

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

STATE OF LOUISIANA

NO.: 651,069

SECTION 22

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

VERSUS

TERRY S. SHILLING, 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

FILED: _____

DEPUTY CLERK

**MEMORANDUM OF MILLIMAN, INC. IN OPPOSITION TO PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT REGARDING "REGULATOR FAULT" OR
"RECEIVER FAULT" DEFENSES OR, IN THE ALTERNATIVE, MOTION TO
STRIKE DEFENSES PRECLUDED AS A MATTER OF LAW**

Defendant Milliman, Inc. ("Milliman") respectfully files this Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment Regarding "Regulator Fault" or "Receiver Fault"¹ Defenses or, in the Alternative, Motion to Strike Defenses Precluded as a Matter of Law ("Motion").²

¹ Milliman understands Plaintiff's use of "Receiver" versus "Regulator" to be differentiating between the conduct of the Commissioner in his capacity as Rehabilitator and/or by the Receiver, as distinct from regulatory conduct by the Louisiana Department of Insurance and its agents or employees. For ease of reference, Milliman will continue to use the terms "Receiver" and "Regulator." Milliman also uses the terms "Rehabilitator" and "Receiver" interchangeably since the Rehabilitator is the plaintiff in this case.

² Plaintiff confirmed to Milliman's counsel that the "Motion only intends to limit Milliman's Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Thirteenth Defenses to the extent that this includes regulator or receiver actions." See Email Chain between A. Cullens and J. Margolis (Oct. 19, 2020) attached as **Exhibit A**.

I. PRELIMINARY STATEMENT

A litigant's "right to litigate the issues raised" in a complaint against the litigant is "guaranteed ... by the Due Process Clause." *United States v. Armour & Co.*, 402 U.S. 673, 682, 91 S. Ct. 1752, 1757 (1971). And fundamental to that due process right is "the right to present a defense." *State v. Wilson*, 2017-0908 (La. 12/5/18). One of the most basic and vital defenses is the right to show that other persons caused or contributed to the quantum of harm alleged. To that end, La. Civ.Code. art. 2323(A) mandates that "the degree or percentage of fault of *all persons* causing or contributing to the injury, death, *or loss shall be determined*, regardless of whether the person is a party to the action *or a nonparty*, and regardless of the person's insolvency, ability to pay, *immunity by statute . . .*" (emphasis added).

Plaintiff's Motion flies in the face of these mandates. Before any meaningful discovery has even been commenced let alone completed in this case, Plaintiff asks this Court to deprive Milliman of its constitutional and statutory rights to prove that the conduct of the "Regulator" and the "Receiver" contributed to or failed to mitigate, the losses alleged and should not be ascribed to Milliman. Plaintiff's overreaching construction of the Louisiana Rehabilitation, Liquidation, Conservation Act ("RLCA") La. R.S. § 22:2043.1 is wrong for several reasons.

First, the RLCA by its plain terms does not preclude *defenses* based on the Receiver's conduct. It only immunizes the Receiver from *causes of action* and *liability*. There is, therefore, no conflict between the RLCA and the Louisiana comparative fault statute, La. Civ.Code. art. 2323(A). The comparative fault statute makes clear that the Receiver's fault, if any, "shall be determined" at trial, even if he is immune from liability.

Second, Plaintiff's construction of the RLCA would lead this Court to prejudicial error by denying Milliman its fundamental due process rights under both the U.S. and Louisiana Constitutions to fully and fairly defend itself against the liability and damages claims of which it has been accused. It is Plaintiff who has affirmatively put the conduct of the Regulator at issue by accusing Milliman of misleading *the Regulator* who approved Louisiana Health Cooperative's ("LAHC") actual funding needs, premium rates, and the use of these rates. This Court must reject a statutory construction that would deprive Milliman of its constitutionally protected due process "right to litigate the issues raised" and to "present a defense" to Plaintiff's effort to recover several tens of millions of dollars in damages from Milliman. If, on the other hand, this Court were inclined to construe the RLCA to protect the Regulator or the Receiver from such discovery and from fault allocation, the Louisiana Constitution would trump such construction and invalidate the RLCA as so construed.

Third, Plaintiff's overbroad construction of the RLCA is not supported by any case law. None of the cases cited by Plaintiff bar defenses that are based on the Receiver's conduct. None address whether defenses can be barred when Regulator conduct and allegations that the Regulator was misled by a defendant have been put at issue. None of the cases the Plaintiff cites address the serious due process concerns attendant to depriving defendants of "the right to present a defense." In fact, Plaintiff does not cite any cases interpreting the relevant portions of the Louisiana RLCA, or attempting to harmonize those RLCA provisions, with La. Civ. Code art. 2323(A) or the Louisiana Constitution, because there are none.

Plaintiff's Motion illustrates the confusion and potential for legal error inherent in asking the Court to rule, now, on the availability, or unavailability, of more than fifty defenses that the defendants in total have pled, each using different words and asserted in factual contexts that are

particular to each defendant. For example, Plaintiff seeks to strike Milliman's Thirteenth Defense that "Plaintiff's damages, if any, were not caused by Milliman. . ." Thus, at the outset of the case and before any real discovery has occurred, Plaintiff seeks to win the essential element of causation by depriving Milliman of the opportunity to obtain discovery and prove that it did not cause the damages that the Plaintiff seeks to recover. Similarly, having alleged that Milliman is liable for misleading the Regulator, Plaintiff seeks to win his claim by precluding Milliman from discovering evidence from the Regulator potentially showing that the Regulator was not misled and that Milliman did nothing to mislead him; or that Milliman's work was proper.

After having disparaged Milliman's reputation publicly for the past three years with serious accusations of having misled the government regulators of LAHC (*i.e.*, the Louisiana Department of Insurance ("LDI")), yesterday at 4:30PM, Plaintiff's counsel served defense counsel with a proposed *Fourth* Amended Petition purporting to delete that accusation. This eleventh hour maneuver should be seen for what it is—a baseless attempt to prevent Milliman from presenting a full defense and to prevent disclosure of highly relevant documents in the possession of the LDI that Milliman believes will show that the LDI understood and agreed with Milliman's rate projections and methodology—thereby undermining Plaintiff's hindsight claims that Milliman's work product was deficient and unreliable.

Milliman requests that Plaintiff's Motion for Leave to Amend be set for separate hearing, and Milliman reserves all rights to oppose Plaintiff's Motion for Leave To Amend. However, whether or not the Court allows Plaintiff to amend for a third time, Plaintiff's motion to strike is meritless. Milliman's rights to discover evidence to resist the Receiver's claims of liability, and evidence that other persons, including the Receiver and the Regulator, were responsible for some

of the quantum of damages, are protected by Louisiana statute and its Constitution. And the LDI documents and testimony that Milliman has sought and will seek in discovery go directly to the issue of disproving Plaintiff's negligence and malpractice claims.

At this early, pre-discovery juncture of the case, this Court must deny the Motion and preserve Milliman's rights to: (1) full discovery of evidence related to the actions of the Regulator, the LDI, the Rehabilitator, and the Receiver with respect to LAHC, and (2) to present such evidence on summary judgment or at trial related to Milliman's liability (or lack thereof) for the losses LAHC incurred.

While the Motion should be denied outright on the merits, at a minimum, it must also be denied until defendants have been given an "opportunity for adequate discovery" as mandated by Louisiana Code of Civil Procedure Article (La. Code Civ. Proc. art.) 966(A)(3). Plaintiff's Motion to strike seeks a "drastic remedy" that is "disfavored" and should not be granted before there has been a fair opportunity for pretrial development. *Carr v. Abel*, 10-835 (La. App. 5 Cir. 3/29/11); 64 So.3d 292, 296, writ denied, 2011-0860 (La. 6/3/11); 63 So.3d 1016.

II. GENUINE ISSUES OF MATERIAL FACT ARE IN DISPUTE

Plaintiff's bald assertions that there is "no fact which supports any of the defenses challenged here," and no genuine issues of fact which preclude the granting of the Motion, are both premature at this early stage of discovery and false. (Mot. at 10.) Limited facts developed by defendants to date raise genuine material questions regarding the Receiver and Regulator's conduct, which can only be evaluated after full discovery and examination of the relevant files of the Receiver and the Regulator.

Plaintiff's Petition seeks to hold Milliman jointly and severally liable for LAHC's insolvency and its alleged total net deficit of up to \$82 million. (Second, Supp., Amending and

Restated Petition (“SAC”) at ¶ 22; and p. 42, Prayer for Relief). However, the vast majority of Plaintiff’s purported claim against Milliman was eviscerated by the U.S. Supreme Court’s April 27, 2020 decision in *Maine Community Health Options v. United States*, 140 S. Ct. 1308 (2020). The U.S. Supreme Court held that the federal government was statutorily obligated to pay \$63 million in Risk Corridor payments to LAHC pursuant to the Affordable Care Act, 42 U.S.C. 18062. In other words, the federal government’s wrongful withholding of the Risk Corridor money in 2015, not Milliman’s work, caused at least \$63 million of LAHC’s purported \$82 million loss.

Despite the U.S. Supreme Court’s decision entitling LAHC to the full \$63 million Risk Corridor payments from the federal government, the Receiver reached a settlement with the federal government for only \$46 million, leaving \$17 million in federal Risk Corridor payments on the table. *See* HRIC Judgment Order attached hereto as **Exhibit B**; *see also* Release Agreement between the United States and Billy Bostick, the Receiver of the Louisiana Health Cooperative, Inc. in Rehabilitation attached hereto as **Exhibit C**. Of the 148 health insurers involved in the *Health Republic* class action settlement, LAHC is the *only* insurer that did not insist on and get paid 100% of the full Risk Corridor payments owed. *Id.*

On top of the \$17 million in Risk Corridor federal payments the Receiver concedes he left on the table, the Receiver also appears to have abandoned: (i) legitimate defenses to payment of an additional \$13.9 million allegedly owed by LAHC to the federal government, and (ii) its claim for consequential damages arising from the federal government’s failure to pay timely the Risk Corridor payments owed to LAHC. *See* The Receiver’s Reply Report Regarding the Status of Risk Corridor Payments and Monthly Status Report Regarding Health Republic at 1 (Oct. 30, 2020) (“The Receiver has no other claims against the federal government”) attached as **Exhibit**

D. This additional \$13.9 million includes payments to the federal government which may not actually be owed by LAHC:

- some or all of \$7.1 million in “interest payable” purportedly owed by LAHC, which should be mitigated by the amount of interest that would not have accrued had the federal government’s \$63 million in Risk Corridor payments been timely paid;
- some or all of \$1.5 million in risk adjustment payables allegedly owed by LAHC to the federal government that the government miscalculated; and
- \$5.3 million attributable to an “Early Termination Penalty” under LAHC’s Solvency Loan Agreement, that arguably should not have been imposed pursuant to the terms of that Agreement.

Plaintiff thus seeks to recover from Milliman at least \$31 million in alleged losses that he unilaterally decided not to collect or seek from the federal government. And through this Motion, Plaintiff seeks to insulate himself from these viable post-receivership defenses, including failure to mitigate, which go directly to whether his own conduct in relinquishing these claims contributed to and/or exacerbated claimed losses of LAHC. These are yet additional core issues that must be subjected to pretrial discovery.

In that same vein, by this Motion the Regulator asks this Court to shield him from affirmative defenses aimed at what the LDI knew, despite explicitly accusing Milliman of having made misrepresentations that supposedly misled the LDI. *See* SAP ¶ 139 (alleging that “Milliman’s advice and/or reports to LAHC and/or LDI and/or CMS concerning LAHC’s funding needs negligently misrepresented the actual funding needs and premium rates of LAHC.”). As further discussed below, this “misrepresentation” claim opens the door to all defenses directed to the Regulator’s pre-receivership conduct and knowledge, all of which

Milliman is entitled to fully discover. For example, Milliman must be entitled to obtain evidence of and present evidence regarding the Regulator's actual knowledge when it reviewed and approved LAHC's rates, which directly bears on the claims here that Milliman misled the LDI, and that Milliman's work in setting the rates was improper or negligent. Indeed, one court reviewing nearly identical allegations brought on behalf of the failed Kentucky Health Cooperative has already held that the logic of the filed rate doctrine precludes a rehabilitator from recovering damages for allegedly improper premium rates where those rates were filed with and approved by the Department of Insurance. *See* August 3, 2018 Order, p. 15 attached hereto as **Exhibit E**.

At a minimum, Plaintiff's Complaint raises a number of disputed issues of material fact including, among others:

- Whether, and the extent to which, the Regulator reviewed Milliman's actuarial reports;
- Whether the Regulator independently concluded that Milliman's methodology was reasonable and actuarially sound at the time, without the benefit of hindsight;
- Whether Milliman presented unknowns and uncertainties that could impact the adequacy of 2014 rates with the Regulator and LAHC;
- Whether the Regulator was aware of the assumptions allegedly used by Milliman and challenged in the Petition, and yet approved them anyway; and
- What actions the Regulator took based on Milliman's suggested rates or other filings.

III. ARGUMENT

A. Plaintiff's Construction Of The RLCA Is Contrary To Law

Plaintiff's construction of the RCLA to preclude any defenses based on Receiver or Regulator conduct violates core principles of statutory construction because it: (1) is contrary to the plain text of the statute; (2) creates an unnecessary conflict with Louisiana's comparative fault statute and (3) runs afoul of Milliman's (and all of the defendants') due process rights.

1. Plaintiff's Motion With Respect To "Receiver Actions" Has No Support In Law

Plaintiff's interpretation of La. R.S. § 22:2043.1 to bar defenses based on the *Receiver's* conduct is contradicted by the plain text of the statute itself, which states:

B. No action or inaction by the insurance regulatory authorities may be asserted as a defense to a claim by the receiver.

C. There shall be **no liability** on the part of, and **no cause of action** of any nature shall arise against, the department or its employees, or the commissioner or his designee in his capacity as **receiver**, liquidator, rehabilitator or conservator, or otherwise, or any special deputy, the receiver's assistants or contractors, or the attorney general's office for any action taken by them in performance of their powers and duties under this Code.

(emphasis added).³

As a matter of well-settled statutory interpretation, Section 22:2043.1(C) only precludes Defendants from asserting "*causes of action*" against the Receiver and shields the Receiver from "*liability*," but does not bar affirmative *defenses* directed to post-receivership conduct. *National Union Fire Ins. Co. of Pittsburgh, Pa. v. City Sav.*, F.S.B, 28 F.3d 376, 393 (3d Cir. 1994); *Southwest Marine and General Ins. Co. v. Nat'l Credit Union Admin. Board*, 2019 WL 3936986, at *6 (Aug. 20, 2019) (holding that the terms "claims" and "actions" "do not encompass affirmative defenses"). As a matter of statutory interpretation, "it is plain enough that a defense or an affirmative defense is neither an 'action' nor a 'claim' but rather is a response to an action

³ Plaintiff does not assert any argument under RLCA, La. R.S. § 22:2043.1(A)

or a claim.” *National Union*, 28 F.3d at 393; *see also Resolution Tr. Corp. v. Mass. Mut. Life Ins. Co.*, 93 F.Supp.2d 300, 309 (W.D.N.Y. 2000) (“state law affirmative defenses, like failure to mitigate damages and contributory negligence, do not conflict with FIRREA's policies”).

Similarly here, it is plain that a defense or an affirmative defense is neither a “cause of action” nor an assertion of “liability.” *See Liability*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The quality, state or condition of being legally obligated or accountable” or “A financial or pecuniary obligation in a specified amount.”). None of the defenses raised by Milliman seek to establish any legal obligations or liability to pay money by either the Receiver or the Regulator.

The Rehabilitation Order, on which Plaintiff relies, does not compel a different result. *See Ex. I to Mot.* at 8-9. The Order simply parrots the language of RLCA, Section C, in ordering that “there shall be no liability on the part of, and that no cause of action of any nature shall exist against” the Receiver.

Similarly, not one of the cases cited by Plaintiff addresses, much less bars, affirmative defenses directed to a receiver’s conduct. For example, the court in *Foster v. Monsour Med. Found.*, 667 A.2d 18 (Pa. Commw. Ct. 1995) did not address defenses based on receiver conduct. *Id.* at 19. Plaintiff’s lengthy discussion of *Wooley v. Lucksinger*, 2009-0571 (La. 4/1/11), 61 So.3d 507, is likewise inapposite. That case does not address or purport to bar defenses directed to receiver conduct, and was decided under Texas law, not Louisiana, law. *Wooley*, 61. So.3d at 606.

Nor can Plaintiff rely on La. R.S. § 22:2043.1(B) (“Section B”) to preclude Milliman from asserting defenses based on Receiver conduct. By its plain terms, Section B only relates to “regulatory” conduct, not “receiver” conduct. As Plaintiff himself recently explained to this

Court, the RLCA distinguishes between “the Commissioner qua regulator” and “the Commissioner qua receiver” as “two separate and distinct legal entities”:

The RLCA creates a court-appointed position of Receiver that is legally distinguishable from the Commissioner of Insurance in his capacity as regulator. La. R.S. 22:2008(A). Although the Commissioner is the statutorily designated appointee who serves as a Receiver of an insolvent insurance company, it does not follow that these two positions -- Receiver and Regulator -- are one and the same for all purposes. To the contrary, the RLCA mandates a court order appointing the Commissioner to serve as a receiver strongly evidences that the legislature contemplated and mandated that the Commissioner as receiver acts in a separate and distinct capacity than he does when he acts in his capacity as regulator.

Plaintiff’s Memo. in Opp. to Mot. to Compel at 3-4. *See, e.g., Ario v. Deloitte & Touche, LLP*, 934 A.2d 1290, 1293-94 & n.2 (Pa. Commw. Ct. 2007) (“Under the ‘separate capacities doctrine’ a governmental entity, when acting in one capacity, is treated as a separate entity when acting in another capacity.”). Had the legislature intended to extend the purported protections of Section B to the Receiver and Rehabilitator, it could have easily done so but did not. *Louisiana Safety Ass'n of Timbermen Self-Insurers Fund v. Louisiana Ins. Guar. Ass'n*, 2009-0023 (La. 6/26/09), 17 So. 3d 350, 356 (“It is presumed every word, sentence or provision in the statute was intended to serve some useful purpose, that some effect is to be given to each such provision, and that no unnecessary words or provisions were used. It is presumed that the Legislature understands the effect and meaning of the words it uses in a statute.”).

The Receiver’s immunity from *liability* under RLCA, La. R.S. § 22:2043, does not shield the Receiver from a *fault allocation* under Louisiana’s comparative fault statute, La. Civ.Code art. 2323(A). Rather, these two statutes are easily read together to find that percentage of fault “shall be determined” regardless of any statutory immunity.

In any action for damages where a person suffers [. . .] loss, the degree or **percentage of fault of all persons** causing or contributing to the [. . .] loss **shall be determined**, regardless of whether the person is a party to the action or a nonparty, and regardless of **the person's** insolvency, ability to pay, **immunity by statute** [. . .]

La. Civ. Code art. 2323(A) (emphasis added).

Louisiana courts have long held that immunity from liability does not prohibit a defendant from introducing evidence that the immune party or non-party is at fault for part or all of plaintiff's alleged injury. *Foley v. Entergy Louisiana, Inc.*, 2004-1967 (La. App. 4 Cir. 2/15/06), 925 So. 2d 638, 641, writ granted, 2006-0983 (La. 6/30/06), 933 So. 2d 130, *aff'd with respect to allocation of fault to otherwise immune party*, 2006-0983 (La. 11/29/06), 946 So. 2d 144. *See also Gatlin v. Entergy Corp.*, 2004-0034, 2004-1368 (La. App. 4 Cir. 5/4/05); 904 So.2d 31, 34, writ denied 2005-1509 (La. 12/16/05) 917 So.2d 1114, (La. Civ. Code art 2323(A) requires all evidence of fault from any person to be considered even though third-party was immune under worker's compensation statute); *Morella v. Bd. of Comm'rs of Port of New Orleans*, 2007-0864 (La. App. 4 Cir. 5/14/08); 988 So. 2d 266, 275, writ denied, 2008-2362 (La. 1/16/09); 998 So. 2d 100, and writ denied, 2008-2422 (La. 1/16/09); 998 So. 2d 101 (holding that "the independent comparative fault of the tort-immune employer-lessee" must be allocated).

Plaintiff's argument that immunity from liability to pay money requires immunity from fault allocation not only runs afoul of this well-settled Louisiana case law, it would also violate well-settled precedent holding that "when two statutes can be reconciled by a fair and reasonable interpretation, the court must read the statutes so as to give effect to each." *Rush v. Rush*, 2012-1502 (La. App. 1 Cir. 3/25/13); 115 So. 3d 508, 512, writ denied, 2013-0911 (La. 5/31/13); 118 So. 3d 398 (citation omitted). The Receiver should therefore be treated no differently than any

other person. He should have no reason to expect—nor does the RLCA provide—that he would be insulated from defenses, including but not limited to failure to mitigate damages, or comparative fault, which can be asserted against any other person whose acts may have contributed to the losses sought to be recovered from defendants.

Nor is there any merit to Plaintiff’s argument that Milliman must establish an independent “duty” on the part of the Regulator or the Receiver to allocate fault to them. Mot. at 13-14. Defendants need not assert that the Receiver owes them a duty in order to assert *defenses*. *Foley*, 925 So. 2d at 641; *see also F.D.I.C. v. Skow*, 741 F.3d 1342 (11th Cir. 2013) (holding that “no duty rule,” which “bars tort actions,” cannot “bar affirmative defenses asserted against the FDIC when [the FDIC] is the one advancing claims”); *Resolution Tr. Corp.*, 93 F. Supp. 2d at 308 (rejecting “no duty” argument asserted to strike defense of failure to mitigate because “the duty to mitigate damages is not, in fact, a duty owed to anyone else”); *Resolution Tr. Corp. v. Evans*, No. Civ. A. 92-0756, 1993 WL 354796, at *4 (E.D. La. Sept. 3, 1993) (unpublished opinion) (“While the RTC has no duty to the institution, neither are the defendants liable for damages which they did not cause. The defense of failure to mitigate damages is directed more to quantum than to liability.”).

The relevance of post-receivership defenses is particularly obvious in the instant case, in which the Plaintiff’s expansive damage theory and arguably improvident post-receivership settlements with the federal government and/or other parties, necessitate defenses, including failure to mitigate, going to the extent to which Plaintiff’s own conduct may have contributed to and/or caused the loss that he seeks to recover from the defendants. For the reasons above, Milliman should not be barred from asserting any defenses or allocating fault based on the actions or inactions of the Rehabilitator/Receiver in LAHC’s rehabilitation and/or receivership.

Accordingly, Plaintiff's Motion must be denied outright with respect to Milliman's Sixth, Eighth, and Eleventh Defenses. Plaintiff's Motion must be denied on Milliman's Fifth, Seventh, Ninth, Tenth, and Thirteenth Defenses to the extent such defenses address Receiver conduct.

2. Plaintiff's Interpretation Of The RLCA To Ban Defenses Based On Actions Or Inactions Of The Receiver Or Of The Regulator Violates Due Process

The interpretation of the RLCA urged by Plaintiff to bar any defense based on the Receiver's or the Regulator's actions or inactions violates the fundamental principle, enshrined in the Louisiana and U.S. Constitutions, that "[n]o person shall be deprived of life, liberty, or property, except by due process of law." La. Const. art. 1, § 2; U.S. Const. 14th Am. § 1 ("... nor shall any state deprive any person of life, liberty, or property, without due process of law..."). A litigant's "right to litigate the issues raised" is "guaranteed ... by the Due Process Clause." *Armour & Co.*, 402 U.S. at 682, 91 S. Ct. at 1757. And "[d]ue process requires that there be an opportunity to present every available defense." *Lindsey v. Normet*, 405 U.S. 56, 66, 92 S. Ct. 862, 870 (1972) (quoting *Am. Surety Co. v. Baldwin*, 287 U.S. 156, 168, 53 S. Ct. 98, 102 (1932)); *State v. Wilson*, 2017-0908 (La. 12/5/18) ("[f]undamental to due process of law is the right to present a defense, *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973), and to have it fairly considered by the jury.").

