

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

**BUCK GLOBAL, LLC'S MOTION TO COMPEL LOUISIANA DEPARTMENT OF  
INSURANCE'S COMPLIANCE WITH SUBPOENA DUCES TECUM**

NOW INTO COURT, through undersigned counsel, comes Buck Global, LLC f/k/a Buck Consultants, LLC ("Buck"), who respectfully moves this Honorable Court pursuant to La. Code Civ. Proc. arts. 1354, 1463, and 1469 for an order compelling the Louisiana Department of Insurance ("LDI") to comply with the subpoena duces tecum served upon on it on October 22, 2020, upon showing that:

1.

The requested LDI documents are directly relevant to the Plaintiff's claims and/or are reasonably calculated to lead to the discovery of admissible evidence. Although Buck's subpoena seeks documents that fall well within the scope of the "broad and liberal" discovery allowed by Louisiana law, the LDI has refused to produce a single document.

2.

LDI's boilerplate and unsupported objections *to every single one* of Buck's document requests fail to preserve, and thereby waive, any objections to the subpoena. Further, LDI has not asserted any applicable ground of privilege and/or confidentiality pertaining to any subpoenaed document. And any relevant claim of privilege or confidentiality has been waived

by the failure to properly assert it, the filing of the instant suit against the defendants, and the LDI's previous publication of related information.

3.

In support of this Motion to Compel, Buck attaches the following exhibits:

- Exhibit A:** Plaintiff's Second Amended Petition
- Exhibit B:** Notice of Records Only Deposition and Subpoena Duces Tecum to LDI with Exhibits
- Exhibit C:** Sheriff's Service Return
- Exhibit D:** LDI's Objections to Subpoena Duces Tecum
- Exhibit E:** Transcript of Non-Appearance at November 11, 2020 Records Deposition
- Exhibit F:** Excerpts of Plaintiff's Opposition to Defendants' Motion to Compel on Custody and Control
- Exhibit G:** Transcript of September 25, 2020 Hearing
- Exhibit H:** Commissioner's Public Records Request to LDI and transmission of response
- Exhibit I:** Excerpts of Commissioner's Responses to Buck's Written Discovery Requests (undertaking to produce LDI records in his "possession and control.")
- Exhibit J:** Lewis & Ellis Reports Published on LDI website
- Exhibit K:** Crohan Affidavit Authenticating Lewis & Ellis Reports

Buck respectfully requests that the Court sign the Rule to Show Cause filed with this Motion setting it for hearing at the earliest feasible date. In compliance with Local Rule 9.8, Buck represents that this case is not set for trial, and that live testimony will not be offered at the hearing of this motion.

WHEREFORE, Buck respectfully prays that, after hearing of this matter, the Court grant its motion to compel and order the Louisiana Department of Insurance to comply fully with Buck's subpoena duces tecum and produce documents responsive to Buck's discovery requests.

Respectfully submitted,

/s/ James A. Brown  
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*Attorneys for Buck Global, LLC*

**RULE 10.1 CERTIFICATE OF CONFERENCE**

I, the undersigned counsel for Buck Global, LLC, personally conferred with John Ashley Moore, counsel for Louisiana Department of Insurance, by telephone on December 1, 2020. At this conference, there was a substantive discussion of every item presented to the Court in this motion and, despite their best efforts, counsel were unable to resolve the matters presented.

Certified this 16th day of December, 2020

/s/ James A. Brown (Bar #14101)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing Motion to Compel has been served upon all parties through their counsel of record, by e-mail, and, additionally, upon counsel for Louisiana Department of Insurance by certified mail, return receipt requested, this 16th day of December, 2020.

/s/ James A. Brown

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SURETY COMPANY OF AMERICA

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

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DEPUTY CLERK

**BUCK GLOBAL, LLC'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL  
LDI'S COMPLIANCE WITH SUBPOENA DUCES TECUM**

Buck Global, LLC f/k/a Buck Consultants, LLC ("Buck"), respectfully submits this memorandum in support of its Motion to Compel the Louisiana Department of Insurance ("LDI") to comply with Buck's subpoena duces tecum that was served upon it on October 22, 2020.

As more fully set forth below, the documents that Buck seeks are relevant and/or reasonably calculated to lead to the discovery of admissible evidence. Moreover, Buck has been unable to obtain the requested information from other sources. Responsive LDI documents are relevant to the ultimate determination of causation, liability, and damages in the pending litigation.

The Plaintiff has already conceded the discoverability of LDI documents pertaining to Louisiana Health Cooperative, Inc. ("LAHC") by undertaking to produce them to the extent they are within his "possession and control" and by issuing a "public records" request to LDI for records pertaining to LAHC. And while this Court previously ruled that the Commissioner, as Rehabilitator's, "possession and control" of LDI documents is limited to what is in the records of LAHC, in rehabilitation, at the same time the Court has suggested that other LDI records may be sought by means of a subpoena duces tecum directed to the LDI. But when Buck sought

discovery of documents directly from LDI through a subpoena duces tecum, it was met with wholesale, boilerplate objections to each and every request set forth in the subpoena. And, as shown below, LDI's previous "public records" production, consisting of largely irrelevant information, is meaningless. LDI's objections to Buck's subpoena duces tecum are legally ineffective and without merit. This Court should enforce Buck's subpoena duces tecum and direct LDI to comply with the subpoena's document requests.

## **I. BACKGROUND**

### **A. Relevant Procedural History**

This lawsuit arises out of the failure of Louisiana Health Cooperative, Inc. ("LAHC"), a consumer operated and oriented health care plan ("CO-OP") created under the Patient Protection and Affordable Care Act ("ACA"). LAHC, a Louisiana nonprofit corporation, was formed in 2011 and was licensed to operate as a health maintenance organization by the Louisiana Department of Insurance ("LDI") in 2013. In September 2015, LDI placed LAHC into rehabilitation under the direction and control of Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana, as Rehabilitator.

In August 2016, the Commissioner, appearing herein as Rehabilitator ("Plaintiff" or "Commissioner"), filed this suit against several Defendants, including LAHC's former directors and officers (the "D&O Defendants"),<sup>1</sup> the developer and initial manager of LAHC, Beam Partners, LLC ("Beam"), and LAHC's third-party administrators, CGI Technology and Solutions, Inc. ("CGI") and Group Resources, Inc. ("GRI").<sup>2</sup> He later amended his petition to name two Defendants who provided actuarial services to LAHC – Milliman, Inc. ("Milliman") and Buck – and, later, several insurers of LAHC's directors and officers. According to the Commissioner's suit, the supposed acts or omissions of all defendants combined to cause LAHC's insolvency and required LDI to place it into rehabilitation.

On November 20, 2020, the Court held a Zoom hearing on Plaintiff's opposed motion for partial summary judgment on "Regulator Fault" affirmative defenses. Although the Court ultimately granted Plaintiff's motion and dismissed certain affirmative defenses, it recognized

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<sup>1</sup> The D&O Defendants are now named as nominal defendants pursuant to a "*Gasquet*" release.

<sup>2</sup> Plaintiff has settled its claims against Beam and CGI. His claims against GRI remain pending.

that its ruling was not dispositive of the discoverability of LDI documents. Rather, the Court correctly recognized that LDI regulatory documents may be discovered upon a showing that they fall within the broad ambit of discovery allowed by Louisiana law.

**B. The LDI documents are relevant to the Commissioner's lawsuit.**

LDI's role and involvement relative to LAHC are intertwined with and relevant to the Commissioner's claims against Buck and other defendants. For example, the Second Amended Petition (the "SAP"), attached to the Motion to Compel as **Exhibit A**, asserts:

"State regulators, like the Louisiana Department of Insurance ("LDI"), have the primary oversight of CO-OP's as health insurance issuers." Ex. A, SAP at ¶ 16.

"The LDI placed LAHC in rehabilitation in September 2015, and a Receiver, Billy Bostick, was appointed by this Court to take control of the failed Louisiana CO-OP." Ex. A, SAP at ¶21.

"For instance, when the LDI took over the operations of LAHC, the CO-OP had a backlog of approximately 50,000 claims that had not been processed." Ex. A, SAP at ¶22.

"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." Ex. A, SAP at ¶139.<sup>3</sup>

"Buck's advice and/or reports to the LAHC and/or LDI and/or CMS concerning LAHC's funding needs negligently misrepresented the actual funding needs and premium rates of LAHC." Ex. A, SAP at ¶144.<sup>4</sup>

"Because of Defendant's gross negligence, as of December 31, 2015, LAHC has lost more than \$82 million." Ex. A, SAP at ¶22.

"Buck's failure to exercise reasonable care, and its failure to act in accordance with the professional standards to actuaries was the legal cause of all of, or substantially all of, LAHC's damages as set forth herein." Ex. A, SAP at ¶134.

Buck's subpoena duces tecum issued to LDI is directly related to these allegations. *See* Subpoena Duces Tecum, attached to the Motion to Compel as **Exhibit B**. Buck is certainly

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<sup>3</sup> In his Fourth Amended Petition, Plaintiff seeks to replace this language with the following: "In Milliman's reports concerning LAHC's funding needs and premium rates, Milliman negligently misrepresented the actual funding needs and premium rates required of LAHC. Milliman's negligent misrepresentations regarding LAHC's actual funding needs and premium rates were made to LAHC. LAHC relied upon these negligent misrepresentations to its detriment." Regardless of the amendment, the LDI documents remain relevant and discoverable.

<sup>4</sup> In Plaintiff's Fourth Amended Petition, he seeks to replace this language with the following allegation: "In Buck's reports concerning LAHC's funding needs and premium rates, Buck negligently misrepresented the actual funding needs and premium rates required of LAHC. Buck's negligent misrepresentations regarding LAHC's actual funding needs and premium rates were made to LAHC. LAHC relied upon these negligent misrepresentations to its detriment." Regardless of the amendment, the LDI documents remain relevant and discoverable.

entitled to discovery of responsive documents from the LDI, the entity that had “primary oversight” of LAHC—the failure of which is at the center of this litigation.

It is indisputable the LDI has special and direct knowledge relevant to this action. By way of example, LDI and/or its consulting actuaries contemporaneously reviewed Buck’s and Milliman’s rate projections. LDI documents therefore may support, or contradict, the Commissioner’s claims that those rate projections were unreasonable and misleading. LDI documents likewise may support, or contradict, the Commissioner’s allegations that the Defendants caused LAHC to become insolvent, requiring LDI to place it into rehabilitation.

