

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

SUITE NO.: 651,069 SECTION: 22

versus

19<sup>TH</sup> JUDICIAL 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

**REPLY MEMORANDUM IN RESPONSE TO**  
**PLAINTIFF'S OPPOSITION TO MILLIMAN'S DECLINATORY EXCEPTION OF**  
**LACK OF SUBJECT MATTER JURISDICTION**

MAY IT PLEASE THE COURT:

Defendant, Milliman, Inc. ("Milliman"), submits this *Reply Memorandum* in response to the *Opposition to Milliman's Declinatory Exception of Lack of Subject Matter Jurisdiction* (the "*Opposition*") filed by Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as rehabilitator of Louisiana Health Cooperative, Inc., ("*Plaintiff*" or "*Rehabilitator*"). As more thoroughly discussed below, the arguments raised by Plaintiff in his *Opposition* are without merit. Accordingly, this Court should grant Milliman's *Declinatory Exception of Lack of Subject Matter Jurisdiction* and dismiss Plaintiff's claims against Milliman with prejudice at Plaintiff's cost.

**I. RELATIVE TO ALL OF THE CLAIMS RAISED BY THE COMMISSIONER AS REHABILITATOR, THE INSURANCE CODE DOES NOT GRANT THE COMMISSIONER AS REHABILITATOR GREATER RIGHTS THAN LAHC HAD IN REGARD TO ITS CONTRACT WITH MILLIMAN.**

In his *Opposition*, Plaintiff erroneously alleges that Milliman in its Exception "ignores the comprehensive and exclusive scope of the Louisiana Insurance Code regarding receivership

litigation.”<sup>1</sup> In addition, Plaintiff contends that the “statutory scheme for the rehabilitation and/or liquidation of insurers is comprehensive and exclusive in scope.”<sup>2</sup> Milliman agrees with Plaintiff that under the terms of the Insurance Code, “[a]s rehabilitator, the Commissioner is vested with broad, exclusive powers and duties for the benefit of policyholders, creditors, and the public.”<sup>3</sup> However, Milliman submits that when considering the claims made against it, no provision of the Insurance Code provides or even suggests that the rehabilitator would not be bound by the terms of a contract signed by a third party and the insurance company over which the Commissioner has taken control. In fact, in his *Opposition*, Plaintiff cites La. Rev. Stat. § 22:2008(A), which provides, in pertinent part, that once a court grants a Petition for Rehabilitation, “[t]he 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.”<sup>4</sup> This language clearly states that the Commissioner in a rehabilitation proceeding is vested with all rights the insolvent insurance company may have to a contract as those rights exist on the date of the rehabilitation order. The statute does not suggest that the Commissioner, by virtue of his status of rehabilitator, somehow obtains greater rights to the contract than the insolvent insurance company enjoyed, nor should it in a rehabilitation proceeding.

Furthermore, La. Rev. Stat. § 22:2009 envisions that upon entry of an Order of Rehabilitation as occurred herein (see the Permanent Order of Rehabilitation, which is incorporated herein and attached hereto as Exhibit “A”), the Commissioner “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.” Stated simply, the Commissioner as Rehabilitator takes over the company and operates it instead of liquidating the property, business, and affairs of the insurer as would occur subsequent to an Order of Liquidation under La. Rev. Stat. § 22:2010. “Unlike rehabilitation proceedings, which aim to restore an insurer and preserve its business where possible, liquidation proceedings wind down a company’s affairs and

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<sup>1</sup> *Opposition*, p. 3.

<sup>2</sup> *Opposition*, p. 3., citing *Brown v. Associated Ins. Consultants, Inc.*, 97-1396 (La. App. 1 Cir. 6/29/98), 724 So.2d 939, 941-42.

<sup>3</sup> *Opposition*, p. 3.

<sup>4</sup> La. Rev. Stat. § 22:2008(A)(emphases added).

permanently retire its debt.”<sup>5</sup> In addition, “one of the most notable differences between liquidation proceedings and rehabilitation proceedings is that the entry of a liquidation order will fix the rights and liabilities of an insurer and its creditors, policyholders, stockholders, members, subscribers, and other interested parties; in contrast, rehabilitation statutes are generally silent on this subject. Similarly, liquidation statutes establish a priority order for the distribution of payments and permit setoffs, unlike most rehabilitation statutes.”<sup>6</sup> Thus, the marked differences between rehabilitation proceedings and liquidation proceedings demonstrate why a statute providing for exclusive jurisdiction in one type of a proceeding may not apply in the other type of proceeding. As discussed *infra*, this distinction is particularly significant when considering the two primary grounds upon which the Plaintiff’s *Opposition* improperly rests: 1) La. Rev. Stat. § 22:257(F) and 2) the Ohio jurisprudence.

