

JAMES J. DONELON, COMMISSIONER : SUIT NO.: 651,069 SECTION: 22
OF INSURANCE FOR THE STATE OF :
LOUISIANA, IN HIS CAPACITY AS :
REHABILITATOR OF LOUISIANA :
HEALTH COOPERATIVE, INC. :

versus : 19TH JUDICIAL DISTRICT COURT

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

**PLAINTIFF'S OPPOSITION TO DEFENDANT CGI'S
MOTION FOR SUMMARY JUDGMENT**

MAY IT PLEASE THE COURT:

Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. ("LAHC"), through his duly appointed Receiver, Billy Bostick ("Plaintiff" or the "Commissioner" or the "Receiver"), through undersigned counsel, respectfully files this opposition memorandum to the Motion for Summary Judgment (the "Motion") filed by defendant, CGI Technologies and Solutions, Inc. ("CGI"). The Motion is set for hearing on August 25, 2017. For all of the following reasons, CGI's Motion should be DENIED in its entirety.

OVERVIEW

This lawsuit arises out of the creation and failure of LAHC, a Consumer Operated and Oriented Plan ("CO-OP") program established by the Patient Protection and Affordable Care Act ("ACA"), as a result of the gross negligence of numerous individuals and entities, including CGI. Incorporated in 2011, LAHC eventually applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") totaling more than \$65 million. Pursuant to the ACA, these loans were to be awarded only to entities that demonstrated a high probability of becoming financially viable. All CO-OP loans must be repaid with interest. LAHC's Start-up Loan must be repaid no later than five (5) years from disbursement; and LAHC's Solvency Loan must be repaid no later than fifteen (15) years from disbursement.¹

¹ According to the 2012 Loan Agreement with LAHC, the Louisiana CO-OP was awarded a Start-up Loan of \$12,426,560, and a Solvency Loan of \$52,614,100.

As succinctly summarized and plead by the Commissioner in his First Supplemental, Amending and Restated Petition for Damages (“Amended Petition”), LAHC failed miserably due to the gross negligence of the Defendants, including CGI. By July 2015, only eighteen months after it started issuing policies, LAHC decided to stop doing business. Because of Defendants’ gross negligence, as of December 31, 2015, LAHC had lost more than \$82 million. The Louisiana Department of Insurance (“LDI”) placed LAHC in rehabilitation in September 2015, and a Receiver, Billy Bostick, was appointed by this Court to take control of the failed Louisiana CO-OP.

On or about February 15, 2013, LAHC and CGI entered into an Administrative Services Agreement (“Agreement”), pursuant to which CGI served as the Third Party Administrator of LAHC beginning in approximately March 2013. *See*, Plaintiff’s First Supplemental, Amending, and Restated Petition for Damages, ¶¶11, 41. Under the terms of the Agreement, CGI was obligated to competently perform all tasks expected and required of a Third Party Administrator, such as processing and paying claims for covered services provided to LAHC’s members; transmitting all required notices, including denial notifications; developing and implementing a functional coding system. *Id.* at ¶43. CGI represented and warranted that its personnel had “the appropriate training, licensure and or certification to perform each task assigned to them” and that “CGI will make a good faith effort to maintain consistent staff performing the delegated functions” for LAHC. *Id.* at ¶42.

CGI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner. Ex. “A”, ¶44. For example, CGI failed to pay claims at the proper contract rates and amounts, resulting in overpayment of claims; failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums; failed to provide proper notice (delinquency letters) to subscribers prior to terminating coverage; failed to properly process claims; failed to establish, manage, and run the call center for LAHC; failed to implement a billing system that would accurately calculate balance due; failed to appropriately establish an EDGE server and/or failed to appropriately or timely provide the Department of Health and Human Services with access to required data on the EDGE server. *Id.* In short, almost every facet of the system designed and implemented by CGI as a third party administrator of LAHC was a failure. *Id.* at ¶¶45, 65-73.

In its Motion, CGI erroneously argues that all of the Commissioner’s claims against it are barred because “CGI and LAHC mutually released all potential claims against each other in June 2014.” *See* CGI’s memorandum in support, p. 4. As is shown below, CGI’s argument fails for several reasons; namely: (1) the Letter Agreement relied upon by CGI in support of its Motion has not been properly authenticated and cannot be relied upon by this Honorable Court; (2) CGI’s Motion is premature; (3) the Letter Agreement, by its own terms—and assuming for purposes of argument only that it is both authentic and enforceable—is limited in scope and does not release CGI for its negligence during the transitional or “wind down” period; and numerous issues of material fact remain contested regarding the nature and extent of CGI’s post-April 30, 2014 conduct and the damages resulting from it; and (4) as rehabilitator, the Commissioner is not a signatory to the purported Letter Agreement between LAHC and CGI, and enforcement of this clause against the Commissioner would violate strong public policy. Each of these reasons which preclude summary judgment is discussed in turn.

STATEMENT OF GENUINELY DISPUTED MATERIAL FACTS

Pursuant to Uniform District Rule 9.10, Plaintiff respectfully submits this Statement of Genuinely Disputed Material Facts in support of Plaintiff’s Opposition to CGI’s Motion:

1. List of the material facts that the opponent contends are genuinely disputed:

- A. Whether Exhibit B (purported Letter Agreement) attached to CGI’s Motion is an authentic copy of any Letter Agreement which may exist between LAHC and CGI.
- B. Whether Greg Cromer actually signed any Letter Agreement.
- C. Whether Greg Cromer had the legal authority, absent BOD approval, LDI approval, and/or CMS approval, to bind LAHC (much less the Receiver) by signing any Letter Agreement that attempted to release CGI in any way.
- D. Whether any Letter Agreement between LAHC and CGI, assuming one exists, effectively released any claims LAHC may have against CGI for its grossly negligent performance at LAHC.
- E. What were all of the “obligations assumed” by CGI according to the express terms of the purported Letter Agreement.
- F. Whether CGI breached or failed to perform any of the “obligations assumed” by CGI according to the express terms of the purported Letter Agreement.
- G. Whether CGI breached or failed to perform any of the obligations imposed upon CGI pursuant to the original agreement between CGI and LAHC.
- H. What damages were caused by CGI’s breach or failure to perform any of the “obligations assumed” by CGI according to the express terms of the purported Letter Agreement.

- I. What are the amount of compensatory damages caused by CGI's breach or failure to perform any of the "obligations assumed" by CGI according to the express terms of the purported Letter Agreement.
- J. What are the amount of compensatory damages caused by CGI's breach or failure to perform any of the obligations imposed upon CGI pursuant to the original agreement between CGI and LAHC.
- K. Whether enforcing the terms of any purported Letter Agreement, given the contested factual circumstances here, violates the strong public policy of Louisiana law to protect the policyholders, health care providers, and creditors of the now insolvent LAHC.

2. Reference to the document proving that each such fact is genuinely disputed:

- A. Exhibit 1, Affidavit of Receiver Billy Bostick;
- B. Exhibit 1A, "Termination of Administrative Services Agreement" dated June 19, 2014;
- C. Exhibit 1B, November 12, 2013 document with Greg Cromer's notarized signature;
- D. Exhibit 1C, May 12, 2015 document with Greg Cromer's notarized signature;
- E. Exhibit 1D, May 27, 2014 document with Greg Cromer's notarized signature;
- F. Exhibit 1E, June 6, 2013 document with Greg Cromer's notarized signature;
- G. Exhibit 1F, June 6, 2013 document with Greg Cromer's notarized signature;
- H. Exhibit 1G, May 23, 2012, Greg Cromer's Driver's License;
- I. Exhibit 1H, A/P Vendor Transactions spreadsheet which itemizes every payment made by LAHC to CGI from April 2013 through November 2014;
- J. Exhibit 1I, A/P Vendor Transactions spreadsheet which itemizes every payment made by LAHC to CGI from April 2014 through November 2014;
- K. Exhibit 1J, correspondence dated April 17, 2014 regarding termination of CGI.

LAW AND ARGUMENT

I. CGI's Motion relies on inadmissible, unauthenticated evidence and is premature given the posture of this litigation.

Pursuant to Louisiana Code of Civil Procedure article 966(D)(2), Plaintiff objects to and moves to strike the Affidavit of Daniel Scott Neice attached to CGI's Motion, particularly to the extent it purports to authenticate the Letter Agreement (Exhibit B to CGI's Motion). The Letter Agreement was purportedly signed on behalf of CGI by David L. Henderson, who, upon information and belief, is currently serving as President of CGI's United States operations. But rather than submit an affidavit from Henderson, CGI attempts to authenticate the Letter Agreement via Neice, who states that the Letter Agreement attached to his Affidavit as Exhibit B "is a true and correct copy of the original letter agreement." *See* Neice Affidavit, ¶3. Neice provides no basis for this statement, other than the general assertion that he is an Account Executive at CGI who is "familiar with CGI's business relationship with" LAHC. *Id.* at ¶2.