The responsive LDI records thus are relevant and discoverable,<sup>5</sup> and hence the Commissioner has already expressly agreed to produce LDI records that are “in his possession and control.” For example, in response to Buck’s Interrogatory No. 4, which asked the Commissioner to “[e]xplain in detail LDI’s review and approval of LAHC’s 2014 and 2015 rates,” the Commissioner, subject to a number of objections, represented that: “Without waiving these objections, to the extent that there are responsive pre-Receivership documents related to LAHC’s 2014 or 2015 rates by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.”<sup>6</sup>

Further implicitly conceding the discoverability of LDI materials, the Commissioner previously issued a “public records” request to LDI for records pertaining to LAHC and provided that production—however incomplete—to the defendants in this case.<sup>7</sup> But, as

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<sup>5</sup> See La. Code Civ. Proc. art. 1422 (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . . .”); *Donelon v. Herbert Clough, Inc.*, No. CV 03-282-A-M2, 2006 WL 8436324, at \*5 (M.D. La. Oct. 19, 2006) (“courts have . . . held that the Commissioner should be required to produce documents in his capacity as ‘regulator’ which have been ‘placed at issue’ by the litigation and which are in his or her possession or control, *i.e.* because the documents are within the Insurance Department.”) (citing *Benjamin v. Sawicz*, 823 N.E.2d 879, 885 (Ohio App. Ct. 2004); *In re Ideal Mutual Insurance Company v. Becker*, 140 A.D.2d 62, 532 N.Y.S.2d 371, 375-76 (N.Y. App. Div. 1988)).

<sup>6</sup> See **Exhibit I**, Excerpts of Commissioner’s Response to Buck’s Written Discovery Requests, Interrogatory No. 4 (emphasis added). The Commissioner’s Responses to Buck’s Interrogatory Numbers 5-8, 19, 22 and Request for Production Numbers 3-4, 12-16, 28, 31-33, 34, 37, and 38 similarly promised, subject to stated objections, to produce responsive LDI records that were in the Commissioner’s “possession and control.”

<sup>7</sup> See **Exhibit H**, Commissioner’s Public Records Request to LDI.

shown below, the records that LDI produced as “public records” are largely irrelevant and so cannot even remotely suffice as a response to Buck’s subpoena duces tecum.

### C. The Discovery Dispute

On September 25, 2020, this Court held a hearing on Defendants’ motion to compel the Plaintiff, James J. Donelon, the Commissioner of Insurance as the Rehabilitator of LAHC, to produce responsive LDI documents. The Court ruled that the Commissioner, as Rehabilitator’s, “possession and control” of LDI records extends only to those that are in the records of LAHC, in rehabilitation.<sup>8</sup> In its ruling, the Court recognized that Defendants could seek discovery from LDI through alternative means. Specifically, the Court reasoned that Defendants are not limited by the strictures of a “public records” request to LDI, but could proceed by “third-party subpoena, which the court believes is the proper vehicle through which to obtain the documentation [from the LDI].” *See Exhibit G* to the Motion to Compel at p. 50 [bracketed material added]. At that same hearing, the Commissioner’s counsel also asserted that LDI records could be sought by means of subpoena duces tecum served on the LDI.<sup>9</sup>

In accordance with the Court’s statements and ruling at the September 25<sup>th</sup> hearing, and subject to Buck’s pending writ application from that ruling, on October 13, 2020, the Clerk, at Buck’s request, issued a Notice of Records Only Deposition and Subpoena Duces Tecum to LDI through its records custodian, James J. Donelon, Commissioner of Insurance, seeking production of documents relating to LAHC and the Commissioner’s claims against Buck and other defendants.<sup>10</sup> The East Baton Rouge Sheriff served LDI with Buck’s subpoena duces tecum on October 22, 2020.<sup>11</sup> On November 9, 2020, *after* the expiration of the 15-day deadline for lodging objections to the subpoena provided by La. Code. Civ. P. article 1354(B), the LDI served

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<sup>8</sup> Following the mailing of the Court’s written Judgment, and within the return date set by this Court, on November 10, 2020, Buck timely filed a supervisory writ from the Court’s “custody and control” ruling, which is pending before the Louisiana First Circuit Court of Appeal.

<sup>9</sup> *See Exhibit G*, Transcript of Sept. 25, 2020 Hearing, at p. 20 (“[Plaintiff] would suggest to [the court] regardless of the ultimate decision on custody. . . there are other vehicles. I mean, a third-party subpoena. . . . Nothing prevents the defendants from issuing a third-party subpoena to the Department of Insurance, which would be bound by the discovery rules set by Your Honor.”); *see also Exhibit G* at pp. 28, 34, 35, 38, 40 (Plaintiff advising the Court that Defendants have relief through a subpoena); Excerpts of Plaintiff’s Opposition to Defendants’ Motion to Compel on Custody and Control, attached hereto as **Exhibit F** at pp. 7, 10.

<sup>10</sup> *See Exhibit B*, Notice of Records Only Deposition and Subpoena Duces Tecum to LDI.

<sup>11</sup> *See Exhibit C*, Sheriff’s Return.

undersigned counsel with blanket, boilerplate objections to *every single request* set forth in the subpoena.<sup>12</sup> On November 11, 2020, LDI failed to appear for the scheduled records deposition.<sup>13</sup>

In its objections, LDI contends that Buck’s subpoena requests are “incomprehensible,” “vague,” “not relevant” and “not reasonably calculated to lead to the discovery of admissible evidence.”<sup>14</sup> Additionally, LDI cites generically to La. R.S. 22:2043.1 and La. R.S. 22:2045 without tying those statutes to any objection or explaining how any statutory provision might support any such objection.<sup>15</sup>

In accordance with Local Rule 10.1, Buck conferred by telephone with counsel for LDI, John Ashley Moore, on December 1, 2020, in an attempt to resolve the discovery dispute. However, the parties were unable to reach a resolution.<sup>16</sup> To date, LDI has not produced any documents in response to Buck’s subpoena duces tecum.

The LDI’s blanket refusal to comply with Buck’s subpoena for documents within the realm of the “broad and liberal” discovery afforded under Louisiana law should not be countenanced. Ultimately, Buck is being denied a significant source of relevant and responsive materials—the records of the LDI pertaining to LAHC—regardless of the procedural vehicle Buck pursues. This Court should order LDI to comply with the subpoena.

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<sup>12</sup> See **Exhibit D**, LDI’s Objections to Subpoena Duces Tecum. The untimeliness of LDI’s objections could support an argument of waiver based upon delay. *E.g.*, *Payne v. Forest River, Inc.*, No. CIV.A. 13-679-JWD, 2014 WL 7359059, at \*4 (M.D. La. Dec. 23, 2014) (quoting *La. Generating, L.L.C. v. Ill. Union Ins. Co.*, No. 10–516, 2011 WL 6259052, at \*2 (M.D. La. Dec. 14, 2011)). But given that LDI served its objections on the Monday following the Friday on which they were due, Buck has elected to forego an argument of waiver based upon delay in the spirit of fairness and to reduce the number of issues before the Court. However, as set forth in the argument sections of this brief, Buck vigorously asserts that LDI has waived objections to Buck’s subpoena by failing to assert or support them with any particularity.

<sup>13</sup> See **Exhibit E**, Transcript of Non-Appearance.

<sup>14</sup> **Exhibit D**, LDI’s Objections. The title to LDI’s objections also incorrectly suggests that the subpoena was “incompletely and improperly served without pages 5-7, DOCUMENTS TO BE PRODUCED.” But, as evidenced by the record, the Notice of Records Only Deposition and Subpoena Duces Tecum, with exhibits A and B attached thereto, *including* pages 5-7 “Documents to be Produced,” were filed with the Clerk and provided to the Sheriff for service. See **Ex. B**. Further, the subpoena and attached exhibits *in full* were emailed to Walter Corey, Attorney Supervisor for the LDI, on October 22, 2020 (the same day of service). In any event, LDI did not make or preserve any objection to the form or completeness of the service, so that issue is moot. See **Ex. D**.

<sup>15</sup> **Exhibit D**, LDI’s Objections.

<sup>16</sup> See Rule 10.1 Certificate of Conference, p. 3 of the Motion to Compel.

## II. Law and Argument

### A. LDI documents are discoverable under the “broad and liberal” discovery permitted by La. Code. Civ. P. article 1422.

The documents subpoenaed from the LDI are relevant to the subject matter involved in this litigation and are discoverable under the broad and liberal discovery guaranteed by Louisiana law. Under La. Code Civ. P article 1422, “[p]arties may obtain discovery regarding *any matter*, not privileged, which is *relevant to the subject matter* involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party[.]” La. Code Civ. Proc. art. 1422 (emphasis added). The Louisiana Supreme Court has made clear that litigants are entitled to “extremely broad” discovery. *MTU of N. Am., Inc. v. Raven Marine, Inc.*, 475 So. 2d 1063, 1067 (La. 1985). The broad scope of permissible discovery extends to discovery sought through a subpoena duces tecum. *See, e.g., Francois v. Norfolk S. Corp.*, 2001-1954 (La. App. 4 Cir. 3/6/02), 812 So. 2d 804; *Young v. Young*, 97-1261 (La. 5/16/97), 693 So. 2d 788.

Relevant evidence includes “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” La. Code Evid. art. 401. The test for discoverability is not whether the information sought will be admissible at trial, but whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. La. Code Civ. Proc. art. 1422; *see also Lehmann v. Am. S. Home Ins. Co.*, 615 So. 2d 923, 925 (La. App. 1 Cir. 1993); *accord Stewart v. Mitchell Transp.*, No. 01-2456-JWL, 2002 WL 1558210, at \*4 (D. Kan. July 11, 2002) (“Relevancy is broadly construed, and a request for discovery should be considered relevant if there is ‘any possibility’ that the information sought may be relevant to the claim or defense of any party.”). “[A]ny relevant matter, not privileged, is discoverable.” *Collins v. Crosby Grp., Inc.*, 551 So. 2d 42, 43 (La. App. 1 Cir. 1989), *writs denied*, 556 So. 2d 39, 42 (La. 1990); *see also Wollerson v. Wollerson*, 29,183 (La. App. 2 Cir. 1/22/97), 687 So. 2d 663, 665.