Thus, contrary to Plaintiff’s contention, Milliman properly acknowledges the broad authority the Insurance Code affords the Commissioner in his capacity as Rehabilitator, as distinguished from the broad authority the Insurance Code affords the Commissioner when acting in his capacity as Liquidator. Specifically, Milliman recognizes that the rights afforded by the Insurance Code to the Commissioner as Rehabilitator are not greater than those rights possessed by Louisiana Health Cooperative, Inc. (“LAHC”). All of the allegations against Milliman set forth in the Petition arise from the contractual duties to which Milliman bound itself when entering into the Consulting Services Agreement (“the Agreement”) with LAHC, thus in litigating a dispute arising out of those contractual duties, the Commissioner as Rehabilitator steps into the shoes of LAHC and is likewise bound by the obligations that LAHC undertook under that same Agreement.

## **II. LA. REV. STAT. § 22:257(F) DOES NOT APPLY TO THIS MATTER BECAUSE THE INSTANT MATTER DOES NOT ARISE FROM A LIQUIDATION PROCEEDING.**

Plaintiff asserts that the Nineteenth Judicial District Court has exclusive jurisdiction over this matter pursuant to La. Rev. Stat. § 22:257(F), which provides:

F. The commissioner is specifically empowered to take over and liquidate the affairs of any health maintenance organization experiencing financial difficulty at

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<sup>5</sup> 9-100 New Appleman on Insurance Law Library Edition § 100.01 (2016)

<sup>6</sup> *Id.*



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.<sup>7</sup>

La. Rev. Stat. § 22:257 governs the suspension or revocation of a certificate of authority issued to a health maintenance organization (“HMO”), which includes in Section F the process that follows when the Commissioner takes over and liquidates an HMO. The Commissioner is not liquidating LAHC, but is instead rehabilitating it; thus, in citing this provision, the Commissioner as Rehabilitator is improperly attempting to utilize a jurisdictional statute that is expressly limited to liquidation proceedings in accordance with authority granted pursuant to an Order of Rehabilitation, not an order of Liquidation.

The use of the terms “liquidate,” “liquidation,” and “wind up the affairs” clearly indicate that this statute applies only in instances where the Commissioner has initiated proceedings to liquidate, as opposed to rehabilitate, the affairs of an HMO. Thus La. Rev. Stat. § 22:257(F) has no relevance to this proceeding.

Additionally, the claims brought against Milliman do not even arise from the takeover of LAHC; rather, the claims against Milliman have been fully available to LAHC since its determination to select a new actuary in 2014. Thus, Plaintiff’s assertion regarding the applicability of the exclusive jurisdiction under this statute is both misplaced and improper.

Because the instant matter involves rehabilitation proceedings instead of liquidation proceedings, Plaintiff’s reliance on La. Rev. Stat. § 22:257(F) to establish exclusive jurisdiction in the Nineteenth Judicial District Court is misplaced.

**III. PLAINTIFF HAS FAILED TO PROVIDE ANY ANALYSIS IN SUPPORT OF HIS ARGUMENT THAT ENFORCEMENT OF THE ARBITRATION CLAUSE WOULD CAUSE PLAINTIFF TO VIOLATE THE REHABILITATION ORDER.**

Plaintiff contends that “forcing the Commissioner to arbitrate this dispute would violate the applicable Rehabilitation Order regarding LAHC”<sup>8</sup> and that “LAHC’s Rehabilitation Order is consistent with [the provisions of the Insurance Code governing rehabilitation, liquidation, and

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<sup>7</sup> La. Rev. Stat. § 22:257(F)(emphases added).

<sup>8</sup> Opposition, p. 1.

conservation] and in furtherance of [the provisions'] purposes.”<sup>9</sup> However, Plaintiff fails to make any specific argument regarding how the enforcement of the arbitration clause in the Consulting Services Agreement would force the Commissioner to violate the Rehabilitation Order. While Plaintiff cites to various provisions of the Insurance Code and the Rehabilitation Order in support of his conclusory statements, he does not actually provide any analysis to support his contentions.