According to Article 966, “[t]he only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions.” La. Code Civ. Proc. art. 966(A)(4). Because authentication of evidence is a condition precedent to admissibility, an exhibit that is not authenticated does not constitute competent evidence. *Price v. Roy O. Martin Lumber Co.*, 04–0227 (La.App. 1st Cir.4/27/05), 915 So.2d 816, 822 (citing La. C.E. art. 901). “Authentication” is a process whereby something is shown to be what it purports to be. *Id.* (internal citations omitted). Evidence must either be authenticated as provided in La. C.E. art. 901, or it must be self-authenticating.² *Id.*

Louisiana Code of Evidence article 901(B) includes a non-exclusive list of methods that may be utilized to authenticate evidence, including testimony of a witness with knowledge. Similarly, La. Code of Civil Procedure article 967 provides that “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” Neice’s affidavit does not establish that he has the requisite knowledge of the Letter Agreement or that he is competent to testify regarding its execution. Significantly, Neice was not a signatory to the Letter Agreement, nor does he attest that he has personal knowledge of Henderson’s signature.

Likewise, and more importantly, Neice does not attest that he has personal knowledge regarding the signature of Greg Cromer, who purportedly signed the Letter Agreement on behalf of LAHC. Authentication of Cromer’s signature is at issue here, given that the signature on the Letter Agreement attached to CGI’s Motion clearly does not match Cromer’s signature on numerous other documents in LAHC’s possession. *See* attached Exhibit 1, ¶¶ 4-6, Affidavit of Receiver Billy Bostick and attached Exhibits 1A through 1G. Furthermore, Plaintiff’s ongoing review of LAHC’s documents and database has revealed an additional copy of the Letter Agreement (attached Exhibit 1A) with what purports to be Cromer’s signature, but the signature is clearly not the same as that on the document (Exhibit B attached to CGI’s Motion) submitted by CGI. And, without a properly authenticated copy of this alleged Letter Agreement, CGI’s Motion cannot and should not be granted.

² The Letter Agreement does not meet the self-authenticating requirements of La. Code of Evidence article 902—it is not an authentic act, act under private signature duly acknowledged, or instrument attested by witnesses and accompanied by affidavits.

Plaintiff had no access to LAHC's files until LAHC was placed into rehabilitation and under the direction and control of the Receiver. As explained by the Receiver in his Affidavit (Exhibit 1), not only were LAHC's files voluminous, they were very difficult to locate given "the limited ability within SharePoint to search for specific documents natively, coupled with the absence of a systematic electronic filing system." Exhibit 1. Plaintiff has now located the documents identified above and attached hereto, which reveal key questions as to which Letter Agreement—if any—could be properly submitted as evidence. Again, the obvious discrepancy surrounding the purported signatures of Greg Cromer calls the authenticity of the Letter Agreement into question.

Moreover, under the circumstances, CGI's Motion is premature at best. Under Code of Civil Procedure article 966(A)(3), a motion for summary judgment shall be granted, after an opportunity for adequate discovery, if there is no genuine issue as to material fact and the mover is entitled to judgment as a matter of law. Here, as this Honorable Court is aware, this litigation remains in the early stages and only very limited discovery has been conducted to date. Essentially no documents have been produced and no depositions have been taken; a Case Management Schedule controlling discovery has not yet been entered. Multiple questions exist as to the circumstances surrounding the execution of the Letter Agreement, as well as whether Cromer (assuming he did, in fact, sign the document) was authorized to bind LAHC without approval by the Board of Directors, the Louisiana Department of Insurance, and/or CMS. It is in the interest of substantial justice to deny CGI's premature Motion at this time and allow Plaintiff sufficient time to depose the relevant witnesses surrounding the alleged execution of the Letter Agreement and all related issues regarding the scope and enforceability of the purported release. Plaintiff, and all of the policyholders, health care providers, and creditors of LAHC whom the Receiver represents, will be prejudiced by such a premature consideration of CGI's Motion.³

³ As pled by Plaintiff, the gross negligence of CGI in failing to roll-out LAHC to the public is fairly apparent; it is also fairly apparent that other defendants, most notably GRI, will undoubtedly argue that CGI's initial negligence was so great that GRI could never "right the ship." Consider this allegation taken from p. 2 of GRI's memorandum in support of its pending exception: "Thus, in mid-2014, LAHC fired its original third party administrator, CGI Technologies and Solutions, Inc. ("CGI"), and hired GRI in its place, to right the ship. However, on July 1, 2015 – before GRI could fix LAHC's 'broken' system, which had already been operating dysfunctionally long before GRI was brought on board – the Louisiana Department of Insurance suggested to LAHC that it should voluntarily wind down its operations over the remainder of the 2015 plan year." If, assuming for purposes of argument only that this Court were to consider and grant CGI's Motion at this preliminary, pre-discovery stage of this litigation, thereby dismissing CGI as a party-defendant, significant issues surrounding whether other defendants like GRI could attempt to allocate fault to CGI at the trial of this matter would abound as per La.C.C.P. art. 966(G). For this additional reason, Plaintiff respectfully suggests that CGI's Motion is premature and should not be considered at this time.

II. The Letter Agreement is limited in scope and does not release CGI from all of its grossly negligent conduct which damaged LAHC and its policyholders, health care providers, and creditors.

Putting aside the significant issues regarding the authenticity and/or enforceability of Exhibit B, along with considerations regarding prematurity, CGI's interpretation of the Letter Agreement is clearly wrong. LAHC did not release all claims against CGI pursuant to the Letter Agreement. Although CGI insists that LAHC effectively released all of its claims against CGI through the Letter Agreement,⁴ the express terms of this document refute CGI's erroneous position. According to the Letter Agreement:

5. *Except for obligations assumed herein*, LAHC and CGI hereby release each other, and their respective directors, officers, agents, employees, representative, insurers, parents and subsidiaries, from any and all claims that either may have against the other arising out of or relating to the Original Agreement.

(Exhibit B, ¶ 5, emphasis added). LAHC did not release CGI for "obligations assumed" by the Letter Agreement. According to the Letter Agreement, CGI assumed numerous obligations, including:

- For "the six month wind-down period [from April 2011 through October 2011], CGI shall provide such wind-down services as the parties may agree in a wind-down plan, all in accordance with Sections 2.5 and 2.5.1 of the Original Agreement." (Exhibit B, ¶ 1).
- "The general scope and structure of the wind down period is as specified in Attachment 1 to this Letter Agreement." (Exhibit B, ¶ 2). Attachment 1 to the Letter Agreement further specifies that, during the wind down period, CGI was responsible for transferring "membership data," "enrollment data," "paid claim data," "pending and/or in-flight claim data," "file server records," and "other data transfer as the parties agree" to GRI. (Exhibit B, Attachment 1).
- "During the wind-down period, CGI will make commercially reasonable efforts to perform the Delegated Functions in accordance with the Service Level Specifications set forth in Section 6 in Exhibit 1 to the Original Agreement." (Exhibit B, ¶ 3).

Significantly, not only did CGI assume these numerous obligations to LAHC, but as alleged by Plaintiff, CGI did not meet these obligations.⁵

⁴ See, e.g., "The claims that Plaintiff is [sic] now asserting against CGI on behalf of LAHC are precisely the same claims that LAHC compromised in June 2014" (CGI's Statement of Undisputed Material Fact, II(D)); "CGI and LAHC mutually released all potential claims against each other in June 2014." (CGI Memo, p. 4); "Every allegation in the Receiver's petition concerning CGI arises out of or relates to CGI's performance of the Original Agreement." (CGI Memo, p. 7).

⁵ See, e.g., ¶ 41-46; ¶ 65-73 of Plaintiff's First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial.

Indeed, as further evidenced by an April 17, 2014, correspondence from LAHC to CGI (Exhibit 1J attached hereto) that requested that the original agreement between LAHC and CGI be terminated because of numerous specific failures of CGI to perform under the agreement and asserted that “CGI is in fundamental breach of the Agreement,” CGI continued to provide services to LAHC during the transition period. Specifically, in addition to detailing the numerous failures of CGI to perform, according to this correspondence:

- “LAHC must transition the revoked Delegated Functions to other organization(s) while relying on CGI to cooperatively effect a smooth and orderly transition of those services as required by Article 3.13.6.” (Exhibit 1J, p. 1).
- “Consistent with the provisions of Article 3.13.6 of the Agreement, LAHC expects that CGI continue to provide services, including information and exchanges as reasonably requested by LAHC or its designee, until effective transition on or about October 1, 2014.” (Exhibit 1J, p. 3).