The Louisiana Supreme Court will interpret a Louisiana statute "so as to preserve its constitutionality when it is reasonable to do so." *City of New Orleans v. Louisiana Assessors' Ret. & Relief Fund*, 2005-2548 (La. 10/1/07), 986 So. 2d 1, 12, on reh'g (Jan. 7, 2008) (citation omitted). "In other words, if a statute is susceptible of two constructions, one of which would render it unconstitutional, or raise grave constitutional questions, the court will adopt the interpretation of the statute which, without doing violence to its language, will maintain its constitutionality." *Id.* (citing *Hondroulis v. Schuhmacher*, 553 So.2d 398, 416-17 (La. 1988)).

Because “the constitution is the supreme law of this state, to which all legislative acts must yield...[w]hen a statute conflicts with a constitutional provision, the statute must fall.” *Id.* at 12-13 (emphasis added; citation omitted).

As a matter of fundamental due process, this Court must construe the RLCA to preserve Milliman’s right to litigate the issues raised by the litigation. Where, as here, Plaintiff has directly accused defendants of making misrepresentations to those same insurance regulatory authorities, La. R.S. 22:2043.1(B) cannot bar defenses (affirmative or otherwise) without depriving defendants of due process. *See* SAP ¶ 139 (alleging that “Milliman’s advice and/or reports to LAHC and/or LDI and/or CMS concerning LAHC’s funding needs negligently misrepresented the actual funding needs and premium rates of LAHC.”). Such an unconstitutional reading of the statute cannot stand. *Hondroulis*, 553 So.2d at 416–17; *City of New Orleans*, 986 So. 2d at 12 (requiring interpretation of statutes “so as to preserve its constitutionality when it is reasonable to do so”); *Schettler v. RalRon Capital Corp.*, 275 P.3d 933, 940 (Nev. 2012) (“[i]f parties were barred from presenting defenses and affirmative defenses to claims which have been filed against them, they would not only be unconstitutionally deprived of their opportunity to be heard, but they would invariably lose on the merits of the claims brought against them.”). Instead, due process requires that Milliman be able to defend itself from such accusations. *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S. Ct. 1011, 1020 (1971); *Armour & Co.*, 402 U.S. at 682, 91 S. Ct. at 1757; *Lindsey*, 405 U.S. at 66, 92 S. Ct. at 870.

Unlike many receivership cases, the conduct of the “regulator” is at the heart of Plaintiff’s theories of liability with respect to Milliman. Although the Commissioner of Insurance *qua* Rehabilitator now challenges Milliman’s actuarial work and recommended premium rates, the LDI, headed by the Commissioner of Insurance *qua* Regulator, is the very

entity who reviewed and approved Milliman's work. Plaintiff also accuses Milliman of suggesting premium rates based on assumptions that the LDI may well have been aware of when accepting the rates prepared by Milliman for LAHC. Thus, the conduct and state of the knowledge of the LDI at the time is not only relevant to Milliman's affirmative defenses, but is central to Plaintiff's theories of liability and the pivotal question of whether or not Milliman even committed any wrongdoing in the first place. Plaintiff's allegations against Milliman have therefore placed the regulator's pre-receivership knowledge and conduct with respect to Milliman's actuarial work directly at issue, squarely implicating Milliman's due process rights to defend itself against these allegations. None of the cases cited in the Plaintiff's Motion deal with this situation.

Other courts considering this same issue have held that constitutional rights to due process bar interpretation of a statute that would eliminate a defendant's ability to present defenses to claims brought against them. *See National Union*, 28 F.3d at 394; *Placida Pro. Ctr., LLC v. F.D.I.C.*, 512 F. App'x 938, 949-950 (11th Cir. 2013) (barring defendant's ability to raise affirmative defenses against FDIC receiver "does not comport with due process").

In *National Union*, the U.S. Third Circuit appeals court evaluated whether FIRREA § 1821(d)(13)(D), (also discussed on pp. 9-10 *supra*), could bar defendants from raising defenses to counterclaims brought by the receiver for a failed financial depository institution. 28 F.3d at 393. Holding that it could not, the Third Circuit explained that interpreting the state to ban such defenses would "result in an unconstitutional deprivation of due process:"

Property which one stands to lose as a result of a lawsuit is a property interest protected by the Due Process Clause, and the Due Process Clause prevents denying potential litigants use of established adjudicatory procedures, where such an action would be the equivalent of denying them an opportunity to be heard upon their claimed rights. If parties were barred from presenting

defenses and affirmative defenses to claims which have been filed against them, they would not only be unconstitutionally deprived of their opportunity to be heard, but they would invariably lose on the merits of the claims brought against them. Such a serious deprivation of property without due process of law cannot be countenanced in our constitutional system.

Id. at 394 (emphasis added; citation omitted). The same analysis applies here.

Likewise, the U.S. Supreme Court has held that a defendant cannot be subjected to damages for “injuring a nonparty victim” when it was given “no opportunity to defend against the charge.” *Philip Morris USA v. Williams*, 549 U.S. 346, 353-54, 127 S. Ct. 1057, 1063 (2007). The Court reasoned that due process guarantees a defendant “an opportunity to present every available defense.” *Id.* at 353 (quoting *Lindsey*, 405 U.S. at 66, 92 S. Ct. at 870). Just as the defendants in *Philip Morris* could not be subjected to liability based on the accusation that it had committed fraud against third-parties, Milliman cannot be subjected to liability for making misrepresentations to third-party LDI, if it has no opportunity to defend against the charge, for example, by showing that Milliman’s statements were entirely accurate and/or vetted by LDI itself. Or that the LDI misunderstood the material Milliman presented to the LDI.

This right to a defense is also why none of the cases cited by Plaintiff are dispositive here. None of Plaintiff’s cases, including the Louisiana case cited by Plaintiff, *Wooley v. Lucksinger*, 2009-0571 (La. 4/1/11), construed the RLCA in light of Defendant’s constitutional right to due process. *See* Mot. at 10-12. Accordingly, allowing La. R.S. § 22:2043.1(B) to serve as a bar to defenses where Plaintiff has put Defendants alleged misrepresentations to LDI at issue would be an unconstitutional deprivation of due process and must be rejected.

B. The Court Should, At A Minimum, Deny This Motion Pending The Completion Of Full And Adequate Discovery In This Case

Whether construed as a motion to strike or one for summary judgment, Plaintiff's Motion is improper at this early stage of litigation, before Defendants have had a "fair opportunity to carry out discovery" and to present their factual defense in response to a renewed summary judgment motion by Plaintiff asserting that there are no material factual disputes. *Welch v. East Baton Rouge Parish Metro. Council*, 2010-1532 (La. App. 1 Cir. 3/25/11), 64 So. 3d 249, 254. There has been no adequate opportunity for discovery or other pre-trial factual development in this case. Under the Court's most recent Case Management Schedule, document production is not scheduled to be substantially completed until March 1, 2021 and Plaintiff has produced only 150 documents responsive to the defendants' outstanding discovery requests.

Milliman is entitled to "extremely broad" discovery related to the issues raised in this litigation. La. Civ.Code art 1422; *MTU of N. Am., Inc. v. Raven Marine, Inc.*, 475 So. 2d 1063, 1067 (La. 1985). For instance, discovery aimed at showing that Milliman was *not* negligent and did *not* mislead the regulator, as Plaintiff has alleged, go directly to the issue of Milliman's liability, not solely an affirmative defense of "regulator fault." Plaintiff's Motion should, therefore, have no bearing on the scope of discovery in this case. *See, e.g., F.D.I.C. v. Dosland*, No. C13-4046, 2014 WL 1347118, at *4 (N.D. Iowa Apr. 4, 2014) ("FDIC-R must prove that the defendants' conduct violated an applicable standard of care. It is within the realm of reasonable possibility that internal OTS documents may contain information that is relevant to the defendants' denials that any such violations occurred."); *F.D.I.C. v. Clementz*, No. 13-CV-00737, 2014 WL 4384064, at *3 (W.D. Wash. Sept. 4, 2014) (rejecting FDIC-R's argument that former D&O's of failed bank should not be entitled to discovery relevant to affirmative defenses, even though possibly barred by state and federal law). Resolving Plaintiff's Motion,

as a practical matter, is only relevant to the parties' jury verdict form, drafts of which are not due to be exchanged until **May 16, 2022**. *See* Case Management Schedule § 9 (Sept. 9, 2020).

Nonetheless, it is plain that Plaintiff intends to try to use this Motion to limit discovery. For example, although Milliman is entitled to adduce evidence to disprove the allegation that it “fail[ed] to set premium rates for LAHC that were accurate and reliable.” SAP ¶¶ 109, 133. Plaintiff has cited this Motion to object to producing “Documents and Communications in the possession, custody or control of LAHC or the [LDI] concerning the [LDI’s] review and approval of LAHC’s 2014 or 2015 rates.” *See* Plaintiff’s Response to Milliman’s First, Second, and Third Set of Interrogatories and Requests for Production of Documents, attached hereto as **Exhibit F**, p. 59 (Request for Production No. 56). The potential for prejudicial error here illustrates why Article 966(A)(3) wisely precludes summary judgment before there has been “an opportunity for adequate discovery.” If the Court grants any part of this Motion, the parties inevitably will become embroiled in discovery disputes just for defendants to obtain the basic discovery they need to defend themselves against the allegations against them.

IV. CONCLUSION

For the reasons set forth above, Plaintiff’s Motion for Partial Summary Judgment or, in the alternative, Motion to Strike, should be denied outright, or denied pending the completion of full discovery in this case. Besides attempting to rely upon erroneous legal principles and the abject absence of supporting law, Milliman disputes Plaintiff’s absurd contention that there are “no material facts in dispute.” While Milliman has identified some material issues of fact, the

compelling need for an opportunity for adequate discovery (which has been absent so far) will undoubtedly establish additional factual disputes.⁴

Respectfully submitted,

/s/ Harry Rosenberg_____

PHELPS DUNBAR LLP

HARRY ROSENBERG (Bar #11465)
Canal Place | 365 Canal Street, Suite 2000
New Orleans, LA 70130-6534
Telephone: 504-566-1311
Facsimile: 504-568-9130
Email: rosenbeh@phelps.com

H. ALSTON JOHNSON (Bar # 7293)
400 Convention Street, Suite 1100
Baton Rouge, LA 70302
Telephone: 225-346-0285
Facsimile: 225-381-9197
Email: johnsona@phelps.com

DENTONS US LLP

Reid L. Ashinoff (admitted *pro hac vice*)
Justin N. Kattan (admitted *pro hac vice*)
Justine N. Margolis (admitted *pro hac vice*)
Catharine Luo (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, NY 10020
Telephone: 212-768-6700
Facsimile: 212-768-6800
Email: reid.ashinoff@dentons.com
justin.kattan@dentons.com
justine.margolis@dentons.com
catharine.luo@dentons.com

Counsel for Defendant Milliman, Inc.

⁴ Milliman respectfully adopts and incorporates the legal arguments from the Memorandum of Buck Global, LLC in Opposition to Motion for Partial Summary Judgment Regarding “Regulator Fault” or “Receiver Fault” Defenses Or, In the Alternative, Motion to Strike Defenses Precluded as a Matter of Law.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by e-mail this 5th day of November, 2020.

/s/ Harry Rosenberg

Exhibit A

From: Margolis, Justine N.
Sent: Friday, October 16, 2020 4:12 PM
To: J. Cullens
Cc: Kattan, Justin N.; Luo, Catharine
Subject: Question regarding Motion for Partial Summary Judgment/to Strike

J,

Hope all is well. On behalf of Defendant Milliman, Inc., we wanted to clarify what we think is an unintentional ambiguity in your Memorandum in Support of Motion for Partial Summary Judgment Regarding “Regulator Fault” or “Receiver Fault.”

In footnotes 3-6 and in the Conclusion of your memo of law, you state that the Receiver is moving to strike certain defendants’ affirmative defenses only to the extent they are directed at “regulator or receiver actions.” However, you did not limit your motion in the same way as to Milliman’s affirmative defenses. Is that intentional? In other words, are you moving to strike Milliman’s Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Thirteen Defenses in their entirety or only “to the extent that this includes regulator or receiver actions”? Based on how the request for relief is worded for the other defendants and the substance of the brief, we assume you did not intend to treat Milliman differently than the other defendants. Can you please confirm?

Thanks,
Justine

 **Justine N. Margolis**
Partner

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D +1 212 768 5344 | US Internal 15344
justine.margolis@dentons.com
[Bio](#) | [Website](#)

Dentons US LLP
1221 Avenue of the Americas, New York, NY 10020-1089

[Rattagan Macchiavello Arocena > Jiménez de Aréchaga, Viana & Brause > Lee International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > Sayarh & Menjra > Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > For more information on the firms that have come together to form Dentons, go to \[dentons.com/legacyfirms\]\(https://dentons.com/legacyfirms\)](#)

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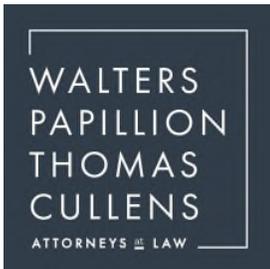
From: Andrée M. Cullens <acullens@lawbr.net>
Sent: Monday, October 19, 2020 11:15 AM
To: Margolis, Justine N.; Kattan, Justin N.; Luo, Catharine
Cc: J. Cullens; S. Layne Lee
Subject: Question regarding Motion for Partial Summary Judgment/to Strike

[External Sender]

Good morning Justine,

I am responding to your email to Mr. Cullens dated October 16, 2020. There is no intent to treat Milliman any differently than other defendants. As reflected in our request for relief and the substance of the brief, our Motion only intends to limit Milliman's Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Thirteen Defenses to the extent that this includes regulator or receiver actions.

Regards,



Andrée M. Cullens

12345 Perkins Road, Building 1, Baton Rouge, LA, 70810

acullens@lawbr.net

Tel: 225.236.3643 **Fax:** 225.236.3650

www.lawbr.net

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Exhibit B

In the United States Court of Federal Claims

No. 16-259C
(Filed: July 23, 2020)

HEALTH REPUBLIC INSURANCE *
COMPANY, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

On July 17, 2020, the parties in the above-captioned case filed (1) a joint motion to divide the class into subclasses and stipulation for the entry of a partial judgment and (2) a joint status report regarding further proceedings. As set forth below, the court grants the parties’ motion, adopts a schedule for further proceedings, and directs the entry of judgment pursuant to Rule 54(b) of the Rules of the United States Court of Federal Claims (“RCFC”).

The Joint Motion to Divide the Class Into Subclasses

On January 3, 2017, the court certified the following class:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

In light of the decision of the United States Supreme Court in Maine Community Health Options v. United States, 140 S. Ct. 1308 (2020), the parties agree that the class members are entitled “to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014 and 2015.” Mot. 3. They further “agree on the amount due to the Class with respect to all but four class members” and that one of the class members that does not have a dispute with the government “is not yet authorized to stipulate to judgment.” Id. They therefore request that the class be divided into three subclasses pursuant to RCFC 23(c)(5) to facilitate the resolution of the class members’ claims.

The first proposed subclass is “the ‘Non-Dispute Subclass,’ which consists of Class members who have no disputes with the government,” id., contains all but five of the members of the existing class, and is defined as follows:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), except those entities with ongoing disputes with the government concerning the amount due to the entity under Section 1342 of the Affordable Care Act, entities that dispute the government’s right to offset debts against a judgment pursuant to Section 1342, or entities that disputes [sic] the extent of any such offset.

Id. at 4. Plaintiff Health Republic Insurance Company “has agreed to serve as the class representative for the Non-Dispute Subclass.” Id.

The second proposed subclass is “the ‘Dispute Subclass,’ which consists of Class members who have a legal dispute with the government,” id. at 3, and is defined as follows:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and that dispute the amount due to the entity under Section 1342 of the Affordable Care Act, and/or dispute the government’s right to offset debts against a judgment pursuant to Section 1342, and/or dispute the extent of any such offset.

Id. at 4. The proposed Dispute Subclass would include Colorado Health Insurance Cooperative, Inc., Freelancers CO-OP of New Jersey, Inc., Meritus Health Partners, and Meritus Mutual Health Partners. Class member “Colorado Health Insurance Cooperative, Inc. has agreed to serve as the class representative for the Dispute Subclass.” Id.

The third proposed subclass is “the ‘Arches Subclass,’ which consists of Arches Mutual Insurance Company, who has no legal dispute with the government but is not yet authorized to stipulate to judgment,” id. at 3, by “the state court governing its liquidation,” id. at 3 n.2. The proposed subclass is defined as follows:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their

target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and who have reached an agreement with the government related to offsets, but must seek approval from a state court prior to stipulating to judgment.

Id. at 5. Class member “Arches Mutual Insurance Company has agreed to serve as the class representative for the Arches Subclass.” Id.

“When appropriate, a class may be divided into subclasses that are each treated as a class.” RCFC 23(c)(5). “Subclasses may be certified . . . to isolate common issues of law or fact shared by distinct groups of plaintiffs.” Haggart v. United States, 104 Fed. Cl. 484, 488 (2012). When entertaining a motion to certify subclasses, even when such a motion is made jointly by the parties, the court must determine whether each subclass satisfies the prerequisites of RCFC 23(a) and (b). Id. Specifically, a proposed subclass representative must demonstrate (i) numerosity—that the proposed subclass is so large that joinder is impracticable; (ii) commonality—that there are common questions of law or fact that predominate over questions affecting individual prospective subclass members and that the government has treated the prospective class members similarly; (iii) typicality—that its claims are typical of the proposed subclass; (iv) adequacy—that it will fairly represent the proposed subclass; and (v) superiority—that a class action is the fairest and most efficient method of resolving the suit. RCFC 23(a)-(b).

With respect to the proposed Non-Dispute Subclass, the court finds that its definition is imprecise because, as drafted by the parties, it includes a member of another proposed subclass: Arches Mutual Insurance Company. To remedy this issue, the court amends the definition as follows (amendments are underlined for the parties’ convenience):

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), except those entities that must seek approval from a state court prior to stipulating to judgment, entities with ongoing disputes with the government concerning the amount due to the entity under Section 1342 of the Affordable Care Act, entities that dispute the government’s right to offset debts against a judgment pursuant to Section 1342, and entities that dispute the extent of any such offset.

As amended, the court finds that the proposed Non-Dispute Subclass satisfies the requirements described in RCFC 23(a)-(b). In addition, although the proposed Dispute Subclass includes only four members and the proposed Arches Subclass includes only one member, the nature of these proceedings and the rationale for the creation of the subclasses supports a finding that these subclasses satisfy the requirements described in RCFC 23(a)-(b).¹ Accordingly, the court

¹ Indeed, the court is entitled to consider issues of judicial economy when certifying a class, see, e.g., Haggart, 104 Fed. Cl. at 489, and by jointly proposing the creation of the

GRANTS the parties' motion and certifies (1) the Non-Dispute Subclass, as defined by the court; (2) the Dispute Subclass, as defined by the parties; and (3) the Arches Subclass, as defined by the parties. In addition, the court appoints Quinn Emanuel Urquhart & Sullivan, LLP, who the court appointed as counsel for the original class, as counsel for each subclass.²

Further Proceedings in the Dispute and Arches Subclasses

With respect to the Dispute Subclass, the parties propose a schedule for briefing defendant's anticipated motion for leave to amend its answer. The court adopts the parties' proposal, as follows:³

- Defendant shall file its motion for leave to amend its answer **no later than Monday, August 3, 2020.**
- The subclass representative, Colorado Health Insurance Cooperative, Inc., shall file its response to defendant's motion **no later than Thursday, August 13, 2020.**
- Defendant shall file its reply in support of its motion **no later than Thursday, August 20, 2020.**

With respect to the Arches Subclass, the parties shall file, **no later than Friday, August 21, 2020**, a joint status report advising the court of the status of the request for state court approval and proposing a schedule for providing the court with periodic updates on that request.

Entry of Judgment and Further Proceedings in the Non-Dispute Subclass

With respect to the Non-Dispute Subclass, the parties jointly stipulate that "the Non-Dispute Subclass is entitled to payment from the United States under the risk corridors program for the 2014 and 2015 benefit years in the amount of \$1,921,068,282.41," that defendant "is entitled to payment from Non-Dispute [Subclass] member Louisiana Health Cooperative, Inc." in the total amount of \$17,406,235.22, and that the amount due to each subclass member is

subclasses, the parties are implicitly representing that the creation of these two small subclasses provides the most efficient method of resolving the claims of the proposed subclasses' members.

² Although the parties did not address the appointment of counsel for the subclasses in their motion, the court is required to appoint counsel for the subclasses pursuant to RCFC 23(c)(1) and RCFC 23(c)(5). See, e.g., Haggart, 104 Fed. Cl. at 491.

³ Notwithstanding the addition of two class representatives, the parties may, for simplicity, retain the existing case caption in their filings related to the claims of the Dispute Subclass and the Arches Subclass.

accurately set forth in the exhibit attached to their joint stipulation. The parties request that the court enter judgment in accordance with these stipulations. The court **GRANTS** that request.⁴

Pursuant to RCFC 54(b), there being no just reason for delay, the clerk shall enter judgment in favor of the Non-Dispute Subclass in the amount of \$1,921,068,282.41 and judgment in favor of the United States in the amount of \$17,406,235.22. The judgment in favor of the United States shall be paid through deduction from the amount owed under the judgment in favor of the Non-Dispute Subclass, such that the net amount payable by the United States to the Non-Dispute Subclass from the Judgment Fund is \$1,903,662,047.19. The amount due to each member of the Non-Dispute Subclass is set forth in Exhibit A. The judgment shall be payable to JND Legal Administration, the claims administrator retained by class counsel, for distribution to the members of the Non-Dispute Subclass.⁵

In addition, plaintiff requests that the court set a schedule for determining attorney's fees and nontaxable costs payable from the Non-Dispute Subclass's net judgment proceeds pursuant to RCFC 23(h). The court **GRANTS** plaintiff's request and adopts the following schedule:

- Subclass counsel shall file a motion for an award for attorney's fees and nontaxable costs **no later than Thursday, July 30, 2020**. Pursuant to RCFC 23(h)(1), "[n]otice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." **The notice shall be provided to subclass members promptly after the motion is filed, and shall include instructions for the submission of written objections or responses to the motion to subclass counsel.**
- Members of the Non-Dispute Subclass may object or respond to the motion. Such objections/responses **must be made in writing and submitted to subclass counsel in the manner described in the notice no later than Thursday, August 20, 2020.**
- **No later than Thursday, September 3, 2020**, subclass counsel shall file either (1) a reply that addresses all subclass member objections/responses,

⁴ In conjunction with this order, the court **FINDS** the parties' cross-motions for summary judgment (ECF No. 47 and ECF No. 52) to be **MOOT**.