In any event, no provision of the Insurance Code or Rehabilitation Order even suggests that Plaintiff would enjoy greater rights than LAHC did under terms of the Consulting Services Agreement executed by LAHC and Milliman. Furthermore, the Rehabilitation Order is invalid to the extent it provides the rehabilitator with more authority than that to which he is otherwise entitled pursuant to the rehabilitation provisions of the Insurance Code. Because no provision of the Insurance Code provides a rehabilitator with greater contractual rights than those expressly set forth within the four corners of the contract, the Rehabilitation Order cannot grant a rehabilitator additional rights beyond those stated in the contract. Therefore, Plaintiff is mistaken in his assumption that the terms of the Rehabilitation Order somehow prohibit the enforcement of the arbitration clause in the Consulting Services Agreement.

#### **IV. THE COMMISSIONER IS BOUND BY THE ARBITRATION CLAUSE IRRESPECTIVE OF THE FACT THAT THE COMMISSIONER IS NOT A SIGNATORY TO THE ARBITRATION AGREEMENT.**

Because he is not a signatory to the Consulting Services Agreement, Plaintiff contends that he is not bound by the arbitration clause contained in the Agreement.<sup>10</sup> Yet, Plaintiff has asserted claims against Milliman that are expressly based on Milliman’s alleged breach of the Agreement. For example, in Plaintiff’s First Supplemental, Amending and Restated Petition for Damages, Plaintiff indicates that the “Actuary Defendants,” including Milliman, have committed the offenses designated in the Petition as “Count Four: Professional Negligence and Breach of Contract.”<sup>11</sup> In addition, Plaintiff states that “[i]n or around August 2014, Milliman was engaged by Shilling on behalf of Beam Partners and/or LAHC to render “actuarial support” for LAHC,

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<sup>9</sup> Opposition, p. 5.

<sup>10</sup> Opposition, p. 7.

<sup>11</sup> First Supplemental, Amending and Restated Petition, p. 23, ¶ 74 (emphasis added).



including the production of a “feasibility study and loan application...”<sup>12</sup> Also, Plaintiff alleges that “Milliman’s failure to exercise reasonable care, and its failure to act in accordance with the professional standards applicable to actuaries, and its breach of contract, was the legal cause of, or substantially all of, LAHC’s damages as set forth herein.”<sup>13</sup>

On one hand, Plaintiff argues that he is not bound by the arbitration clause contained in the Consulting Services Agreement because he is not a signatory on the contract; on the other hand, Plaintiff has filed suit against Milliman based on Milliman’s alleged breach of the obligations set forth in the Consulting Services Agreement. Plaintiff wants to sue Milliman for purportedly breaching the terms of Milliman’s contract with LAHC, yet Plaintiff does not want to be bound by the terms of Milliman’s contract with LAHC. Thus, Plaintiff wants to have his cake and eat it, too. As stated hereinabove, no provision of the Insurance Code or the Rehabilitation Order affords the Commissioner as Rehabilitator greater contractual rights than the rights he inherits from the insolvent insurance company. If Plaintiff is able to avail himself of the right to enforce the provisions of the Consulting Services Agreement, then it stands to reason that he must also be bound by the restrictions set forth in the Consulting Services Agreement.<sup>14</sup> Accordingly, Plaintiff’s contention that he is not bound by the arbitration clause in the Consulting Services Agreement is wholly without merit.

**V. THE OHIO SUPREME COURT’S DECISION IN *TAYLOR V. ERNST & YOUNG, LLP* IS NOT BINDING ON THIS COURT AND IS FACTUALLY DISTINGUISHABLE FROM THE INSTANT MATTER; THEREFORE, IT SHOULD HAVE NO BEARING ON THE COURT’S DECISION IN THE INSTANT MATTER.**

Milliman was perplexed to read Plaintiffs’ statement that “Milliman fails to cite, much less distinguish, the *Taylor* case decided by the Ohio Supreme Court in 2011, a case which [the Plaintiff contends] is directly on-point both factually and legally.”<sup>15</sup> Milliman is unsure why Plaintiff is insinuating that a non-Louisiana case rendered by a common-law jurisdiction that pertains to a proceeding arising from a liquidation is somehow dispositive of the issues presented

<sup>12</sup> First Supplemental, Amending and Restated Petition, p. 23, ¶ 76 (emphasis added).