These services performed by CGI after April 30, 2014 are, in effect, “obligations assumed” by the Letter Agreement. And, again, to the extent CGI performed these assumed obligations negligently, CGI is potentially liable to LAHC for such negligence given that LAHC did not release such claims against CGI pursuant to terms of the Letter Agreement.

CGI was paid a total of \$1,176,224.42 by LAHC over the course of their working relationship from approximately April 2013 to November 2014. Exhibit 1, 1H. Of this total amount, \$539,139.59—or about 46%—was paid to CGI on or after April 30, 2014, the alleged termination date of the original agreement. Exhibit 1, 1I. Undoubtedly, “CGI did substantial work for LAHC after April 30, 2014 during the transitional or ‘wind down’ period as GRI assumed the role of third party administrator of LAHC.” Exhibit 1, ¶ 7. As alleged by Plaintiff and supported by the Receiver’s Affidavit:

For example, both before and after April 30, 2014, CGI failed to ensure that its personnel who performed services for LAHC were adequately and appropriately trained, licensed, and certified to perform the services and functions delegated by LAHC to CGI; failed to accurately process and pay claims on LAHC’s behalf in a timely manner at the correct rates and amounts; failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts; and, in general, failed to provide for a smooth and seamless transition of LAHC’s ongoing business to GRI.

(Exhibit 1, ¶ 8). Because CGI is potentially liable to Plaintiff because of its failure to meet the “obligations assumed” pursuant to the Letter Agreement, CGI’s Motion must be denied.

Numerous issues of material fact remain regarding, *inter alia*: whether, and to what extent, CGI breached the “obligations assumed” during the transition or wind down period; and whether, and to what extent, did CGI’s breach of these “obligations assumed” cause damage to LAHC and its policyholders, health care providers, and creditors—and the quantum of such compensable damages. It will take considerable discovery, including possible expert analysis, to investigate and sort out these complex and interrelated factual issues. Indeed, it is unlikely that Plaintiff and CGI will ever reach consensus regarding the factual answers to these important questions; therefore, even after substantial discovery, it is likely—if not certain—that these material issues of material fact will remain contested until the trier of fact ultimately determines them at trial. As such, CGI’s Motion must be denied.

III. As rehabilitator, the Commissioner is not a signatory to the Letter Agreement between LAHC and CGI, and enforcement of the clause against the Commissioner would violate strong public policy.

CGI’s Motion attempts to limit the Commissioner’s role as rehabilitator, describing him as “the nominal plaintiff” who is “merely the appointed manager of LAHC’s affairs.” *See* CGI Memorandum in Support, p. 6. Relying upon La.R.S. 22:2008, which states that the Commissioner is vested with the title to all property, contracts, and rights of action of the insurer as of the Rehabilitation Order, CGI argues that the Commissioner cannot assert a claim on LAHC’s behalf that LAHC no longer possesses. *Id.* However, this overly reductive description of the Commissioner’s duties, powers, and responsibilities as rehabilitator of LAHC is simply not supported by the Louisiana Insurance Code.

The Commissioner is charged with the duty of administering the Insurance Code, which includes specific provisions for the administration of insurance insolvencies, as set forth in La. R.S. 22:2001 *et seq.*, entitled “Rehabilitation, Liquidation, Conservation” (hereafter referred to as the “RLC Act”).⁶ This special statutory scheme is “comprehensive and exclusive” in scope and “represents the legislative will in balancing the interests of policyholders, creditors, and claimants.” *LeBlanc v. Bernard*, 554 So.2d 1378, 1383-84 (La. App. 1st Cir.1989), *writ denied*, 559 So.2d 1357 (La.1990). The Louisiana Supreme Court has recognized that, “[a]s liquidator or rehabilitator of an insurance company the Insurance Commissioner acts as an officer of the state to protect the interests of the public, the policy holders, the creditors, and the insurer.” *Green v.*

⁶ Acts 2008, No. 415, § 1 amended and reenacted Title 22 of the Louisiana Revised Statutes of 1950, the Louisiana Insurance Code, and directed the Louisiana State Law Institute to redesignate the provisions of Title 22, formerly comprised of La. R.S. 22:1 to 22:3311, into a new format and numbering scheme comprised of La. R.S. 22:1 to 22:2371, without changing the substance of the provisions.

Louisiana Underwriters Ins. Co., 571 So.2d 610, 615 (La. 1990) (citing *State v. Preferred Accident Ins. Co. of New York*, 238 La. 372, 115 So.2d 384 (1959); and *LeBlanc*, 554 So.2d 1378)).⁷

A review of Louisiana jurisprudence indicates that neither the Louisiana Supreme Court nor the appellate courts have addressed the precise question before this Honorable Court, i.e., whether the Commissioner is bound by a purported release previously executed by a now-insolvent insurer. However, the First Circuit has specifically stated that the Commissioner, in his capacity as rehabilitator, does not simply “stand in the shoes” of the insolvent insurer, but that his responsibilities include protection of the general public and the policyholders and creditors as well as the insurer itself. *LeBlanc*, 554 So.2d at 1381 (finding Commissioner was third-party entitled to protection of public records doctrine).⁸ See also *Republic of Texas Savings Association v. First Republic Life Insurance Co.*, 417 So.2d 1251, 1254 (La.App. 1st Cir.), writ denied, 422 So.2d 161 (La.1982), finding that the rehabilitator’s powers and responsibilities, which include protecting the interests of the policyholders, creditors and the insurer, indicate “rehabilitator does not stand precisely in the shoes of [the insurer].”

In addition, the First Circuit has held that, “[w]hile a party to the instrument may be estopped from asserting defenses based on previous misrepresentations, this restriction does not extend to the rehabilitator.” *Republic of Texas Savings Association*, 417 So.2d at 1254 (rejecting the argument that the rehabilitator should be estopped from asserting certain defenses because those defenses would allow the now-insolvent insurer to “benefit from its own misrepresentations”; the defenses of lack of corporate authority for hand note issued by insurer and the barring of the backdated note were available to the rehabilitator because “[w]hile a party to the instrument may be estopped from asserting defenses based on previous misrepresentations, this restriction does not extend to the rehabilitator.”). Courts have also held that Louisiana’s

⁷ As this Honorable Court is aware, Plaintiff’s previously filed oppositions to exceptions on behalf of Milliman, Beam Partners, and Buck extensively addressed the RLC Act, the LAHC Rehabilitation Order, and the Commissioner’s role as rehabilitator. To avoid excessive repetition, Plaintiff incorporates and adopts his prior arguments herein.

⁸ In *LeBlanc*, 554 So.2d at 1382, the First Circuit emphasized the Commissioner’s duties to the public as follows:

The trial court placed defendant [Commissioner] in the exact shoes of First Republic [the insolvent insurer]. He erred here as a matter of law. 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 Association v. First Republic Life Insurance Co.*, 417 So.2d 1251, 1254 (La.App. 1st 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.*

“interlocking web of statutes” governing insurance insolvency are controlling and prevail over general contract law.⁹ *Crist v. Sharp Elec., Inc.*, 876 F.2d 379, 381 (5th Cir. 1989).¹⁰

Insurance companies operate in a highly-regulated environment very different from that of other companies. When an insurance company is placed into rehabilitation, the company is subjected to a comprehensive statutory scheme designed to protect the public as well as the policyholders and other creditors of the insurer. Under the RLC Act, the Commissioner, as rehabilitator, is not the equivalent of the company, nor is he the mere successor to the company. Rather, the Commissioner “is the manifestation of the state’s police power and is asserting the sovereign authority and interest of the state in seizing the delinquent insurer and dealing with its assets and liabilities to protect the interests of the innocent policyholders and other creditors of the insurer.”¹¹

While CGI does acknowledge the Commissioner has rights beyond those of LAHC, CGI incorrectly attempts to limit those rights by imposing the temporal limitations on the avoidance of preferential transfers (La. R.S. 22:2020(B), 22:2021) on the Commissioner’s right to disavow pre-rehabilitation contracts (La. R.S. 22:2009(E)).¹² CGI provides no explanation for why the time periods for preferential transfers should somehow apply to, as CGI describes it, the Commissioner’s “right to unwind completed contracts.” CGI’s Memorandum in Support, p. 6.