The Louisiana Supreme Court has recognized that the discovery process serves important objectives and is intended “to allow parties to obtain pertinent facts, to discover true

facts and to compel their disclosure, to assist in trial preparation, to narrow and clarify the issues, and to encourage settlement or abandonment of claims lacking merit.” *Hodges v. S. Farm Bureau Cas. Ins. Co.*, 43 So. 2d 125, 129 (La. 1983). The discovery statutes are to be “liberally and broadly construed” to achieve these objectives. *Id.* (emphasis added); *see also Fox v. Fox*, 47,937 (La. App. 2 Cir. 4/10/13), 113 So. 3d 457, 462, *writ denied*, 2013-1320 (La. 6/21/13), 118 So. 3d 426 (“Louisiana jurisprudence requires that discovery statutes be liberally and broadly construed.”).

Buck therefore is entitled to “extremely broad” discovery related to the issues raised in this litigation. *MTU of N. Am., Inc.*, 475 So. 2d at 1067. The instant case arises out of the rehabilitation of LAHC. The Commissioner’s lawsuit seeks to recover tens of millions of dollars in damages from defendants for their alleged negligence in supposedly causing LAHC to be placed in rehabilitation. As the entity that placed LAHC into rehabilitation, LDI’s documents are, at minimum, discoverable. Merely by way of example, LDI’s records may reflect or pertain to the factors that caused LAHC to be in a condition requiring that it be placed in rehabilitation. Those facts may or may not be related to any act or omission of any defendant.

LDI documents may support, or contradict, the Commissioner’s allegations that Milliman and Buck “negligently misrepresented the actual funding needs and premium rates of LAHC.” It cannot be disputed that LDI and its consulting actuaries received Buck’s rate projections and reviewed them *contemporaneously*, based upon the financial data and other information known *at the time*, as opposed to with 20/20 hindsight.

LDI’s and its consulting actuaries’ records are thus, at minimum, discoverable on the factual issues of (1) what financial information, market factors, and other data actually were known and available at the time, (2) whether the actuaries’ assumptions and rate projections were, or were not, reasonable at the time based upon that available information, and/or (3) whether their work caused any of LAHC’s losses. *See, e.g., FDIC v. Clementz*, No. 2:13-CV-00737-MJP, 2014 WL 4384064, at \*1 (W.D. Wash. Sept. 4, 2014) (holding that internal regulatory documents regarding the FDIC’s contemporaneous evaluation of the at issue loans were “relevant to the propriety of the [defendants’] approval of specific loans”). Such

information would likely inform the opinions of both sides' actuarial and damages experts. This information could and likely will be used on direct and/or cross examination of Plaintiff's experts during the Plaintiff's case in chief before any burden shifts to the defendants to put on a defense.

Critically, the reviews undertaken by LDI and its consulting actuaries at the time are the *only* source of evidence of *contemporaneous* evaluations of the actuarial defendants' rate projections, uncontaminated by hindsight knowledge of future events. As actuaries must project the unknown future based upon information available to them *at the time*, contemporaneous reviews and evaluations of their projections by others who likewise have no knowledge of the future are obviously critical evidence going to whether or not the actuaries breached any duty or standard of care. Only LDI and its consulting actuaries have this contemporaneous information. These documents obviously meet and far exceed all criteria for discoverability.

LDI documents are also relevant to a host of other factual issues raised by the Commissioner's claims against Buck and other defendants, including:

- Representations that LAHC's directors and officers made to LDI regarding its HMO license and financial prospects; the work and rate projections provided by Milliman and, later, Buck; the work of LAHC's third party administrators named as defendants herein ("TPA's"); and related issues;
- Statements that LDI may have made to LAHC's directors and officers regarding Milliman's and/or Buck's actuarial work and rate projections, which may have informed their understanding, or not, of the actuaries' work and rate projections and the reasonableness, or not, of their reliance, on those projections. For example, we know that in 2014/15, LDI posted on its public website a contemporaneous report of its consulting actuary, Lewis & Ellis, finding Buck's rate projections for 2015 to have been reasonable and in accordance with applicable guidelines and standards.<sup>17</sup> Similar

LDI communications with LAHC's directors and/or officers may have caused their

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<sup>17</sup> See **Exhibit J**, Lewis & Ellis Report downloaded from LDI's public website, at pp. 1-3, 4, 5, 6, 7, 8, 10-12, 13, 16-17; **Exhibit K**, Crohan Affidavit authenticating Lewis & Ellis reports that he downloaded from LDI website.

reliance on Buck's rates to have been reasonable, in turn bearing upon their fault as compared to any fault of Buck.

- Representations that LDI may have made to LAHC regarding the work of the TPA defendants, which may have informed its directors' and officers' understanding of and/or reliance, or not, on their work and related issues of comparative fault of all defendants;
- Whether LAHC's directors and officers ignored or failed to heed advice or warnings from LDI or its consulting actuaries regarding the rate projections provided by Milliman, Buck and/or the work of the TPA defendants;
- Why LAHC terminated contracts with prior TPAs and Milliman and the extent that may bear upon Buck's and/or other defendants' comparative fault, if any, and/or contributed to LAHC's insolvency;
- Communications between the LDI, LAHC and/or the federal government regarding the federal government's failure to make over \$60 million in "risk corridor" payments, the post-hoc changing of the rules and regulations governing the ACA CO-Ops, and the impact of those factors on LAHC's financial condition;
- The degree to which the federal government's failure to make risk corridor payments was, or was not, foreseeable to Milliman, Buck, the director and officer defendants, and/or the TPA's of LAHC, bearing upon the comparative fault of all of those defendants;
- Whether LAHC and its directors and officers complied, or not, with LDI's statements, requirements, and reporting/filing requirements, bearing directly upon their fault as compared to any fault of Buck or other defendants;

Louisiana's "extremely broad," "liberally construed" discovery rules entitle Buck and the other defendants to discovery of LDI records going to the above and related factual issues.

**B. Courts have consistently held that regulatory documents are discoverable in analogous cases.**

Other courts in analogous cases, including those brought by Commissioner Donelon himself, have repeatedly held that regulatory documents pertaining to the institution in

rehabilitation and/or liquidation are, at minimum, discoverable. As here, in *Donelon v. Herbert Clough, Inc.*, 2006 WL 8436324 (M.D. La. Oct. 19, 2006), Commissioner Donelon, in his capacity as rehabilitator/liquidator, asserted that the actions and inactions of the defendants in that case caused the insolvency of the institution. The Court in *Herbert Clough* ruled that the Commissioner's suit opened the door to the regulatory records of the LDI. Therefore, the Commissioner was obliged to produce the "investigative and/or regulatory files" related to the insurer in rehabilitation. 2006 WL 8436324, at \*5.

Other state courts in analogous insurance receivership cases have likewise compelled production of the regulatory records pertaining to the failed institution. In *Benjamin v. Sawicz*, 823 N.E.2d 879 (Ohio Ct. App. 2004), the appellate court affirmed the trial court's discovery order requiring the Superintendent of Insurance to respond to defendants' discovery demands irrespective of her statutorily separate capacities as liquidator and Director of the Ohio Department of Insurance ("ODI"). *Id.* at 887. The court held that the conduct occurring prior to the liquidation was placed in issue by the superintendent through the claims she asserted in her complaint. Because the superintendent, through the department of insurance, had "special and direct knowledge vital to the action," she was required to disclose all information material and relevant to the action.

The *Sawicz* court firmly rejected the notion that the "ODI should be permitted to take control of a privately owned company, put it out of business, sue its officers for failing to run the company properly, and deny the officers access to documents that could allow them to defend themselves." *Id.* Because the superintendent initiated an action against officers of a failed corporation and raised claims implicating matters within the knowledge of the department of insurance, the regulator was required to submit to discovery. *Id.*; *see also In re Ideal Mut. Ins. Co. v. Becker*, 140 A.D.2d 62 (N.Y. App. Div. 1988) (same principles).

*RTC v. Deloitte & Touche*, 145 F.R.D. 108 (D. Colo. 1992), is also "instructive." In *Deloitte*, the Resolution Trust Corporation ("RTC") filed suit against the auditing and financial consulting firm of Deloitte & Touche. In essence, "the OTS served as the regulator of S&Ls (comparable to the LDI here), and the RTC served as the receiver to manage and administer the assets of failed S&Ls (comparable to the Receiver of LAHC)."

The *Deloitte* court granted the defendants' motion to compel the production of regulatory documents. *Id.* at 112. The court reasoned that the regulatory documents concerning the failed thrift were relevant to the lawsuit and opined that RTC had "undoubtedly reviewed a substantial amount of regulatory documentation in connection with this case." *Id.* at 111. Further, the court ruled that "any regulatory privilege applicable to pre-conservatorship documents has been waived by the filing of this lawsuit." *Id.* at 112 n.6. *See also FDIC v. Wise*, 139 F.R.D. 168, 172 (D. Colo. 1991) (holding that the FDIC waived asserted "regulatory" privileges, and stating: "[W]e are persuaded that defendants' ability to test these allegations by reviewing the regulatory documents is vital to their defense.").