<sup>13</sup> First Supplemental, Amending and Restated Petition, p. 103, ¶ 30 (emphasis added).

<sup>14</sup> See *Bennett v. Liberty Natl. Fire Ins. Co.* (C.A.9 1992), 968 F.2d 969; *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (C.A.3 1989), 885 F.2d 1149; *Costle v. Fremont Indemn. Co.* (D.Vt.1993), 839 F.Supp. 265, 272 (“if a liquidator seeks to enforce an insolvent company’s rights under a contract, she must also suffer that company’s contractual liabilities”); *Koken v. Cologne Reinsurance, Ltd.* (D.C.Pa.1999), 34 F.Supp.2d 240; *Foster v. Philadelphia Mfrs.* (1991), 140 Pa.Comm.w. 186, 592 A.2d 131.

<sup>15</sup> Opposition, p. 1.

in Milliman's *Exception of Lack of Subject Matter Jurisdiction* filed in response to Plaintiff's claim as a rehabilitator **not** a liquidator. Nevertheless, because Plaintiff has chosen to rely on and spends multiple pages of his *Opposition* discussing this non-binding case, Milliman responds as follows.

First, at the risk of stating the obvious, this Court is in no way, shape, or form even remotely bound by any decision of the Ohio Supreme Court. As the Court is well aware, in a civil law jurisdiction such as Louisiana, legislation is the primary source of law and *jurisprudence constante* is a secondary source of law.<sup>16</sup> Thus, a court may not rely on jurisprudence in a particular situation if legislation provides a rule for that situation.<sup>17</sup> As Milliman explains in its *Memorandum in Support of its Exception of Lack of Subject Matter Jurisdiction*, La. Rev. Stat. § 9:4201 provides,

A provision in any written contract to settle by arbitration a controversy thereafter arising out of the contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, **shall be valid, irrevocable, and enforceable**, save upon such grounds as exist at law or in equity for the revocation of any contract.<sup>18</sup>

Because legislation provides a rule regarding the enforceability of arbitration clauses, this Court is not permitted to look to other sources when performing its analysis. However, even if the Court were allowed to rely on jurisprudence in rendering its decision, the Supreme Court of **this state** has expressly stated that "[t]he positive law of Louisiana favors arbitration."<sup>19</sup> Accordingly, Plaintiff's reliance on a decision rendered in a common-law jurisdiction is severely misplaced.

Secondly, the *Taylor* decision is factually distinguishable from the facts of the instant matter. In *Taylor*, a liquidator (as opposed to a rehabilitator) alleged that an accounting firm negligently failed to perform its duties in conducting an audit and that the accounting firm received preferential or fraudulent payments of more than \$25,000.00.<sup>20</sup> Therefore, the Ohio Supreme Court determined that these claims had not "arise[n] from the contract containing the arbitration clause" and instead implicated rights for which the liquidator was statutorily

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<sup>16</sup> *Kelly v. State Farm Fire & Cas. Co.*, 2014-1921 (La. 05/05/15); 169 So. 3d 328, 338.

<sup>17</sup> La. Code Civ. art. 4.

<sup>18</sup> *Memorandum in Support of Exception of Lack of Subject Matter Jurisdiction*, p. 6.

<sup>19</sup> *Aguillard v. Auction Mgmt. Corp.*, 2004-2804 (La. 6/29/05), 908 So. 2d 1, 7.

<sup>20</sup> *Taylor*, 958 N.E.2d at 1206-07.



authorized to address.<sup>21</sup> However, as discussed above, the Plaintiff in this matter is asserting breach of contract claims against Milliman. Since the liquidator in *Taylor* did not sue the accounting firm for breach of contract, he was not attempting to assert a cause of action for breach of contract while seeking to avoid arbitration by disavowing the arbitration provision contained in that contract. In the instant matter, however, the Plaintiff is suing Milliman for breach of contract while at the same time attempting to avoid the application of the arbitration clause contained in that contract. Thus, aside from not being binding on this court, the *Taylor* case is clearly factually distinguishable from the instant matter and should be disregarded in favor of express Louisiana statutory law.