CGI’s argument is belied by the plain language of the statutes CGI cites. La. R.S. 22:2009(E), which is cited but not discussed by CGI, contains a nonexclusive list of the powers given to the Commissioner in his role as rehabilitator. According to this statute, the Commissioner’s powers include the following:

- (1) To avoid fraudulent transfers.

* * *

⁹ Louisiana’s statutory scheme specifically designed for insurance insolvency takes precedence over general law to the extent that the general law is inconsistent with the provisions or purpose of the comprehensive, statutory scheme. *Bernard v. Fireside Commercial Life Ins. Co.*, 633 So.2d 177, 185–86 (La. App. 1st Cir. 11/24/1993), *writ denied sub nom. Bernard v. Fireside Commercial Life Ins. Co.*, 634 So.2d 839 (La. 1994) (citing *Green*, 571 So.2d at 615-616; *Crist v. Benton Casing Service*, 572 So.2d 99, 102 (La.App. 1st Cir.1990), *writ denied*, 573 So.2d 1143 (1991).

¹⁰ This case was followed by the Louisiana First Circuit in *Crist v. Benton Casing Serv.*, 572 So.2d 99, 99 (La. App. 1st Cir. 1990), *writ denied*, 573 So. 2d 1143 (La. 1991) (“We hold that the receiver of the insolvent insurer is entitled to collect premiums earned prior to the date of insolvency from an insured, and reverse the action of the trial court in ruling otherwise.”)

¹¹ Karl L. Rubinstein, *The Legal Standing of an Insurance Insolvency Receiver: When the Shoe Doesn't Fit*, 10 *Conn. Ins. L.J.* 309, 312 (2004)

¹² CGI also quotes a case involving the judicial receiver of an insolvent corporation (not the Commissioner or an insolvent insurer). See CGI’s Memorandum in Support, p. 6, quoting *Weber v. Press of H.N. Cornay, Inc.*, 144 So.2d 581, 588 (La. Ct. App. 4th 1962) (“a receiver has the right to either adopt or reject executory contracts of the corporation entered into prior to the receivership”). While the principle quoted is not necessarily inconsistent with the Commissioner’s right to affirm or disavow any contracts under La. R.S. 22:2009(E), CGI’s reliance on this case is somewhat confusing. *Weber* does not support the crux of CGI’s argument, i.e. that the Commissioner’s “right to unwind completed contracts...is much more limited.” *Id.*

(4) To enter into such agreements or contracts as necessary to carry out the full or partial plan for rehabilitation or the order to liquidate and to affirm or disavow any contracts to which the insurer is a party.

La. R.S. 22:2009(E)(1), (4). Although CGI conflates the Commissioner's right to avoid fraudulent transfers with his right to disavow (or affirm) contracts to which LAHC was a party, as enumerated in La. R.S. 22:2009, these are two separate, distinct powers of the Commissioner. The time periods identified in CGI's Motion (four months / one year) are contained in statutes pertaining to voidable transfers, not pre-rehabilitation contracts.¹³

Specifically, per La. R.S. 22:2020, also discussed in CGI's Motion, "[n]o insurer shall make any transfer of or create any lien upon any of its property with the intent of giving to or enabling any creditor or policyholder to obtain a greater percentage of this debt than any other creditor of the same class." La. R.S. 22:2020(A). Under that statute, any such transfer or lien made or created within four months prior to a petition for rehabilitation shall be voidable (if accepted by a creditor or policyholder having reasonable cause to believe that such a preference will occur).

La. R.S. 22:2020(B). La. R.S. 22:2020 also permits that Commissioner as rehabilitator to:

avoid any transfer or lien upon the property of an insurer which any creditor, stockholder or member of such insurer might have avoided and may recover the property so transferred or its value from the person to whom it was transferred unless he was a bona fide holder for value prior to the date of the entry of the order of liquidation.

La. R.S. 22:2020(D). According to La. R.S. 22:2021, which is discussed in CGI's Motion, "fraudulent transfers" made within one year prior to filing of a petition for rehabilitation may be avoided in certain circumstances. The statute explains that "[e]very transfer made or suffered and every obligation incurred by an insurer within one year prior to the [Rehabilitation Petition] is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors." La. R.S. 22:2021(A).

In effect, CGI is attempting to use La. R.S. 22:2020 and 2021 to urge prescription or preemption beyond the context of preferential transfers. However, the First Circuit rejected a similar argument in *Brown v. Risk Exchange, Inc.*, 674 So.2d 484 (La.App. 1 Cir. 5/10/96), *writ denied* 679 So.2d 442 (La. 9/20/96). In *Brown*, the Commissioner (as liquidator) filed suit for the return of payments made to debenture holders. The court characterized his cause of action as

¹³ LAHC's Rehabilitation Order is consistent with the RLC Act. *See* the Permanent Order of Rehabilitation and Injunctive Relief (the "Rehabilitation Order"). Pursuant to the Rehabilitation Order, the Commissioner has "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." *Id.* at p. 3.

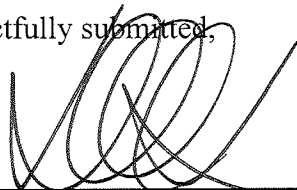
“based on the obligation found in the Louisiana Civil Code to restore a payment received which was not due.” *Id.* at 487. Defendant argued the Commissioner was limited to actions under La. R.S. 22:2020 (then La. R.S. 22:745.1) permitting the rescission of fraudulent transfers made within one year prior to filing of a successful petition for rehabilitation.¹⁴ Because the insurer had a right of action on the date of the liquidation order against the debenture holders for return of any payments made which were not due, the First Circuit correctly held the ten-year prescriptive period for a personal action under Civil Code article 3499 was applicable. *Id.* (quoting La. R.S. 22:2008 (then La. R.S. 22:736(A): “The commissioner of insurance ... 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.” (Emphasis in original.) Thus, the Commissioner’s action was neither preempted nor prescribed. *Id.*

Here, as in *Brown*, the insurer had a right of action on the date of the Rehabilitation Order against CGI for breach of the original Agreement, gross negligence and negligence. Any dispute regarding these claims does not convert them to preferential transfer claims subject to special time limitations.

CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully request that CGI’s Motion for Summary Judgment be DENIED in its entirety.

Respectfully submitted,



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

¹⁴ Because the insurer had been placed in liquidation, the defendant in that case also relied upon La. R.S. 22:2023 (then La. R.S. 22:745.3), which is specific to voidable preferences and liens in the liquidation context and, therefore, inapplicable here.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via U.S. Mail, postage prepaid, and via e-mail to all counsel of record as follows:

Thomas McEachin
Schonekas, Evans, McGoey & McEachin, LLC
909 Poydras Street, Suite 1600
New Orleans, Louisiana 70112

W. Brett Mason
Stone Pigman
301 Main Street, #1150
Baton Rouge, LA 70825
225-490-5812

Robert J. David, Jr.
Juneau David, APLC
Post Office Drawer 51268
Lafayette, LA 70505

Frederic Theodore 'Ted' Le Clercq
Deutsch Kerrigan, LLP
755 Magazine Street
New Orleans, LA 70130

Henry D.H. Olinde, Jr.
Olinde & Mercer, LLC
8562 Jefferson Highway, Suite B
Baton Rouge, LA 70809

V. Thomas Clark, Jr.
Adams and Reese, LLP
450 Laurel Street
Suite 1900
Baton Rouge, LA 70801

Harry (Skip) J. Philips, Jr.
Taylor Porter
Post Office Box 2471
Baton Rouge, LA 70821

James A. Brown
Liskow & Lewis
One Shell Square
701 Poydras Street, #5000
New Orleans, LA 70139

Matt J. Farley
Krebs Farley
400 Poydras Street, #2500
New Orleans, LA 70130

Baton Rouge, Louisiana this 10th day of August, 2017.