⁵ Plaintiff "requests that the Court direct the government to present this judgment to the Department of Treasury for payment to the Court-appointed claims administrator JND Legal Administration." First, the court has not appointed JND Legal Administration as the claims administrator. Rather, it appointed Health Republic Insurance Company as class representative and Quinn Emanuel Urquhart & Sullivan, LLP as class counsel, see ECF No. 30; RCFC 23(c)(1), who retained JND Legal Administration to serve as claims administrator. Second, defendant is not responsible for presenting the judgment to the Department of Treasury. Rather, after the entry of judgment, the clerk of court will provide plaintiff's counsel with a certified transcript of judgment and instructions for obtaining payment of the judgment from the Department of Treasury.

with every objection or response received by counsel attached to the reply as an exhibit; or (2) a status report indicating that no objections or responses were received.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Chief Judge

Exhibit A

IN THE UNITED STATES COURT OF FEDERAL CLAIMSHEALTH REPUBLIC INSURANCE
COMPANY,Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 16-259C

Judge Sweeney

**EXHIBIT A TO JOINT MOTION TO DIVIDE CLASS INTO SUBCLASSES AND
STIPULATION FOR ENTRY OF PARTIAL JUDGMENT AS TO ONE SUBCLASS**

HIOS ID	Issuer Name	Total Payments Balance	Offsets	Net RC Balance
16049	All Savers Insurance Company	\$6,697,668.39		
36373	All Savers Insurance Company	\$11,449,513.89		
36677	All Savers Insurance Company	\$294,912.81		
39924	All Savers Insurance Company	\$7,972,985.11		
85947	All Savers Insurance Company	\$62,422,090.52		
92137	All Savers Insurance Company	\$184,407.92		
98971	All Savers Insurance Company	\$7,002,813.66		
67577	Alliance Health and Life Insurance Company	\$369,880.03		
32536	ATRIO Health Plans	\$589,657.01		
60536	Avera Health Plans, Inc.	\$26,120,468.22		
74980	Avera Health Plans, Inc.	\$913,160.23		
15287	Blue Cross & Blue Shield of Rhode Island	\$381,639.63		
16842	Blue Cross and Blue Shield of Florida	\$12,018,283.99		
18558	Blue Cross and Blue Shield of Kansas, Inc.	\$38,218,779.37		
42690	Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc.	\$3,275,797.62		
26065	Blue Cross and Blue Shield of South Carolina	\$11,205,576.67		
49532	BlueChoice HealthPlan of South Carolina, Inc.	\$7,837,407.61		

27811	BlueCross BlueShield Kansas Solutions, Inc.	\$12,968,346.42		
40586	Bluegrass Family Health, Inc.	\$4,440,440.13		
82569	Boston Medical Center Health Plan, Inc.	\$1,445,782.89		
70285	CA Physician's Service dba Blue Shield of CA	\$22,807,199.00		
45127	Capital Advantage Assurance Company	\$2,505,542.65		
82795	Capital Advantage Insurance Company CAIC	\$241,532.88		
10207	CareFirst BlueChoice, Inc.	\$2,560,974.15		
28137	CareFirst BlueChoice, Inc.	\$37,089,252.70		
45532	CareFirst of Maryland, Inc.	\$12,096,305.98		
54192	CareSource Indiana, Inc.	\$1,293,422.26		
45636	CareSource Kentucky Co.	\$3,577,396.03		
92551	CDPHP Universal Benefits Inc.	\$47,697,764.95		
47579	Chinese Community Health Plan	\$593,429.63		
72034	CHRISTUS Health Plan	\$134,369.02		
63312	Colorado Choice Health Plans	\$6,659,644.23		
87416	Common Ground Healthcare Cooperative	\$67,325,233.36		
18581	Community Health Plan of Washington	\$1,187,131.21		
98905	CommunityCare HMO Inc.	\$2,422,216.86		
87698	CommunityCare Life & Health Insurance Co	\$761,894.83		
41895	Consumers Mutual Insurance of Michigan	\$25,843,655.17		
38345	Dean Health Plan	\$31,644,174.98		
66699	Denver Health Medical Plan, Inc	\$380,764.18		
78124	Excellus Health Plan, Inc.	\$31,028,716.81		
88806	Fallon Community Health Plan, Inc.	\$1,218,752.09		
56503	Florida Health Care Plan, Inc.	\$719,021.99		
22444	Geisinger Health Plan	\$36,995,506.57		
75729	Geisinger Quality Options	\$8,372,420.70		
94084	GHMSI	\$4,445,042.32		
85408	GlobalHealth, Inc.	\$6,202,344.71		
47949	Golden Rule Insurance Company	\$0.00		
80473	Group Health Cooperative	\$521,384.24		
34102	Group Health Plan, Inc.	\$11,396,084.43		
40308	Group Hospitalization and Medical Services Inc.	\$155,508.63		

27651	Gundersen Health Plan, Inc.	\$394,393.50		
91058	Gundersen Health Plan, Inc.	\$6,096,264.82		
27357	Health First Health Plan, Inc.	\$85,751.91		
77150	Health First Insurance, Inc.	\$1,708,120.48		
30252	Health Options, Inc.	\$9,475,810.73		
95865	Health Plan of Nevada, Inc.	\$643,589.93		
96383	Health Republic Insurance Company	\$19,565,019.76		
47342	Health Tradition Health Plan	\$1,385,886.58		
92036	HealthSpan	\$12,878,282.88		
20126	HealthSpan Integrated Care	\$21,869,077.92		
19636	HMO Louisiana, Inc.	\$18,013,347.69		
21032	Kaiser Foundation Health Plan of Colo.	\$64,718,412.45		
89942	Kaiser Foundation Health Plan of Georgia	\$10,913,600.35		
90296	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	\$17,630,217.35		
94506	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	\$3,903,893.99		
95185	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	\$34,598,194.30		
40513	Kaiser Foundation Health Plan, Inc.	\$117,740,652.66		
60612	Kaiser Foundation Health Plan, Inc.	\$34,324,694.58		
71287	Kaiser Foundation Healthplan of the NW	\$9,821,230.13		
53789	Keystone Health Plan Central	\$528,671.99		
67202	Louisiana Health Cooperative, Inc.	\$63,331,147.11	\$17,406,235.22	\$45,924,911.89
97176	Louisiana Health Service & Indemnity Company	\$73,296,024.88		
58326	MercyCare HMO, Inc.	\$2,414,171.05		
35334	MercyCare Insurance Company	\$1,170,713.86		
11177	MetroPlus Health Plan	\$16,424,594.93		
11555	New Health Ventures Inc	\$177,328.66		
82483	North Shore-LIJ Insurance Company Inc	\$18,002,649.15		
20507	Optima Health Plan	\$2,229,495.98		
74289	Oscar Insurance Corporation	\$58,424,157.02		
50221	Oscar Insurance Corporation of New Jersey	\$2,132,615.32		
48834	Oxford Health Plans (NJ), Inc.	\$1,357,526.59		
10091	PacificSource Health Plans	\$16,892,224.87		

23603	PacificSource Health Plans	\$17,473,387.21		
60597	PacificSource Health Plans	\$3,930,773.68		
65441	PHPS, Inc. (fka Phoenix Health Plans, Inc.)	\$34,931.14		
50816	Physicians Health Plan of Northern Indiana, Inc.	\$6,370,812.47		
58564	Physicians Plus Insurance Corporation	\$171,543.34		
88102	PreferredOne Insurance Company	\$45,727,888.21		
26734	Premier Health Plan, Inc.	\$2,572,926.75		
57173	Presbyterian Health Plan, Inc.	\$2,063,703.11		
29698	Priority Health	\$14,688,532.68		
29241	Priority Health Insurance Company (PHIC)	\$5,678,007.91		
16698	Prominence HealthFirst	\$501,439.74		
56707	Providence Health Plan	\$7,302,569.66		
70525	QCA Health Plan, Inc.	\$3,957,601.38		
37903	QualChoice Life & Health Insurance Company, Inc.	\$4,524,487.98		
80208	Rocky Mountain Health Care Options	\$366,780.94		
97879	Rocky Mountain HMO	\$34,831,063.53		
38166	Security Health Plan of Wisconsin, Inc.	\$36,886,330.97		
26002	SelectHealth	\$60,598,770.69		
68781	SelectHealth	\$180,603,493.13		
26539	SHA, LLC DBA FirstCare Health Plans	\$7,356,449.15		
92499	Sharp Health Plan	\$37,507.58		
62210	South Dakota State Medical Holding Company, Inc.	\$13,269,548.73		
52664	Summa Insurance Company, Inc.	\$2,091,574.38		
14650	Time Insurance Company	\$494,806.51		
19068	Time Insurance Company	\$1,450,728.94		
19524	Time Insurance Company	\$4,045,974.64		
20544	Time Insurance Company	\$7,352,482.72		
24867	Time Insurance Company	\$253,920.36		
28020	Time Insurance Company	\$7,661,197.18		
29176	Time Insurance Company	\$568,168.32		
29211	Time Insurance Company	\$7,321,151.53		
39996	Time Insurance Company	\$1,451,025.54		
42260	Time Insurance Company	\$925,446.08		
60299	Time Insurance Company	\$234,775.92		

62662	Time Insurance Company	\$61,174,353.15		
67807	Time Insurance Company	\$1,111,551.75		
80863	Time Insurance Company	\$7,624,448.10		
89029	Time Insurance Company	\$431,897.82		
91842	Time Insurance Company	\$4,618,815.85		
29125	Tufts Associated Health Maintenance Org	\$285,907.70		
85736	UCare Minnesota	\$10,464,932.43		
71667	UnitedHealthcare Community Plan, Inc.	\$144,054.47		
31779	UnitedHealthcare Insurance Company	\$166,087.58		
49650	UnitedHealthcare Insurance Company	\$497,317.92		
45002	UnitedHealthcare Life Insurance Company	\$27.28		
59809	UnitedHealthcare Life Insurance Company	\$6,577.07		
68259	UnitedHealthcare of Alabama, Inc.	\$8,688,275.81		
68398	UnitedHealthcare of Florida, Inc.	\$42,820,458.16		
43802	UnitedHealthcare of Georgia, Inc.	\$12,145,393.47		
23671	UnitedHealthcare of Kentucky, Ltd.	\$13,606.24		
38499	UnitedHealthcare of Louisiana, Inc.	\$4,251,825.74		
97560	UnitedHealthcare of Mississippi, Inc.	\$809,174.17		
79881	UnitedHealthcare of New England, Inc.	\$635.07		
54235	UnitedHealthcare of New York, Inc.	\$909,112.89		
54332	UnitedHealthcare of North Carolina, Inc	\$18,401,376.06		
33931	UnitedHealthcare of Ohio, Inc.	\$902,297.30		
24872	UnitedHealthcare of Pennsylvania, Inc.	\$5,937,531.25		
21066	UnitedHealthcare of the Mid-Atlantic Inc	\$14,598.52		
31112	UnitedHealthcare of the Mid-Atlantic Inc	\$128,553.76		
16724	UnitedHealthcare of the Midwest, Inc.	\$115,915.27		
66413	UnitedHealthcare of Utah, Inc.	\$6,697.41		
37833	Unity Health Plans Insurance Corporation	\$11,131,237.20		
88925	University of Arizona Health Plans-University Healthcare, Inc.	\$1,750,150.59		

75293	USable Mutual Insurance Company	\$15,919,592.28		
67243	Vantage Health Plan, Inc.	\$1,785,495.97		
93689	Western Health Advantage	\$176,519.93		
TOTAL		\$1,921,068,282.41	\$17,406,235.22	\$1,903,662,047.19

Exhibit C

CONFIDENTIAL

Burglass Tankersley

Attorneys at Law
5213 Airline Drive
Metairie, Louisiana 70001-5602
www.burglass.com

Sue Buser
sbuser@burglass.com

Direct Dial
(504) 836-0460
Direct Fax
(504) 287-0460

September 12, 2019

Sharon Williams
Trial Attorney
Civil Division
Commercial Litigation Branch
United States Department of Justice
1100 L Street, N.W.
Room 7004
Washington, D.C. 20005

Sent by Overnight Courier

Re: *James J. Donelon, Commissioner of Insurance for the State of Louisiana v. Louisiana Health Cooperative, Inc.*, 19th JDC #641 928, Section 26
Our File No.: 87004

EXECUTED FEDERAL WAIVER TO MAKE PARTIAL DISTRIBUTION

Dear Ms. Williams:

Attached please find a fully executed Release Agreement between the United States Department of Justice and Louisiana Health Cooperative, Inc. in Rehabilitation ("LAHC").

I deeply appreciate your persistence and assistance through this long process. Your help has been invaluable.

Thank you.

Sincerely,

Sue Buser

cc: Louisiana Health Co-Operative, Inc. in Rehabilitation
Walter Corey, Louisiana Department of Insurance



U.S. Department of Justice
Civil Division

Regular Mail:
P.O. Box 875
Ben Franklin Station Room 10016
Washington, D.C. 20044-0875

Express Delivery:
1100 L Street, N.W.
Room 7004
Washington, D.C. 20005

LHR:SCW
Sharon C. Williams
Trial Attorney
D.J. No. 77-51-4411

Tel.: (202) 353-0530 Facsimile: (202) 307-0494
E-mail: sharon.williams@usdoj.gov

September 3, 2019

Sue A. Buser
Burglass & Tankersley, L.L.C.
5213 Airline Dr.
Metairie, Louisiana 70001

Re: Louisiana Health Cooperative, Inc. in Rehabilitation

Dear Ms. Buser:

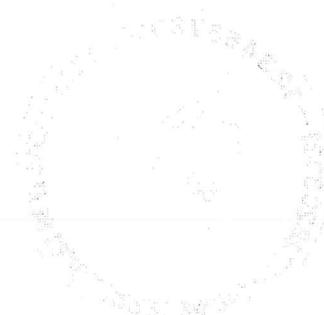
Enclosed are two copies of the Release Agreement for Louisiana Health Cooperative, Inc. in Rehabilitation. Please have both copies signed, and mail one of the originals to me at P.O. Box 875, Ben Franklin Station, Washington, D.C. 20044-0875, or send them by Federal Express or another form of hand delivery to me at Federal Express/Overnight, 1100 L Street, NW, Room 7004, Washington, D.C. 20005. I suggest you use Federal Express or another form of hand delivery. If you use regular mail, I may not receive your materials for an additional two to three weeks.

If you have any questions, please contact me using the information above.

Sincerely,

Sharon C. Williams
Trial Attorney
Civil Division
Commercial Litigation Branch

Enclosure



RELEASE AGREEMENT

This Release Agreement is being entered into by the United States and Billy Bostick, the Receiver of the Louisiana Health Cooperative, Inc. in Rehabilitation (“Receiver”).

I. PARTIES

The parties to this Release Agreement are the United States and the Receiver (collectively, the “Parties”). The Receiver also makes this agreement on behalf of James J. Donelon, Commissioner of Insurance for the State of Louisiana as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation (“Louisiana Health”).

II. RECITALS

1. On April 15, 2016, the United States Department of Health and Human Services (“HHS”) filed a proof of claim that asserted a \$66,168,307.24 claim (with additional undetermined amounts under the cost-sharing reduction and ACA Risk Adjustment programs. 42 U.S.C. §§ 18061, 18063, and 18082) against the Louisiana Health Cooperative, Inc. in Rehabilitation (“Louisiana Health”) pursuant to the Patient Protection and Affordable Care Act (“Act”), 42 U.S.C. §§ 18061, 18063, and 18082 (“ACA Claim”).
2. The Parties agree that the ACA Claim is (a) due and owing, subject to supplementing additional items owing and verification by the Receiver and (b) is a Class 5 claim under La. R.S. 22:254(G), but will be paid in full before any other Class 5 claim is paid.
3. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and

penalties arising under 42 U.S.C. § 1395y(b), or any liability under 31 U.S.C. § 3713(b) arising from such claims other than for payments due under La. R.S. 22:254(G), classes 1 through 4.

4. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Receiver or the Louisiana Health estate.

5. The Parties understand that this Release Agreement is subject to the approval of the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana (“Receivership Court”), which is supervising the rehabilitation of Louisiana Health.

6. The United States enters into this Release Agreement in reliance upon the information contained in the Receiver’s affidavits dated October 10, 2016 and October 27, 2016 attached as Exhibit A to this Release Agreement.

III. AGREEMENT

1. The Parties agree that the ACA Claim is due and owing, subject to supplementing additional items owing and verification by the Receiver, but agree that it is a Class 5 claim pursuant to La. R.S. 22:254(G). Louisiana Health will pay the ACA Claim to the extent funds are available to pay Class 5 claims, after payment of all Class 1, 2, 3, and 4 claims. No other Class 5 claim will be paid before the ACA Claim is paid in full. To the extent funds are available to pay Class 5 claims, this Release Agreement will be effective only upon the United States’ receipt of payment of the ACA Claim.

2. The Parties agree that until the Louisiana Health insurance insolvency proceeding, *James J. Donelon, Commissioner of Insurance for the State of Louisiana v. Louisiana Health Cooperative, Inc.*, 19th JDC # 641-298, is closed the United States has the right to offset any amounts owed and not yet paid by the United States to Louisiana Health against the ACA Claim pursuant to 45 C.F.R. § 156.1215, as in effect as of December 31, 2015.

3. Subject to satisfaction of the conditions in paragraphs III. 1-2, and the exclusions in the immediately following paragraph, the United States hereby releases and discharges the Receiver and the Louisiana Health estate from any and all liability under 31 U.S.C. § 3713(b) in connection with the Louisiana Health rehabilitation.

4. Except for the release provided in III. 3 and notwithstanding any other provision to this Release Agreement, the United States does not release the Receiver and the Louisiana Health estate for:

(a) any claim arising under any criminal law or any liability under 31 U.S.C.

§ 3713(b) arising from such claim;

(b) any criminal, civil, or administrative claim, right or defense arising under Title 26, U.S. Code (Internal Revenue Code), or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(c) any claim or action arising under 31 U.S.C. § 3729 et seq. (False Claims Act), 31 U.S.C. § 3801 et seq. (Program Frauds Civil Remedies Act), 42 U.S.C. § 1320a-7a (Civil Monetary Penalties statute), 29 U.S.C. Ch. 18 (Employee Retirement Income Security Program), or 42 U.S.C. § 1395y(b) (Medicare as Secondary Payer), or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(d) any claim arising under any other statute or common law principle governing pension benefit, fraudulent conveyance or any other form of fraud, or any liability under 31 U.S.C. § 3713(b) arising from such claim;

(e) any obligation created by or reflected in this Release Agreement.

5. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of Louisiana Health's records in accordance with the orders of the Receivership Court, during normal business hours, on a date and at a location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the Louisiana Health estate and of the Receiver, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the Louisiana Health estate, or to determine Louisiana Health's compliance with the terms of this Release Agreement. No documents, books, or records of the Louisiana Health estate or the Receiver may be destroyed unless notice is given to the United States of any motion filed with the Receivership Court requesting approval of additional destruction. If the Receiver does not request approval from the Receivership Court, he or she must obtain prior written authorization from the United States before destruction of any documents, books, or records of the Louisiana Health estate or the Receiver. For purposes of this paragraph, Louisiana Health paper documents that have been converted to electronic documents and then destroyed are not considered destroyed documents and are not violations of this section.

6. Except for the express undertakings of the Receiver and the United States in this Release Agreement, nothing in this Release Agreement shall be construed:

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Receiver; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Receiver.

7. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Receivership Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Receivership Court, including, but not limited to, making the necessary witnesses available for testimony considered necessary or appropriate to provide the Receivership Court with an adequate record upon which to approve this Release Agreement.

Dated: 9/3/19

By: SC Williams
Sharon C. Williams
Trial Attorney
Civil Division
Department of Justice
Attorney for the United States

Dated: 9/12/19

By: 
Billy Bostick
Receiver of Louisiana Health Cooperative,
Inc. In Rehabilitation

EXHIBIT A

AFFIDAVIT OF THE RECEIVER FOR LOUISIANA HEALTH COOPERATIVE, INC. IN REHABILITATION

STATE OF LOUISIANA

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:

BILLY BOSTICK, RECEIVER

a competent major and authorized representative of James J. Donelon, Insurance Commissioner of the State of Louisiana, as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation, who, after being duly sworn, did depose and state:

1. He is the court-appointed Receiver for Louisiana Health Cooperative, Inc. in Rehabilitation ("LAHC"). **Exhibits 1 and 2.**
2. He is familiar with and has personal first-hand knowledge of operations of LAHC.
3. He is familiar with and has personal first-hand knowledge of the policies and procedures of LAHC.
4. He is familiar with and has personal first-hand knowledge of the records and files of LAHC.
5. He has been personally involved in the rehabilitation of LAHC since the rehabilitation suit was filed in this matter on September 1, 2015. **Exhibit 1.**
6. The facts and information set forth below are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge.
7. LAHC was placed in rehabilitation by order of the Court in the above referenced matter on September 1, 2015, which order was made permanent on September 21, 2015, and Billy Bostick was appointed Receiver. **Exhibits 1 and 2.**
8. By order dated September 21, 2015, the Commissioner of Insurance for the State of Louisiana (the "Commissioner") was appointed Rehabilitator of LAHC, with all of the power and authority outlined in La. R.S. 22:241, et seq. and La. R.S. 22: 2001 et seq., and authorized to exercise and perform those duties set forth therein. **Exhibits 1 and 2.**
9. Upon said appointment, the Receiver proceeded to work on rehabilitation of the property, business and affairs of LAHC, which included operating LAHC as a Qualified Health Plan through December 31, 2015. **Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 21, 22, 23, 31 and 32.**
10. LAHC provided notice of the rehabilitation order to all known claimants appearing on the LAHC books and records and thereafter filed a Certificate of Providing Notice of the Court's Order of December 14, 2015 Granting the Emergency Ex Parte Motion to Approve LAHC Plan to Continue

Coverage for LAHC Policyholders, Members, Subscribers and Enrollees Through December 31, 2015 and to Approve Partial Payment of Claims and supporting documents (Filed under Seal due to Protected Identifying Information) filed on January 5, 2016. **Exhibits 3, 4, and 5.**

11. LAHC provided notice of the March 31, 2016 claims filing deadline established by the Rehabilitation Court and thereafter filed a Certificate of Notice of Providing Notice of The Court's Order of January 28, 2016 Establishing a March 31, 2016 Deadline for Filing Claims and supporting documents (Filed under Seal due to Protected Identifying Information) on March 17, 2016. **Exhibits 3, 4, and 5.**
12. LAHC was licensed as a health maintenance organization (HMO) in the State of Louisiana and authorized to do business only in the State of Louisiana by the Louisiana Department of Insurance on May 13, 2013. **Exhibit 28.**
13. LAHC has no subsidiaries, predecessors, and/or related entities. **Exhibit 13.**
14. There is no guaranty fund coverage for LAHC. La. R.S. 22:241, et seq.
15. The Commissioner determined that LAHC has liabilities exceeding its assets and was operating in a hazardous financial condition prior to rehabilitation. **Exhibits 1 and 2. See also, Exhibits 24 and 25.**
16. Pursuant to the Order of January 28, 2016, **Exhibit 18**, and to the accompanying documents with this affidavit, the Receiver sent a proof of claim form to all persons, companies and entities which LAHC's books and records revealed have or may have claims against LAHC, its property or assets, or against an LAHC policyholder, member, subscriber, or enrollee, together with information about the claims process and the claims bar date of March 31, 2016 and the requirement that an LAHC claim form be filed with the Receiver for purposes of participating in any distribution of LAHC's assets that may be made on claims allowed in the Rehabilitation proceedings. **Exhibit 5.**
17. To the best of the Receiver's knowledge, the only claim presented to the Receiver by any of federal agencies or their employees, was the LAHC claim form submitted by the Center for Medicare and Medicaid Service ("CMS") on April 15, 2016. **Exhibit 9.**
18. On September 21, 2016, the Louisiana Rehabilitation Court approved the process for LAHC claim determination and possible distribution to LAHC Class 3 and Class 4 claimants and recognized the current claims of the federal government as per the CMS Claim Form, **Exhibits 20, 21 and 22 .**
19. The actions of CMS in offsetting and recoupment of funds due to LAHC from operations violates the express orders of the Louisiana Rehabilitation Court and Louisiana Insurance laws, which prohibit all self-help collection activities. **Exhibits 1 and 2.**
20. To the best of the Receiver's knowledge, neither the United States government nor any of its agencies has a claim against LAHC other than those already satisfied by CMS offset and recoupment actions as to advance payment of premium tax credits ("APTC"), cost sharing reductions ("CSR"), user fees, transitional reinsurance ("RI") payments due to LAHC, risk adjustment ("RA") payments due from LAHC, and to collect amounts CMS claims are currently due under the LAHC Start Up Loan, given the amount due to LAHC for Risk Corridor payments of approximately \$62 million. **Exhibit 9.**

21. The terms of the CMS-LAHC Solvency Loan and Solvency Loan Promissory Note require that the Solvency Loan be paid only out of LAHC surplus earnings and only with the prior approval of the Louisiana Commissioner of Insurance and re-payment is specifically subordinated to the claims of LAHC policyholders and providers for benefit claims, LAHC operating expenses, "all other classes of creditors other than surplus note holders (CMS), and the LAHC reserve and solvency requirements under Louisiana law. **Exhibit 9.**
22. A flash drive containing (a) LAHC data as to the available information on all pending and unpaid known, actual or potential LAHC claims filed through September 30, 2016; (b) LAHC data as to LAHC policyholders, members, subscribers and enrollees from the operation of LAHC during receivership from September 1, 2015 through December 31, 2015; and (c) LAHC data as to the list of persons or entities that were mailed notices and LAHC claim forms during the LAHC Rehabilitation is being forwarded with the LAHC request for federal waiver. **Exhibit 32.**
23. The Receiver has identified no actual or additional potential federal claims other than the claims of CMS which have been satisfied and CMS claim for payment of the Solvency Loan which is subject to the written approval of the Louisiana Commissioner of Insurance and subordinated to all other LAHC claims. **Exhibits 9 and 32.**
24. The data and information on the attached flash drive contains detailed information on all timely and late-filed LAHC claims filed in the LAHC rehabilitation proceedings through September, 2016, as well as detailed information on all potential lost claimants that were sent a proof of claim form but did not file a proof of claim in the LAHC Rehabilitation proceedings. The Receiver has provided similar documents for all known LAHC claimants who may have a claim for premium refunds. **Exhibit 32.**
25. The Receiver ran a search using certain "catch-all" terms related to federal agencies, i.e., agency, bureau, CMS, HHS, United States, federal, Medicare, Medicaid, etc., to identify any potential federal claims, which information is also provided on the flash drive. **Exhibit 32.**
26. To the best of the Receiver's information, no federal claims, other than the CSM LAHC Claim Form, were identified.
27. LAHC filed Federal Income Tax Returns for the calendar years 2011, 2012, 2013, 2014 and 2015 showing no tax due.
28. He has personally reviewed the LAHC Request for Federal Waiver, the Receiver's Report and Affidavit, and each exhibit attached and the information and documents contained therein are true and correct to the best of his knowledge.
29. The documents attached as exhibits to this affidavit and the accompanying report are true and correct copies of the business records of LAHC kept in the ordinary course of the rehabilitation of LAHC.
30. Since the United States Department of Justice has asserted in other insurer liquidations that the claim filing deadline does not apply to claims by the Federal Government in light of the federal

priority act, 31 U.S.C. S 3713, and since CMS has asserted offset and recoupment rights, LAHC will need to obtain a waiver before making the planned and approved partial distribution to LAHC claimants and any future such disbursements.