**VI. THE COMMISSIONER DOES STAND IN THE SHOES OF LAHC FOR PURPOSES OF EXERCISING THE RIGHTS AND BEING OBLIGATED BY THE RESTRICTIONS SET FORTH IN THE CONSULTING SERVICES AGREEMENT.**

Plaintiff asserts that “it is inaccurate to argue, as Milliman does, that the Commissioner simply stands in the shoes of a failed insurance company like LAHC”<sup>22</sup> and that “[t]he Commissioner does not stand precisely in the shoes of the insolvent insurer because he acts as an officer of the state.”<sup>23</sup> In support of his argument, Plaintiff relies on *LeBlanc v. Bernard*<sup>24</sup> and *Republic of Texas Savings Association v. First Republic Life Insurance Co.*,<sup>25</sup> wherein the First Circuit stated that when serving as rehabilitator, the Commissioner “does not stand precisely in the shoes of First Republic.”<sup>26</sup> However, neither of those cases involved a rehabilitator asserting a breach of contract against a party and yet seeking to avoid application of a binding arbitration clause, but instead pertain to certain enumerated rights and duties afforded the Commissioner as Rehabilitator that are not triggered by the claims raised by the Rehabilitator against Milliman. As discussed above, it would be unjust for Plaintiff in the instant matter to be able to sue Milliman for breach of contract and yet escape application of the arbitration clause contained in the Agreement that was part of the basis for the contractual relationship by and between Milliman and LAHC. Furthermore, two Louisiana courts have expressly stated the Commissioner in a

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<sup>21</sup> *Id.* at 1213, citing *Gerig v. Kahn*, 95 Ohio St.3d 478, 2002 Ohio 2581, 769 N.E.2d 381, ¶ 19.

<sup>22</sup> Opposition, p. 1.

<sup>23</sup> Opposition, p. 11.

<sup>24</sup> 554 So.2d 1378, 1383 (La. App. 1st Cir. 1989).

<sup>25</sup> 417 So.2d 1251, 1254 (La. App. 1st Cir. 1982).

<sup>26</sup> *Id.*



rehabilitation proceeding steps into or stands in the shoes of the insolvent insurer.<sup>27</sup> Therefore, Plaintiff's assertion that he does not stand in the shoes of LAHC in regards to LAHC's contractual relationship with Milliman is a fact driven determination that in this matter is meritless as asserted against Milliman's Exception.

## **VII. THE COMMISSIONER'S CLAIMS ARISE OUT OF THE PROVISIONS OF THE CONSULTING SERVICES AGREEMENT.**

Furthermore, Plaintiff's argument that his claims against Milliman "do not arise from the subject engagement letter"<sup>28</sup> is without merit because they directly contradict Plaintiff's own allegations contained in the Petition filed herein. Apparently in its tortured attempt to equate the facts in *Taylor* with the facts of the instant matter, Plaintiff states in conclusory fashion that "[i]n this case, as in *Taylor*, the Commissioner is not seeking a declaration of Milliman's obligations under its engagement letter with LAHC." Plaintiff also asserts that the actuary work Milliman performed for LAHC, "including the feasibility study, three year pro forma reports, and memoranda prepared as part of the 2014 rate filings,"<sup>29</sup> was "unreliable, inaccurate, and not the result of careful, professional analysis"<sup>30</sup> and that Milliman failed to "set premium rates that were accurate and reliable."<sup>31</sup> However, Plaintiff's argument fails to take into account the fact that Milliman's contractual relationship with LAHC is embodied within an engagement letter, captioned "Consulting Services Agreement" that incorporates by reference the "Proposal for Actuarial Services" dated August 4, 2011, which establishes the contractual obligations of these parties now in dispute.

As discussed above, in his First Supplemental, Amending, and Restated Petition, Plaintiff states that "[i]n or around August 2011, Milliman was engaged by Shilling on behalf of Beam Partners and/or LAHC to render "actuarial support" for LAHC, including the production of a "feasibility study and loan application...""<sup>32</sup> Plaintiff also alleges that "Milliman's failure to exercise reasonable care, and its failure to act in accordance with the professional standards applicable to actuaries, and its breach of contract, was the legal cause of, or substantially all of,

<sup>27</sup> *Savant Ins. Servs. V. Cent. Oil & Supply Corp.*, 36,095 (La. App. 2d Cir. 6/12/2002), (821 So. 2d 623,631; *Green v. Pesson Plumbing & Heating Co.*, 599 So. 2d 492,493 (La. App. 3d Cir. 1992).

<sup>28</sup> Opposition, p. 2.

<sup>29</sup> Opposition, p. 13.

<sup>30</sup> Opposition, p. 13.

<sup>31</sup> Opposition, p. 13.