J. E. Cullens, Jr.

JAMES J. DONELON, COMMISSIONER	:	SUIT NO.: 651,069 SECTION: 22
OF INSURANCE FOR THE STATE OF	:	
LOUISIANA, IN HIS CAPACITY AS	:	
REHABILITATOR OF LOUISIANA	:	
HEALTH COOPERATIVE, INC.	:	
	:	
versus	:	19 TH 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,	:	PARISH OF EAST BATON ROUGE
INC., GROUP RESOURCES	:	
INCORPORATED, BEAM PARTNERS,	:	
LLC, MILLIMAN, INC., BUCK	:	
CONSULTANTS, LLC. AND	:	
TRAVELERS CASUALTY AND	:	
SURETY COMPANY OF AMERICA	:	STATE OF LOUISIANA

AFFIDAVIT OF RECEIVER BILLY BOSTICK

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary, personally came and appeared:

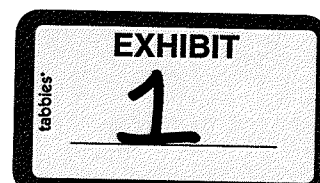
BILLY BOSTICK

who, after being duly sworn, deposed and stated of his own personal knowledge that:

1. I am the court-appointed Receiver for Louisiana Health Cooperative, Inc. (“LAHC”), and have served in this capacity continuously since my appointment as Receiver in September 2015.

2. LAHC used a SharePoint database to manage and store its corporate documents. In general, LAHC’s corporate documents were saved and organized in an inconsistent, confusing, and often haphazard manner. The search function within SharePoint is extremely limited and unreliable. There appears to have been no systematic or consistent procedure for naming or saving documents; as a result, there are multiple subfolders insider of subfolders (sometimes as many as a dozen or more layers of subfolders) which may or may not contain relevant documents. Given the limited ability within SharePoint to search for specific documents natively, coupled with the absence of a systematic electronic filing system, it has been a difficult, labor-intensive, and time-consuming process to locate relevant documents.

3. Prior to filing suit, no release agreement between LAHC and CGI was located within LAHC’s SharePoint database.



4. After CGI filed its Motion for Summary Judgment on or about April 13, 2017, a document purporting to be a “Termination of Administrative Services Agreement” dated June 19, 2014, was found in the LAHC corporate database. Attached hereto as Exhibit 1A is a true and accurate copy of this document.

5. The purported signature of Greg Cromer found on attached Exhibit 1A is not identical to the purported signature of Greg Cromer found on Exhibit B attached to CGI’s Motion for Summary Judgment.

6. Exhibits 1B, 1C, 1D, 1E, 1F, and 1G, are all documents found in the LAHC database which purportedly bear Greg Cromer’s signature at various times: Exhibit 1B (11/12/13 before a Notary Public); Exhibit 1C (5/12/15 before a Notary Public); Exhibit 1D (5/27/14 before a Notary Public); Exhibit 1E (6/6/13 before a Notary Public); Exhibit 1F (6/6/13 before a Notary Public); and Exhibit 1G (5/23/11 Driver’s License). All of these documents, with the exception of Exhibit 1G, were signed before a Notary Public. A simple comparison of the signatures on these documents to the purported signature of Greg Cromer found on Exhibit B attached to CGI’s Motion for Summary Judgment reveals that they are not the same.

7. CGI did substantial work for LAHC after April 30, 2014 during the transitional or “wind down” period as GRI assumed the role of third party administrator of LAHC. LAHC accounting documents indicate that LAHC paid CGI a total of \$1,176,224.42 over the course of their working relationship, from approximately April 2013 to November 2014. Attached Exhibit 1H is A/P Vendor Transactions spreadsheet which itemizes every payment made by LAHC to CGI from the first payment of April 10, 2013 through the last payment of November 21, 2014. LAHC accounting documents indicate that from April 30, 2014 (the date of the alleged termination of the original agreement) through November 21, 2014, LAHC paid CGI a total of \$539,139.59—or approximately 46% of the total amount paid to CGI. Attached Exhibit 1I is A/P Vendor Transactions spreadsheet which itemizes every payment made by LAHC to CGI from the April 30, 2014 through November 21, 2014.

8. During this transitional or “wind down” period after April 30, 2014, CGI continued to provide grossly negligent services to LAHC and failed to perform its obligations to LAHC in a reasonable, competent, and professional manner, all of which caused compensable damages to LAHC. For example, both before and after April 30, 2014, CGI failed to ensure that its personnel who performed services for LAHC were adequately and appropriately trained, licensed, and

certified to perform the services and functions delegated by LAHC to CGI; failed to accurately process and pay claims on LAHC's behalf in a timely manner at the correct rates and amounts; failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts; and, in general, failed to provide for a smooth and seamless transition of LAHC's ongoing business to GRI.

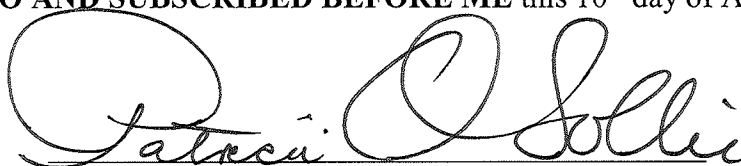
9. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge.

Executed on this 10th day of August, 2017.



**BILLY BOSTICK, RECEIVER OF
LOUISIANA HEALTH COOPERATIVE, INC.**

SWORN TO AND SUBSCRIBED BEFORE ME this 10th day of August, 2017.



Notary Public

Patricia O. Sollie, Notary Public
State of Louisiana
Notary Number 010497
My Commission Expires at Death

June 19, 2014

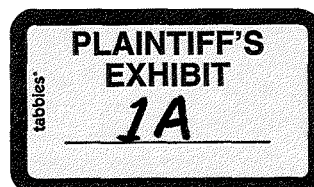
Greg Cromer
CEO
Louisiana Health Cooperative, Inc.
3445 N Causeway Blvd
Metairie, LA 70002

Re: Termination of Administrative Services Agreement

Dear Greg:

I am writing to memorialize our agreement regarding termination of the Administrative Services Agreement (the "Original Agreement") between the Louisiana Health Cooperative, Inc. ("LAHC") and CGI Technologies and Solutions Inc. ("CGI") dated February 15, 2013. Once executed by you in the space provided, this letter agreement (this "Letter Agreement") shall be effective on the date of such execution and shall constitute an amendment to the Original Agreement. In the event of conflict between the terms of this Letter Agreement and the Original Agreement, the terms of this Letter Agreement shall control.

1. For the convenience of LAHC, the Original Agreement shall terminate on April 30, 2014. CGI shall continue to perform the Delegated Functions through April 30, 2014, to be followed by a six month wind-down period as specified in Section 2.5 of the Original Agreement. For the six month wind-down period, CGI shall provide such wind-down services as the parties may agree in a wind-down plan, all in accordance with Sections 2.5 and 2.5.1 of the Original Agreement.
2. LAHC shall pay all CGI invoices issued to date. CGI shall also be compensated for performance of the Delegated Functions prior to termination of the Original Agreement in accordance with Exhibit 1 to the Original Agreement. The general scope and structure of the wind down period is as specified in Attachment 1 to this Letter Agreement. CGI's compensation for services during the wind-down period shall be a fixed price of \$75,000 per month for May and \$60,000 per month for June and at LAHC direction on a time-and-materials basis July through October. In addition to CGI's compensation for performing Delegated Services during the wind-down period, LAHC will continue to pay Healthation (Aldera) Access Fees and direct expenses in accordance with Exhibit 1 of the Original Agreement. CGI waives all deferred implementation fees specified in Section 1 of Exhibit 1 to the Original Agreement (i.e., those implementation fees payable on December 31 of 2014, 2015 and 2016). LAHC waives all interest on late paid claims specified in Section 1.6 of Exhibit 2 to the Original Agreement.
3. No Service Level Credits shall be assessed for failures to meet one or more Service Level Specifications effective March 1, 2014. During the wind-down period, CGI will make commercially reasonable efforts to perform the Delegated Functions in accordance with the Service Level Specifications set forth in Section 6 in Exhibit 1 to the Original Agreement, but no additional CGI personnel will be assigned to the LAHC account for purposes of improving CGI's performance.
4. Neither party hereto will make any statement to any third party that disparages the other party's performance under the Original Agreement, nor will either party make statement to any third party that disparages any person or persons involved in the performance of the Original Agreement. LAHC will also



provide to CGI a reasonably complimentary letter of reference that CGI may use at its discretion in future efforts to secure new business.


5. Except for obligations assumed herein, LAHC and CGI hereby release each other, and their respective directors, officers, agents, employees, representatives, insurers, parents and subsidiaries, from any and all claims that either may have against the other arising out of or relating to the Original Agreement. Greg, if the foregoing accurately states our agreement to amend the Original Agreement, please sign below in the space provided (two signed originals enclosed) and return one fully executed original to me.

Sincerely,



David L. Henderson
Senior Vice President
CGI Technologies and Solutions Inc.

SO AGREED:



Greg Cromer
CEO
Louisiana Health Cooperative, Inc.