**C. Regulatory documents are discoverable even when "regulator fault" defenses are disallowed.**

Courts have likewise consistently held that regulatory documents are relevant and discoverable in receivership cases like this one, *even when* "regulator fault" defenses have been disallowed. For example, in *F.D.I.C. v. Dosland*, No. C13-4046-MWB, 2014 WL 1347118, at \*4 (N.D. Iowa Apr. 4, 2014), the court held that internal Office of Thrift Supervision ("OTS") regulatory documents were relevant and discoverable even though the court had previously "limit[ed] defendants' ability to rely on OTS's actions as an affirmative defense . . . ." The Court found that "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." *Id.*

Similarly, in *F.D.I.C. v. Berling*, No. 14-CV-00137-CMA-MJW, 2015 WL 3777408, at \*2 (D. Colo. June 16, 2015), the court found that "the documents may ultimately prove inadmissible for a variety of reasons. But either way, they might nonetheless contain information leading to the discovery of admissible evidence." "The records would shine light on [the Defendants'] conduct—specifically, whether they followed their internal policies generally, and whether they met their standard of care." *Id.*

The reasoning in *F.D.I.C. v. Clementz*, No. 2:13-CV-00737-MJP, 2014 WL 4384064, at \*3 (W.D. Wash. Sept. 4, 2014), supports Buck's position that responsive LDI documents are

discoverable. In *Clementz*, the court, over the FDIC Receiver's objections, granted Defendant D&O's motion to compel production of internal documents held by FDIC regulators "related to any regulatory examinations, loans, and handling of loans, warnings, or criticisms and oversight." *Id.* at \*1. The court found that the FDIC's contemporaneous evaluation of the loans in question were relevant to the propriety of the FDIC Receiver's claims against the defendants. *Id.* at \*2. In a subsequent ruling, despite dismissing regulator fault defenses, the *Clementz* court reiterated its discoverability ruling: As "this Court has already ruled, the FDIC's conduct as regulator and examiner remains relevant to whether Defendants breached their duties of care, and Defendants are still entitled to raise the FDIC's approval and authorization of specific loans to attack Plaintiff's case in chief." *F.D.I.C. v. Clementz*, No. C13-737 MJP, 2015 WL 11237021, at \*4 (W.D. Wash. Sept. 23, 2015).

Likewise, the court in *Colonial BancGroup, Inc. v. PricewaterhouseCoopers, LLP*, 110 F. Supp. 3d 37 (D.D.C. 2015), recognized the relevancy and discoverability of pre-receivership regulatory documents, even though regulator fault defenses were barred. The OCC documents "would reflect real-time observations, analyses, and assessments of bank management, the MWLD, risk factors, controls, audits, and other aspect of the bank that relate directly to the claims and defenses, or at least reasonably could lead to information bearing on [these] issues." *Id.* at 41-42.

In line with these cases, this Court correctly observed at the Zoom hearing on November 20, 2020, that, notwithstanding the Court's dismissal of Defendants' "Regulator Fault" affirmative defenses, LDI regulatory documents may be discovered upon a showing that they fall within the broad scope of discovery permitted under Louisiana law. The LDI documents that Buck has subpoenaed fall well within that broad scope, as demonstrated above.

**E. Denial of discovery of LDI records pertaining to LAHC would deprive Buck of federal and state constitutional due process rights.**

The foregoing precedents firmly support the entry of an order compelling LDI to comply with Buck's subpoena duces tecum. Buck's right to discovery of LDI documents under Louisiana's liberal discovery rules is particularly evident in this case, in which the Commissioner has sued Buck and other defendants for tens of millions of dollars in alleged

damages. Denial of Buck's right to broad discovery of LDI records pertaining to LAHC would deprive it of federal and state constitutional due process rights. *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007); *National Union Fire Ins. Co. of Pittsburgh v. City Savings, F.S.B.*, 28 F.3d 376, 394 (3d Cir. 1994).

**F. The Commissioner's meaningless "public records" production cannot possibly substitute for compliance with Buck's subpoena duces tecum.**

As set forth above, the Commissioner has already conceded the discoverability of LDI records pertaining to LAHC by agreeing to produce LDI documents that he considers to be in his "possession and control," and by issuing a "public records" request to the LDI on September 3, 2020.<sup>18</sup> LDI's response to Buck's subpoena duces tecum refers to the prior public records production generically, "subject to" its objections, but it fails to assert that production as grounds for any specific objection to any of Buck's document requests.<sup>19</sup> Hence, any objection based upon the prior "public records" production is waived.

But, even putting waiver aside, the LDI's "public records" production is essentially meaningless – consisting of director and officer biographical information and other largely irrelevant material. The production is totally *un*responsive to Buck's subpoena and hence cannot possibly pose as a substitute for LDI's compliance with it.

As one glaring example, despite the Commissioner's "public records" request for "all communications" between the LDI and LAHC and at least 17 other entities/individuals from January 2011 to September 2015, LDI produced only 60 documents in total in response to the public records request.<sup>20</sup> That paltry production could not possibly have been the result of any meaningful or fulsome review of relevant communications, e-mail, and other records pertaining to LAHC. Of the trifling number of documents produced, many are obviously incomplete and missing attachments, and the bulk are irrelevant to Buck's subpoena.

As other examples, the public records request and response failed to include numerous relevant documents that Buck has subpoenaed, including:

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<sup>18</sup> **Exhibit H**, Commissioner's Public Record Request to LDI.

<sup>19</sup> *See* **Exhibit D**, LDI's Objections to Buck's requests Nos. 5-10, 13-23.

<sup>20</sup> *See* **Exhibit H**, Commissioner's Public Record Request to LDI.

- Communications between the LDI and its consulting actuary, Lewis & Ellis, pertaining to LAHC. No documents pertaining to Lewis & Ellis or communications with it were included in the public records request or response and none were produced to the defendants.
- The documents pertaining to Buck and Milliman are missing. Only 4 documents mentioning Buck were produced, and one mentioning Milliman was produced. That cannot possibly be a complete production of those LDI records.
- No documents reflecting review of actuarial projections and/or rates were produced. This could not possibly be complete.
- Only one document mentioning risk corridor payments was produced, even though the government's failure to make those payments likely was the principal cause of LAHC's insolvency. And those documents go directly to whether or not Buck's and other defendants' contemporaneous expectations that the federal government would honor its risk corridor obligations were reasonable, or not. This production could not possibly be complete.
- Also missing are the documents supporting and pertaining to LAHC's Co-Op application, including financial and rate projections, market assumptions and other information – showing what information was available *contemporaneously* to support, or not support, the rate projections of LAHC's actuaries and the assumptions and expectations of all defendants. That contemporaneous information is directly at issue in this case.

Because the response to the public records request was incomplete and non-responsive, this Court should enforce Buck's subpoena duces tecum served on LDI.

**G. LDI's blanket, boilerplate objections to Buck's subpoena are legally insufficient.**

LDI's boilerplate, unexplained and unsupported objections to *every single one of* Buck's requests as "not relevant and [] not reasonably calculated to lead to the discovery of admissible evidence," are legally insufficient to preserve a valid objection to any specific request. *See, e.g., Am. Fed'n of Musicians of the United States & Can. v. Skodam Films, LLC,*

313 F.R.D. 39, 46 (N.D. Tex. 2015) (“A non-party’s Rule 45(d)(2)(B) objections to discovery requests in a subpoena are subject to the same prohibition on general or boiler-plate objections and requirements that the objections must be made with specificity and that the responding party must explain and support its objections.”); *F.D.I.C. v. Brudnicki*, 291 F.R.D. 669, 674 n.4 (N.D. Fla. 2013) (declining to consider FDIC-R’s boilerplate objections: “Intoning the ‘overly broad burdensome’ litany, without more, does not express a valid objection.”); *Chevron Midstream Pipelines LLC v. Settoon Towing LLC*, 2015 WL 269051, at \*3 (E.D. La. Jan. 21, 2015) (“Boilerplate and general objections, including those vaguely asserted privileges, are taglines, completely devoid of any individualized factual analysis” and are “inadequate to voice a successful objection.”); *KeyBank Nat. Ass’n v. Perkins Rowe Assocs., LLC*, 2011 WL 765925 at \*4 (M.D. La. Feb. 25, 2011) (Blanket objections or objections that are not supported with any factual or legal basis “cannot be sustained.”).<sup>21</sup>

LDI’s objections also stretch the limits of good faith. For example, LDI professes an inability to understand the meaning of the word “work” in Buck’s first and second document requests, which seek records “reflecting Buck’s [and Milliman’s] professional services and work for LAHC.”<sup>22</sup> LDI asserts that these requests are “incomprehensible” because the “[t]he word “work” is undefined, vague and indefinite. . .”<sup>23</sup> That is nonsense, plain and simple. Equally preposterous is LDI’s assertion that Buck’s request No. 11, for documents reflecting or analyzing Commissioner Donelon’s November 5, 2015 testimony to Congress on the factors that caused LAHC’s financial problems, is “incomprehensible” and “would necessarily include Commissioner Donelon’s birth certificate, social security card, driver’s license, wedding license and similar documents.”<sup>24</sup>

LDI likewise objects that Buck’s requests 1-4 lack a “subject designation and temporal limitation.” These objections can quickly be rejected because Buck’s requests (i) obviously are limited to Milliman’s and Buck’s professional services to LAHC, and (ii) as alleged in the

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<sup>21</sup> *In re Kuntz*, 06-0487 (La. 05/26/2006), 934 So. 2d 34, 35 (Louisiana discovery rules are derived from federal rules, and analogous federal rules are persuasive authority).

<sup>22</sup> **Exhibit D**, LDI’s Objections, at pp.1-2.

<sup>23</sup> *Id.*

<sup>24</sup> **Exhibit D**, LDI’s Objections, at p. 9.

Commissioner's amended petition, encompass a distinct timeframe as Milliman provided professional services to LAHC from August 2011 through March 2014, and Buck provided professional services to LAHC from March 2014 through July 2015. To clarify this limited scope, Buck, by letter, made clear to LDI's counsel that these requests were limited to LAHC and to these time periods - to no avail. These implausible objections are insufficient and lacking in merit. This Court should order LDI to comply with Buck's subpoena duces tecum.

**H. LDI's citations to La. R.S. 22:2043.1 and La. R.S. 22:2045 are wholly inadequate to preserve any objection.**

It is unclear the extent, if any, of LDI's reliance on La. R.S. 22:2043.1 and La. R.S. 22:2045. LDI simply recites the language of these statutes over and over again "subject to" its objections, but without asserting them in support of any objection or explaining how they might support any specific objection.<sup>25</sup>

Such abstract, boilerplate recitations fail to preserve any objection, whether based on a privilege, confidentiality interest, or otherwise. "Under Louisiana law, the party asserting the privilege has the burden of proving that the privilege applies; further, the party asserting the privilege must adequately substantiate the claim and cannot rely on a blanket assertion of privilege." *Nelson v. Carroll Cuisine Concepts, LLC*, 2018-1079, p. 1 (La. App. 1 Cir. 11/09/18), 2018 WL 5881710; *see also Fleisher v. Phoenix Life Ins. Co.*, 2013 WL 42374, at \*3 (S.D. N.Y. Jan. 3, 2013) ("[T]he burden is on a party claiming the protection of the privilege to establish those facts that are essential elements of the privileged relationship, a burden not discharged by mere conclusory or ipse dixit assertions."). Accordingly, any objections that might have been asserted based upon the recited statutory provisions are waived.