<sup>32</sup> First Supplemental, Amending and Restated Petition, p. 23, ¶ 76 (emphasis added).

LAHC's damages as set forth herein."<sup>33</sup> Thus, all of the conduct of which Plaintiff's complains (i.e., Milliman's alleged breach of contract) arises out of the contractual relationship between LAHC and Milliman. Although Plaintiff boldly asserts that his claims against Milliman "arise from his statutory powers and Milliman's failure to perform its services for LAHC in accordance with applicable professional standards – standards that it was independently required to observe, irrespective of any written engagement letter,"<sup>34</sup> Plaintiff overlooks the fact that Milliman never even would have had such a duty but for the fact that it entered into the Consulting Services Agreement with LAHC. That is, were it not for the fact that LAHC retained Milliman's actuarial services pursuant to the terms of the Consulting Services Agreement, Milliman never would have owed any duty to LAHC to comply with applicable professional standards in the provision of those very services. All aspects of Plaintiff's claims against Milliman are founded on the contractual relationship LAHC established with Milliman by virtue of the Consulting Services Agreement. Accordingly, Plaintiff's allegations that his claims against Milliman are not contractual in nature are without merit.

**VIII. THE COMMISSIONER HAS CONCEDED THAT THE ARBITRATION CLAUSE CONTAINED IN THE CONSULTING SERVICES CONTRACT DOES NOT AMOUNT TO A CONTRACT OF ADHESION.**

Finally, Plaintiff in his *Opposition* has failed to contest Milliman's argument that the arbitration clause contained in the Consulting Services Agreement does not contain any characteristics of an unenforceable contract of adhesion.<sup>35</sup> Instead, Plaintiff argues that whether the arbitration clause in the Consulting Services Agreement is adhesionary is irrelevant because Plaintiff is not a signatory to the Agreement.<sup>36</sup> Plaintiff's failure to respond to Milliman's argument indicates that Plaintiff has tacitly conceded that the arbitration clause does not contain any elements of a contract of adhesion.

**IX. CONCLUSION**

For the reasons set forth hereinabove and in Milliman's Exception, this Court does not have subject matter jurisdiction over Plaintiff's claims against Milliman. Accordingly, this Court

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<sup>33</sup> First Supplemental, Amending and Restated Petition, p. 103, ¶ 30 (emphasis added).

<sup>34</sup> *Opposition*, p. 13.

<sup>35</sup> Memorandum in Support of Exception of Lack of Subject Matter Jurisdiction, p. 6-9.

<sup>36</sup> *Opposition*, p. 7.



should grant Milliman's *Declinatory Exception of Lack of Subject Matter Jurisdiction* and order that Plaintiff's claims against Milliman be dismissed with prejudice at Plaintiff's cost.

Respectfully submitted:

**ADAMS AND REESE LLP**

/s/

V. THOMAS CLARK, JR. (#20519)

J. ROBERT WOOLEY (#13679)

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*Counsel for Milliman, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record via facsimile, e-mail and/or by placing same in the U.S. Mail, postage pre-paid and properly addressed.

Baton Rouge, Louisiana, this 25<sup>th</sup> day of May, 2017.

  
V. THOMAS CLARK, JR.

## STATE OF LOUISIANA

SECTION: 26

VERSUS

STATE

SEP 21 2015

BY 19  
DEPUTY CLERK OF COURT

FILED: \_\_\_\_\_

DEPUTY CLERK

PERMANENT ORDER OF REHABILITATION AND INJUNCTIVE RELIEF

**NOW INTO COURT,**

PRESENT: Assistant Attorney General Michael Charles Guy, attorney for James J. Donelon, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative ("LAHC"), and the Court appointed Receiver, Billy Bostick (the "Receiver")

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC shall be and hereby is placed into rehabilitation under the direction and control of the Commissioner of Insurance for the State of Louisiana (the "Commissioner"), his successors and assigns in his office and his agents, designees, and/or employees, subject to the further written orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner or

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any deputy, be and hereby is confirmed as Rehabilitator.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Billy Bostick be and hereby is confirmed Receiver of LAHC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner as Rehabilitator or his appointees and/or the Receiver or Deputy Receiver be allowed and are authorized to employ and authorize the compensation of accountants, clerks, attorneys and such assistants as he deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidents thereof, to be paid out of the funds or assets of LAHC in the possession of the Receiver and/or Rehabilitator or coming into LAHC's possession.