6/19/2014

Date

Attachment 1 – Wind Down Period Services

1. May and June 2014

From May 1 to June 30, CGI will perform the Delegated Services as well as the following in-scope transition services, which will be further defined and mutually agreed in the more detailed Transition Plan:

In Scope

- Membership data transfer to GRI as follows:
 - Aldera Member Extract file, delivered initially at 6/1 and finally at 7/1
- Enrollment data transfer to GRI as follows:
 - 834 EDI files received from FFM, files received between 6/1 and 7/1
 - Effectuation EDI files sent to FFM, files sent between 6/1 and 7/1
 - Spreadsheets received from LAHC reflecting Bswift off-exchange enrollments, files received between 6/1 and 7/1
- Paid claim data transfer to GRI as follows:
 - TBD
- Pended and/or in-flight claim data transfer to GRI as follows:
 - TBD
- Compilation and hand-over of all Aldera and CGI file server records back to 10/1/13 where retention is required by law or regulation and/or essential for GRI continued operation, as listed and agreed with LAHC, as of the record-date that all CGI processing terminates; destruction of all other records not listed and agreed with LAHC as soon as all CGI processing terminates
- Other data transfer as the parties agree

Not in Scope

- Completion of delivery of any intended system or interworking functionality not already operational at 5/16, except as the parties agree in advance
- Provider data updates or contract price/fee schedule updates, except as CGI determines helpful or necessary for claims processing
- Processing of any claims received after 6/8, regardless of service date
- Processing of member billings and associated payments for enrollments or enrollment modifications with an effective date of 7/1 or later
- Mailing of ID cards or welcome kits to paid-thru members with an effective date of 7/1 or later; the final mailing to be no later than GRI's initial bulk mailing of new ID cards
- Health Risk Assessment processing after 5/31
- FFM or other 3rd party system data reconciliation beyond 6/30

2. July to October 2014

Beginning July 1, CGI will perform all services on a Time and Materials basis, at the request of LAHC, using the rates in the table below. LAHC will make requests in writing and CGI will provide an estimate for approval by LAHC before any work is performed.

Role	Rate per Hour
Data Analyst Sr.	120.00
Data Analyst Jr.	100.00
Claim Supervisor	60.00
Project Manager	120.00
Claim Examiner or Customer Service Rep	35.00
Expenses	As Agreed

LOUISIANA BOARD OF ETHICS
CAMPAIGN FINANCE
RECEIVED

LOUISIANA BOARD OF ETHICS

Post Office Box 4368
Baton Rouge, Louisiana 70821

2013 NOV 12 PM 3:12

TIER 2 PERSONAL FINANCIAL DISCLOSURE STATEMENT (ANNUAL)

I currently hold an office that would require me to file a Tier 2.1, or Tier 3 Personal Financial Disclosure Statement. As such, I have completed SCHEDULE L.

This Report Covers Calendar Year: 2012

ORIGINAL REPORT

AMENDED REPORT

FINAL REPORT WHERE TERM ENDS IN JANUARY (JANUARY 1 THROUGH JANUARY)

Final reports must be filed on or before May 15 of the year in which your service to that office ends. Refer to the "GENERAL INFORMATION" sheet of this form to determine eligibility.

Office/Position Held: STATE REP. DIST. 90

Name of Filer (print full name) GEORGE GREGORY CROMER

Mailing Address 308 MARGON CT.

City, State, Zip SLIDELL, LA. 70458

Name of Spouse (print full name) PEGGY SUE CROMER

Spouse's Occupation RETIRED

Spouse's Principal Business Address N/A

City, State, Zip N/A

Check all that apply:

I have filed my state income tax return for the previous year.

I have filed for an extension of my state income tax return for the previous year.

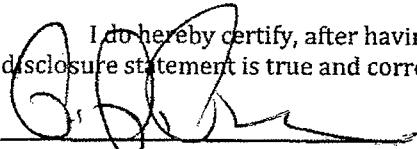
I have filed my federal income tax return for the previous year.

I have filed for an extension of my federal income tax return for the previous year.

I have filed for an extension of my federal income tax return for the previous year AND I am requesting an extension in filing my Tier 2 Personal Financial Disclosure.

Certification of Accuracy

I do hereby certify, after having been duly sworn, that the information contained in this personal financial disclosure statement is true and correct to the best of my knowledge, information, and belief.



Signature of Filer

Sworn to and subscribed before me this 12th day of November, 2012

Cynthia Simmons Mancuso
Notary Public (print name)
Cynthia Simmons Mancuso
Notary Public (signature)

ID# 17799

Date Commission Expires at death



HAND DELIVERED

LOUISIANA BOARD OF ETHICS
Post Office Box 4368
Baton Rouge, Louisiana 70821

TIER 2 PERSONAL FINANCIAL DISCLOSURE STATEMENT (ANNUAL)

I currently hold an office that would require me to file a Tier 2.1, or Tier 3 Personal Financial Disclosure Statement. As such, I have completed SCHEDULE D.

- ORIGINAL REPORT
- AMENDED REPORT

This Report Covers Calendar Year: 2014

FINAL REPORT (WHERE TERM ENDS IN JANUARY [COVERING JANUARY 1 THROUGH JANUARY])

A final reports must be filed on or before May 15 of the year in which your service to that office ends. Refer to the "GENERAL INFORMATION" sheet of this form to determine eligibility.

OFFICE/POSITION HELD: STATE REP. DIST 90

NAME OF FILER (print full name): GEORGE GREGORY CROMER

Mailing Address: 308 MARGON CT.

City, State, Zip: SLIDELL, LA, 70458

NAME OF SPOUSE(if applicable)(print full name): PEGGY SUE CROMER

Spouse's Occupation: RETIRED

Spouse's Principal Business Address: N/A

City, State, Zip: N/A

CHECK ALL THAT APPLY

- I have filed my state income tax return for the previous year.
- I have filed for an extension of my state income tax return for the previous year.
- I have filed my federal income tax return for the previous year.
- I have filed for an extension of my federal income tax return for the previous year.
- I have filed for an extension of my federal income tax return for the previous year AND I am requesting an extension in filing my Tier 2 Personal Financial Disclosure.

CERTIFICATE OF ACCURACY

I do hereby certify, after having been duly sworn, that the information contained in this personal financial disclosure statement is true and correct to the best of my knowledge, information, and belief.

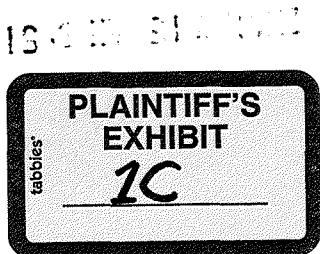
[Signature]
Signature of Filer

Sworn to and subscribed before me this 12TH day of MAY, 2015

Tommy D. Teague
Notary Public (print name)
Tommy D. Teague
Notary Public (signature)

ID# _____
Date Commission Expires TOMMY D. TEAGUE

NOTARY PUBLIC #12692
3445 N. CAUSEWAY BLVD. STE. 200
METAIRIE, LA 70002 ethics.la.gov
My Commission is for Life



STATE OF LOUISIANA
PARISH OF JEFFERSON

ELIGIBILITY TO PARTICIPATE IN FEDERAL PROGRAMS

Before me, the undersigned authority, George G. Cromer, personally came and appeared:

George G. Cromer residing at 308 Margon Court, Slidell, LA 70458, who after being duly sworn, deposed as follows:

I, George G. Cromer being of sound mind, acknowledge and understand that any intentional falsification of information I am about to provide may subject me to penalties for the crime of injuring public records and false swearing under Louisiana law and additional penalties under federal law.

My full name is George Gregory Cromer. I have reached the age of majority.

_____ I am a Director on the formation Board of Directors of the Louisiana Health Cooperative, Inc. and I hold the office as the Board's _____

X I am the Chief Executive Officer of the Louisiana Health Cooperative, Inc.

_____ I am Chief Financial Officer of the Louisiana Health Cooperative, Inc.

I certify that I have never been debarred from participating in a federal program.

I further certify that no employee, contractor or agent of the Louisiana Health Cooperative Inc. has ever been debarred from participating in a federal program.

I HEREBY AFFIRM AND ATTEST, under penalty of law, that the above information is true and complete:

Thus done, read and signed at Metairie, State of Louisiana, this 27th day of May, 2014.



Print Name: George G. Cromer

WITNESSETH:

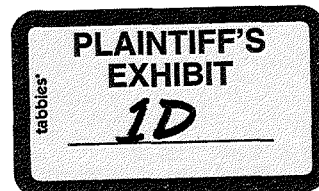
this 27th day of May, 2014.



