Act. McCarran-Ferguson exempts from federal preemption state laws enacted "for the purpose of regulating the business of insurance." 15 U.S. § 1012. Congress has mandated that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of . . . States which relate to the regulation . . . of such business." *Id.* at 1012(a). No federal law "shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance." *Id.* at 1012(b).

[9] Direct benefits estoppel prevents a non-signatory from escaping the effects of an arbitration clause when he knowingly exploits and receives a benefit from the agreement containing the arbitration clause. *See Courville v. Allied Professionals Insurance Co.*, 2016-1354 (La. App. 1 Cir. 4/12/17), 218 So.3d 144, 148, n.3, *writ denied*, 2017-0783 (La. 10/27/17), 228 So.3d 1223.

Courts have adopted a three-part test to determine when a state law, through application of McCarran-Ferguson, reverse preempts federal law: (1) when the federal statute is not specifically related to the insurance business, (2) when the state statute was enacted to regulate insurance, and (3) when application of the federal statute would invalidate, impair, or supersede the state statute. *Am. Bankers Ins. Co. of Fla. v. Inman*, 436 F.3d 490, 493 (5th Cir. 2006).

The FAA does not specifically relate to "the business of insurance." *Id.* Thus, the first test for reverse preemption is satisfied.

Next is whether Louisiana Revised Statutes 22:2004(A) was enacted "for the purpose of regulating the business of insurance." *Id.* The Commissioner persuasively argues Louisiana's comprehensive statutory scheme for handling insolvent insurers, including the right to choose the forum for actions brought by him as rehabilitator, serves the purpose of regulating the business of insurance and is within the scope of McCarran-Ferguson. *See Munich Am. Reinsurance Co. v. Crawford*, 141 F.3d 585, 591 (5th Cir. 1998).

In *Munich* the court considered whether Oklahoma law governing insurance company delinquency proceedings reverse preempted the FAA. Oklahoma, like most states, enacted its insurance regulatory scheme under the "shield provided by the McCarran-Ferguson Act." *Id.*, citing *Harford Cas. Ins. Co. v. Corococan*, 807 F.2d 38, 43 (2d Cir.1986). Oklahoma courts, as the "primary expositors of Oklahoma law and public policy, have expressly declared that Oklahoma's Insurers Liquidation Act is designed to protect the public in general, and *policyholders of an insolvent insurer in particular*." *Id.* at 592. The court ultimately held the provisions of the insurance insolvency scheme were enacted for the purpose of regulating the

business of insurance and reverse preempted the FAA, thus exempting the Oklahoma insurance commissioner from arbitration. [10]

The *Munich* court relied heavily on *Stephens v. American Int'l Ins. Co.*, 66 F.3d 41 (2d Cir.1995), which found an anti-arbitration provision in Kentucky's Insurance Rehabilitation and Liquidation Law was enacted to regulate the business of insurance and was not preempted by the FAA. The *Stephens* court reasoned the Kentucky liquidation scheme protects policyholders by "assuring that an insolvent insurer will be liquidated in an orderly and predictable manner and the anti-arbitration provision is simply one piece of that mechanism." *Stephens*, 66 F.3d at 45.

Although not binding on us, we are persuaded by these federal court decisions. While *Munich* and *Stephens* involved liquidation, not rehabilitation, the distinction is immaterial when considering the overall statutory scheme, as both are legal devices used by the Commissioner to manage insolvent insurers. Similar to Oklahoma and Kentucky, Louisiana's RLCA was enacted for the purpose of regulating the business of insurance. Louisiana Revised Statutes 22:2004(A), is part of the RLCA. La. R.S. 22:2001, *et seq.* Section 2004(A) authorizes the Commissioner to select the forum for "all actions under [the RLCA] brought by the commissioner . . .as rehabilitator." Section 2008 gives the Commissioner "title to all property, contracts, and rights of action of the insurer." Section 2009 mandates that the Commissioner "proceed to conduct the business of the insurer." This statutory scheme for rehabilitation and liquidation of insurers is comprehensive and

[10] The *Munich* court utilized a three-part test set forth in *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119, 129, 102 S.Ct. 3002, 73 L.Ed.2d 647 (1982) to evaluate whether the Oklahoma law regulated the business of insurance: (1) "whether the practice in question has the effect of transferring or spreading a policyholder's risk;" (2) "whether the practice is an integral part of the policy relationship between the insurer and the insured;" and (3) "whether the practice is limited to entities within the insurance industry." The court in *Pierno* noted that no single factor is determinative, but examination of all the factors may lead to the conclusion that a state law regulates the "business of insurance." *Id.* The *Munich* court found Oklahoma's comprehensive regulatory scheme sufficient to satisfy at least two of three *Pireno* factors: "First, it is crucial to the relationship between the insurance company and its policyholders for both parties to know that, in the event of insolvency, the insurance company will be liquidated in an organized fashion." *Munich*, 141 F.3d 585 (1998). Second, the court found the liquidation scheme limited, by its nature, to entities in the insurance industry. "It does not apply to insolvent companies generally, but only to insolvent insurance companies." *Id*. The same factors are met relative to Louisiana's comprehensive regulatory scheme.