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator, the Receiver, their agents and/or employees, shall be and hereby are directed to take possession and control of the property, business, affairs, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and Twitter accounts), documents, claims files, software, electronic data, e-mail, websites, books, records, accounts, copyrights, trademarks, patents, and all other assets of LAHC, including all real property, whether in the possession of LAHC or its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, or agents, and of the premises occupied by LAHC for its business, conduct all of the business and affairs of LAHC, or so much thereof as he may deem appropriate, manage the affairs of LAHC, and to rehabilitate same, until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC, its policyholders, subscribers, members, enrollees, officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, creditors, banks, savings and loan associations, and/or

other entity or person acting for or on behalf of LAHC shall be and hereby are permanently enjoined from disposing of the property, business, affairs, bank accounts, safety deposit boxes, statutory deposits, computers, all primary and secondary storage media, social media (including, but not limited to Facebook and Twitter accounts), documents, claims files, software, electronic data, e-mail, websites, books, records, accounts, copyrights, trademarks, patents, and all other assets of LAHC, including all real property, and from the transaction of the business of LAHC, except with the concurrence of the Commissioner, until further order of this Court.

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC providers and contractors are required to abide by the terms of their contracts with LAHC and to provide services to LAHC members under the terms of such contracts in order to ensure continuation of services for LAHC policyholders, subscribers, members, and enrollees until further order of this Court.

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



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

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all attorneys employed by LAHC as of the date of the order entered herein shall, within ten (10) days notice of the order entered herein, report to the Receiver or Rehabilitator on the name, company, claim number and status of each file they are handling on behalf of LAHC. Said report shall also include an account of any funds received from or on behalf of LAHC. All attorneys described herein are hereby discharged as of the date of this order unless the Receiver or Rehabilitator retains their services in writing. All attorneys employed by LAHC who are in possession of litigation files or other material, documents or records belonging to or relating to work

performed by the attorney on behalf of LAHC shall deliver such litigation files, material, documents or records intact and without purging to the Receiver notwithstanding any claim of a retaining lien, which, if otherwise valid, shall not be extinguished by such turn-over of documents.

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

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

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

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

herein, unless instructed to the contrary by the Receiver.

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rehabilitator and his assistants shall be and hereby are authorized to conduct an investigation of LAHC and its subsidiaries and affiliates to uncover and make fully available to the Court the true state of LAHC's financial affairs. In furtherance of this investigation, LAHC, its subsidiaries, its affiliates, owners, officers, directors, managers, trustees, agents, employees, servants, adjustors, accountants, actuaries, attorneys, contractors, consultants, or third party administrators, LAHC shall make all books, documents, accounts, records and affairs, which either belong to or pertain to LAHC available for full, free and unhindered inspection and examination by the Commissioner during normal business hours, Monday through Friday, from the date of the order entered herein. LAHC and the above-specified entities shall fully cooperate with the Rehabilitator, including, but not limited to, the taking of oral testimony under oath of LAHC and its officers, directors, employees, managers, trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, and subsidiaries and any other person or entity who possesses any executive authority over, or who exercises any control over, any segment of the affairs of LAHC in both their official, representative, and individual capacities and the production of all documents that are calculated to disclose the true state of LAHC's affairs.



IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LAHC shall not engage in any advertising or solicitation whatsoever, other than that approved by the Receiver.

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any and all individuals and entities shall be and hereby are permanently enjoined from instituting and/or taking further action in any suits, proceedings, and seizures against LAHC, the Commissioner in his capacity as rehabilitator of LAHC, the Receiver, and any affiliates, subsidiaries, insurers, its officers, directors, employees, managers, trustees, agents, adjusters, accountants, actuaries, attorneys, contractors, consultants, third party administrators, subsidiaries, affiliates, or representatives of same, to prevent any preference, judgment, seizure, levy, attachment, or lien being rendered against LAHC, its estate and assets, and/or its members, subscribers, enrollees, and policyholders, the Commissioner in his capacity as rehabilitator and/or liquidator, the Receiver, any affiliates, subsidiaries, insurers, its officers, directors, employees, managers,

trustees, agents, adjustors, accountants, actuaries, attorneys, contractors, consultants, third party administrators of same, and the making of any levy against LAHC, its property or assets.