The above is true and correct to the best of his knowledge.

LOUISIANA HEALTH COOPERATIVE, INC. IN REHABILITATION

BY:



BILLY BOSTICK, RECEIVER

Sworn to and subscribed before me, notary public,
this 10th day of October, 2016.



Notary Public

Sue Buser
NOTARY PUBLIC
State of Louisiana
LSBA No. 18151
My Commission is Issued for Life

**SUPPLEMENT TO THE OCTOBER 10, 2016 REQUEST FOR FEDERAL WAIVER
AND SUPPLEMENTAL AFFIDAVIT OF THE RECEIVER OF
LOUISIANA HEALTH COOPERATIVE, INC. IN REHABILITATION**

STATE OF LOUISIANA

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:

BILLY BOSTICK, RECEIVER

a competent major and authorized representative of James J. Donelon, Insurance Commissioner of the State of Louisiana, as Rehabilitator of Louisiana Health Cooperative, Inc. in Rehabilitation, who, after being duly sworn, did depose and state:

- 4) He is the court-appointed Receiver for Louisiana Health Cooperative, Inc. in Rehabilitation ("LAHC").
- 5) He is familiar with and has personal first-hand knowledge of operations of LAHC.
- 6) He is familiar with and has personal first-hand knowledge of the policies and procedures of LAHC.
- 7) He is familiar with and has personal first-hand knowledge of the records and files of LAHC.
- 8) He has been personally involved in the rehabilitation of LAHC since the rehabilitation suit was filed in this matter on September 1, 2015.
- 9) The facts and information set forth below are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge.

LAHC TAX IDENTIFICATION NUMBER

- 10) Louisiana Health Cooperative, Inc. in Rehabilitation's tax identification number is 45-318-8075.

LAHC ADDRESS

- 11) The current address for Louisiana Health Cooperative, Inc. in Rehabilitation is 3445 North Causeway Boulevard, Suite 800, Metairie, LA 70002.

NO RELATED ENTITIES

- 12) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation has no known subsidiaries, or predecessors in interest or related entities and/or other names.

OTHER LAHC NAMES

- 13) Louisiana Health Cooperative, Inc. in Rehabilitation was formerly known as Louisiana Health Cooperative, Inc.

LAHC LINES OF BUSINESS

- 14) Louisiana Health Cooperative, Inc. in Rehabilitation lines of business and federal marketplace plans:

To the best of the Receiver's knowledge, LAHC operated as a Louisiana health maintenance organization ("HMO") providing only health care coverage as a Louisiana HMO, primarily for individuals and small groups.

LAHC OPERATED SOLELY IN LOUISIANA

- 15) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation operated only in Louisiana.

KNOWN FEDERAL CLAIMS

- 16) As more fully explained in the original submission, the Centers for Medicare and Medicaid Services ("CMS") has asserted claims against Louisiana Health Cooperative, Inc. in Rehabilitation of over \$66 million, as shown in the CMS Proof of Claim attached to the original submission. At present, LAHC is receiving CMS communications regarding user fees owed to the IRS that have not been paid by LAHC. LAHC is not aware at present of any other federal agency claims.

LAHC CLAIMS

- 17) A flash drive of electronic documents containing the data as to all LAHC claims filed is attached. LAHC has not completed reconciliation and audit of the LAHC claims, both of which are continuing. LAHC reserves the right to supplement and amend any and all information related to LAHC claims, LAHC claimants, and any and all related data and matters.
- 18) To the best of the Receiver's knowledge, the list of LAHC claims is accurate and complete.
- 19) The flash drive attached with the LAHC claims data reflects the following:

- a) Class 3 claims for covered benefits of LAHC providers, doctors, hospitals, policyholders, members, and subscribers are shown as Unpaid Medical Claims in the CMS EHP (Electronic Health Record) reporting system (unaudited); Unpaid Paper Medical Claims not in EHP system (unaudited).
- b) Class 4 claims for premium refunds are shown as Unpaid Refunds (unaudited)
- c) Class 5 claims for all other claims are shown as Unpaid Vendor Claims

The flash drive contains the following folders of LAHC claims:

- 1) Unpaid Medical Claims in the LAHC EHP System (filed electronically by LAHC providers) – generally Class 3 claims;
- 2) Unpaid Refunds (claims from LAHC subscribers) - generally Class 4 claims;
- 3) Unpaid Paper Medical Claims (filed on paper forms by LAHC providers) – generally Class 3 claims;
- 4) Unpaid Proof of Claims (LAHC Claim forms filed in all classes, which may include priority claims in Class 2, Class 3 and Class 4 and non-priority claims in Class 5);
- 5) Unpaid Vender invoices – generally Class 5 claims, including the CMS claim filed

The LAHC claims information is contained on an encrypted drive and contains confidential information which contain Protected Health Information (“PHI”) and/or Personally Identifiable Information (“PII”) and is intended for Federal Waiver Request filing purposes only. Use of this information for any other purpose is strictly prohibited. The recipient of this drive is not authorized to remove the encryption for any reason.

Further, LAHC has not completed reconciliation and audit of the LAHC claims, both of which are continuing. LAHC reserves the right to supplement and amend any and all information related to LAHC claims, LAHC claimants, and any and all related data and matters.

LAHC SEARCH OF FEDERAL TERMS

- 20) LAHC conducted a search of federal terms. A list of federal terms searched and located in LAHC records is attached. Additional information as to the results of this search can be provided if a narrower list of search terms is provided.

NO LAHC POLICIES OR BONDS FOR THE BENEFIT OF THE UNITED STATES

- 21) The books and records of Louisiana Health Cooperative, Inc. in Rehabilitation reflect that the company did not issue policies or bonds for the benefit of the United States.

NO LAHC LIABILITY POLICIES

- 22) The books and records of Louisiana Health Cooperative, Inc. in Rehabilitation reflect that the company did not issue policies that included coverage for tort liability.

LAHC POLICIES (SUBSCRIBER AGREEMENTS) ISSUED FOR MEDICAL EXPENSES

- 23) The books and records of Louisiana Health Cooperative, Inc. in Rehabilitation reflect that the company did issue policies that included coverage for medical expenses.

LAHC PROCEDURES TO REPORT AS TO MEDICARE

- 24) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation had procedures in place for identifying LAHC members who were 65 years of age or older, which is more fully explained in the attached report on LAHC procedures. It should be noted that CMS, not LAHC, was the sole party that enrolled subscribers for LAHC and as such was the gateway for determining Medicare eligibility.
- 25) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation none of the payments made by LAHC for member benefits related to items or services paid for by the Medicare program, as is more fully explained in the attached report on LAHC procedures.
- 26) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation regularly reported claims and enrollment information to the Centers for Medicare and Medicaid Services on a monthly, quarterly and annual basis, as is more fully explained in the attached report on LAHC procedures.
- 27) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation did not participate in enrollment of LAHC members, which was a process under the direction and control of the Centers for Medicare and Medicaid Services on a monthly, quarterly and annual basis, as is more fully explained in the attached report on LAHC procedures.
- 28) To the best of the Receiver's knowledge, in the event CMS enrolled a LAHC member who was also Medicare eligible and/or enrolled, Louisiana Health Cooperative, Inc. in Rehabilitation paid claims of any such LAHC member as primary (not secondary) and as such LAHC payments did not relate to items or services paid for by Medicare, as is more fully explained in the attached report on LAHC procedures.
- 29) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation complied with the applicable reporting requirements and all program instructions of 42 USC 1395y (b)(7) and (8), as is more fully explained in the attached report on LAHC procedures.
- 30) To the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation did not and does not owe Medicare and/or CMS for any items or services on behalf of Medicare beneficiaries whose medical care should have been paid for by LAHC, as is more fully explained in the attached report on LAHC procedures.

- 31) To the extent CMS enrolled LAHC members whose medical care should have been paid for by Medicare, to the best of the Receiver's knowledge, Louisiana Health Cooperative, Inc. in Rehabilitation did not have the ability to disenroll such LAHC members and LAHC reported the information known by LAHC to CMS, as is more fully explained in the attached report on LAHC procedures.

- 32) To the best of the Receiver's knowledge, to the extent Louisiana Health Cooperative, Inc. in Rehabilitation made payments to and/or on behalf of LAHC members who were also Medicare beneficiaries for covered benefits, LAHC paid such claims as primary and has no reimbursement obligations under 42 USC 1395y(2)(B), as is more fully explained in the attached report on LAHC procedures.

The above is true and correct to the best of his knowledge.

LOUISIANA HEALTH COOPERATIVE, INC. IN REHABILITATION

BY: 
BILLY BOSTICK, RECEIVER

Sworn to and subscribed before me, notary public,
this 27th day of October, 2016.


Notary Public

Sue Buser
NOTARY PUBLIC
State of Louisiana
LSBA No. 18151
My Commission is Issued for Life

Exhibit D

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	:	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

THE RECEIVER’S MONTHLY STATUS REPORT REGARDING *HEALTH REPUBLIC*

NOW INTO COURT, through undersigned counsel, comes the duly appointed Receiver of LAHC (“Plaintiff” or the “Receiver”), who respectfully files this Monthly Status Report regarding the *Health Republic* class action.

The ORDER signed by this Honorable Court on August 4, 2020 provides that “plaintiff shall, on the last Friday of every month, file with the Court and serve on all Defendants a report concerning the status of: (1) LAHC’s claims against the United States in *Health Republic* ...; (2) Plaintiff’s and/or LAHC’s claims against the United States filed or otherwise asserted in any other action; and (3) any claims by the United States against LAHC, including but not limited to claims filed or otherwise asserted in *Health Republic*, or in the [LAHC “Rehabilitation Action”].” The Receiver’s fourth such monthly status report is due today, October 30, 2020.

The Receiver reports as follows:

(1) The Receiver is not aware of any new developments, orders, or judgments regarding LAHC’s claims in the *Health Republic* suit since his last report, other than the ORDER issued by the U.S Court of Federal Claims on Friday, October 16, 2020, a .pdf copy of which was forwarded to all defense counsel by undersigned counsel on Monday, October 19, 2020.

(2) The Receiver has no other claims against the federal government.

(3) The Receiver adopts his prior report of August 28, 2020, as there have been no new claims filed to the Receiver’s knowledge since his last report.

Respectfully submitted,



J. E. Cullens, Jr., T.A., La. Bar #23011
Edward J. Walters, Jr., La. Bar #13214
Darrel J. Papillion, La. Bar #23243
Andrée M. Cullens, La. Bar #23212
S. Layne Lee, La. Bar #17689
**WALTERS, PAPILLION,
THOMAS, CULLENS, LLC**
12345 Perkins Road, Bldg One
Baton Rouge, LA 70810
Phone: (225) 236-3636

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via e-mail to all counsel of record as follows, this 30th day of October, 2020, in Baton Rouge, Louisiana.

W. Brett Mason
Michael W. McKay
Stone Pigman
301 Main Street, #1150
Baton Rouge, LA 70825

Harry Rosenberg
Phelps Dunbar
365 Canal Street
Suite 2000
New Orleans, LA 70130

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

Michael A. Balascio
Barrasso Usdin Kupperman
909 Poydras Street
24th Floor
New Orleans, LA 70112

Seth A. Schmeeckle
Lugenbuhl, Wheaton, Peck
601 Poydras Street
Suite 2775
New Orleans, LA 70130

Karl H. Schmid
Degan, Blanchard, & Nash
400 Poydras Street
Suite 2600
New Orleans, LA 70130

George D. Fagan
Leake & Andersson
1100 Poydras Street
Suite 1700
New Orleans, LA 70163

Mr. John W. Hite, III
Salley, Hite, Mercer & Resor, LLC
365 Canal Street
Suite 1710
New Orleans, LA 70130

Thomas McEachin
Schonekas, Evans, McGoey
909 Poydras Street, Suite 1600
New Orleans, LA 70112

Robert B. Bieck, Jr.
Jones Walker LLP
201 St. Charles Avenue
49th Floor
New Orleans, LA 70170



J. E. Cullens, Jr.

Exhibit E

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 16-CI-1160

DONALD ROOF, DEPUTY LIQUIDATOR OF
KENTUCKY HEALTH COOPERATIVE, INC.

PLAINTIFF

v.

OPINION & ORDER
GRANTING SUMMARY JUDGMENT

BEAM PARTNERS, LLC, *et al.*

DEFENDANTS

This matter is before the Court on Motions for Summary Judgment filed by Defendants Janie Miller, Joseph Smith, and the Board of Directors of the Kentucky Health Cooperative, Inc. (the “Board”). The parties appeared during Motion Hour on July 2, 2018, and the Court thereafter took the Motions under submission on the parties’ briefs. Having heard the arguments of the parties, and being otherwise sufficiently advised, the Court hereby **GRANTS** the Motions for Summary Judgment, for the reasons set forth below.

BACKGROUND

I. The Affordable Care Act

The Kentucky Health Cooperative, Inc. (“KYHC”) was formed in 2011 under the Affordable Care Act (“ACA”), which sought “to expand coverage in the individual health insurance market.” *King v. Burwell*, 135 S.Ct. 2480, 2485 (2015). To effectuate this goal, the ACA established Health Benefit Exchanges (“Exchanges”), or “online marketplaces where individuals can purchase health insurance and potentially obtain federal subsidies.” *New Mexico Health Connections v. United States Dept. of Health and Human Servs.*, 2018 WL 1136901, at *2 (D. N.M. Feb. 28, 2018) (citation omitted). These Exchanges offered four (4) health plans: bronze, silver, gold, and platinum, with insurance companies paying sixty percent (60%) of

bronze-level members' healthcare costs and up to ninety percent (90%) for platinum-level enrollees. *Id.* In other words, bronze plans were designed for those individuals anticipating few healthcare needs and platinum plans attracted less-healthy individuals with higher healthcare costs. *Id.* To foster competition within this market, the ACA also created the Consumer Operated and Oriented Plan (“CO-OP”) program, which provided loans and grants to new nonprofit health-insurance issuers so long as they offer their plans on the Exchanges. *Id.*

Though these programs worked to expand healthcare access, they also increased the risk that some insurers would incur “massive new costs,” as they were required to “accept unhealthy individuals but prohibited from charging them rates necessary to pay for their coverage.” *Id.* (quoting *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 548 (2012)) (internal quotation marks omitted). Furthermore, “[b]ecause insurers lacked reliable data to estimate the cost of providing care for the expanded pool of individuals seeking coverage via the new exchanges, insurers faced significant risk if they elected to offer plans in the[] exchanges.” *Moda Health Plan, Inc. v. United States*, 892 F.3d 1311, 1314 (Fed. Cir. 2018).

To combat this risk, the ACA created a temporary risk corridor program. In operation from 2014 to 2016, this program required profitable insurers to make payments to the United States Department of Health and Human Services (“HHS”), which in turn made payments to unprofitable insurers. *New Mexico Health Connections*, 2018 WL 1136901, at *2 (citing 42 U.S.C. § 18062); *see also Moda Health Plan, Inc.*, 892 F.3d at 1315 (explaining risk corridor program). These “risk corridor payments” therefore “permit[ted] issuers to lower [premiums] by not adding a risk premium to account for perceived uncertainties in the 2014 through 2016 markets.” *Moda Health Plan, Inc.*, 892 F.3d at 1315 (quoting HHS Notice of Benefit and Payment Parameters for 214, 78 Fed. Reg. 15,410, 15, 413 (Mar. 11, 2013)) (internal quotation

marks omitted). In other words, the payments “protect against uncertainty in rate setting for qualified health plans by limiting the extent of issuer’s financial losses and gains.” *New Mexico Health Connections*, 2018 WL 1136901, at *2 (quoting 2014 Final Rule, 78 Fed. Reg. at 15,411 (A.R. 000228)) (internal quotation marks omitted).

II. Kentucky Health Cooperative, Inc.

This action stems from the liquidation of KYHC, a CO-OP based in Louisville, Kentucky and offering services across the entire state. The program’s stated goal was to “secur[e] access to high quality, inexpensive health insurance for the sizeable number of uninsured Kentuckians and persons working for small companies.” *About Us*, KENTUCKY HEALTH COOPERATIVE, <http://www.mykyhc.org/about-us.html> (last visited July 31, 2018). It was self-described as “a revolutionary new model for health insurance in Kentucky.” *Id.*

KYHC suffered major losses in its first years and necessarily sought risk corridor payments for 2014 and 2015. However, by that time, Congress changed directions and backtracked on its original commitments in the ACA, significantly restricting the funds available for risk corridor programs. *See Moda Health Plan, Inc.*, 892 F.3d at 1318–19. When HHS refused to make the requested payments in full, KYHC was rendered insolvent.¹ On January 15, 2016, this Court found that, if KYHC continued its operations, it would be hazardous, financially or otherwise, to the policyholders and public. As a result, the Court placed KYHC into

¹ On July 6, 2017, after the filing of the present suit, the Liquidator sued the United States in the U.S. Court of Federal Claims for payment of the risk corridor funds. This, of course, demonstrates that the Liquidator, and her legal counsel, agree with the defendants in this action that KYHC has a good faith claim to recover these funds. The Court will take judicial notice that the Liquidator has asserted claims under Section 1342 of the ACA in the amount of \$142,101,334.20 against the federal government in the U.S. Court of Federal Claims. *See Nancy G. Atkins, in her capacity as Liquidator of Kentucky Health Cooperative, Inc. v. United States of America*, Fed. Ct. Cl. Case No. 17-cv-01108C.

liquidation and appointed the Commissioner of the Kentucky Department of Insurance as Liquidator and Jeff Gaither and David Hurt as Special Deputy Liquidators.

III. The Present Lawsuit

Jeff Gaither filed this suit in his capacity as Special Deputy Liquidator² on October 28, 2016. Among the named defendants are Janie Miller, who was hired by KYHC as its Chief Executive Officer (“CEO”). She held this position from approximately September 17, 2012 through June 5, 2015. Plaintiff also sues Joseph Smith, who served as Chairman of the Permanent Board and Facilitator of the Transitional Board, both unpaid volunteer positions. He held these positions from July 2012 until approximately October 29, 2015, when this Court placed KYHC into rehabilitation. Plaintiff sues Smith in both his individual capacity and as the representative of all members of the Board of Directors. No other individual officers or directors are sued in any capacity; instead, Plaintiff attempts to sue the Board as an entity, with service of process on Smith as Chairman of the Board. Essentially, Plaintiff seeks to sue the Board, but also seeks to impose liability on one individual, Smith, for the actions of the entire Board. However, there is no allegation or proof that Smith had unilateral power to take any of the actions complained of by the Plaintiff, nor is there any allegation that Smith usurped the authority of the Board or took any unilateral action that resulted in injury to the CO-OP.

Plaintiff initially asserted claims of negligence, unjust enrichment, breach of fiduciary duty, gross negligence, and punitive damages, against Miller.³ Similar claims were asserted against Smith and the Board for negligence, gross negligence, breach of fiduciary duties, and punitive damages. On July 31, 2017, the Court entered an Order dismissing Count 4 (Negligence

² Donald Roof, who now serves as Deputy Liquidator of Kentucky Health Cooperative, Inc., was substituted as the named Plaintiff by Order dated August 14, 2017.

³ Miller’s employment contract has an arbitration clause, but the Plaintiff has chosen to bypass arbitration and bring suit against Miller, thereby waiving the right to arbitration.

against Miller), Count 5 (Unjust Enrichment against Miller), Count 6 (Breach of Fiduciary Duty against Miller), Count 8 (Negligence against Board and Smith), and Count 10 (Breach of Fiduciary Duty against Board and Smith).⁴

In that same Order, the Court permitted Plaintiffs to proceed with “limited discovery on the allegations of ‘gross negligence’ asserted against” Miller, Smith, and the Board. *See* Order at 11. Specifically, the Court directed the parties to develop their factual basis for these claims, including the employment of a qualified actuary and other insurance consultants, reliance on advice from those entities, the process by which the rates were submitted and approved by the Department of Insurance, “and any facts that set forth the failure of the federal government to make the risk corridor and reinsurance payments that were provided for” under the ACA. *Id.* at 11–12. In addition, the Court noted that defendants should

provide affidavits or testimony that will set forth a detailed record of facts that they alleged would support a finding of clear and convincing evidence that Ms. Miller and Mr. Smith and the Board of Directors of KYHC did not act in good faith, did not act on an informed basis, or did not act in a manner they honestly believed was in the best interest of KYHC, and that their actions or inactions, viewed through the lens of an ordinarily prudent person in a like position, amounted to gross negligence.

Id. at 12.

In accordance with the Court’s Order, the parties agreed to a “Topic List” to govern upcoming depositions. The Liquidator thereafter deposed Miller and Smith, as well as corporate

⁴ Plaintiff’s Second Amended Complaint, filed September 6, 2017, realleges claims of simple negligence, unjust enrichment (against Miller only), and breach of fiduciary duties, which were dismissed with prejudice from the First Amended Complaint, and adds claims of breach of statutory duties. However, the Court’s July 31, 2017 Order directed the parties to proceed with discovery on the issue of gross negligence only, and the Motions for Summary Judgment and their corresponding memoranda were therefore limited to the claims of gross negligence against Miller, Smith, and the Board of Directors. It is the Court’s understanding, however, that the dispositive motions before the Court cover all claims not previously ruled on in the July 31, 2017 Order. To the extent some issues in the various claims asserted in the First and Second Amended Complaints are overlapping, the Court’s ruling granting summary judgment also applies to the other claims of the Second Amended Complaint, as set forth in the Conclusion of this Order.

representatives of Beam Partners, LLC (“Beam”), CGI Technologies and Solutions, Inc. (“CGI”), and Milliman, Inc. (“Milliman”).⁵ The parties also engaged in written discovery.

Accordingly, with discovery on these issues complete, Miller, Smith, and the Board filed Motions for Summary Judgment. In their Motions, the defendants argue for the dismissal of the gross negligence and punitive damages claims, as they contend that the facts uncovered during this period of limited discovery fail to demonstrate that either party acted in a grossly negligent manner during their tenure with KYHC.