exclusive in scope. *Brown v. Associated Ins. Consultants, Inc.*, 97-1396 (La. App. 1 Cir. 6/29/98), 714 So. 2d 939, 942. It balances the interests of policyholders, creditors, and claimants. *LeBlanc v. Bernard*, 554 So. 2d at 1383–84. It was enacted to regulate insurance "in the public interest." La. R.S. 22:2(A)(1). Section 2004 is part of a coherent policy to address that interest. *Health Net, Inc. v. Wooley*, 534 F.3d 487, 496 (5th Cir. 2008).

Milliman argues *United States Treasury Dept. v. Fabe*, 508 U.S. 491, 505, 113 S.Ct. 2202, 124 L.Ed. 2d 449 (1993) prohibits consideration of the insurance statutory scheme as a whole when determining whether a specific statute was enacted for the purpose of regulating the business of insurance. We disagree. The *Fabe* court considered whether a federal priority statute was superseded by a conflicting state priority statute, where the latter was part of a larger statutory scheme enacted to regulate insolvent insurers. The *Fabe* court observed that an individual statute can reverse preempt federal law to the extent the specific statute regulates policyholder interests. However, the court found the provisions that did not directly affect policyholder interests were not enacted for the purpose of regulating the business of insurance and, thus, had no reverse preemptive effect. The *Munich* court rejected an expansive application of the *Fabe* holding, finding "the court stopped short of directing that [a parsing of statutes] approach be taken in every case." *Munich*, 141 F.3d 592. It continued:

> This uncertainty need not concern us today, however, because if we are required to parse [Oklahoma Insurance regulation law], the specific provisions of the statute at issue here —vesting exclusive original jurisdiction of delinquency proceedings in the Oklahoma state court and authorizing the court to enjoin any action interfering with the delinquency proceedings—are laws enacted clearly for the purpose of regulating the business of insurance. These provisions give the state court the power to decide all issues relating to disposition of an insolvent insurance company's assets, including whether any given property is part of the insolvent estate in the first place.

Id.

Louisiana, like Oklahoma, adopted a comprehensive scheme to regulate insolvent insurers, including granting the Commissioner, as rehabilitator, the authority to choose which forum to bring an action. The policy reasons for this grant of discretion mirror those of Oklahoma: "the orderly adjudication of claims;" the avoidance of "unnecessary and wasteful dissipation of the insolvent company's funds" that would occur if the receiver had to litigate in different forums nationwide; the elimination of "the risk of conflicting rulings, piecemeal litigation of claims, and unequal treatment of claimants." *Munich*, 141 F.3d at 593. While each of these concerns alone may not justify avoiding the arbitration clause, collectively they support our holding that the venue selection provision in Section 2004 was enacted for the purpose of regulating the business of insurance.

Last, reverse preemption does not apply unless the FAA acts to "invalidate, supersede, or impair" the RLCA, particularly the venue provision. Forcing arbitration upon the Commissioner conflicts with the Louisiana law authorizing him to choose which forum to proceed in as rehabilitator. This conflict sufficiently impairs the Commissioner's rights under Section 2004 to trigger McCarran-Ferguson's reverse preemption effect.

CONCLUSION

For the reasons stated herein, we find the Louisiana Rehabilitation, Liquidation, and Conservation Act, specifically Louisiana Revised Statutes 22:2004(A), prevents the Commissioner from being compelled to arbitration. We reverse the judgment of the court of appeal and remand for proceedings consistent with this opinion.

REVERSED AND REMANDED.

04/27/20

SUPREME COURT OF LOUISIANA

NO. 2019-C-00514

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

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

WEIMER, J.,concurring.

The statute central to this case, La. R.S. 22:2004(A), provides that an "action by the commissioner of insurance, in that capacity, or as conservator, rehabilitator, or liquidator may be brought **in the Nineteenth Judicial District Court** for the parish of East Baton Rouge **or any court** where venue is proper under any other provision of law." (Emphasis added.) Arbitration is not mentioned in the statute. Accordingly, I believe the commissioner is not statutorily authorized to elect arbitration, but is limited to litigation, in court, as described in La. R.S. 22:2004(A). Thus, I respectfully concur; I join the majority opinion in all other respects.