Further, while La. R.S. 22:2043.1 immunizes the Commissioner from liability and certain defenses, such immunity does not shield its documents potentially relevant to this lawsuit from discovery. There is not a single Louisiana case applying La. R.S. 22:2043.1 to bar discovery of relevant LDI records.

And there is no possible basis for an objection under La. R.S. 22:2045, as it protects the confidentiality of documents produced by, obtained by, or disclosed to the Commissioner "*in the*

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<sup>25</sup> See **Exhibit D**, LDI's Objections to Buck's document requests Nos. 5-10, 13-23.

*course of an action pursuant to this Chapter*”—meaning Chapter 9: “Rehabilitation, Liquidation, Conservation.” *See* La. R.S. 22:2045 (emphasis added). The subpoenaed LDI documents were not produced by, obtained by, or disclosed to the Commissioner “*in the course of an action pursuant to*” Chapter 9. The LDI documents were generated *before* LAHC was placed in receivership - which is the very reason Buck was forced to issue the subpoena duces tecum to the LDI based on the Commissioner’s “different capacities” argument. Hence, this statutory provision could not apply to bar production to the defendants of pertinent LDI documents in this case. And the LDI has not asserted any other statutory basis for a privilege applicable to the documents that Buck has subpoenaed, so any such objection is waived.

And, even absent waiver, any other statutory privilege or confidentiality that might be argued to apply to the LDI’s records has been waived by the Commissioner’s filing of the instant suit. Under basic principles of due process and fundamental fairness, the Commissioner cannot file a multi-million dollar lawsuit implicating LDI records while at the same time refusing to produce them to the defendants he has sued based upon an inadequately alleged statutory privilege. *See RTC v. Deloitte & Touche*, 145 F.R.D at 112 n.6 (finding that that “any regulatory privilege applicable to pre-conservatorship documents has been waived by the filing of this lawsuit.”); *see also FDIC v. Wise*, 139 F.R.D. 168, 172 (D. Colo. 1991) (finding that the FDIC waived asserted “regulatory” privileges, and stating: “[W]e are persuaded that defendants’ ability to test these allegations by reviewing the regulatory documents is vital to their defense.”); *Sawicz*, 823 N.E.2d at 887 (firmly rejecting the Superintendent of Insurance’s argument that he should be allowed “to take control of a privately owned company, put it out of business, [and] sue its officers for failing to run the company properly,” while denying them access to department of insurance regulatory records pertaining to the company).

Finally, LDI’s publication on its public website of reports of reviews and evaluations of Buck’s actuarial rate projections eliminates any possibility of a claim of confidentiality or privilege as to that and related information.<sup>26</sup> LDI’s claim of confidentiality and privilege, *even for documents that it publishes on its own website*, shows that LDI clearly has not made a

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<sup>26</sup> *See Exhibit J*, Lewis and Ellis report downloaded from LDI public website, at pp. 1-3, 4-8, 10-12, 13, 16-17.

good faith effort to determine whether any particular document may be subject to a privilege, as is its burden when objecting to a subpoena duces tecum. Nor has it provided a description of any document withheld on grounds of privilege or confidentiality. LDI's boilerplate objections are insufficient as a matter of law to preserve any such privilege or confidentiality interest. Finally, the protective order already entered in this case will more than suffice to preserve any confidentiality that may attach to records produced by the LDI in compliance with Buck's subpoena. *See Stewart*, 2002 WL 1558210, at \*5 ("[D]ocuments are not shielded from discovery on the basis of confidentiality," but may be subject to a protective order.).

### **III. CONCLUSION**

For all of the foregoing reasons, this Court should order LDI to comply with Buck's subpoena duces tecum, in accordance with the "extremely broad," "liberal discovery" that should be afforded to Buck in this case.

Respectfully submitted,

/s/ James A. Brown

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*Attorneys for Buck Global, LLC*

### **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, and, additionally, upon counsel of record for LDI by certified mail, return receipt requested, this 16th day of December, 2020.

/s/ James A. Brown

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

**SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL**

NOW INTO COURT, through undersigned counsel, comes James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, who respectfully requests that this SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL be filed herein and served upon all named Defendants; and respectfully represents:

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EXHIBIT  
A

1.

That the caption of this matter be amended to read as follows:

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	:	
	:	
	:	
	:	PARISH OF EAST BATON ROUGE
CGI TECHNOLOGIES AND	:	
SOLUTIONS, INC., GROUP	:	
RESOURCES INCORPORATED, BEAM	:	
PARTNERS, LLC, MILLIMAN, INC.,	:	
BUCK CONSULTANTS, LLC. WARNER	:	
L. THOMAS, IV, WILLIAM A. OLIVER,	:	
SCOTT POSECAI, PAT QUIINLAN,	:	
PETER NOVEMBER, MICHAEL	:	
HULEFELD, ALLIED WORLD	:	
SPECIALTY INSURANCE	:	
COMPANY a/k/a DARWIN NATIONAL	:	19 <sup>TH</sup> JUDICIAL DISTRICT COURT
ASSURANCE COMPANY,	:	
ATLANTIC SPECIALTY INSURANCE	:	
COMPANY, EVANSTON INSURANCE	:	
COMPANY, RSUI INDEMNITY	:	
COMPANY AND ZURICH AMERICAN	:	
INSURANCE COMPANY	:	STATE OF LOUISIANA

### JURISDICTION AND VENUE

2.

This Court has jurisdiction over this dispute involving Louisiana Health Cooperative, Inc., (“LAHC”) a Louisiana Nonprofit Corporation that holds a health maintenance organization (“HMO”) license from the Louisiana Department of Insurance, is domiciled, organized and doing business in the State of Louisiana, and maintains its home office in Louisiana.

3.

This Court has jurisdiction over all of the named Defendants because each of them has transacted business or provided services in Louisiana, has caused damages in Louisiana, and because each of them is obligated to or holding assets of Louisiana Health Cooperative, Inc.

4.

Venue is proper in this Court pursuant to the provision of the Louisiana Insurance Code, including La. R.S. 22:257, which dictates that the Nineteenth Judicial District Court has exclusive jurisdiction over this proceeding and La. R.S. 22:2004, which provides for venue in this Court and Parish, as well as other provisions of Louisiana law.

## **PARTIES**

5.

### **Plaintiff**

The Plaintiff herein is James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick (“Plaintiff”).

6.

Louisiana Health Cooperative, Inc. (“LAHC”) is a Nonprofit Corporation incorporated in Louisiana on or about September 12, 2011. LAHC was organized in 2011 as a qualified nonprofit health insurer under Section 501(c)(29) of the Internal Revenue Code, Section 1322 of the Patient Protection and Affordable Care Act of 2010, the Louisiana Nonprofit Corporation Law, and Louisiana Insurance Law.

7.

A Petition for Rehabilitation of LAHC was filed in the 19<sup>th</sup> JDC, Parish of East Baton Rouge, on September 1, 2015; on September 1, 2015, an Order of Rehabilitation was entered, and on September 21, 2015, this Order of Rehabilitation was made permanent and placed LAHC into rehabilitation and under the direction and control of the Commissioner of Insurance for the State of Louisiana as Rehabilitator, and Billy Bostick as the duly appointed Receiver of LAHC.

8.

Plaintiff has the authority and power to take action as deemed necessary to rehabilitate LAHC. Plaintiff may pursue all legal remedies available to LAHC, where tortious conduct or breach of any contractual or fiduciary obligation detrimental to LAHC by any person or entity has been discovered, that caused damages to LAHC, its members, policyholders, claimants, and/or creditors.

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9.

**Defendants**

Named Defendants herein are the following:

10.

**D&O Defendants**

Each of the D&O Defendants listed below are named only as Nominal Defendants in this matter, to the extent that insurance coverage, other than the Travelers Casualty and Surety Company of America policy, may apply to the claims asserted against them herein:

a. **WARNER L. THOMAS, IV (“Thomas”)**, an individual of the full age of majority domiciled in the State of Louisiana. Thomas was a Director of LAHC from 2011 until approximately January 2014. Thomas was Ochsner Health System’s Chief Operating Officer from 1998 until September 1, 2012; Ochsner’s President from 1998 until present; and Ochsner’s Chief Executive Officer from September 1, 2012, until present. Thomas is a Nominal Defendant only.

b. **WILLIAM A. OLIVER (“Oliver”)**, an individual of the full age of majority domiciled in the State of Louisiana. Oliver was a Director of LAHC from 2011 through 2015. Upon information and belief, Oliver was a director and/or officer of Ochsner Health Systems at pertinent times hereto. Oliver is a Nominal Defendant only.

c. **SCOTT POSECAI (“Posecai”)**, an individual of the full age of majority domiciled in the State of Louisiana. Posecai was a Director of LAHC from 2011 until October 28, 2013, and Treasurer of LAHC from September 25, 2012, until October 28, 2013. Posecai has been Chief Financial Officer of the Ochsner Clinic Foundation since 2001 and CFO of the Ochsner Health System since 2006. Posecai is a Nominal Defendant only.

d. **PATRICK QUINLAN (“Quinlan”)**, an individual of the full age of majority domiciled in the State of Louisiana. Quinlan was a Director of LAHC from September 25, 2012, until approximately January 2013. Quinlan was Chief Executive Officer of Ochsner Health System from 2001 until September 2, 2012. Quinlan is a Nominal Defendant only.

e. **PETER NOVEMBER (“November”)**, an individual of the full age of majority domiciled in the State of Louisiana. November was a Director of LAHC from May 23, 2013, until 2015, and Secretary commencing July 9, 2013. Upon joining Ochsner in 2012, November initially served as Senior Vice President, General Counsel, and Chief Compliance Officer for Ochsner

Health System, and he currently is Executive Vice President and Chief Administrative Officer of Ochsner Health System. November is a Nominal Defendant only.

f. **MICHAEL HULEFELD (“Hulefeld”)**, an individual of the full age of majority domiciled in the State of Louisiana. Hulefeld was a Director of LAHC from May 23, 2013, until 2015. Hulefeld is Executive Vice President and Chief Operating Officer of Ochsner Health System, and he previously served as the Chief Executive Officer of Ochsner Medical Center. Hulefeld is a Nominal Defendant only.