ANALYSIS

I. Plaintiff Had an Adequate Opportunity to Engage in Discovery.

Plaintiff first contends that additional discovery is necessary. However, a plaintiff is not entitled to take unlimited discovery prior to summary judgment but is entitled only to a full and fair opportunity to develop a factual record on any potential issues of disputed facts. *See Blankenship v. Collier*, 302 S.W.3d 665, 668 (Ky. 2010) (noting that a court should take up a summary judgment motion after reasonable opportunity for discovery); *Rich for Rich v. Kentucky Country Day, Inc.*, 793 S.W.2d 832, 838 (Ky. App. 1990) (finding thirteen months between filing of complaint and granting of summary judgment was “ample time to complete discovery”). Here, the Court finds that Plaintiff had a more than adequate opportunity to fully develop the facts supporting its gross negligence claims, especially since most if not all of the relevant facts are matters of public record. While the universe of potential topics for discovery in a case of this nature is virtually unlimited, the Court finds that the Plaintiff has had more than a full and adequate opportunity to take discovery on all material issues of fact supporting the remaining claims, and the topics for which Plaintiff seeks additional discovery are tangential at

⁵ Plaintiff also filed a Motion to Compel seeking discovery on issues irrelevant to the limited issues set forth in the Court’s July 31, 2017 Order. That Motion was denied by Order dated July 2, 2018.

best. Any additional discovery at this point would amount to little more than a “fishing expedition” that would unnecessarily prolong these proceedings and impose unnecessary additional costs for all concerned.

II. Plaintiff Cannot Impose Representative Liability on Defendant Smith.

As explained in more detail below, individual officers and directors may be sued in their individual capacity for their individual breaches of the duties set forth in KRS 273.229(1) and 273.215(1). The corporation may also be sued in its corporate name under KRS 273.171. In the present case, Plaintiff sues the “Officers and Board of Directors of the Kentucky Health Cooperative, Inc.” and Joseph E. Smith, both individually and “in his representative capacity as Chairman of the Board of Directors.” However, Plaintiff is unable to point to any legal authority that would allow this Court to impose representative liability on a single Board member for the actions (or failures to act) of the entire Board.

Instead, the actions (and inaction) of the Board at issue in this case were just that—the actions of the Board, as a whole. In fact, in his deposition, Smith explained that his job as Chair was to conduct meetings; he did not vote on any issues unless the votes were tied. *See* Smith Dep. 128–30, Jan. 24, 2018. He also explained that he could step down from his position as Chair to speak against any action that he believed was not in KYHC’s best interest; however, he could not overrule the actions of the Board. *See id.* at 130–32. There is simply nothing in the record to support imposing personal liability on Smith, or any other individual Board member, for the actions of the entire Board. Accordingly, to the extent Smith is sued in his “representative capacity,” he is dismissed from this suit. To the extent he is sued in his individual capacity, there is no legal authority to impose individual liability on him for the actions or inactions of the Board, and those claims fail as well.

III. The Undisputed Facts Fail to Demonstrate Intentional Misconduct, Wanton or Reckless Behavior, or Self-Dealing, and the Business Judgment Rule Therefore Protects Defendants from Liability for their Discretionary Actions.

The business judgment rule is “a presumption that in making a business decision, not involving self-interest, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.” *Allied Ready Mix Co., Inc. v. Allen*, 994 S.W.2d 4, 8 (Ky. App. 1998) (quoting *Spiegel v. Buntrock*, 571 A.2d 767, 774 (Del. 1990)) (internal quotation marks omitted). This rule has been codified for nonprofit corporations at KRS 273.229(1) and 273.215(1). Under those statutes, officers and directors of a nonprofit corporation must discharge their discretionary authority in good faith, on an informed basis, and “[i]n a manner [they] honestly believe[] to be in the best interests of the corporation.” So long as they abide by the terms of these statutes, such officers and directors are typically shielded from civil liability.

However, if an officer or director breaches or fails to perform these statutory duties, he or she may be subject to a suit for injunctive relief. *See* KRS 273.229(5)(a); 273.215(5)(a). If the failure to discharge these duties “constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property,” the officer’s actions, or failure to act, may also be the basis for monetary damages. *See* KRS 273.229(5)(b); 273.215(5)(b). In other words, to obtain monetary damages against an officer or director, one must prove that the officer acted in a grossly negligent manner by failing to discharge his or her statutory duties. *See City of Middlesboro v. Brown*, 63 S.W.3d 179, 181 (Ky 2001) (defining gross negligence). To overcome the presumption of the business judgment rule, the challenging party must prove these

allegations by clear and convincing evidence. *See* KRS 273.229(6); 273.215(6). In such situations, punitive damages may be appropriate. *Brown*, 63 S.W.3d at 181.

To support the gross negligence claim at issue here, Plaintiff's Second Amended Complaint asserts that Smith, the Board, and Miller "willfully and recklessly ignored the obvious and foreseeable danger of setting woefully inadequate insurance premiums, and continued their willful and reckless conduct after it became known that the insurance premiums would result in KYHC's insolvency." Sec. Am. Compl. ¶¶ 59, 90. Plaintiff also alleges that these defendants "willfully and recklessly ignored the obvious and foreseeable danger posed by CGI's continuing failure to adequately process claims on behalf of KYHC's insureds." *Id.* ¶¶ 59, 91.

These conclusory allegations lack any specific facts showing bad faith or intentional misconduct on behalf of Smith and the Board. The Second Amended Complaint does not allege that these defendants personally enriched themselves at the expense of KYHC or the public in any way, or that anyone involved in KYHC's management engaged in any dishonest or unethical conduct. Thus, the Court's July 31, 2017 Order directed Plaintiff to develop the factual basis for the gross negligence claims. With discovery on this issue now complete, Plaintiff makes the following factual allegations:

- *The Board's decision to hire Defendant Janie Miller as KYHC's CEO:* According to Plaintiff, Smith knew that Miller lacked experience running a health insurance company and that her prior experiences in government were clearly not comparable.
- *KYHC's decision to hire Milliman:* Prior to KYHC's hiring of Milliman to set rates, Milliman prepared a feasibility study to inform the Center for Medicare & Medicaid Services' ("CMS's") decision to approve and fund KYHC, and payment

for the study was contingent on acceptance by CMS. Plaintiff argues that Miller knew this but failed to question Milliman's financial interest. Plaintiff also argues that Miller and the Board failed to seek outside assistance in the hiring process.

- *KYHC's decision to hire CGI:* KYHC hired CGI as a business process outsourcing ("BPO") vendor. In this role, CGI assumed and performed many of KYHC's core operations (claims processing, payments, enrollment, etc.). According to Plaintiff, Miller did not participate in the selection process, and the Board failed to investigate concerns about CGI's lack of experience with KYHC's claims software. Instead, Plaintiff argues, the decision to hire CGI was based entirely on the recommendations of Miller and Beam.
- *KYHC's concerns with CGI's performance:* Shortly after open enrollment began in October 2013, "serious problems developed" because CGI transferred inaccurate information from Kentucky's Health Exchange. By December, Plaintiff argues, the Board had "real concerns with CGI's performance" and the problems worsened in January; however, the Board took no action. Plaintiff also argues that Miller knew that a Louisiana Co-op fired CGI for similar problems, but chose not to share this with the Board and eventually pushed the Board to stay with CGI, which relied on Miller's recommendation without obtaining an outside opinion.
- *Initial rate development:* After approving the initial rates, the Board submitted the information to the Department of Insurance ("DOI"). The Board then realized that Milliman had failed to factor certain costs into its calculations; however,

according to Plaintiff, the Board failed to investigate and instead relied on Milliman's assurances that the oversight would not affect these rates.

- *2015 rate development:* The Board approved Milliman's suggested increase in rates, but Plaintiff argues that it did so without meeting with Milliman to discuss its methodology. Furthermore, the Board lacked the actuarial expertise necessary to review the recommendation and Miller knew that neither the Board nor Milliman had accurate enrollment or claims data.
- *The Board's lack of action as losses continued:* Plaintiff claims that it had become clear by 2014 that CGI's job performance was worsening and KYHC was unable to pay claims; however, the Board took no action other than encouraging its staff to fix the problem. Plaintiff also claims that Miller was aware of monthly losses but did not inform Board, and instead relied on the risk corridor payments.⁶ Miller discussed with the Board whether the platinum plan (in which insurers paid approximately ninety percent (90%) of patient costs) should be dropped, but could not advise Board and recommended retaining the plan; the Board agreed. Lastly, Plaintiff points to a discussion between Smith and Miller in 2014 in which Smith raised concerns over KYHC's financial trouble and Miller told him that it would improve in 2015. The Board's only action was to request more funding; it did not engage another actuarial firm to review Milliman's work or get a second opinion.
- *The Corrective Action Plan:* In January 2015, the Department of Insurance ("DOI") placed KYHC into a Corrective Action Plan. Plaintiff contends that the Board took no action, relying exclusively on Miller to implement the Plan.

⁶ However, Miller stated in her deposition that she understood the risk corridor payments were temporary.

- *The preparation of 2016 rates:* According to Plaintiff, in 2015, Smith questioned for the first time whether the rates set by Milliman were too low. In her deposition, Miller conceded that they were too low, though she referenced various other factors, like that all companies had somewhat low rates and that KYHC received ninety percent (90%) of Kentucky's high-risk population. Plaintiff also notes that Miller cautioned the Board that the DOI might reject its rate filing if Milliman's rates were not accepted. Ultimately, the rates were accepted without discussion of raising the rates and without bringing in an expert to review Milliman's work.

Relying on these factual assertions, Plaintiff now argues that these defendants acted in a grossly negligent manner because (1) their reliance on Milliman to set rates was unwarranted and improper; (2) they permitted KYHC to continue offering a health plan that it could not afford; and (3) they failed to act or otherwise made uninformed decisions regarding CGI. In addition, Plaintiff claims that Miller's desire to obtain a bonus contributed to her grossly negligent conduct. Simply put, Plaintiffs contend that these defendants failed to act on an informed basis and their failure to abide by their statutory duties "constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property" under KRS 273.215(5) and 273.229(5).

a. Defendants' Reliance on Milliman Was Not "Unwarranted" under KRS 273.215 and KRS 273.229.

As noted above, KRS 273.229(1) and KRS 273.215(1) require that officers and directors discharge their discretionary authority "on an informed basis." They are considered to act on an informed basis so long as they rely on "information, opinions, reports, or statements, including financial statements and other financial data" that are prepared or presented by an officer or

employee of the corporation “whom the [officer or director] honestly believes to be reliable and competent in the matters presented” or “[l]egal counsel, public accountants, or other persons as to matters the [officer or director] honestly believes are within the person’s professional or expert competence.” KRS 273.229(3); KRS 273.215(3). However, an officer or director “shall not be considered to act in good faith” if he or she relies on another’s opinion despite having knowledge that makes reliance “unwarranted” under Subsection 3. *See* KRS 273.229(4); KRS 273.215(4). Thus, if the officer or director knows that the entity providing the information is unreliable, incompetent, or acting outside the scope of its professional or expert competence, that officer or director has failed to act on an informed basis.

Here, Plaintiff argues that the defendants’ reliance on Milliman was unwarranted because Milliman conducted its feasibility study on a contingency basis, failed to factor certain costs into the initial rates, and set rates too low. However, the facts produced in discovery do not indicate that Miller or any other officer or director had specific knowledge that Milliman was an unreliable or incompetent actuarial consultant or was otherwise acting outside the scope of its professional competence. Instead, Milliman, a reputable actuary,⁷ was selected to calculate rates for a new and unpredictable health insurance market, with no precedent to guide it. It is therefore not surprising that payment for Milliman’s feasibility study would be contingent on CMS’s approval and funding of KYHC. The uncertainty of the market also helps explain Milliman’s initial failure to factor certain costs into its calculations and the low rate settings. Most importantly, the DOI, as the state agency with regulatory responsibility to oversee the setting of health insurance rates under KRS Chapter 304, ultimately approved Milliman’s recommended rates. Thus, the officers and directors of KYHC had no reason to believe that KYHC’s failings

⁷ Milliman is self-described as “one of the world’s largest providers of actuarial and related products and services.” *Who We Are*, MILLIMAN, <http://www.milliman.com/about/> (last accessed August 2, 2018).

were due to Milliman's incompetence rather than the unique and uncertain nature of the market in which tens of thousands of formerly uninsured individuals were obtaining health insurance for the first time.

In short, Miller and the Board relied on the opinion of Milliman, a nationally recognized, established actuary, to provide guidance on rate-setting. The record does not indicate that Miller or any member of the Board of Directors held any specific knowledge that Milliman was unreliable, incompetent, or acting outside the scope of its expertise. Accordingly, these defendants acted on an informed basis under KRS 273.229(3) and 273.215(3).

b. Defendants Made Informed Decisions in a Unique and Unpredictable Market.

In addition to its arguments regarding Milliman, Plaintiff argues that these defendants acted in a grossly negligent manner by permitting KYHC to continue offering a health plan (the platinum plan) that it could not afford, and by failing to act or making uninformed decisions regarding CGI. For example, Plaintiff points to the hiring of CGI despite concerns about its lack of experience with certain software and the failure to replace CGI or take other action, such as obtaining a second opinion, as CGI's performance declined.

When considering whether these defendants made informed choices, the Court must consider the highly unique nature of KYHC. The program's stated purpose was to provide high quality, inexpensive health insurance for many uninsured Kentuckians and employees of small companies. The public service nature of the programs brought significant risks, as this unique market had no precedent or health insurance rate or payment history to rely on when calculating rates. As noted above, this lack of precedent presented a significant challenge to Milliman, who struggled to set adequate rates and factor in certain costs. Reliance on those suggested rates,

however, was not unreasonable given the unpredictable nature of the market. Simply put, the very lack of any established model for enrolling hundreds of thousands of people into these programs in such a short period of time supports a finding that the “standard of care” that prevailed in the marketplace was in a state of flux.

Furthermore, it should be noted that Milliman’s suggested rates were continuously approved by the DOI, the very government agency whose commissioner, in her statutory capacity as Liquidator, is now alleging that the DOI-approved rates were “grossly inadequate.” However, the filed rate doctrine supports KYHC’s reliance on the DOI-approved rates. That doctrine “prohibits a ratepayer from recovering damages measured by comparing the filed rate and the rate that might have been approved absent the conduct in issue.” *Commonwealth ex rel. Chandler v. Anthem Insurance Co., Inc.*, 8 S.W.3d 48, 52 (Ky. App. 1999) (quoting *Sun City Taxpayers’ Assoc. v. Citizens Utilities Co.*, 847 F.Supp. 281, 288 (1994)) (internal quotation marks omitted). It therefore “preserve[s] the authority of the legislatively created agency to set reasonable and uniform rates and to insure that those rates are enforced, thereby preventing price discrimination.” *Id.* (quoting *Sun City*, 847 F.Supp. at 288) (internal quotation marks omitted). Though arguably not directly applicable in the present matter, the doctrine does support the defendants’ reliance on the rates, recommended by Milliman and ultimately approved by DOI. The DOI was authorized to set reasonable and uniform rates, and it was not unreasonable for KYHC to rely on those approved rates, particularly given the lack of other guiding precedent.

The Court also notes that Congress created the risk corridor program for the very purpose of alleviating the many risks associated with this market, and it was therefore not unreasonable that KYHC relied upon these payments to get them through the risky navigation of uncharted

territory, namely, setting rates for thousands of previously uninsured citizens.⁸ Congress then did a complete “about face” and changed the rules by eliminating much of the funding for risk corridor payments, paying KYHC and many other CO-OPs a fraction of their requested payments. In fact, as a result of the risk corridor program’s failure, only four (4) of the country’s original (23) CO-OPs still operate, offering plans in only five (5) states. *See* Louise Norris, *CO-OP health plans: patients’ interests first*, (July 25, 2018), <https://www.healthinsurance.org/obamacare/co-op-health-plans-put-patients-interests-first/#states>.

Thus, the failure of KYHC is not demonstrative of gross negligence or incompetence of these defendants or the other CO-OPS throughout the country that failed; instead, it serves to highlight the necessity of the risk corridor payments in such a high-risk market.

In sum, the actions (or inactions) of Miller, Smith, and the Board must be considered in the context of a unique and unpredictable health insurance market in its infancy. With no precedent to guide them through this high-risk enterprise, these defendants reasonably relied on the work of Milliman, CGI, and others. Though the program struggled financially, it was not unreasonable that the officers and directors of KYHC interpreted this as a natural consequence of the market’s volatile development, to be alleviated in the first few years by the risk corridor payments and then to stabilize over time. Through no fault of KYHC, however, Congress drastically reduced the risk corridor payments, forcing KYHC into insolvency. While the Court

⁸ Publicly available data demonstrates that from 2013 to 2016, approximately 351,749 previously-uninsured individuals obtained insurance, and the portion of uninsured individuals in Kentucky fell from 16.3 percent to 7.2 percent. *See Key Facts about the Uninsured Population*, THE HENRY J. KAISER FAMILY FOUNDATION (Nov. 2017), <http://files.kff.org/attachment/Fact-Sheet-Key-Facts-about-the-Uninsured-Population>. The record in this case does not disclose how much of this improvement in health insurance coverage is due to the low rates set by KYHC. Nevertheless, the Court may take judicial notice that the consequence of KYHC’s setting of the rates so low was that more people obtained health insurance coverage, even if they paid too little for it. The likely alternative was that many of these individuals would have gone uninsured if they were forced to pay higher market-based rates, which would have worked against the goals of the ACA and imposed enormous costs on the health care system through untreated illness and health care in emergency rooms.

recognizes that KYHC aggressively set low rates with the goal of bringing more people into the insurance market, there is no evidence that the rates were set in bad faith. The fact that these rates were approved by DOI is dispositive and precludes any claim for gross negligence in the setting of the rates. Given these unique circumstances, the Court cannot find that these defendants acted intentionally, wantonly, or recklessly, and their discretionary actions are therefore protected by the business judgment rule, as codified at KRS 273.229(1) and 273.215(1).

c. The Undisputed Facts Do Not Provide Sufficient Evidence of Self-Dealing by Miller.

Under the business judgment rule, the Court presumes that an officer acted on an informed basis, in good faith, and with an honest belief that the action taken was in the best interest of the corporation, so long as the officer's decision was not influenced by self-interest. *Allied Ready Mix Co., Inc.*, 994 S.W.2d at 8 (citation omitted). In the present case, Plaintiff points to Miller's acceptance of a \$50,000 bonus to argue that Miller's actions as CEO were clouded by her desire to obtain this bonus. The bonus, as written into Miller's employment agreement, was contingent on the achievement of certain "Bonus Milestones." She achieved the necessary milestones and received the bonus in 2014.⁹ Plaintiff now argues that Miller "made the Bonus Milestones her focus." Pl.'s Resp. in Opp. 19. As a result, Plaintiff argues, she rushed the Board through the hiring process and later refused to consider replacing CGI as BPO in the hopes that she would satisfy the Bonus Milestones.

⁹ It is worth noting that Miller accepted her bonus in 2014, and Congress restricted appropriations for risk corridor payments by enacting the Consolidated and Further Continuing Appropriations Act on December 16, 2014. Thus, it is unclear but possible that Miller received her bonus prior to learning that KYHC would not be receiving its risk corridor payments in full.

However, the record remains void of any facts that would overcome the presumption that Miller's decisions were made in good faith and with an honest belief that she acted in the best interest of KYHC. Though her actions ultimately satisfied the various Bonus Milestones, one can presume that the achievement of these objectives benefitted—or at least were intended to benefit—the corporation. Otherwise, KYHC would have no reason to incentivize Miller to accomplish the Bonus Milestones. In fact, as Miller explained in her deposition, the CO-OPs had to submit the Milestones to CMS for approval in order to receive start-up funding, “and that was [CMS’s] method of oversight to assure that [CO-OPs] were, in fact, doing what they needed to do to draw down the federal funds.” Miller Dep. 116: 7–16, Jan. 17, 2018. Having received approval from CMS, KYHC then contracted with Miller for the very purpose of achieving these goals and therefore clearly hoped that she would do so. Miller, in turn, focused on satisfying the terms of that contractual agreement. As she explained, “In general a [CO-OP] had to be completing its milestones in a timely fashion or run at the risk that CMS could delay providing start-up funds to the [CO-OP], so meeting the milestones was important to the development of the [CO-OP].” Miller Dep. 239: 14–18.

In addition, the Court notes that Plaintiff largely mischaracterizes much of Miller's deposition. For example, while Miller acknowledged that the hiring decision “was a tight time frame,” she does not state that she “rushed the Board through hiring Milliman because she wanted to satisfy a Bonus Milestone.” Pl.'s Resp. in Opp. 19. Instead, she explains that the Milestones “were coming fast and furious and the—at some point in time someone was going to have to step to the plate and say, we're not going to be able to meet this milestone.” Miller Dep. 251: 1–4. At the possibility of missing a deadline, Miller noted that she “didn't want the board

to think I was shirking in my obligations” and it was not “in [her] psyche to . . . miss milestones.” *Id.* at 251: 10–17.

At most, these statements demonstrate Miller’s desire to achieve the Milestones that the Board had approved, and without more, the Court cannot infer that Miller acted in bad faith or declined to act in the corporation’s best interest. It is undisputed that the Milestones were legitimate performance goals written into her contract to provide extra incentive to achieve worthwhile goals for the organization. The record in this case leaves no doubt that the Milestones were made part of the employment contract because the Board reasonably concluded that such performance standards were beneficial to the mission of the CO-OP, namely, promoting public health by extending health insurance options to a vast population of citizens who were previously uninsured or underinsured.

While it is easy to second guess those decisions in retrospect, this record offers absolutely no basis to conclude that the Milestones or contract with Miller were not good faith efforts to accomplish the goals spelled out in the ACA. Stated another way, the fact that Miller received a financial benefit from satisfying the Bonus Milestones, without more, is insufficient to demonstrate self-interest. There is simply no evidence in the record that personal financial gain—to the detriment of the corporation—was Miller’s goal in achieving the Bonus Milestones. Thus, Plaintiff fails to overcome the business judgment rule’s presumption.

This Court does note that the awarding of the \$50,000 bonus to Miller raises legitimate concerns; however, the Court must conclude based on this record that the awarding of a contractual bonus was a matter within the discretion of the Board. While this Court may have exercised that discretion differently, it has no legal authority to second guess the Board in the circumstances presented in this record. Again, the record is devoid of any evidence of

dishonesty, misrepresentation, or misconduct that would form the basis to void the Board's decision. The Court also notes that the Liquidator had the option of addressing these issues in arbitration and waived that option in favor of going directly to court. The Court is now bound to defer to the business judgment of the Board absent some showing of bad faith or misconduct.

IV. KRS 411.200 Also Shields Smith for Actions Taken in Good Faith and Within the Scope of his Official Functions and Duties.

KRS 411.200 provides that

[a]ny person who serves as a director, officer, volunteer or trustee of a nonprofit organization qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1986, as from time to time amended, and who is not compensated for such services on a salary or prorated equivalent basis, shall be immune from civil liability for any act or omission resulting in damage or injury occurring on or after July 15, 1988, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by the willful or wanton misconduct of such person.

In the present case, Smith served on the Board of Directors of KYHC, a 501(c)(29) nonprofit organization. Unlike Miller, he and the other members of the KYHC Board served as volunteers to launch this non-profit enterprise under the ACA for the purpose of extending healthcare coverage to a large segment of previously-uninsured Kentucky citizens. They received absolutely no compensation for this public service. Furthermore, there is no allegation that Smith or any Board member used their positions to financially benefit themselves in any way. There is no allegation of misconduct, self-dealing, conflicts of interest, financial impropriety, or any other form of malfeasance. Rather, the Liquidator stakes his claim on the allegation that the rates set by the KYHC were so unreasonably low that they guaranteed failure in the insurance marketplace. However, these low rates were ultimately approved by the DOI. In addition, while KYHC encountered significant problems with the administration of claims by CGI, there is not one shred of evidence that the hiring of the contractor was not done in "good faith and within the

scope of his official functions and duties.” In sum, the undisputed facts do not indicate that any alleged damages resulted from his willful or wanton misconduct; instead, the actions at issue here were taken in good faith and within the scope of Smith’s official functions and duties as Chair of the Board. Accordingly, he is shielded from civil liability by both the business judgment rule, as codified at KRS 273.215, and KRS 411.200.