Notary Public

My Commission expires: _____

TOMMY D. TEAGUE
NOTARY PUBLIC #12692
3445 N. CAUSEWAY BLVD. STE. 800
METAIRIE, LA 70002
My Commission is for Life





LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

OATH OF OFFICER

STATE OF Louisiana
COUNTY OR PARISH OF East Baton Rouge

I, the undersigned, do hereby swear and affirm that I accept the trust imposed upon me as an officer of the
LOUISIANA HEALTH COOPERATIVE, INC.
an insurance company organized under the laws of the State of Louisiana, and will perform the duties imposed upon me as such
by the Articles of Incorporation, By-laws, and the laws of the State of Louisiana including, but not limited to, the Louisiana
Insurance Code and/or the Louisiana Worker's Compensation Code to the best of my ability, so help me God.

Sandra Pauting
Signature of Witness

Sandra Pauting
Printed Name of Witness

[Signature]
Signature of Witness

Christie Russe II
Printed Name of Witness

[Signature]
Signature of Officer

GEORGE G. CROMER
Printed Name of Officer

SWORN TO and subscribed before me this 6th day of June, 2013.

Cynthia Simmons Mancuso
Signature of Notary Public

CYNTHIA SIMMONS MANCUSO
Printed Name of Notary Public

My Commission Expires at death
Bar # 17799



STATE OF LOUISIANA

PARISH OF East Baton Rouge

DIRECTOR'S AFFIDAVIT REGARDING CONFLICT OF INTEREST

Before me, the undersigned authority George Gregory Cromer, personally came and appeared:

George Gregory Cromer, residing at 308 Margon Court, Slidell, LA 70458, who after being duly sworn, deposed as follows:

- 1) I, George Cromer, being of sound mind, acknowledge and understand that any intentional falsification of information I am about to provide may subject me to penalties for the crime of injuring public records and false swearing under Louisiana law and additional penalties under federal law.
- 2) My full name is George Gregory Cromer. I have reached the age of majority.
- 3) I have accepted the position of Chief Executive Officer of the Louisiana Health Cooperative, Inc.
- 4) I have been presented with and have reviewed the Louisiana Health Cooperative, Inc. Conflict of Interest Policy and Conflict of Interest Statement and Statement of Disclosure.
- 5) After reviewing the Conflict of Interest Policy and completing the Conflict of Interest Statement and Statement of Disclosure I confirm that I have no conflict of interest, as defined therein that would interfere with my service as a Chief Executive Officer of the Louisiana Health Cooperative, Inc.
- 6) I HEREBY AFFIRM AND ATTEST, under penalty of law, that the above information is true and complete:

Thus done, read and signed at Baton Rouge, State of Louisiana, this 6th day of June, 2013.

Signed: [Signature]

Print Name: George Gregory Cromer

WITNESSETH:

this 6th day of June, 2013.

[Signature]

Notary Public
CINTHIA SIMMONS MANCUSO

My Commission expires: at death
Bar #17799



Louisiana

Don't Drink And Drive
Don't Drink Louisiana

PERSONAL DRIVER'S LICENSE

LICENSE/ID NO. CLASS EXPIRATION DATE

004029859 E 06-26-2015

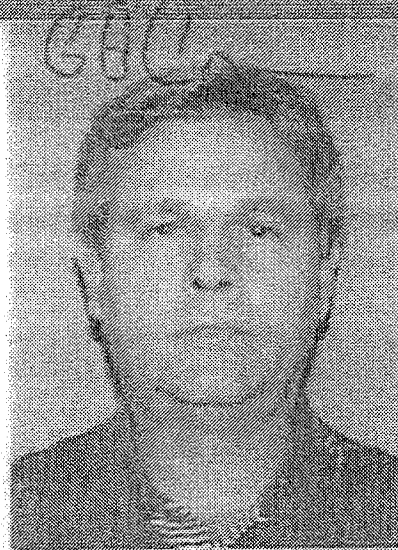
ENDORSEMENTS

RESTRICTIONS

CROMER, GEORGE G
308 MARGON CT
SLIDELL, LA 70458-0000

DATE OF BIRTH SS NUMBER PARISH
06-26-1958 52

SEX HGT WGT ISSUE DATE OFFICE AUDIT
M 5-05 150 05-23-2011 299 9811



PLAINTIFF'S
EXHIBIT

16

tabbles

A/P Vendor Transactions (APVTRN01)

From Short Name [CGI] To [CGI]
 From Document Date [1/1/2000] To [12/31/9999]
 Session Date [8/8/2017]
 Report Format [Vendor Transactions by Document Date]
 Transaction Types [Payment]
 Include Contact/Phone/Credit Limit [No]
 Include Space For Comments [No]
 Include Zero-Balance Vendors [Yes]
 Include Transaction Type Totals [No]
 Show Applied Details [No]
 Show Fully Paid Transactions [Yes]
 Sort Transactions by Transaction Type [No]



Vendor Number/Name/ Document Number/Type	Order Number/ 1099/CPRS Code/Amount	PO Number	Doc. Date	Due Date or Check Number	Batch- Entry	Days Over	Transaction Amount	Balance
0312001	CGI TECHNOLOGIES AND SOLUTION							
PY00000113	PY		4/10/2013		14-4		-175,000.00	0.00
PY00000767	PY		12/31/2013		133-14		-193,300.00	0.00
PY00000805	PY		2/4/2014		138-4		-90,250.00	0.00
PY00000816	PY		2/7/2014		139-1		-133,500.00	0.00
PY00001078	PY		4/25/2014		152-6		-44,952.80	0.00
PY00001098	PY		4/29/2014		153-1		-82.03	0.00
PY00001114	PY		4/30/2014		153-17		-135,124.44	0.00
PY00001125	PY		5/5/2014		155-9		-123,539.04	0.00
PY00001240	PY		5/19/2014		163-68		-11,139.63	0.00
PY00001284	PY		6/2/2014		169-2		-39,712.96	0.00
PY00001600	PY		7/10/2014		190-1		-171,713.31	0.00
PY00001998	PY		9/2/2014		222-5		-40,745.11	0.00
PY00002216	PY		10/10/2014		249-4		-9,145.10	0.00
PY00002451	PY		11/21/2014		272-4		-8,020.00	0.00
Vendor Total:							-1,176,224.42	0.00
Report Total:							-1,176,224.42	0.00

CR : Credit Note *DB* : Debit Note *IN* : Invoice *IT* : Interest Charge *PI* : Prepayment *MC* : Miscellaneous Payment
AD : Adjustment *CF* : *PY* : Payment *RD* : Rounding
ED : Earned Discount Taken *GL* : Gain or Loss (multicurrency ledgers)

1 vendor printed

A/P Vendor Transactions (APVTRN0)

From Short Name [CGI] To [CGI]
 From Document Date [4/30/2014] To [12/31/9999]
 Session Date [8/8/2017]
 Report Format [Vendor Transactions by Document Date]
 Transaction Types [Payment]
 Include Contact/Phone/Credit Limit [No]
 Include Space For Comments [No]
 Include Zero-Balance Vendors [Yes]
 Include Transaction Type Totals [No]
 Show Applied Details [No]
 Show Fully Paid Transactions [Yes]
 Sort Transactions by Transaction Type [No]



Vendor Number/Name/ Document Number/Type	Order Number/ 1099/CPRS Code/Amount	PO Number	Doc. Date	Due Date or Check Number	Batch- Entry	Days Over	Transaction Amount	Balance
0312001	CGI TECHNOLOGIES AND SOLUTION							
PY00001114	PY		4/30/2014		153-17		-135,124.44	0.00
PY00001125	PY		5/5/2014		155-9		-123,539.04	0.00
PY00001240	PY		5/19/2014		163-68		-11,139.63	0.00
PY00001284	PY		6/2/2014		169-2		-39,712.96	0.00
PY00001600	PY		7/10/2014		190-1		-171,713.31	0.00
PY00001998	PY		9/2/2014		222-5		-40,745.11	0.00
PY00002216	PY		10/10/2014		249-4		-9,145.10	0.00
PY00002451	PY		11/21/2014		272-4		-8,020.00	0.00
Vendor Total:							-539,139.59	0.00
Report Total:							-539,139.59	0.00

CR: Credit Note *DB*: Debit Note *IN*: Invoice *IT*: Interest Charge *PI*: Prepayment *MC*: Miscellaneous Payment
AD: Adjustment *CF*: Cash *PY*: Payment *RD*: Rounding
ED: Earned Discount Taken *GL*: Gain or Loss (multicurrency ledgers)

1 vendor printed



April 17, 2014

David Henderson
Senior Vice President
CGI Technologies and Solutions, Inc.
11325 Random Hills Road
Fairfax, VA 22030

Re: Administrative Services Agreement By and Between CGI Technologies and Solutions, Inc. And Louisiana Health Cooperative, Inc.