11.

**TPA Defendants**

a. **CGI TECHNOLOGIES AND SOLUTIONS, INC. (“CGI”)**, a foreign corporation believed to be domiciled in Delaware with its principal place of business in Virginia. From approximately March 2013 to approximately November 2014, CGI served as the Third Party Administrator of LAHC and/or worked for LAHC to transition its TPA work to GRI. CGI contracted with and did work for LAHC in Louisiana.

b. **GROUP RESOURCES INCORPORATED (“GRI”)**, a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From approximately May 2014 to approximately May 2016, GRI served as the Third Party Administrator of LAHC. GRI contracted with and did work for LAHC in Louisiana.

12.

**Beam Partners, LLC**

a. **BEAM PARTNERS, LLC (“Beam Partners”)**, a foreign corporation believed to be domiciled in Georgia with its principal place of business in Georgia. From prior to LAHC’s incorporation in 2011 through approximately mid-2014, Beam Partners developed and managed LAHC. Beam Partners contracted with and did work for LAHC in Louisiana.

13.

**Actuary Defendants**

a. **MILLIMAN, INC. (“Milliman”)**, a foreign corporation believed to be domiciled in Washington with its principal place of business in Washington. From approximately August 2011 to March 2014, Milliman provided professional actuarial services to LAHC.

b. **BUCK CONSULTANTS, LLC (“Buck”)**, a foreign corporation believed to be domiciled in Delaware with its principal place of business in New York. From approximately March 2014 through July 2015, Buck provided professional actuarial services to LAHC.

14.

**Insurer Defendants**

a. **ALLIED WORLD SPECIALTY INSURANCE COMPANY a/k/a DARWIN NATIONAL ASSURANCE COMPANY (“Allied/Darwin”)**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to Ochsner Clinic Foundation that provide coverage for claims asserted herein.

b. **ATLANTIC SPECIALTY INSURANCE COMPANY (“Atlantic”)**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to Ochsner Clinic Foundation that provide coverage for claims asserted herein.

c. **EVANSTON INSURANCE COMPANY (“Evanston”)**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to Ochsner Clinic Foundation that provide coverage for claims asserted herein.

d. **RSUI INDEMNITY COMPANY (“RSUI Indemnity”)**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to Ochsner Clinic Foundation that provide coverage for claims asserted herein.

e. **ZURICH AMERICAN INSURANCE COMPANY (“Zurich”)**, a foreign insurer, doing business in the State of Louisiana and subject to the regulatory authority of the Louisiana Department of Insurance, who issued an applicable policy or policies to Ochsner Clinic Foundation that provide coverage for claims asserted herein.

**DEFINED TERMS**

15.

As used herein, the following terms are defined as follows:

1. **“D&O Defendants”** shall refer to and mean those directors and officers of LAHC named as either original Defendants and/or Nominal Defendants herein, specifically: Terry S.

Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, and Patrick C. Powers; Scott Posecai; Pat Quinlan; Peter November; and Michael Hulefeld.

2. **“TPA Defendants”** shall refer to and mean those third party administrators hired by LAHC to oversee, manage, and otherwise operate LAHC named as Defendants herein, specifically: CGI Technologies and Solutions, Inc. and Group Resources Incorporated.

3. **“Insurer Defendant”** shall refer to and mean those insurance companies named herein which provide insurance coverage for any of the claims asserted herein by LAHC against any of the Defendants named herein, including: Allied/Darwin, Atlantic, Evanston, RSUI Indemnity, and Zurich.

4. **“Actuary Defendants”** shall refer to and mean those actuaries hired by LAHC to perform actuarial services for LAHC and named as Defendants herein, specifically: Milliman, Inc. (“Milliman”) and Buck Consulting, Inc. (“Buck”).

5. **“LDI”** shall refer to and mean the Louisiana Department of Insurance.

6. **“CMS”** shall refer to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

7. **“Nominal Defendants”** shall refer to and mean those D&O Defendants and Other Insured Persons (as defined in the underlying settlement agreements between Plaintiff and Travelers Casualty and Surety Company of America and others), including but not limited to Warner L. Thomas, IV; William A. Oliver; Scott Posecai; Pat Quinlan; Peter November; and Michael Hulefeld, who are named herein solely to effectuate Plaintiff’s right to proceed against any insurance companies, other than Travelers Casualty and Surety Company of America, which provided coverage for Plaintiff’s allegations herein; including but not limited to Allied World Specialty Insurance Company a/k/a Darwin National Assurance Company; Atlantic Specialty Insurance Company; Evanston Insurance Company; RSUI Indemnity Company; and Zurich American Insurance Company, all pursuant to Plaintiff’s *Gasquet* release of the D&O Defendants, Other Insured Persons, and Travelers Casualty and Surety Company of America.

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## FACTUAL BACKGROUND

16.

The Patient Protection and Affordable Care Act (“ACA”) established health insurance exchanges (commonly called “marketplaces”) to allow individuals and small businesses to shop for health insurance in all states across the nation. To expand the number of available health insurance plans available in the marketplaces, the ACA established the Consumer Operated and Oriented Plan (“CO-OP”) program. The ACA further directed the Secretary of Health and Human Services to loan money to the CO-OP’s created in each state. Beginning on January 1, 2014, each CO-OP was allowed to offer health insurance through the newly minted marketplaces for its respective state. A total of 23 CO-OP’s were created and funded as of January 1, 2014. State regulators, like the Louisiana Department of Insurance (“LDI”), have the primary oversight of CO-OP’s as health insurance issuers.

17.

In Louisiana, the CO-OP created and funded pursuant to the ACA was Louisiana Health Cooperative, Inc. (“LAHC”), a Louisiana Nonprofit Corporation that holds a health maintenance organization (“HMO”) license from the LDI. Incorporated in 2011, LAHC eventually applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) totaling more than \$65 million. Specifically, according to the 2012 Loan Agreement with LAHC, the Louisiana CO-OP was awarded a Start-up Loan of \$12,426,560, and a Solvency Loan of \$52,614,100. Pursuant to the ACA, these loans were to be awarded only to entities that demonstrated a high probability of becoming financially viable. All CO-OP loans must be repaid with interest. LAHC’s Start-up Loan must be repaid no later than five (5) years from disbursement; and LAHC’s Solvency Loan must be repaid no later than fifteen (15) years from disbursement.

18.

From the start, because of the gross negligence of the Defendants named herein, LAHC failed miserably. Before ever offering a policy to the public, LAHC lost approximately \$8 million in 2013. While projecting a modest loss of about \$1.9 million in 2014 in its loan application to CMS, LAHC actually lost about \$20 million in its first year in business. And although LAHC projected turning a modest profit of about \$1.7 million in 2015, it actually lost more than \$54 million by the end of that year.

19.

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. The actuaries hired by LAHC grossly underestimated the level of expenses that LAHC would incur, made erroneous assumptions regarding LAHC's relative position in the marketplace, and grossly misunderstood or miscalculated how the risk adjustment component of the ACA would impact LAHC. Rather than LAHC either receiving a risk adjustment payment or LAHC not being assessed any such risk adjustment payment at all, as the actuaries erroneously predicted, in actuality, LAHC incurred significant risk adjustment payments in both 2014 and 2015. These failures of the actuaries who served LAHC were a significant factor in causing LAHC's ultimate collapse.

20.

Not only did LAHC lose a tremendous amount of money, but, from its inception, LAHC was unable to process and manage the eligibility, enrollment, and claims handling aspects of the HMO competently. Almost every aspect of LAHC's eligibility, enrollment, and claims handling process was deficient, resulting in numerous unpaid claims, untimely paid claims, and erroneously paid claims.

21.

By July 2015, only eighteen months after it started issuing policies, LAHC decided to stop doing business. The LDI placed LAHC in rehabilitation in September 2015, and a Receiver, Billy Bostick, was appointed by this Court to take control of the failed Louisiana CO-OP.

22.

The various parties who created, developed, managed, and worked for LAHC (i.e., the Defendants named herein) completely failed to meet their respective obligations to the subscribers, providers, and creditors of this Louisiana HMO. From the beginning of its existence, LAHC was completely ill-equipped to service the needs of its subscribers (i.e., its members / policyholders), the healthcare providers who provided medical services to its members, and the vendors who did business with LAHC. As described in detail herein, the conduct of the Defendants named herein went way beyond simple negligence. For instance, when the LDI took over the operations of LAHC, the CO-OP had a backlog of approximately 50,000 claims that had not been processed.

Because of Defendant's gross negligence, as of December 31, 2015, LAHC had lost more than \$82 million.

23.

As set forth herein, Defendants are liable to Plaintiff for all compensatory damages caused by their actionable conduct.

## **CAUSES OF ACTION**

### **Count One: Breach of Fiduciary Duty (Against the D&O Defendants and Insurer Defendants)**

24.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

25.

The D&O Defendants owed LAHC, its members, and its creditors, fiduciary duties of loyalty, including the exercise of oversight as pleaded herein, due care, and the duty to act in good faith and in the best interest of LAHC. The D&O Defendants stand in a fiduciary relation to LAHC and its members and creditors and must discharge their fiduciary duties in good faith, and with that diligence, care, judgment and skill which the ordinarily prudent person would exercise under similar circumstances in like position.

26.

At all times when LAHC was insolvent and/or in the zone of insolvency, the D&O Defendants owed these fiduciary duties to the creditors of LAHC as well.

27.

The conduct of the D&O Defendants of LAHC, as pled herein, went beyond simple negligence. The conduct of the D&O Defendants constitutes gross negligence, and in some cases, willful misconduct. In other words, the D&O Defendants did not simply act negligently in the management and supervision of and their dealings with LAHC, but the D&O Defendants acted grossly negligently, incompetently in many instances, and deliberately, in other instances, all in a manner that damaged LAHC, its members, providers and creditors.

28.

The D&O Defendants knew or should have known that Beam Partners was unqualified and unsuited to develop and manage LAHC.

29.

The D&O Defendants knew or should have known that GRI was unqualified and unsuited to develop and manage LAHC.

30.