Furthermore, in assessing the potential liability of a volunteer like Smith, the Court also finds it is appropriate to interpret and apply the statutory immunity required by KRS 411.200 in a manner that reflects the similar and longstanding qualified immunity of public officials and agencies. As the Kentucky Supreme Court has noted, such “immunity entitles its possessor to be free ‘from the burdens of defending the action, not merely . . . from liability.’” *Breathitt Cnty. Bd. of Educ. v. Prater*, 292 S.W.3d 883, 886 (Ky. 2009) (quoting *Rowan Co. v. Sloas*, 201 S.W.3d 469, 474 (Ky. 2006)); see also *Mitchell v. Forsyth*, 472 U.S. 511, 525–26 (1985). This case provides a classic example of a defendant, Smith, who volunteered to perform a public service without compensation and has now been brought into court to defend his actions under the threat of personal liability. He has been subjected to all of the costs, inconvenience, time demands, and stress of defending a claim brought by agents of the state who have virtually unlimited resources to pursue litigation. Yet there is not a shred of evidence of any dishonesty, misconduct, self-dealing, financial impropriety, or other malfeasance on the part of Smith. The Liquidator’s only claim against Smith is poor business judgment arising out of a new, untested, quasi-public enterprise¹⁰ established under federal law to extend health insurance coverage to

¹⁰ The CO-OP is a private, nonprofit health insurance carrier. However, it was designed to provide a public service, namely, to be an insurer of last resort under the ACA and to guarantee that all individuals, regardless of health, had an opportunity to obtain adequate coverage. It is also uniquely funded. Instead of dividing profits among shareholders, the CO-OPs, once profitable, reinvest their profits into the plan to allow for lower premiums and better coverage. See Louise Norris, *CO-OP health plans: patients’ interests first*, (July 25, 2018), <https://www.healthinsurance.org/obamacare/co-op-health-plans-put-patients-interests-first/#states>. In addition, the

thousands of previously uninsured individuals, a start-up non-profit enterprise for which there was no known model prior to the enactment of the ACA. In these circumstances, the record is devoid of any basis to impose personal liability against Smith, and all claims against him must be dismissed.

CONCLUSION

For the reasons set forth above, the Court hereby **GRANTS** Joseph Smith and the Board's Motion for Summary Judgment on Counts 10 (Gross Negligence) and 22 (Punitive Damages) of the Second Amended Complaint and **GRANTS** Janie Miller's Motion for Summary Judgment on Counts 7 (Gross Negligence) and 22 (Punitive Damages) of the Second Amended Complaint. These Counts are hereby **DISMISSED WITH PREJUDICE**.

The Court also incorporates by reference its prior Order entered July 31, 2017, granting summary judgment and dismissing with prejudice the First Amended Complaints' claims of simple negligence and breach of fiduciary duties against defendants Miller, Smith, and the Board. That Order similarly held that the business judgment rule protected Smith and Miller from such claims. Accordingly, the following claims against Smith (including the attempt to assert claims against the Board by naming Smith in a "representative" capacity) and Miller are also **DISMISSED WITH PREJUDICE**: Negligence against Miller (Count 4); Breach of Fiduciary Duty against Miller (Count 6); Negligence against Smith and the Board (Count 9); and Breach of Fiduciary Duty against Smith and the Board (Count 11).

In addition, although the parties' arguments were limited to the claims of gross negligence, the Court finds that the analysis set forth in this Order is directly applicable to the Breach of Statutory Duties claim against Miller (Count 8), and Breach of Statutory Duties claim

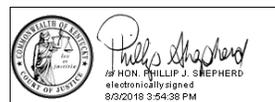
federal government plays a unique role in providing loans and grants to insurers, as well as additional funding through risk corridor payments. Thus, KYHC is best described as a quasi-public entity.

against Smith and the Board (Count 12). Those claims allege violations of KRS 273.229 (against Miller) and KRS 273.215 (against Smith and the Board), the same statutes discussed in this Order. Applying the same analysis, these claims must also be **DISMISSED WITH PREJUDICE**.

Furthermore, the Court’s July 31, 2017 Order dismissed *without* prejudice the Unjust Enrichment claim against Miller (Count 5); however, that Order expressly stated that the claim was dismissed without prejudice “to the right of the plaintiff to assert a claim for breach of contract if facts were developed in discovery that would support a claim that Ms. Miller was not contractually entitled to the bonus payment.” Order at 9. Plaintiff’s Second Amended Complaint realleges the Unjust Enrichment claim, without alleging newly-discovered facts that would support a breach of contract claim. Accordingly, the Unjust Enrichment claim against Miller (Count 5) is now hereby **DISMISSED WITH PREJUDICE**.

This is a final and appealable judgment, and pursuant to CR 54.02 this Court finds that the issues presented regarding defendants Miller, Smith, and the Board are separate and distinct from the remaining issues in this statutory action for the liquidation of the KYHC, and accordingly, there is no just cause to delay the entry of this final judgment in favor of Miller, Smith, and the Board, dismissing all claims against the individual defendants, as well as the Liquidator’s attempt to impose liability on the Board by naming Smith in his “representative” capacity.

So **ORDERED** this the 3rd day of August, 2018.



PHILLIP J. SHEPHERD
 #/ HON. PHILLIP J. SHEPHERD
 #/ electronically signed
 8/3/2018 3:54:36 PM

PHILLIP J. SHEPHERD, JUDGE
 Franklin Circuit Court, Division I

DISTRIBUTION:

Hon. Paul C. Harnice
Hon. Sarah J. Bishop
201 West Main St., Suite A
P.O. Box 5130
Frankfort, KY 40601

Hon. Stewart C. Burch
114 West Clinton St.
Frankfort, KY 40601

Hon. Perry M. Bentley
Hon. Lucy A. VanMeter
Hon. Connor B. Egan
300 West Vine St., Suite 2100
Lexington, KY 40507

Hon. Darryl W. Durham
Hon. B. Keith Saksefski
471 West Main Street, Suite 400
Louisville, KY 40202

Hon. Douglas L. McSwain
250 West Main St., Suite 1600
Lexington, KY 40507

Hon. Matthew Nickel
2000 McKinney Ave., Suite 1900
Dallas TX 75201

Hon. Justine Margolis
Hon. Catharine Luo
Hon. Justin Kattan
1221 Avenue of Americas, 26th Floor
New York, NY 10020

Hon. Philip W. Collier
400 West Market St., Suite 1800
Louisville, KY 40202-3352

Hon. Luke Morgan
201 East Main St., Suite 900
Lexington, KY 40507

Hon. Margaret H. Warner
500 North Capitol St., NW
Washington, DC 20001

Exhibit F

JAMES J. DONELON, COMMISSIONER	:	SUIT NO.: 651,069 SECTION: 22
OF INSURANCE FOR THE STATE OF	:	
LOUISIANA, IN HIS CAPACITY AS	:	
REHABILITATOR OF LOUISIANA	:	19 TH JUDICIAL DISTRICT COURT
HEALTH COOPERATIVE, INC.	:	
	:	
versus	:	PARISH OF EAST BATON ROUGE
	:	
TERRY S. SHILLING, <i>ET AL.</i>	:	STATE OF LOUISIANA

PLAINTIFF’S RESPONSE TO MILLIMAN’S FIRST, SECOND AND THIRD SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

NOW INTO COURT, through undersigned counsel, comes 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”), who, in response to Milliman, Inc.’s (“Milliman”) First Set of Interrogatories and Requests for Production of Documents and Milliman’s Second and Third Sets of Requests for Production of Documents, states as follows:

INTERROGATORIES

INTERROGATORY NO. 1:

Please identify and provide the full name, address, and telephone number of all persons providing the information used in answering these written discovery requests.

RESPONSE TO INTERROGATORY NO. 1:

J. E. Cullens, Jr., Andree Cullens, and Receiver, Billy Bostick.

INTERROGATORY NO. 2:

Please identify (by name, address and telephone number) any individual that you believe is likely to have information relevant to any of the claims asserted in this lawsuit. For each individual identified, please describe the subject(s) of the information you believe the individual may possess.

RESPONSE TO INTERROGATORY NO. 2:

See Response to Interrogatory No. 7. Additionally, see the following list:

- Warner L. Thomas, IV, Director of LAHC with related knowledge

Warner L. Thomas, IV
2030 Palmer Avenue
New Orleans, LA 70121

- William A. Oliver, Director of LAHC with related knowledge

William A. Oliver
345 Harbor Dr.
Old Hickory, TN 37138

- Scott Posecai, Director of LAHC with related knowledge
 - Scott Posecai
 - 237 Garden Rd.
 - New Orleans, LA 70123
- Patrick Quinlan, Director of LAHC with related knowledge
 - Patrick Quinlan
 - 255 Audubon St.
 - New Orleans, LA 70118
- Peter November, Director of LAHC with related knowledge
 - Peter November
 - 5914 Coliseum St.
 - New Orleans, LA 70115
- Michael Hulefeld, Director of LAHC with related knowledge
 - Michael Hulefeld
 - 2005 Octavia St.
 - New Orleans, LA 70115
- Terry S. Shilling, Chief Executive Officer with related knowledge
 - Terry Shilling
 - 2451 Cumberland Parkway, #3170
 - Atlanta, GA 30339
- George G. Cromer, Chief Executive Officer of LAHC with related knowledge
 - George G. Cromer
 - 308 Margon Court
 - Slidell, LA 70458
- Charles D. Calvi, Chief Marketing Officer of LAHC with related knowledge
 - Charles D. Calvi
 - 18437 E. Village Way Dr.
 - Baton Rouge, LA 70810
- Patrick C. Powers, Chief Financial Officer of LAHC with related knowledge
 - Patrick C. Powers
 - 9572 Wesson St.
 - Baton Rouge, LA 70809
- Other representatives of LAHC yet to be identified
- Billy Bostick, Receiver of LAHC and/or other representatives of the Receiver, knowledge of the current financial condition of LAHC related to damages
 - Billy Bostick
 - 3445 N Causeway Blvd #800,
 - Metairie, LA 70002
- Scott Neice and/or other representative(s) of CGI Technologies and Solutions, Inc.

- Andy Willoughby and/or other representative(s) of GRI, knowledge of GRI's actions or inactions in connection with its contracts with LAHC

Andy Willoughby
388 Wimberly Way
Powder Springs, GA 30127

- Representative(s) of Beam Partners, LLC

2451 Cumberland Pkwy SE
Suite 3170
Atlanta, GA 30339

- Representative(s) of Milliman, Inc., knowledge of Milliman's actions in connection with its contracts with LAHC

1301 Fifth Avenue
Suite 3800
Seattle, WA 98101-2646

- Representatives of Buck Consultants, LLC, knowledge of Buck actions in connection with its contracts with LAHC

11 Stanwix Street
Suite 700
Pittsburgh, PA 15221

- Representative(s) of CGI Technologies and Solutions, Inc.

260 Peachtree Street NW
Suite 2303
Atlanta, GA 30303-1290

- Representative(s) of Group Resources, Incorporated

3080 Premier Parkway
Suite 100
Duluth, GA 30097-4904

- Representative(s) of Allied World Specialty Insurance Company a/k/a Darwin National Assurance Company

199 Water Street
24th Floor
New York, NY 10038

- Representative(s) of Atlantic Specialty Insurance Company

605 Highway 169 North
Suite 800
Plymouth, MN 55441

- Representative(s) of Evanston Insurance Company

Ten Parkway North
Deerfield, IL 60015

- Representative(s) of RSUI Indemnity Company

645 E. Paces Ferry Rd.
Atlanta, GA 30326
- Representative(s) of Zurich American Insurance Company

1299 Zurich Way
Schaumburg, IL 60196
- Representative(s) of Jones, Walker, *et al.*

201 St. Charles Avenue
49th Floor
New Orleans, LA 70170
- Representatives of the Insurer Defendants
- Representatives of CMS, knowledge of GRI's actions or inactions in performance of LAHC's regulatory and contractual obligations to the government.
- Tyler Augustine or other representative of Smart Data Solutions, knowledge of GRI's handling of claim processing.
- Teresa Heap, LAHC Provider Relations Representative and related knowledge
- Karen Gaspard, LAHC Provider Relations Representative and related knowledge
- Tommy Teague, LAHC General Counsel and Vice President of Operations, Information Technology and Provider Relations, and related knowledge

Tommy Teague
4626 Lake Lawford Court
Baton Rouge, LA 70816
- Jennifer Pinkins, LAHC Director of Operations and related knowledge
- Pamela Kennedy, LAHC Benefits Integrity Audit and related knowledge
- Representative of Baton Rouge Clinic, GRI claim processing and payment
- Women's Hospital, GRI's claim processing and payment
- Joseph Bonsignore, or other representative of Verity Healthnet, LLC, regarding contract termination
- Missy Notsinger or other representatives of Multiplan/PHCS regarding GRI claim processing and payments
- John Welborn, Chief Strategy Officer of LAHC, with related knowledge

John Welborn
136 Woodruff Dr.
Slidell, LA 70461

- Anisa Dominick, Billing Accounts Receivable Coordinator, Assistant, LAHC member claims, calls, and related knowledge
- Sylvia Theriot, Financial Controller of LAHC and related knowledge
- Xurui Fan, LAHC Financial Analyst and related knowledge
- Sam Blount, LAHC Contract Compliance Officer and related knowledge
- Julia Peek, LAHC statutory accountant and related knowledge
- Cheri Carter, LAHC Business Intelligence Specialist and related knowledge
- Glynda Ferdinand, LAHC Billing A/R coordinator and related knowledge
- A'JeNenne McDonald, LAHC REGTAP Supervisor and related knowledge
- Robin Muski, LAHC A/O coordination and related knowledge
- Lauren Yazbeck, LAHC Administrative Assistant to Finance and related knowledge
- Shannon Schwartz, LAHC Executive Assistant and assistant to Human Resources and related knowledge
- Jeremy Murphy, LAHC Compliance Officer and related knowledge

Jeremy Murphy
 511 Marigny St., #103
 New Orleans, LA 70117

- Rodney Bierra, LAHC member complaints and related knowledge
- Kimberly Jones, LAHC appeals and Grievances Coordinator and related knowledge
- Wendy Portier, LAHC Director of Medical Management and related knowledge
- Serelda Young, LAHC Director of Quality Improvement and related knowledge
- Tony Cimino, LAHC Director of Sales and Marketing and related knowledge
- Dee Pitchford, LAHC Sales and Marketing Manager and related knowledge
- Tanzia Jones, LAHC Communications Manager and related knowledge
- Dawn Nickens, LAHC Sales and Marketing Analyst and related knowledge
- Tricia Shaheen, LAHC Sales and Marketing Coordinator and related knowledge
- Nadine Wells, LAHC Enrollment Supervisor and related knowledge
- Jim Starnes, LAHC Information Technology Director and related knowledge
- Ryan Starnes, LAHC Help Desk Coordinator and related knowledge
- Sonia Puente, LAHC Business Analyst and related knowledge
- Clint Archer, LAHC Information Technology Analyst and related knowledge

- Eve Lion, LAHC Project Manager and related knowledge
- Barbara Baudin, LAHC Project Manager and related knowledge
- Mark Gentry, LAHC and related knowledge
- Ryan Germain, LAHC and related knowledge
- Arline Cobham
- Representative of Ehealth regarding EHP program used by GRI/LAHC
- Representative of EMDEON regarding claims processing
- Christin Cantavaspi, LAHC Appeals and Grievances Coordinator
- Thomas S. Byrd, President and CEO of GRI, knowledge relation to GRI contract with LAHC

Thomas Byrd
P.O. Box 3970
Duluth, GA 30096

- Representative from Dr. Victor Theriot's office regarding LAHC claim payments
- Harvey Korey, Louisiana Department of Insurance regarding information learned in audit
- Representative of Health Integrated regarding GRI claims processing
- Rachel W. Killian, Milliman principal and consulting actuary and related knowledge
- Courtney R. White, Milliman principal and consulting actuary and related knowledge
- Thomas Tomczyk, Buck Consultants and related knowledge
- Michael Thomas, Milliman Associate Actuary and related knowledge
- Harvey Sobel, Buck Consultants principal and consulting actuary and related knowledge
- David Billig, Buck Consultants, knowledge related to COOP issues
- Janet DenBleyker, Buck Consultants, knowledge related to COOP issues
- Scott Bush, Buck Consultants, knowledge related to COOP issues
- Lauren Taylor, Buck Consultants, knowledge related to COOP issues
- Sheila Autry, GRI Business Unit Director and related knowledge
- Steve Kemp, GRI Network Specialist and related knowledge
- Wellington Olacio, GRI Software Support and related knowledge
- Theresa Foster, GRI Member services Representative and related knowledge
- Sheri Williams, GRI Member services Representative and related knowledge
- Octavia Young, GRI Member Services Representative and related knowledge

- Debbie Bloodworth, GRI Systems Coordinator and related knowledge
- Aline Cook, GRI Business Unit Director and related knowledge
- Gail McDougal, GRI Member Service Representative for LAHC members and related knowledge
- Janice Zamorano, GRI employee and related knowledge
- Valerie Kellar, GRI employee and related knowledge
- Ivonne DeJesus, GRI Member Services Unit and related knowledge
- Lisa Disharoon, GRI employee and related knowledge
- Verna Hicks, CMS representative with knowledge of GRI data processing with CMS
- Representatives of: The Connection regarding handling LAHC member calls and related knowledge
- Representatives of: bswift regarding handling LAHC member calls, claims processing and related knowledge
- Greg Dumas, LAHC Statutory Regulations Accountant and related knowledge
- Rajeev Chaturvedi, or other representative of Santech regarding membership billing and payment processing
- Representative of Capitol House Nursing and Rehabilitation Center regarding provider payments and member services
- Representative of Sage Rehabilitation Hospital regarding provider payments and member services
- Representative of Gastroenterology Associates regarding provider payments and member services
- Representative of Baton Rouge Louisiana Endoscopy regarding provider payments and member services
- Representative of Baton Rouge Orthopedic Clinic regarding provider payments and member services
- Representative(s) of Ochsner Clinic Foundation
1514 Jefferson Highway
New Orleans, LA 70121
- Mike Reed, GRI employee and related knowledge
- Robin Mushkin, GRI employee and related knowledge

- Ian Holt, CGI employee regarding transfer of data to GRI
- Jan Macy, Healthx, GRI mobile application for LAHC
- Melissa Dufrene, or other representative of Ochsner regarding provider billing and payments
- Representative of St. Frances Medical Center regarding provider billing and payments
- Qweotta Sims, Health Integrated, members being refused treatment for nonpayment/processing of claims
- Trish Freeman, Trish Freeman Insurance Services, LAHC member client's treatment issues due to provider problems with GRI customer service
- Karen Gaspard, LAHC Provider Development, provider claims issues and related knowledge
- Representative of Women's Hospital, provider billing and payments and related knowledge
- Etosha McGee, LAHC claims processing and related knowledge
- Representative of Woodlawn Family Health regarding delay in processing and payment of claims and refusal to see patients
- Representative of Dr. Craig Laudwehr's office regarding delay in processing and payment of claims and refusal to see patients
- Victor G. Villagra, providers refusing care due to non-payment
- Representative of Pinnacle Home Health regarding providers refusing care due to non-payment
- Representative of Emdeon regarding claims clearing house issues
- Representatives of any and all outside vendors or contractors employed by LAHC, knowledge of defendants and LAHC's actions in connection with the performance of their contracts.

Plaintiff expressly reserves the right to supplement this response, and to assert additional objections or privileges, as discovery proceeds and in accordance with the Court's Case Management Schedule.

INTERROGATORY NO. 3:

Please identify (by name, business address, business telephone number, and current employer, if applicable) any and all persons at CMS with whom you communicated concerning: LAHC’s CO-OP application (including any feasibility study or business plan), b) pro forma submissions, c) rate filing submissions, d) requests for additional funding, e) any corrective action plan, f) the “3Rs” set out under the Patient Protection and Affordable Care Act (the “ACA”), g) the decision to retain or terminate any consulting actuary or third-party administrator, h) LAHC’s financial condition, i) the basis for terminating any actuary or third- party consultant.

RESPONSE TO INTERROGATORY NO. 3:

This request calls for information that the Receiver does not have personal knowledge of and for the production of documents that are not in the Receiver’s possession, custody, or control. See Opposition Memorandum to Defendants’ Motion to Compel filed on September 17, 2020 and the Motion for Partial Summary Judgment Regarding “Regulator Fault” or “Receiver Fault” Defenses or, in the Alternative, Motion to Strike Defenses Precluded as a Matter of Law.” Further, this information is discernable through ongoing discovery and witness testimony. Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

INTERROGATORY NO. 4:

Please identify (by name, business address, business telephone number, and current employer, if applicable) any and all persons at the Louisiana Department of Insurance with whom you communicated concerning: a) LAHC’s CO-OP application (including any feasibility study or business plan), b) pro forma submissions, c) rate filing submissions, d) requests for additional funding, e) any corrective action plan, f) the “3Rs” set out under the Patient Protection and Affordable Care Act (the “ACA”), g) the decision to retain or terminate any consulting actuary or third-party administrator, h) LAHC’s financial condition, i) the basis for terminating any actuary or third-party consultant.

RESPONSE TO INTERROGATORY NO. 4:

This request calls for information that the Receiver does not have personal knowledge of and for the production of documents that are not in the Receiver's possession, custody, or control. See Opposition Memorandum to Defendants' Motion to Compel filed on September 17, 2020 and the Motion for Partial Summary Judgment Regarding "Regulator Fault" or "Receiver Fault" Defenses or, in the Alternative, Motion to Strike Defenses Precluded as a Matter of Law." Further, this information is discernable through ongoing discovery and witness testimony. Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

INTERROGATORY NO. 5:

Please list each category of damages that you seek to recover through this lawsuit, and state the amount of damages claimed in each category.

RESPONSE TO INTERROGATORY NO. 5:

Plaintiff objects to this request on the grounds that it is premature as discovery is ongoing. Plaintiff further objects to this request on the grounds that it is overly broad and unduly burdensome. Plaintiff further objects to this request on the grounds that it is vague and ambiguous. Plaintiff further objects to this request to the extent it seeks information that constitutes attorney work product, attorney-client communications, or information that is otherwise privileged. Plaintiff further objects to this interrogatory insofar as it calls for expert opinion which is not capable of being ascertained or produced until after sufficient discovery has been conducted, including testimony of material witnesses. Plaintiff shall produce such expert testimony pursuant to the dictates of the applicable Case Management Schedule issued by the Court herein. Subject to these objections, plaintiff responds that it is entitled to all compensatory damages allowed by applicable law caused by Milliman's gross negligence as actuary to LAHC. Additionally, Plaintiff is entitled to damages from Milliman for all fees, expenses, and compensation of any kind paid by LAHC to Milliman; all recoverable costs and litigation expenses incurred herein; all judicial interest on any award; any and all attorneys' fees recoverable pursuant to statute and/or contract;

and any and all equitable relief to which LAHC may be properly entitled according to applicable law. Plaintiff expressly reserves the right to supplement this response as discovery proceeds and as additional information is obtained. Plaintiff further objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this interrogatory appears to call for information related to any expert witness consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information related to any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information regarding a potential testifying expert's opinion, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Moreover, discovery is ongoing, and this analysis has not been finalized.

Without waiving any objections, Plaintiff states that damages have not yet been finally quantified, but that he is generally seeking economic damages in the amounts to be identified after discovery and expert analysis is concluded, all recoverable costs and litigation expenses incurred herein; all judicial interest on any award; and any and all equitable relief to which LAHC may be properly entitled according to applicable law. Plaintiff expressly reserves the right to supplement this response as discovery proceeds and as additional information is obtained.