Dear David:

Reference is hereby made to that certain Administrative Services Agreement ("Agreement") entered into by and between CGI Technologies And Solutions, Inc. ("CGI") and Louisiana Health Cooperative, Inc. ("LAHC"), which Agreement was made effective on February 15, 2013.

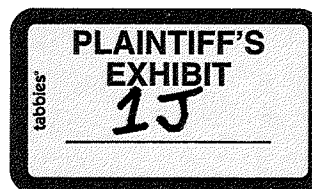
Pursuant to **Article 3.13.8.1** of the Agreement, LAHC hereby notifies CGI of the immediate revocation of certain delegated functions as more fully set forth below. This Notice of Revocation is the result of a recent internal evaluation of CGI's performance under the Agreement. Pursuant to **Article 2.2** of the Agreement, all Delegated Functions were to have become fully operational on January 1, 2014. As CGI is aware, functionality was not attained on January 1, 2014, and, in the vast majority of cases, the specified functionality has still not been attained. CGI was a mission-critical participant in LAHC's initial business system roll-out. It was also to be a vital participant in LAHC's on-going business operations. Because the functionalities as defined by the Agreement have not been achieved, LAHC must transition the revoked Delegated Functions to other organization(s) while relying on CGI to cooperatively effect a smooth and orderly transition of those services as required by **Article 3.13.6**.

IMMEDIATE REVOCATION OF CERTAIN DELEGATED FUNCTIONS

LAHC hereby notifies CGI of the immediate revocation of the following Delegated Functions:

- 1) Claims Processing
- 2) Printing and Fulfillment (New Member Kits and Materials),
- 3) Premium Billing (on Exchange), and
- 4) Member/Provider Support Services.

(Collectively referred to as the "Revoked Delegated Services"). Termination of the Revoked Delegated Services is required as a result of a) CGI's failure to perform as set forth in the Agreement, b) LAHC's resultant inability to comply with "Applicable Laws", c) LAHC's resultant inability to fulfill its obligations under its Loan Agreement with the Centers for Medicare and Medicaid Services ("CMS"), and d) the



opportunity losses LAHC is currently incurring due to CGI's failure to achieve the functionality of core functions almost three (3) months past the January 1, 2014, deadline.

BASES FOR REVOCATION OF THE SPECIFIED DELEGATED FUNCTIONS

Immediate revocation of Delegated Functions is authorized under **Article 3.13.8.1** of the Agreement, which provides:

LAHC may revoke delegation of a Delegated Function immediately upon notice if...CGI, in performing the Delegated Function, threatens the health or safety of a Member, or fails to comply with Applicable Law, or may subject LAHC to regulatory or legal actions from any Applicable Regulatory Agency, including CMS or an Accreditation Agency[.]

The Agreement defines "Applicable Law" in **Article 1**, as follows:

- (i) such federal, state and local laws, rules and administrative regulations and guidance, including manuals, guidelines, policy letters, court decisions, and CMS instructions to LAHC, that are adopted and/or published or sent to LAHC by CMS or any State agency or other federal, state or local governmental body...with authority over LAHC, CGI, Providers or Payors (the Applicable Regulatory Agencies"), and communicated in writing by LAHC to CGI, and
- (ii) Applicable Accreditation Agency requirements and policies; and
- (iii) Health insurance exchanges on which LAHC is approved to offer Benefit Plans.

Applicable Law, as defined in the Agreement, is intended to be broadly interpreted and expressly includes all "...federal and state insurance requirements, all federal and state privacy, security and confidentiality requirements, bonding requirements, licensure requirements, financial solvency requirements, prompt pay requirements, claims administration requirements and fraud and abuse requirements."

LAHC's operation is heavily regulated by federal, state and local authorities, including the Delegated Functions contracted to CGI. Furthermore, LAHC is required by the Affordable Care Act to maintain certification by the National Committee for Quality Assurance ("NCQA") (the "Accrediting Agency") and to comply with state licensure requirements for participation on the exchange.

FAILURE TO PERFORM BY CGI

CGI's specific failures to perform each of the Delegated Functions are outlined below.

Delegated Function	Performance Failure
1) Claims Processing	Total Implementation Failure
2) Printing And Fulfillment (New Member Kit & Materials)	ID Cards Not Distributed Timely. ID's Sent To Incorrect Members. Failure To Advise LAHC After Member ID Mailing Errors.
3) Premium Billing (on Exchange)	Failure To Implement Timely, Accurate And Reliable Invoicing System.
4) Member/Provider Support (post 1/1/14)	Member Portal Not Implemented. ID Card Failures. Searchable Provider Directory Not Functional. CGI Eligibility File Supplied To ProCare Failure. Inaccurate Member Eligibility Information In Provider Portal.

All of these functions are the subject of federal and state laws and regulations. Failure to timely and appropriately implement these functions may subject LAHC to adverse regulatory or legal action(s) by any "Applicable Regulatory Agency", including CMS and the Louisiana Department of Insurance. Additionally, CGI's performance failures expose it to risk of revocation of accreditation by the NCQA. The risk of such exposure is unquestionably present and compels LAHC to immediately revoke the specified Delegated Services.

TRANSITION OF REVOKED DELEGATED FUNCTIONS

Pursuant to **Article 3.13.6**, LAHC has the sole discretion to transition the Revoked Delegated Functions to a third party. Additionally, CGI is obligated to cooperate fully with LAHC in order "to effect a smooth and orderly transition" of each Revoked Delegated Function. LAHC will advise CGI of its decisions and activities in this regard with an aim toward the new organization(s) commencing performance of the Revoked Delegated Function(s) on July 1, 2014. Consistent with the provisions of Article 3.13.6 of the Agreement, LAHC expects that CGI continue to provide services, including information and exchanges as reasonably requested by LAHC or its designee, until effective transition on or about October 1, 2014. Please be advised that where required or prudent, LAHC will also communicate such transition of Delegated Services to Applicable Regulatory Agencies and pertinent Accreditation Agencies.

TERMINATION OF PAYMENT(S) REGARDING REVOKED DELEGATED FUNCTIONS

Effective as of the date indicated above, LAHC will terminate all payments to CGI that pertain to the above-described Revoked Delegated Functions (see **Exhibit 1** for detail).

BREACH OF THE AGREEMENT

LAHC hereby asserts that, as a result of CGI's failures to perform as specified herein, CGI is in fundamental breach of the Agreement. It should be noted that the definition of "Applicable Law" in **Section 1** of the Agreement includes the following provision: "Adherence to these laws, policies, regulations and guidance shall be a material requirement..." of the Agreement. LAHC further maintains

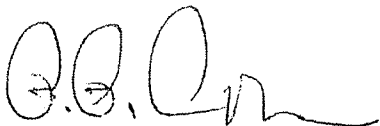
that these specified failures (together with numerous other breaches of the Agreement not specifically set forth herein) are so fundamental that they go to the very essence of the Agreement. As a result of the revocations described above (which are permanent), there is virtually nothing substantial remaining to the Agreement.

The only remaining relevant Delegated Functions include: Enrollment, Printing and Fulfillment (Member Communication Materials) and Premium Billing (Off Exchange). As a matter of course, it is impractical—indeed impossible—for CGI to perform the remaining Delegated Functions because these remaining Functions are inextricably bound together operationally with the Revoked Delegated Functions. Consequently, the Agreement fails as a purely practical matter. Furthermore, because the specified Delegated Functions have been immediately and permanently revoked, any effort on CGI's part to cure the specified breaches would be vain and useless.

Based on the foregoing, LAHC proposes that the parties amicably agree to terminate the Agreement on mutually-agreeable terms. If CGI is in general agreement with this suggestion LAHC will draft and propose a Mutually-Agreed Termination Letter Agreement that will not only terminate the Agreement, but also wrap up all loose ends while, at the same time, protecting the legitimate interests and reputations of the parties.

Please contact me upon your receipt of this communication to coordinate the smooth transition of the Revoked Delegated Functions and begin discussing the terms of a Mutually-Agreed Termination Letter Agreement.

Very truly yours,



Greg Cromer
Chief Executive Officer

cc: U.S. Department Of Health And Human Services
Centers For Medicare And Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201
Attention: Mr. Kevin Kendrick
(Via FedEx)

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