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any action in any suit or proceeding against the Commissioner in his capacity as Rehabilitator of LAHC, the Receiver, and/or the Attorney General of the State of Louisiana in his capacity as attorney for the Commissioner in his capacity as rehabilitator of LAHC, and their representatives, agents, employees, or attorneys, when acting in accordance with this Order and/or as Rehabilitator, Receiver, or Deputy Receiver of LAHC are barred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there shall be no liability on the part of, and that no cause of action of any nature shall exist against the Commissioner in his capacity as Commissioner or Rehabilitator and/or regulator of LAHC, the Receiver and/or the Attorney General of the State of Louisiana in his capacity as attorney for the Commissioner as Commissioner and/or regulator of LAHC, and/or their assistants,

representatives, agents, employees, or attorneys, for any action taken by them when acting in accordance with the orders of this Court and/or in the performance of their power and duties as Rehabilitator, Receiver, Commissioner and/or regulator of LAHC.

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

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

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

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

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commissioner be and hereby is granted all legal and equitable relief as may be necessary to fulfill his duties as Rehabilitator and for such other relief as the nature of the case and the interests of LAHC's members, enrollees, subscribers, policyholders, providers and other creditors, or the public, may require, including but not limited to the Receiver's appointment and authorization to prosecute



all action which may exist on behalf of LAHC members, subscribers, enrollees, policyholders, or creditors against any existing or former officer, director or employee of LAHC or any other person.

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

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

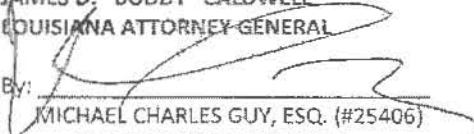
Baton Rouge, Louisiana, this 21<sup>st</sup> day of September, 2015.

  
DISTRICT COURT JUDGE DONALD JOHNSON

RESPECTFULLY SUBMITTED,


JAMES D. "BUDDY" CALDWELL  
LOUISIANA ATTORNEY GENERAL


By:

  
MICHAEL CHARLES GUY, ESQ. (#25406)

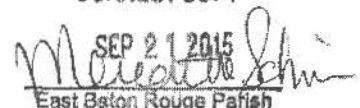
Assistant Attorney General  
P.O. Box 94005  
Baton Rouge, LA 70904  
(225) 326-6400

Attorneys for JAMES I. DONELON,  
Commissioner of Insurance for the State of Louisiana  
as Rehabilitator of Louisiana Health Cooperative, Inc.

EAST BATON ROUGE, LA  
2015 SEP 21 AM 9:16  
  
CHERYL WYATT  
DEPUTY CLERK OF COURT

I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to Michael Guy and Sue Buser  
Done and signed on September 21, 2015  
  
Cheryl Wyatt  
Deputy Clerk of Court

CERTIFIED TRUE AND  
CORRECT COPY

  
SEP 21 2015  
East Baton Rouge Parish  
Deputy Clerk of Court

NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

NUMBER: 641 928

SECTION: 26

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

VERSUS

LOUISIANA HEALTH COOPERATIVE, INC.

FILED: \_\_\_\_\_

DEPUTY CLERK

VERIFICATION

STATE OF LOUISIANA  
COUNTY/PARISH OF EAST BATON ROUGE


BEFORE ME, the undersigned authority, duly commissioned and qualified within and for  
the State and Parish aforesaid personally came and appeared:

CAROLINE BROCK


a person known by me, Notary Public, to be a competent major, who, after first being duly  
sworn by me, did depose and say:

That she is the Deputy Commissioner of Financial Solvency for the Louisiana Department  
of Insurance and is familiar with Louisiana Health Cooperative, Inc.

That she has read the foregoing Consent Permanent Order for Rehabilitation and  
Injunctive Relief, and the allegations contained therein are true and correct to the best of her  
personal knowledge.

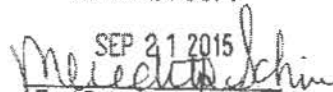
  
CAROLINE BROCK  
DEPUTY COMMISSIONER OF FINANCIAL SOLVENCY  
FOR THE LOUISIANA DEPARTMENT OF INSURANCE

Sworn to and subscribed before me,  
Notary, this 21<sup>st</sup> day of SEPTEMBER, 2015.

  
NOTARY PUBLIC  
Bar Roll Number: 25406

MIKE GUY  
COMMISSIONER OF INSURANCE

CERTIFIED TRUE AND  
CORRECT COPY

SEP 21 2015  
  
East Baton Rouge Parish  
Deputy Clerk of Court