INTERROGATORY NO. 6:

Please identify (by name, employer, address, and telephone number) any and all experts retained by Plaintiff, the Louisiana Department of Insurance, and/or the Receiver in connection with the LAHC rehabilitation proceedings.

RESPONSE TO INTERROGATORY NO. 6:

Plaintiff objects to this request on the grounds that it is vague and ambiguous. This request calls for production of information that is not in the Receiver's possession, custody, or control. See Opposition Memorandum to Defendants' Motion to Compel filed on September 17, 2020 and the Motion for Partial Summary Judgment Regarding "Regulator Fault" or "Receiver Fault" Defenses or, in the Alternative, Motion to Strike Defenses Precluded as a Matter of Law." Plaintiff is not in possession, custody or control of documents received by LAHC pre-receivership. Plaintiff

further objects to this request to the extent it seeks information that constitutes attorney work product, attorney-client communications, or information that is otherwise privileged.

Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this interrogatory appears to call for information about any expert witness consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information regarding a potential testifying expert's opinion, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Moreover, discovery is ongoing, and this analysis has not been finalized. Plaintiff expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule.

INTERROGATORY NO. 7:

Please identify (by name, employer, address, and telephone number) any person who may be used at trial to present evidence under Louisiana Code of Evidence articles 702 through 705. For each person identified, please state the subject matter on which they may testify.

RESPONSE TO INTERROGATORY NO. 7:

Plaintiff objects to this interrogatory as it is premature and to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, to the extent that this interrogatory calls for information about any expert witness consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information regarding a potential testifying expert's opinion, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Moreover, discovery is ongoing, and this analysis has not been finalized. A preliminary

list of potential witnesses that Plaintiff may call is identified in Response to Interrogatory No. 2 above. No determination regarding trial witnesses has yet been made. Plaintiff will supplement this request as required by the Case Management Schedule.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

All Documents and Communications by and between LAHC and any Defendant in this Action. This request includes Communications sent directly to or from LAHC or on LAHC's behalf.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 2:

All Documents and Communications in any and all files that have been maintained by LAHC in any location in the name of or related to any Defendant in this action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 3:

All Documents and Communications related to any assessment or evaluation of the performance of any Defendant in this Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 4:

Any and all agreements, promissory notes, contracts, loans, settlement agreements, or writings of any kind related to any agreement that LAHC has entered into with any of the Defendants or former Defendants in this litigation, or any entity related to any of the Defendants or former Defendants, including all detailed terms, schedules, interim calculations and other such documents. This request also includes, but is not limited to, any engagement letters and amendments to contracts or other agreements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Plaintiff objects to this request on the grounds that it seeks information that is irrelevant and not likely to lead to the discovery of admissible information. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent that this request seeks settlement communications which are not admissible pursuant to La. C.E. art. 408(a) because any related communications are unlikely to lead to the discovery of admissible information. Plaintiff states the Receivership Court approved all settlements with any former or nominal Defendants, which agreements are part of the public record of that suit. [See, Exhibit A, Excel Spreadsheet previously produced]. Finally, the Plaintiff asserts that this request is done for harassment purposes and to mount an impermissible collateral attack on a court-order in the Receivership Action.

Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 5:

All Documents and Communications referencing or relating to LAHC's financial records.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 6:

All Documents and Communications referencing or relating to LAHC's enrollment efforts.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 7:

All Documents and Communications referencing or relating to LAHC's provider discount negotiations.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 8:

All Documents and/or Communications referring or relating in any way to the alleged damages sought in the Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial in this action (the “SAP”).

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Plaintiff objects to this request on the grounds that it is premature as discovery is ongoing and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the exchanges of exhibits set by the Case Management Schedule. Plaintiff further objects to the extent this request seeks the production of Documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. Plaintiff further objects to this request to the extent it calls for the production of impeachment, cross-examination and rebuttal exhibits and evidence. Without waving any objections, see prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Plaintiff further objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for information about any expert witness consulted by LAHC, without regard to whether the expert’s opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information regarding a potential testifying expert, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports and trial exhibits. Without waving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 9:

All Documents and Communications referencing or related to the U.S. Senate Permanent Subcommittee on Investigations' review of the Affordable Care Act Health Insurance CO-OP Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Plaintiff objects to this request on the grounds that it is vague and ambiguous and seeks information that is irrelevant and not likely to lead to the discovery of admissible information. See, La. R.S. 22:2043.1. Without waiving any objections, Plaintiff states that he has no possession, custody or control over any documents responsive to this request and to the extent that any documents are publicly available, Milliman is equally as able to obtain these documents as is the Plaintiff.

REQUEST FOR PRODUCTION NO. 10:

All Communications by and between LAHC and any employee, agent or other representative of the Federal Government and/or CMS. This request includes Communications sent directly to or from LAHC or on LAHC's behalf.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 11:

All Documents sent to or from any employee, agent or other representative of the Federal Government and/or CMS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant,

discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 12:

All Documents and Communications by and between LAHC and any employee, agent or other representative of the Louisiana Department of Insurance. This request includes Communications sent directly to or from LAHC or on LAHC's behalf.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12 SERVED ON JULY 31, 2020:

Plaintiff objects to this request on the grounds that it seeks information that is irrelevant and not likely to lead to the discovery of admissible information. Plaintiff in this matter is the Receiver of LAHC, not LDI or the Commissioner of Insurance in his capacity as regulator. Plaintiff was appointed as the representative of LAHC by Schedule of the Receivership Action court. Put simply, Plaintiff is not a representative of LDI in this litigation. Furthermore, Plaintiff was neither personally involved with nor has any personal knowledge of what LDI or LAHC did or did not do prior to Receivership. "The receiver appointed by a court of this state for a domestic insurer is the proper plaintiff to sue to enforce a right of the domestic insurer, or of its receiver." La. C.C.P. art. 693. Moreover, there is no cause of action against the Receiver, Commissioner Donelon, LDI, its employees or agents and these entities have no liability for any action taken by them in the performance of their powers and duties under the Louisiana Insurance Code. La. R.S. 22:2043.1. More importantly, "no action or inaction by the insurance regulatory authorities may be asserted as a defense to a claim by the receiver." *Id.* See also, *Wooley v. Lucksinger*, 61 So.3d at 132-33 (footnotes omitted) citing *Meyers v. Moody*, 693 F.2d 1196, 1210 n. 11 (5th Cir.1982), cert. denied, 464 U.S. 920, 104 S.Ct. 287, 78 L.Ed.2d 264 (1983); *A-1 Nursery Registry Inc. v. United Teacher Associates Insurance Company*, 96-488 (La. App 3d Cir. 11/6/96), 682 So.2d 929, 931-32. To the extent that LAHC communicated with anyone pre-Receivership regarding the topics listed by Defendant, that information is discernable through ongoing, coordinated ESI discovery and depositions of witnesses with personal knowledge.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

See Opposition Memorandum to Defendants' Motion to Compel filed on September 17, 2020 and the Motion for Partial Summary Judgment Regarding "Regulator Fault" or "Receiver Fault" Defenses or, in the Alternative, Motion to Strike Defenses Precluded as a Matter of Law."

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 13:

Any and all documents submitted by or on behalf of LAHC in connection with LAHC's effort to secure licensure from the Louisiana Department of Insurance, including but not limited to LAHC's HMO license.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Without waiving any objections, the Receiver produces the LAHC license and LAHC's application for this license as LAHC LICENSE 00001 – 00527. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 14:

Any and all Documents and Communications referring or related to the development or setting of premium rates, including, but not limited to, any draft, final, and/or submitted rate filing memoranda and/or materials.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 15:

All Documents and Communications related to any LAHC Board of Director meetings, including agendas, minutes and materials.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule. Further, see attached LAHC-BDMINUTES 00001-00117.

REQUEST FOR PRODUCTION NO. 16:

All Documents and Communications related to the qualifications of LAHC's Directors and Officers, including but not limited to cover letters, resumes, curricula vitae, letters of recommendation, and/or performance reviews.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Plaintiff objects to this request on the grounds that it is vague and ambiguous and seeks information that is irrelevant and not likely to lead to the discovery of admissible information. See, La. R.S. 22:2043.1. See prior production of data by plaintiff on or about February 2, 2018. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 17:

All Documents and Communications referencing or related to Milliman's work for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by Plaintiff on or about February 2, 2018. The

Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Further, to the extent this request seeks work performed by Milliman, Milliman is already in possession of such documents. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 18:

All Documents and Communications referencing or related to information provided to Milliman during the course of Milliman's work for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Further, to the extent this request seeks work performed by Milliman, Milliman is already in possession of such documents. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 19:

All Documents and Communications referencing or related to any Feasibility Study, pro forma report, rate filing, or other work product prepared by Milliman, Inc. for LAHC, including but not limited to data, documents, and information provided to Milliman by LAHC or others.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol

agreed upon by the parties. Further, to the extent this request seeks work performed by Milliman, Milliman is already in possession of such documents. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 20:

Any and all Documents and Communications referencing or related to any evaluation of Milliman's work for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Further, to the extent this request seeks communications with Milliman, Milliman is already in possession of such documents. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 21:

Any and all Documents and Communications concerning or supporting the allegation set forth in SAP ¶ 19 that “the actuaries hired by LAHC to determine the CO-OP's feasibility, assess its funding needs, and set the premium rates to be charged by LAHC in both 2014 and 2015, breached their respective duties owed to LAHC.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the

electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Further, to the extent this request seeks work performed by Milliman, Milliman is already in possession of such documents. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 22:

All Documents and Communications referencing or related to Buck's work for LAHC, including but not limited to all data, documents or information provided to Buck during the course of Buck's work for LAHC, and any work product Buck performed for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 23:

All Documents and Communications that support Plaintiff's allegations in Paragraph 18, including but not limited the allegation that "From the start, because of the gross negligence of the Defendants named herein, LAHC failed miserably."

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the

parties. Further, to the extent this request seeks work performed by Milliman, Milliman is already in possession of such documents. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 24:

All Documents and Communications that support Plaintiff's allegations that "the actuaries hired by LAHC to determine the CO-OP's feasibility, assess its funding needs, and set the premium rates to be charged by LAHC in both 2014 and 2015, breached their respective duties owed to LAHC." Plaintiff's Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial dated October 25, 2017 ("SAP") ¶ 19.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for information produced by any expert witness consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information prepared by any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information regarding a potential testifying expert's opinion, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Moreover, discovery is ongoing, and this analysis has not been finalized.

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control

as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 25:

All Documents and Communications concerning the allegations in SAP ¶ 35 that “[t]o further damage the struggling LAHC, in approximately mid-2014, the D&O Defendants decided to switch health care provider networks from Verity Health (“Verity”) to Primary Healthcare Systems (“PHCS”).”

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for information about any expert witness consulted by LAHC, without regard to whether the expert’s opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information regarding a potential testifying expert’s opinion, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Moreover, discovery is ongoing, and this analysis has not been finalized. Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties.

REQUEST FOR PRODUCTION NO. 26:

All Documents and Communications that support Plaintiff’s allegations that LAHC was adversely dominated by the Defendants and that Defendants effectively concealed the bases for the causes of action alleged by Plaintiffs in the Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial. SAP ¶ 146.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Plaintiff objects to this request on the grounds that it is vague, ambiguous and overly broad. Plaintiff further objects to this request to the extent it calls for the production of documents not in

Plaintiffs possession, custody, or control. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. See prior production of data by plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 27:

All Documents and Communications referencing or relating to LAHC's ceasing to "enroll additional enrollees and [] to advertise and/or solicit new business." Petition for Rehabilitation, Injunctive Relief and Rule to Show Cause of Louisiana Health Cooperative, Inc. ¶ 7 (filed Sept. 1, 2014).

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Plaintiff objects to this request as vague and ambiguous. No petition was filed on Sept. 1, 2014 nor was there any communications or documents on that date referencing LAHC's ceasing to enroll additional enrollees and to advertise or solicit new business. Nor does Paragraph 7 of original Petition or the Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial make any reference to LAHC's ceasing to enroll additional enrollees and to advertise or solicit new business. Plaintiff objects to this request on the grounds that it is vague, ambiguous and overly broad. Plaintiff further objects to this request to the extent it calls for the production of documents not in Plaintiffs possession, custody, or control. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. See prior production of data by Plaintiff on or about February 2, 2018. The

Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 28:

All Documents you intend to offer as an exhibit or demonstrative aid at the trial of or any hearing in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Plaintiff objects to this request on the grounds that it is premature as discovery is ongoing and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the exchanges of exhibits set by the Case Management Schedule. The Receiver further objects to the extent this request seeks the production of Documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. The Receiver further objects to this request to the extent it calls for the production of impeachment, cross-examination and rebuttal exhibits and evidence. Plaintiff will finally identify all trial exhibits and demonstrative aids at such time required pursuant to the Louisiana Code of Civil Procedure and/or any directive of the Court. Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties and as required by Case Management Schedule. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 29:

All witness statements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Plaintiff objects to this request on the grounds that it seeks information protected by the work product privilege and is not discoverable pursuant to La. C.C.P. art. 1424. To the extent any

such statements exist, and without waiving any objection, the Receiver will produce a privilege log of withheld documents in his possession (not in LDI's exclusive possession) along with any non-privileged documents before or with his Electronic Discovery Responses.

REQUEST FOR PRODUCTION NO. 30:

Each and every Document that you will or may use, introduce, or discuss at the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Plaintiff objects to this request on the grounds that it is premature as discovery is ongoing and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the exchanges of exhibits set by the Case Management Schedule. Plaintiff further objects to the extent this request seeks the production of Documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. Plaintiff further objects to this request to the extent it calls for the production of impeachment, cross-examination and rebuttal exhibits and evidence. Plaintiff will finally identify all documents at such time required pursuant to the Louisiana Code of Civil Procedure and/or any directive of the Court.

REQUEST FOR PRODUCTION NO. 31:

For all experts retained or to be retained by LAHC, please produce their curriculum vitae and all Documents and Communications relating to this case and contained in the files of each expert.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for information prepared by any expert witness consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information prepared by any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information prepared by a potential testifying expert, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Discovery is ongoing, and this analysis has not

been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports and trial exhibits.

SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 32:

All reports filed by the Receiver and/or Rehabilitator in the Rehabilitation Action, including, but not limited to, status reports, financial reports, and documents reflecting claims made against LAHC's estate, outstanding amounts allegedly owed to/by LAHC, amounts recovered or collected by the Receiver and/or Rehabilitator, settlements entered into by the Receiver and/or Rehabilitator, and payments made to attorneys by the Receiver and/or Rehabilitator.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32 SERVED ON JULY 31, 2020:

The Receiver objects to this request as vague and ambiguous. The term "Rehabilitator" is not defined by Milliman. The Receiver's answers to this request are made after concluding that "Rehabilitator" and "Receiver" are intended as synonymous terms and do not refer to the Louisiana Department of Insurance or Commissioner Donelon. To aid the response to this request, the Receiver provides the Exhibit A, Excel Spreadsheet identifying the date and caption of all documents filed in the Receivership Action.

All documents filed in the Receivership Action record are public record, except for those filings that the Court has ordered be filed under seal or deemed confidential. For example, the December 3, 2015 docket entry for "Motion and Order" reflects an Order that all invoices associated with legal or contract services provided to the Receiver are confidential and are to be filed under seal. Thus, a Receivership Court (Honorable Judge Richard "Chip" Moore) order protects sealed information from disclosure, and the Receiver will not produce any document filed under seal without (1) an order from this Court (Honorable Judge Timothy Kelley) deeming them relevant and discoverable; and (2) an order from the Receivership Court that allows them to be produced.

These invoices submitted by counsel in the Receivership Action, by the Receiver, and by other vendors and consultants hired by the Receiver, contain privileged and confidential attorney work product, and in general, reflect the strategy, analysis, and thinking of the Receiver and his agents regarding the work that they perform in administering LAHC in rehabilitation and in litigation, including this litigation. Each Motion and Order for payment of those invoices,

however, identifies the amount of payment requested, the identity of the payee, are all authorized by the Receivership Court, and this information is not shielded from public viewing. See Exhibit A, Excel Spreadsheet attached hereto. All other documents are public record and can be viewed at no charge in the record. For clarity, unless the Receivership Action court otherwise ordered documents sealed, Receivership Action filings are publicly available records, including any settlements approved by that Court.

On October 21, 2019, (No. 218 on Excel spreadsheet attached) the Receivership Action court ordered LAHC to provide periodic updates on LAHC's progress in making payments to LAHC providers in the LAHC Settlement Plan. Attached hereto are the two status reports marked "CONFIDENTIAL," dated May 7, 2020 [Exhibit 22], and June 9, 2020 [Exhibit 23], sent to the Receivership Court in compliance with that Order by counsel, Sue Buser, but which were not filed into the Receivership Court record.

REQUEST FOR PRODUCTION NO. 33:

Documents filed in the Rehabilitation Action concerning claims made by any department, agency, division, office, or other representative of the United States government (the "Federal Government"), including but not limited to any proofs of claim submitted by or on behalf of the Federal Government.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33 SERVED ON JULY 31, 2020:

See (1) the 2019 Motion and Memorandum in support, along with attached exhibits, for Authority to Enter Into Release Agreement With the USA, For Release of Certain Federal Claims, and for Authority to Notify the USA of the Closing of the LAHC Estate for the Purpose of Providing an Opportunity for Inspection and Copying of the LAHC Docs, Books, and Records Prior to their Destruction and/or to Request Written Authorization from the US Prior to Destruction of the LAHC Records as Required in the Release Agreement and related order and (2) the attached 2016 Motion for Authority to Act with Respect to Federal Waiver and to Approve Procedures and Process for Determination of LAHC Claims and Possible Distribution both of which are attached as Exhibit 21 *in globo* to the Receiver's Report Regarding the Status of Risk Corridor Payments filed with the Litigation Court on July 31, 2020.

REQUEST FOR PRODUCTION NO. 34:

Documents filed in the Rehabilitation Action concerning claims made by or on behalf of LAHC against the Federal Government, including but not limited to documents concerning

Health Republic Ins. Co. v. United States, No. 1:16-cv-00259-MMS (Fed. Cl.).

RESPONSE TO REQUEST FOR PRODUCTION NO. 34 SERVED ON JULY 31, 2020:

Plaintiff objects to this request on the grounds that the phrase “documents concerning Health Republic Ins. Co. v. United States, No. 1:16-cv-00259-MMS (Fed. Cl.)” is vague and ambiguous. Without waiving his objection, see (1) the 2019 Motion and Memorandum in support, along with attached exhibits, for Authority to Enter Into Release Agreement With the USA, For Release of Certain Federal Claims, and for Authority to Notify the USA of the Closing of the LAHC Estate for the Purpose of Providing an Opportunity for Inspection and Copying of the LAHC Docs, Books, and Records Prior to their Destruction and/or to Request Written Authorization from the US Prior to Destruction of the LAHC Records as Required in the Release Agreement and related order and (2) the attached 2016 Motion for Authority to Act with Respect to Federal Waiver and to Approve Procedures and Process for Determination of LAHC Claims and Possible Distribution both of which are attached as Exhibit 21 *in globo* to the Receiver’s Report Regarding the Status of Risk Corridor Payments filed with the Litigation Court on July 31, 2020.

THIRD SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1 (REQUEST NO. 35):

All Documents and Communications supporting the allegations of wrongdoing and claims for damages against Milliman in the SAP.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1 (REQUEST NO. 35):

See Response to Request for Production No. 21.

REQUEST FOR PRODUCTION NO. 2 (REQUEST NO. 36):

All Documents and Communications supporting the allegations of wrongdoing and claims for damages against the “D&O Defendants” (as defined in the SAP) in the SAP, including but not limited to your allegations in paragraph 27 of the SAP that “the conduct of the D&O Defendants constitutes gross negligence, and in some cases, willful misconduct”.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2 (REQUEST NO. 36):

See Response to Request for Production No. 9.

REQUEST FOR PRODUCTION NO. 3 (REQUEST NO. 37):

All Documents and Communications supporting the allegations of wrongdoing and claims for damages against Beam, CGI, GRI, and/or Buck in the SAP.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3 (REQUEST NO. 37):

See Response to Request for Production No. 4.

REQUEST FOR PRODUCTION NO. 4 (REQUEST NO. 38):

All Documents and Communications referring or related to the Consulting Services Agreement entered into by LAHC and Milliman dated August 4, 2011, including but not limited to documents concerning the negotiation of that agreement.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4 (REQUEST NO. 38):

See Response to Request for Production No. 17.

REQUEST FOR PRODUCTION NO. 5 (REQUEST NO. 39):

LAHC's financial statements/reports.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5 (REQUEST NO. 39):

See Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 6 (REQUEST NO. 40):

LAHC's profit and loss statements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6 (REQUEST NO. 40):

See Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 7 (REQUEST NO. 41):

All Documents and Communications related to any LAHC Board of Director meetings, including, but not limited to, agendas, minutes and materials.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7 (REQUEST NO. 41):

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 8 (REQUEST NO. 42):

All Documents and Communications related to any LAHC Audit Committee meetings, including, but not limited to, agendas, minutes and materials.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8 (REQUEST NO. 42):

Plaintiff objects to this request on the grounds that it is vague, ambiguous and overly broad. Plaintiff further objects to this request to the extent it calls for the production of documents not in Plaintiffs possession, custody, or control. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. See prior production of data by plaintiff on or about February 2, 2018. Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule. Further, see attached LAHC-BDMINUTES 00001-00117.

REQUEST FOR PRODUCTION NO. 9 (REQUEST NO. 43):

All Documents and Communications related to any reports to LAHC's Directors and Officers concerning LAHC's financial condition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9 (REQUEST NO. 43):

Plaintiff objects to this request on the grounds that it is vague, ambiguous and overly broad. Plaintiff further objects to this request to the extent it calls for the production of documents not in Plaintiffs possession, custody, or control. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in

accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 10 (REQUEST NO. 44):

All Documents and Communications related to the qualifications of LAHC's Directors and Officers, including but not limited to, cover letters, resumes, curricula vitae, letters of recommendation, and/or performance reviews.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10 (REQUEST NO. 44):

See Response to Request for Production No. 9 (Request No. 43).

REQUEST FOR PRODUCTION NO. 11 (REQUEST NO. 45):

Any and all Documents and Communications concerning LAHC's Directors or Officers views or opinions on the ACA and the CO-OP Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11 (REQUEST NO. 45):

See Response to Request for Production No. 9 (Request No. 43).

REQUEST FOR PRODUCTION NO. 12 (REQUEST NO. 46):

All Documents and Communications referencing or related to Milliman's work for LAHC, including but not limited to all data, documents or information provided to Milliman during the course of Milliman's work for LAHC, all Communication by and between Milliman and LAHC, any work product Milliman performed for LAHC, and any evaluations of Milliman's work for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12 (REQUEST NO. 46):

The Receiver objects to this request on the grounds that it seeks production of communications and documents between or produced by the Receiver, his agents, employees, and legal counsel. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Further, to the extent this request seeks work performed by Milliman, Milliman is already in possession of such documents. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and

communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 13 (REQUEST NO. 47):

All Documents and Communications referencing or related to Buck's work for LAHC, including but not limited to all data, documents or information provided to Buck during the course of Buck's work for LAHC, all Communication by and between Buck and LAHC, any work product Buck performed for LAHC, and any evaluations of Buck's work for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13 (REQUEST NO. 47):

See Response to Request for Production No. 1.

REQUEST FOR PRODUCTION NO. 14 (REQUEST NO. 48):

All Documents and Communications related to any evaluations of CGI or GRI's work for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14 (REQUEST NO. 48):

See Response to Request for Production No. 4.

REQUEST FOR PRODUCTION NO. 15 (REQUEST NO. 49):

Any and all Documents and Communications submitted by or on behalf of LAHC in connection with LAHC's effort to secure licensure from the Louisiana Department of Insurance, including but not limited to LAHC's HMO license.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15 (REQUEST NO. 49):

The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond

to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule. Without waiving any objections, the Receiver produces the LAHC license and LAHC's application for this license as LAHC LICENSE 00001 – 00527.