The failure of the D&O Defendants to select a competent TPA, negotiate an acceptable contract with GRI, and manage and oversee Beam Partners, CGI, and GRI's conduct, constitutes gross negligence on the part of the D&O Defendants that caused LAHC to hire other vendors and/or additional employees, in effect, to either do work and/or fix work that should have been competently done by Beam Partners, CGI, and/or GRI, resulting in tremendous additional and unnecessary expenses and inefficiencies to LAHC which played a significant role in LAHC's failure.

31.

The D&O Defendants breached their fiduciary obligations in the following, non-exclusive, ways:

- a. Paying excessive salaries to LAHC executives in relation to the poor, inadequate, or non-existent services rendered by them to LAHC and/or on its behalf;
- b. Paying excessive bonuses to LAHC executives in relation to the poor, inadequate, or non-existent services renders by them to LAHC and/or on its behalf;
- c. Grossly inadequate oversight of LAHC operations;
- d. Grossly inadequate oversight of contracts with outside vendors, including CGI and GRI;
- e. Lack of regularly scheduled and meaningful meetings of the Board of Directors and management; the few board meetings that took place (one in 2012; four in 2013; six in 2014; and one in 2015), generally lasted about an hour;
- f. Gross negligence in hiring key management and executives with limited or inadequate health insurance experience;
- g. Gross failure to protect the personal health information of subscribers; unauthorized disclosure of subscribers' personal health information; for example, in February 2014, an incorrect setting within LAHC's document production system caused 154 member ID cards to be erroneously distributed;
- h. Gross failure to issue ID cards to members accurately and timely;
- i. Gross failure to pay claims timely (if at all);
- j. Gross failure to bill premiums accurately and timely;
- k. Gross failure to properly calculate member out-of-pocket responsibilities resulting in members being over-billed for their portion of services rendered by providers;
- l. Gross failure to collect premium payments timely (if at all);

- m. Gross failure to process and record the effective dates of policies accurately or consistently;
- n. Gross failure to process and record the termination dates of policies accurately or consistently;
- o. Gross failure to process invoices correctly and timely;
- p. Gross failure to determine and report eligibility of members accurately;
- q. Gross failure to have in place and/or to implement a financial policy or procedure to verify check register expenditures;
- r. Gross failure to have in place and/or to implement a financial policy or procedure to verify credit card expenditures; for example, in or around October to November 2013, a VP of IT Operations at LAHC, Larry Butler, misused his LAHC credit card by incurring more than \$35,000 in charges, the vast majority of which were personal expenses, on a corporate account with limits of \$5,000;
- s. Gross failure to have in place and/or to implement a financial policy or procedure to verify sponsor invoices;
- t. Gross failure to have in place and/or to implement policies and procedures regarding operational, financial, and compliance areas (such as background checks, corrective action plans, procurement, contract management, and financial management) before engaging in meaningful work and offering insurance coverage to the public;
- u. Gross failure to understand, implement, and enforce the applicable “grace period” pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1260.31, *et. seq.*;
- v. Gross failure to record and report LAHC’s claims reserves (IBNR) accurately;
- w. Gross failure to report and appoint agents and brokers;
- x. Gross failure to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately;
- y. As of March 2014, LAHC described its own system to process enrollment, eligibility, and claims handling as a “broken” process;
- z. Grossly negligent to choose GRI to replace CGI; went from the frying pan into the fire; GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its members, providers, and creditors;
- aa. Erroneously terminating coverage for fully subsidized subscribers;
- bb. Failing to provide notice to providers regarding member terminations and lapses due to non-payment of premiums;
- cc. Failing to provide notice (delinquency letters) to subscribers prior to terminating coverage;
- dd. Failing to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data;
- ee. Failing to collect binder payments on-time;
- ff. Failing to terminate members when binder payments were not received;
- gg. Failing to correct ambiguities in the GRI contract(s);

- hh. Failing to select qualified vendors
- ii. Failing to select qualified management;
- jj. They knew or should have known, prior to the public rollout of LAHC in January 2014, that LAHC would not be a viable HMO, and yet they proceeded to offer policies and services to the public and members knowing that LAHC would fail;
- kk. They caused and/or allowed LAHC to misrepresent the financial condition and viability of LAHC to the LDI, the federal government, its member, its creditors, and the public, thereby allowing LAHC to remain in operation much longer that they should and would otherwise have, adding additional members and incurring additional claims and debt;
- ll. They knowingly paid excessive salaries, professional service fees, and consulting fees, as alleged herein, without receiving appropriate value to LAHC;
- mm. They failed to implement internal controls that would have prevented the gross waste and damages sustained by LAHC as a result of their gross negligence;
- nn. They concealed LAHC's true financial condition and insolvency and artificially prolonged LAHC's corporate life beyond insolvency all to the detriment of LAHC, its members, and its creditors;
- oo. They grossly mismanaged LAHC's affairs;
- pp. They grossly failed to exercise oversight or supervise LAHC's financial affairs;
- qq. They failed to operate LAHC in a reasonably prudent manner;
- rr. They failed in their duty to operate LAHC in compliance with the laws and regulations applicable to them; and
- ss. Other acts of gross negligence as may be later discovered.

32.

The D&O Defendants also breached their fiduciary duty of loyalty, due care, and good faith by allowing, if not fostering, individuals with conflicts of interest to influence, if not control, LAHC, all to the detriment of LAHC, its members, providers, and creditors.

33.

Because of the grossly negligent conduct of the D&O Defendants, LAHC was woefully not prepared for its roll-out to the public on January 1, 2014.

34.

By approximately March 2014, just three (3) months after its ill-advised roll-out, the D&O Defendants compounded an already bad situation by deciding to replace CGI with GRI as TPA. At this point, the D&O Defendants should have either exercised appropriate oversight and management to reform CGI's grossly inadequate performance, or the D&O Defendants should have terminated the Agreement with CGI and found a suitable TPA, or the D&O Defendants

should have ceased operations altogether. Instead, the D&O Defendants made matters worse by hiring a TPA that was even less qualified and less prepared than CGI for the job: GRI.

35.

To further damage the struggling LAHC, in approximately mid-2014, the D&O Defendants decided to switch healthcare provider networks from Verity Healthnet, LLC (“Verity”) to Primary Healthcare Systems (“PHCS”). Once again, the D&O Defendants’ conduct constitutes gross negligence that further damaged LAHC, its members, providers, and creditors.

36.

The D&O Defendants, in breaching both their duty of loyalty and duty of care, showed a conscious disregard for the best interests of LAHC, its members, providers and creditors.

37.

As a direct and proximate result of the gross negligence and foregoing failures of the D&O Defendants to perform their fiduciary obligations, LAHC, its members, its providers and its creditors have sustained substantial, compensable damages for which the D&O Defendants and the Insurer Defendants are liable, and for which Plaintiff is entitled to recover in this action.

38.

The compensable damages caused by the D&O Defendants’ grossly negligent conduct, if not willful conduct, include, but are not limited to:

- a. damages in the form of all losses sustained by LAHC from its inception (i.e., they should have never started LAHC in the first place);
- b. damages in the form of lost profits (i.e., the amount LAHC would have earned, if any, but for their conduct);
- c. damages in the form of excessive losses (i.e., the difference between the amount LAHC would have lost, if any, and the amount LAHC did lose, because of their conduct);
- d. damages in the form of deepening insolvency (i.e., the damages caused by their decision to prolong the corporate existence of LAHC beyond insolvency);
- e. damages in the form of all legitimate debts owed to creditors of LAHC, including but not limited to those unpaid debts owed to health care providers who delivered services to members of LAHC, any debts owed to members of LAHC that were not paid, and the debt owed to CMS (both principal and interest) as a result of LAHC’s gross negligence as pled herein;
- f. disgorgement of all excessive salaries, bonuses, profits, benefits, and other compensation inappropriately obtained by them;
- g. damages in the form of all excessive administrative, operational, and/or management expenses, including:
  - i. Untimely payment of member and provider claims;

- ii. Incorrect payment of member and provider claims;
  - iii. Increased interest expense due to incorrect and/or untimely claims payments;
  - iv. Increased expenses due to incorrect and/or untimely claims payments;
  - v. Incorrect and/or untimely payment of agent/broker commissions;
  - vi. Inaccurate and/or untimely collection of premium due for health coverage;
  - vii. Increased expenses for services from LAHC vendors other than the third party administrator;
  - viii. Increased expenses for provider networks and medical services;
  - ix. Loss of money due to LAHC from the Center for Medicare and Medicaid Services ("CMS") for risk adjustments;
  - x. Fines incurred for failure to have agents/brokers properly appointed; and
  - xi. Inability to repay the millions of dollars loaned to LAHC by the federal government.
- h. all costs and disbursements of this action, including all compensable litigation expenses.

39.

Plaintiff recently reached a *Gasquet* settlement with the originally named D&O Defendants, specifically: Shilling, Cromer, Thomas, Oliver, Calvi, and Powers. Pursuant to the terms of the parties' settlement agreement, the D&O Defendants and Other Insured Persons (i.e., other employees or directors of LAHC) may be named as nominal defendants to the extent Plaintiff elects to pursue his rights against any excess insurer of the D&O Defendants or Other Insured Persons by naming such insurers in this suit (other than Travelers). In accordance with the settlement agreement, Plaintiff has named the Insurer Defendants as excess insurers, and he has named the following as nominal defendants herein: Thomas; Oliver; Posecai; Quinlan; November; and Hulefeld.

40.

The Insurer Defendants are liable to the Plaintiff jointly, severally and *in solido* with the D&O Defendants to the extent of the limits of its respective policies of insurance, for the following reasons:

- a. Allied/Darwin issued a Directors and Officers Liability Policy to Ochsner Clinic Foundation, with policy limits, upon information and belief, of \$5,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;

- b. Allied/Darwin issued an Excess Insurance Policy to Ochsner Clinic Foundation, with policy limits, upon information and belief, of \$5,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;
- c. Atlantic issued a Follow Form Excess Policy to Ochsner Clinic Foundation, with policy limits, upon information and belief, of \$10,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;
- d. Evanston issued an Excess Management Liability Policy to Ochsner Clinic Foundation, with policy limits, upon information and belief, of \$5,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;
- e. RSUI Indemnity issued an Excess Liability Policy to Ochsner Clinic Foundation, with policy limits, upon information and belief, of 10,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff;
- f. Zurich issued a Zurich Excess Select Insurance Policy to Ochsner Clinic Foundation, with policy limits, upon information and belief, of \$10,000,000.00, which policy was in full force and effect at all relevant times and provided insurance coverage to the D&O Defendants for some or all of the claims asserted herein by Plaintiff.