REQUEST FOR PRODUCTION NO. 16 (REQUEST NO. 50):

Any and all Documents and Communications referring or related to the development or setting of premium rates, including, but not limited to, any draft, final, and/or submitted rate filing memoranda and/or materials.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16 (REQUEST NO. 50):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C. P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving these objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 17 (REQUEST NO. 51):

Any and all Documents and Communications referencing or related to LAHC's filings with the Louisiana Department of Insurance ("Louisiana DOI"), including form and rate filings.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17 (REQUEST NO. 51):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C. P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving these objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 18 (REQUEST NO. 52):

Any and all Documents and Communications referencing or related to any filings or other submissions by or on behalf of LAHC with CMS.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18 (REQUEST NO. 52):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C. P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information

about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Please see the Receiver's Status Report Regarding Risk Corridor Expectations filed on June 15, 2020 and his Reply Report Regarding the Status of Risk Corridor Payments and Monthly Status Report Regarding *Health Republic* dated July 31, 2020. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving these objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 19 (REQUEST NO. 53):

Any and all Documents and Communications referencing or related to any feasibility study, pro forma report, or actuarial memorandum prepared by or for LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19 (REQUEST NO. 53):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C. P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving these objections, the Receiver will produce all responsive, relevant, discoverable,

non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 20 (REQUEST NO. 54):

Any and all Documents and Communications referencing or relating to LAHC's estimated enrollment, enrollment projections, enrollment strategy, analysis of the ACA Marketplace (as that term is used in the SAP) with respect to enrollment, enrollment of persons who were previously uninsured, and/or any comparisons or analyses of expected versus actual enrollment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20 (REQUEST NO. 54):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C. P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 21 (REQUEST NO. 55):

All policies or procedures for the processing of claims by or on behalf of LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21 (REQUEST NO. 55):

See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic

review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 22 (REQUEST NO. 56):

Documents sufficient to show LAHC's discount arrangements with providers and/or provider networks, including, but not limited to, any contracts related to provider discounts, and any changes to provider discounts.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22 (REQUEST NO. 56):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 23 (REQUEST NO. 57):

Any and all Documents and Communications referencing or relating to claims coding capabilities or claim coding intensity with respect to LAHC's insureds.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23 (REQUEST NO. 57):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff

will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 24 (REQUEST NO. 58):

Any and all Documents and Communications referencing or relating to actual or expected claim morbidity of LAHC's covered population for policy year 2014 or policy year 2015, or of the anticipated covered population for policy year 2016.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24 (REQUEST NO. 58):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 25 (REQUEST NO. 59):

Any and all Documents and Communications referencing or relating to LAHC's overall medical loss ratio.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25 (REQUEST NO. 59):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 26 (REQUEST NO. 60):

Documents sufficient to show LAHC's claims costs for the policy years 2014 to 2016 and per member per month claims costs throughout the same time period.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26 (REQUEST NO. 60):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to

produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 27 (REQUEST NO. 61):

Any and all Documents and Communications referencing or relating to LAHC's expected or anticipated claims costs for each of the policy years 2014-2016 including, but not limited to, any comparisons or other discussion of expected versus actual claims costs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27 (REQUEST NO. 61):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 28 (REQUEST NO. 62):

Documents sufficient to show LAHC's non-claim related expenses for the policy years 2014 to 2016 and per member per month non-claim expenses throughout the same time period.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28 (REQUEST NO. 62):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 29 (REQUEST NO. 63):

Any and all Documents and Communications referencing or relating to LAHC's expected or anticipated non-claim expenses for each of the policy years 2014-2016 including, but not limited to, any comparisons or other discussion of expected versus actual non-claim expenses.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29 (REQUEST NO. 63):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff

will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 30 (REQUEST NO. 64):

Any and all Documents and Communications referencing or relating to any payments, estimated payments, or anticipated payments to or by LAHC pursuant to the ACA, including but not limited to Risk Corridors Payments, Risk Adjustment Transfer Payments, or Transitional Reinsurance Payments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30 (REQUEST NO. 64):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Please see also the Receiver's Status Report Regarding Risk Corridor Expectations filed on June 15, 2020 and his Reply Report Regarding the Status of Risk Corridor Payments and Monthly Status Report Regarding *Health Republic* dated July 31, 2020. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as

part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 31 (REQUEST NO. 65):

Documents and Communications sufficient to show the extent to which any attorneys' fees have been paid using funds related to Risk Corridor Payments paid to LAHC and the amounts and recipients of such fees.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31 (REQUEST NO. 65):

Plaintiff objects to this request on the grounds that the documents requested are irrelevant and unlikely to lead to the discovery of admissible evidence. Further, Plaintiff asserts that this request is impermissibly made for harassment purposes and to mount an impermissible collateral attack on a court-order in the Receivership Action. On October 5, 2015, two Motions and Orders with attachments [Exhibit A, Spreadsheet Nos. 13-16 previously produced] to approve retaining the Receiver and attorney Sue Buser on the terms and conditions set forth in their contracts, including the obligation not to produce any information without LDI approval were filed and subsequently approved in the Receivership Action. Their contracts are *not* shielded from public viewing. See column marked "**Sealed Docs**" of the Exhibit A, Excel Spreadsheet. All other documents are public record, including these contracts, and can be viewed by Defendants. Furthermore, to clarify the nature and scope of the compensatory damages being sought by the Receiver herein, Plaintiff has filed a Motion and Order to Amend his petition by voluntarily dismissing any claim he may have had for attorney's fees and/or administrative expenses incurred in or related to the Receivership Action which the above-captioned Court granted by order dated August 6, 2020.

REQUEST FOR PRODUCTION NO. 32 (REQUEST NO. 66):

Any and all Documents relating to Communications by and between LAHC and any federal government agency, employee, agent or other representative, including but not limited to, with CMS, related to feasibility studies, startup or solvency loans, or Risk Corridors Payments, Risk Adjustment Transfer Payments, or Transitional Reinsurance Payments, or LAHC's financial performance, financial condition or solvency.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32 (REQUEST NO. 66):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged

communications and to the extent it seeks communications by the Receiver post-receivership. La. R.S. 22:2043.1. Further, settlement communications with CMS are privileged pursuant to La. C.E. art. 408. Furthermore, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Please see also the Receiver's Status Report Regarding Risk Corridor Expectations filed on June 15, 2020 and his Reply Report Regarding the Status of Risk Corridor Payments and Monthly Status Report Regarding *Health Republic* dated July 31, 2020. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 33 (REQUEST NO. 67):

Any and all Documents relating to Communications by and between LAHC and any employee, agent or other representative of the Louisiana DOI related to LAHC's premiums, pricing, filings, enrollment, financial condition or solvency.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33 (REQUEST NO. 67):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence and on the grounds that he is not in possession, custody or control of documents exclusively in the possession of the Louisiana DOI. La. R.S. 22:2043.1(A). Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art.

1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. See prior production of data by Plaintiff on or about February 2, 2018. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 34 (REQUEST NO. 68):

Any and all Documents and Communications referring or related to LAHC's pricing strategy or plan development.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34 (REQUEST NO. 68):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence and on the grounds that he is not in possession, custody or control of documents exclusively in the possession of the Louisiana DOI. La. R.S. 22:2043.1(A). Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. See prior production of data by Plaintiff on or about February 2, 2018. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol

agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 35 (REQUEST NO. 69):

Documents sufficient to show the premiums collected by LAHC for each of the policy years 2014-2016 and per member per month premiums collected for that same time period.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35 (REQUEST NO. 69):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 36 (REQUEST NO. 70):

Any and all Documents and Communications referencing or relating to LAHC's expected or anticipated premium to be collected for each of the policy years 2014-2016 including, but not limited to, any comparisons or other discussion of expected versus actual premiums collected.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36 (REQUEST NO. 70):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged

communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 37 (REQUEST NO. 71):

Documents evidencing LAHC's reinsurance agreements, including but not limited to documents sufficient to show any payments made to LAHC or requested to be made to LAHC from any reinsurer. **[These are segregable documents that do not require search terms].**

RESPONSE TO REQUEST FOR PRODUCTION NO. 37 (REQUEST NO. 71):

See documents previously produced on February 2, 2018. These documents have not yet been identified by the Receiver. The Receiver will respond after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving these objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 38 (REQUEST NO. 72):

Any and all Documents and Communications referring or relating to the impact on LAHC of the ACA's Individual Mandate.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38 (REQUEST NO. 72):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence and on the grounds that he is not in possession, custody or control of documents exclusively in the possession of the Louisiana DOI. La. R.S. 22:2043.1(A). Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. See prior production of data by plaintiff on or about February 2, 2018. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 39 (REQUEST NO. 73):

Any and all Documents and Communications referring or relating to pent up demand for health insurance and its impact or potential impact on LAHC's claims costs, pricing, or enrollment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39 (REQUEST NO. 73):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the

requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 40 (REQUEST NO. 74):

Any and all Documents and Communications referring or relating to the impact on LAHC from any changes to the ACA, regulations promulgated pursuant to the ACA, or changes to the implementation or enforcement of the ACA or such regulations.

RESPONSE TO REQUEST FOR PRODUCTION NO. 40 (REQUEST NO. 74):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 41 (REQUEST NO. 75):

Any and all Documents and Communications related to Deloitte's review of any feasibility study or other materials pertaining to LAHC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 41 (REQUEST NO. 75):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 42 (REQUEST NO. 76):

Any and all Documents and Communications referring or relating to the decision to engage Buck in or around March of 2014 and to extend that engagement in or around December 2014, as alleged in paragraph 112 of the SAP.

RESPONSE TO REQUEST FOR PRODUCTION NO. 42 (REQUEST NO. 76):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any

expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 43 (REQUEST NO. 77):

Any and all Documents and Communications referring to or relating to LAHC's decision not to engage Milliman with respect to LAHC's 2015 rate filing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 43 (REQUEST NO. 77):

Plaintiff objects to this request to the extent to it calls for the production of information prepared in anticipation of litigation, attorney work-product or attorney-client privileged communications. Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Furthermore, and subject to these objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 44 (REQUEST NO. 78):

Any and all Documents and Communications referring or relating to the decision to hire Greg Cromer, Pat Powers, and/or Charles Calvi.

RESPONSE TO REQUEST FOR PRODUCTION NO. 44 (REQUEST NO. 78):

The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 45 (REQUEST NO. 79):

Any and all Documents and Communications referring or relating to LAHC's decision to terminate CGI, and/or to replace CGI with GRI.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45 (REQUEST NO. 79):

See Response to Request for Production No. 44 (Request No.78).

REQUEST FOR PRODUCTION NO. 46 (REQUEST NO. 80):

All Documents and Communications concerning the allegations in SAP ¶ 35 that “[t]o further damage the struggling LAHC, in approximately mid-2014, the D&O Defendants decided to switch health care provider networks from Verity Health (“Verity”) to Primary Healthcare Systems (“PHCS”).”

RESPONSE TO REQUEST FOR PRODUCTION NO. 46 (REQUEST NO. 80):

The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C.P. art. 1425. In particular, this request appears to call for

information about any expert witness consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). To the extent this request calls for information regarding a potential testifying expert's opinion, Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange of expert reports set by the Case Management Schedule. Moreover, discovery is ongoing, and this analysis has not been finalized. Without waiving any objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties.

REQUEST FOR PRODUCTION NO. 47 (REQUEST NO. 81):

All Documents and Communications that support Plaintiff's allegations that LAHC was adversely dominated by the Defendants and that Defendants effectively concealed the bases for the causes of action alleged by Plaintiffs in the SAP. SAP ¶ 146.

RESPONSE TO REQUEST FOR PRODUCTION NO. 47 (REQUEST NO. 81):

See Response to Request for Production No. 26.

REQUEST FOR PRODUCTION NO. 48 (REQUEST NO. 82):

All Documents and Communications concerning your claim as set forth in paragraph 85 of the SAP, that the "Milliman feasibility study was prepared using unrealistic assumption sets."

RESPONSE TO REQUEST FOR PRODUCTION NO. 48 (REQUEST NO. 82):

See Response to Request for Production No. 21.

REQUEST FOR PRODUCTION NO. 49 (REQUEST NO. 83):

Any and all Documents and Communications concerning your claim as set forth in paragraph 95 of the SAP, that the actuarial memorandums "assumed that LAHC would achieve provider discounts on their statewide PPO product that were equal to Blue Cross Blue Shield of Louisiana."

RESPONSE TO REQUEST FOR PRODUCTION NO. 49 (REQUEST NO. 83):

See Response to Request for Production No. 21.

REQUEST FOR PRODUCTION NO. 50 (REQUEST NO. 84):

Any and all Documents and Communications concerning your allegation in paragraph 102 of the SAP that it was unreasonable for Milliman to assume that LAHC would be able to enroll 28,000 members.

RESPONSE TO REQUEST FOR PRODUCTION NO. 50 (REQUEST NO. 84):

See Response to Request for Production No. 21.

REQUEST FOR PRODUCTION NO. 51 (REQUEST NO. 85):

Any and all Documents and Communications concerning your allegation in paragraph 102 of the SAP that “Milliman was aware that a significant percentage of the individual enrollment would be receiving government subsidies and thus would have limited sensitivity to pricing differences between the various plans offered on the ACA exchange.”

RESPONSE TO REQUEST FOR PRODUCTION NO. 51 (REQUEST NO. 85):

See Response to Request for Production No. 21.

REQUEST FOR PRODUCTION NO. 52 (REQUEST NO. 86):

All Documents produced in *Health Republic Ins. Co. v. United States*, No. 1:16-cv-00259-MMS (Fed. Cl.) that relate to LAHC. **[These are segregable documents that do not require search terms].**

RESPONSE TO REQUEST FOR PRODUCTION NO. 52 (REQUEST NO. 86):

Plaintiff objects to this request on the grounds that it is vague. No discovery to or from LAHC was propounded in *Health Republic Ins. Co. v. United States*, No. 1:16-cv-00259-MMS (Fed. Cl.). Thus, no documents were produced relating to LAHC’s claims.

REQUEST FOR PRODUCTION NO. 53 (REQUEST NO. 87):

All Documents on which LAHC bases its claims in *Health Republic Ins. Co. v. United States*, No. 1:16-cv-00259-MMS (Fed. Cl.). **[These are segregable documents that do not require search terms]**

RESPONSE TO REQUEST FOR PRODUCTION NO. 53 (REQUEST NO. 87):

Plaintiff objects to this request on the grounds that it is vague, ambiguous and overly broad. Plaintiff presumes that documents which are in the custody of CMS support LAHC’s claims. The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client

communications, or are otherwise privileged. Subject to these objections, see documents produced herewith as LAHC-HealthRepublic 00001-00066.

Further, Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C. P. art. 1425. In particular, this request appears to call for analysis from experts consulted by LAHC, without regard to whether the expert's opinions may be presented at trial. Plaintiff will not provide information about any expert who is not expected to be called as a witness at trial unless and until defendant satisfied the requirements set out in La. C.C.P. art. 1425(D)(2)-(3). Plaintiff also objects on the grounds that this request is premature. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to produce expert reports. Please see also the Receiver's Status Report Regarding Risk Corridor Expectations filed on June 15, 2020 and his Reply Report Regarding the Status of Risk Corridor Payments and Monthly Status Report Regarding *Health Republic* dated July 31, 2020. See prior production of data by Plaintiff on or about February 2, 2018.

REQUEST FOR PRODUCTION NO. 54 (REQUEST NO. 88):

Any and all Documents and Communications in the possession, custody or control of LAHC or the Louisiana DOI related to 2014 and 2015 rate filings for any insurer concerning ACA-compliant plans sold or to be sold in Louisiana. **[The rate filings themselves are segregable documents that do not require search terms].**

RESPONSE TO REQUEST FOR PRODUCTION NO. 54 (REQUEST NO. 88):

Plaintiff objects to this request on the grounds that it is vague, ambiguous and overly broad. Plaintiff further objects to this request to the extent it calls for the production of documents in LDI's exclusive possession, custody, or control. See, Opposition Memorandum to Defendants' Motion to Compel filed on September 17, 2020 and the Motion for Partial Summary Judgment Regarding "Regulator Fault" or "Receiver Fault" Defenses or, in the Alternative, Motion to Strike Defenses Precluded as a Matter of Law." The Receiver objects to this Request on the grounds that it seeks irrelevant evidence and is not likely to lead to the discovery of other admissible evidence. La. R.S. 22:2043.1(A). Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. See prior production of data by Plaintiff on or about February 2, 2018. The Receiver, without waiving any objections, will

supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications in his possession, custody or control as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld, pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 55 (REQUEST NO. 89):

Any and all Documents and Communications in the possession, custody or control of LAHC or the Louisiana DOI related to enrollment of insureds in ACA-compliant plans sold in Louisiana in 2014 and 2015, including materials related to expected enrollment, enrollment of previously uninsured populations, enrollment relative to population of Louisiana, and any analyses or other discussion of expected versus actual enrollment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 55 (REQUEST NO. 89):

See Response to Request for Production No. 54 (Request No. 88).

REQUEST FOR PRODUCTION NO. 56 (REQUEST NO. 90):

Any and all Documents and Communications in the possession, custody or control of LAHC or the Louisiana DOI concerning the Louisiana DOI's review and approval of LAHC's 2014 or 2015 rates.

RESPONSE TO REQUEST FOR PRODUCTION NO. 56 (REQUEST NO. 90):

See Response to Request for Production No. 54 (Request No. 88).

REQUEST FOR PRODUCTION NO. 57 (REQUEST NO. 91):

Any and all Documents and Communications in the possession, custody or control of LAHC or the Louisiana DOI, including but not limited to any emails and reports, generated in the course of the onsite market conduct and financial examination of LAHC that commenced in or around March of 2015.

RESPONSE TO REQUEST FOR PRODUCTION NO. 57 (REQUEST NO. 91):

See Response to Request for Production No. 54 (Request No. 88).

REQUEST FOR PRODUCTION NO. 58 (REQUEST NO. 92):

Any and all Documents and Communications in the possession, custody or control of LAHC or the Louisiana DOI referring or relating to the decision to place LAHC into rehabilitation or liquidation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 58 (REQUEST NO. 92):

See Response to Request for Production No. 54 (Request No. 88).

REQUEST FOR PRODUCTION NO. 59 (REQUEST NO. 93):

Any and all Documents and Communications in the possession, custody or control of LAHC or the Louisiana DOI related to the November 5, 2015 testimony of the Louisiana Commissioner of Insurance Before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, United States House of Representatives Regarding: “Examining the Costly Failures of Obamacare’s CO-OP Insurance Loans”.

RESPONSE TO REQUEST FOR PRODUCTION NO. 59 (REQUEST NO. 93):

See Response to Request for Production No. 54 (Request No. 88).

REQUEST FOR PRODUCTION NO. 60 (REQUEST NO. 94):

All Documents you intend to rely on to support your claims against Milliman in this action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 60 (REQUEST NO. 94):

Plaintiff objects to this request on the grounds that it is premature as discovery is ongoing and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the exchanges of exhibits set by the Case Management Schedule. The Receiver further objects to the extent this request seeks the production of Documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. The Receiver further objects to this request to the extent it calls for the production of impeachment, cross-examination and rebuttal exhibits and evidence. Without waiving his objections, the Receiver will supplement this response after conducting the electronic review of agreed-upon search terms in accordance with an Electronic Review Protocol agreed upon by the parties and as required by Case Management Schedule. Without waiving any objections, the Receiver will produce all responsive, relevant, discoverable, non-privileged documents and communications as part of his Electronic Discovery Responses along with a privilege log if any documents are withheld pursuant to the Case Management Schedule.

REQUEST FOR PRODUCTION NO. 61 (REQUEST NO. 95):

All witness statements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 61 (REQUEST NO. 95):

Plaintiff objects to this request on the grounds that it seeks information protected by the work product privilege and is not discoverable pursuant to La. C.C.P. art. 1424. To the extent any such statements exist, and without waiving any objection, the Receiver will produce a privilege log of withheld documents in his possession (not in LDI's exclusive possession) along with any non-privileged documents before or with his Electronic Discovery Responses.

REQUEST FOR PRODUCTION NO. 62 (REQUEST NO. 96):

Each and every Document that you will or may use, introduce, or discuss at the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 62 (REQUEST NO. 96):

Plaintiff objects to this request on the grounds that it is premature as discovery is ongoing and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the exchanges of exhibits set by the Case Management Schedule. Plaintiff further objects to the extent this request seeks the production of documents that were prepared for or in anticipation of litigation, constitute attorney work product, contain attorney-client communications, or are otherwise privileged. Plaintiff further objects to this request to the extent it calls for the production of impeachment, cross-examination and rebuttal exhibits and evidence. Plaintiff will finally identify all trial exhibits at such time required pursuant to the Louisiana Code of Civil Procedure and/or any directive of the Court. No determination of any documents that may or will be used, introduced, or discussed at the trial of this matter has been made.

REQUEST FOR PRODUCTION NO. 63 (REQUEST NO. 97):

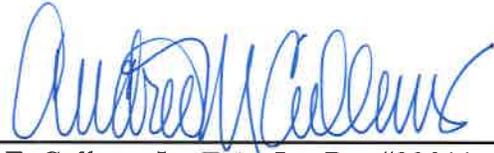
For all testifying experts retained or to be retained by Plaintiff, please produce their curriculum vitae, any expert report and all Documents and Communications relating to this case and contained in the files of each expert to the extent required under the Louisiana Code of Civil Procedure.

RESPONSE TO REQUEST FOR PRODUCTION NO. 63 (REQUEST NO. 97):

Plaintiff objects to the extent that it seeks discovery of expert information beyond that which is made discoverable under La. C.C. P. art. 1425. Plaintiff objects to the request as premature and expressly reserves the right to supplement, and to assert additional objections or privileges, in accordance with the time period for the initial designation of experts and exchange

of expert reports set by the Case Management Schedule. Discovery is ongoing, and this analysis has not been finalized. Plaintiff will respond to this request in compliance with the deadline set by the above-captioned court to identify experts and produce expert reports and trial exhibits.

Respectfully submitted,



J. E. Cullens, Jr., T.A., La. Bar #23011
Edward J. Walters, Jr., La. Bar #13214
Darrel J. Papillion, La. Bar #23243
Andrée M. Cullens, La. Bar #23212
S. Layne Lee, La Bar #17689
**WALTERS, PAPIILLION,
THOMAS, CULLENS, LLC**
12345 Perkins Road, Bldg One
Baton Rouge, LA 70810
Phone: (225) 236-3636
cullens@lawbr.net

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via e-mail and U.S.

Mail, postage prepaid, and via e-mail to all counsel of record as follows:

W. Brett Mason
Michael W. McKay
Stone Pigman
301 Main Street, #1150
Baton Rouge, LA 70825

Harry Rosenberg
Phelps Dunbar
365 Canal Street
Suite 2000
New Orleans, LA 70130

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

Michael A. Balascio
Barrasso Usdin Kupperman
909 Poydras Street
24th Floor
New Orleans, LA 70112

Seth A. Schmeackle
Lugenbuhl, Wheaton, Peck
601 Poydras Street
Suite 2775
New Orleans, LA 70130

Karl H. Schmid
Degan, Blanchard, & Nash
400 Poydras Street
Suite 2600
New Orleans, LA 70130

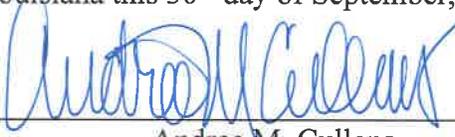
George D. Fagan
Leake & Andersson
1100 Poydras Street
Suite 1700
New Orleans, LA 70163

Mr. John W. Hite, III
Salley, Hite, Mercer & Resor, LLC
365 Canal Street
Suite 1710
New Orleans, LA 70130

Thomas McEachin
Schonekas, Evans, McGoey
909 Poydras Street, Suite 1600
New Orleans, LA 70112

Robert B. Bieck, Jr.
Jones Walker LLP
201 St. Charles Avenue
49th Floor
New Orleans, LA 70170

Baton Rouge, Louisiana this 30th day of September, 2020.



Andree M. Cullens