41.

The Insurer Defendants provide coverage for the liability of executives or employees of Ochsner Clinic Foundation who act as director or officer of any non-for-profit entity, such as LAHC, at the request of Ochsner. The Nominal Defendants, Thomas, Oliver, Posecai, Quinlan, November, and Hulefeld, were all Ochsner executives and/or employees who also served as directors and/or officers of LAHC at the request of Ochsner.

**Count Two: Breach of Contract  
(Against the TPA Defendants and Beam Partners)**

42.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

**CGI**

43.

On or about February 15, 2013, LAHC and CGI entered into an Administrative Services Agreement ("Agreement") whereby CGI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Agreement. A true and correct copy of the Agreement and all exhibits was attached and incorporated by reference in the original Petition for Damages as "Exhibit 1."

44.

Under the terms of the Agreement, CGI represented and warranted, *inter alia*, that "CGI personnel who perform the services under the Agreement shall have the appropriate training, licensure and or certification to perform each task assigned to them" and that "CGI will make a good faith effort to maintain consistent staff performing the delegated functions" for LAHC.

45.

Under the terms of the Agreement, CGI was, among other things, obligated to:

- a. Function as a Third Party Administrator for LAHC;
- b. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.
- c. Accurately process and pay claims for covered services provided to LAHC's members by providers;
- d. Competently perform all of those tasks set forth in the Agreement, including Exhibit 2 thereto, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclean claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and
- e. Competently perform all of those tasks expected and required of a Third Party Administration, whether specified in the Agreement or not.

46.

CGI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

- a. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;
- b. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;
- c. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;
- d. Failed to issue appropriate identification cards to subscribers;
- e. Failed to provide proper notice (delinquency letters) so subscribers prior to terminating coverage;
- f. Failed to process claims properly;

- g. Failed to enter, record, and process paper claims properly;
- h. Failed to establish, manage, and run the call center for LAHC properly;
- i. Failed to implement a billing system that would accurately calculate balance due;
- j. Failed to appropriately establish an EDGE server and/or failed to appropriately or timely provide the Department of Health and Human Services with access to required data on the EDGE server; and
- k. Other acts of gross negligence as may be later discovered.

47.

As of March 2014, just three (3) months after its roll-out, LAHC described the system designed and implemented by CGI to process enrollment, eligibility, and claims handling, as a “broken” process. Indeed, the conduct of CGI, as described herein in detail, goes well beyond simple negligence; almost every facet of the system designed and implemented by CGI as a third party administrator of LAHC was a failure. CGI’s conduct, as described herein in detail, constitutes gross negligence.

48.

Subsequently, LAHC and CGI memorialized their agreement to terminate the CGI Agreement via Letter Agreement dated June 19, 2014 (“Letter Agreement”) (Exhibit 3). Assuming that this purported release is applicable to Plaintiff’s claims against CGI, which Plaintiff expressly denies, the express terms of this Letter Agreement make clear that LAHC did not release CGI for “obligations assumed” by this Letter Agreement.

49.

According to this Letter Agreement, although the Original Agreement allegedly terminated on April 30, 2014, CGI assumed numerous obligations, including:

- For “the six month wind-down period [from April 2011 through October 2011], CGI shall provide such wind-down services as the parties may agree in a wind-down plan, all in accordance with Sections 2.5 and 2.5.1 of the Original Agreement.” (Exhibit 3, ¶ 1).
- “The general scope and structure of the wind down period is as specified in Attachment 1 to this Letter Agreement.” (Exhibit 3, ¶ 2). Attachment 1 to the Letter Agreement further specifies that, during the wind down period, CGI was responsible for transferring “membership data,” “enrollment data,” “paid claim data,” “pending and/or in-flight claim data,” “file server records,” and “other data transfer as the parties agree” to GRI. (Exhibit 3, Attachment 1).

- “During the wind-down period, CGI will make commercially reasonable efforts to perform the Delegated Functions in accordance with the Service Level Specifications set forth in Section 6 in Exhibit 1 to the Original Agreement.” (Exhibit 3, ¶ 3).

50.

Further, as evidenced by correspondence from LAHC to CGI dated April 17, 2014, requesting that the Original Agreement between LAHC and CGI be terminated because of numerous specific failures of CGI to perform under the agreement and asserting that “CGI is in fundamental breach of the Agreement, CGI continued to provide services to LAHC during the transitional “wind down” period. Specifically, in addition to detailing the numerous failures of CGI to perform, according to this correspondence:

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

51.

The services performed by CGI after April 30, 2014 are “obligations assumed” by the Letter Agreement. CGI breached its obligations and warranties set forth in the Letter Agreement in a grossly negligent manner.

52.

CGI was paid a total of approximately \$1,176,224.42 by LAHC over the course of their working relationship from approximately April 2013 to November 2014. Of this total amount, \$539,139.59—or about 46%—was paid to CGI on or after April 30, 2014, the alleged termination date of the original agreement. CGI did substantial work for LAHC after April 30, 2014 during the transitional or “wind down” period as GRI assumed the role of third party administrator of LAHC. For example, both before and after April 30, 2014, CGI:

- failed to ensure that its personnel who performed services for LAHC were adequately and appropriately trained, licensed, and certified to perform the services and functions delegated by LAHC to CGI;
- failed to accurately process and pay claims on LAHC’s behalf in a timely manner at the correct rates and amounts;

- failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts; and
- in general, failed to provide for a smooth and seamless transition of LAHC's ongoing business to GRI.

53.

CGI's breaches of its warranties and obligations in both the Original Agreement and the Letter Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

### GRI

54.

GRI was not qualified to render the services as a third party administrator ("TPA") that LAHC needed to be successful. Rather than decline taking on a job that was outside of its capabilities, GRI wrongly agreed to replace CGI and serve as TPA for LAHC. GRI's decision to serve as LAHC's TPA constitutes gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors. But for GRI's gross negligence, most of LAHC's substantial, compensatory damages would have been avoided.

55.

In or about July 2014, LAHC and GRI entered into an Administrative Services Agreement whereby GRI agreed to perform certain administrative and management services to LAHC in exchange for certain monetary compensation as set forth in the Administrative Services Agreement. The Administrative Services Agreement had an effective date of July 1, 2014. The Administrative Services Agreement was amended both in September 2014 and December 2014. A true and correct copy of the Administrative Services Agreement and all amendments and exhibits are collectively referred to as the "Agreement" and were attached and incorporated by reference in the original Petition for Damages as "Exhibit 2." A true and correct copy of the Delegation Agreement between LAHC and GRI effective August 20, 2014, was attached and incorporated by reference in the First Supplemental, Amending and Restated Petition For Damages as "Exhibit 2A."

56.

Under the terms of the Agreement, CGI represented and warranted that "GRI personnel who perform or provide the Delegated Services specified services under this Agreement shall

possess the appropriate authorization, license, bond and certificates, and are full and appropriately trained, to properly perform the tasks assigned to them.”

57.

Under the terms of the Agreement, GRI was, among other things, obligated to:

- a. Accurately process and pay claims for covered services provided to LAHC's members by participating providers according to payment terms regarding timeliness and the rates and amounts set forth in LAHC's Participating Provider Agreements.
- b. Accurately process and pay claims for covered services provided to LAHC's members by providers;
- c. Competently perform all of those tasks set forth in the Agreement, including Exhibit A-1 to the agreement, such as paying claims, adjudicating claims, determining covered services, identifying and processing clean and unclean claims, collecting and processing all encounter data, transmitting denial notifications to members and providers, transmitting all required notices, tracking and reporting its performance, tracking, reporting and reconciling all records regarding deductibles and benefit accumulators, monitoring all claims, submitting all claims, tracking, reporting, and paying all interest on late paid claims, coordinating the payment and processing of all claims and EOBs, and developing and implementing a functional coding system; and
- d. Competently perform all of those tasks expected and required of a Third Party Administration, whether specified in the Agreement or not.

58.

GRI breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

- a. GRI failed to meet most, if not all, of the performance standards mandated by the Services Agreement of July 1, 2014;
- b. GRI was unqualified, ill-equipped, and unable to service the needs of LAHC, its member, providers, and creditors;
- c. GRI knew or should have known that it was unqualified to service the needs of LAHC;
- d. Pursuant to GRI's Service Agreement, GRI was responsible for critical processes that are typically covered by such a health insurance administrative service provider contracts, including the receipt and processing of member premium payments, the calculation and payment of broker commissions, and the process of managing calls into LAHC;
- e. GRI wholly failed to provide sufficient and adequately trained personnel to perform the services GRI agreed to perform under the Agreement;
- f. Failed to process and pay claims on a timely basis, resulting in interest payment alone in excess of \$600,000.00;
- g. Failed to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims;
- h. Failed to accurately and properly process enrollment segments and failed to timely reconcile enrollment segments;

- i. Erroneously terminated coverage for fully subsidized subscribers (\$0 Invoices);
- j. Failed to provide proper notice to providers regarding member terminations and lapses due to non-payment of premiums;
- k. Failed to timely process enrollment interface (ANSI 834) from CMS;
- l. Failed to accurately process enrollment interface (ANSI 834) from CMS;
- m. Failed to pass CMS data edits for CMS Enrollment Reconciliation Process;
- n. Submitted inaccurate data to the CMS Enrollment Reconciliation Process causing erroneous terminations;
- o. Failed to pass CMS data edits for Enrollment Terminations & Cancellations Interface (ANSI 834) to CMS;
- p. Failed to pass CMS data edits for Edge Server Enrollment Submissions to CMS;
- q. Failed to use standard coding for illustrating non-effectuated members (using years 1915 and 1900 as termination year);
- r. Failed to provide proper notice (delinquency letters) to subscribers prior to terminating coverage;
- s. Failed to invoice subscribers accurately when APTC changed;
- t. Failed to invoice subscribers for previously unpaid amounts (no balance forward);
- u. Failed to cancel members for non-payment of binder payment;
- v. Failed to cancel members after passive enrollment;
- w. Failed to administer member benefits (maximum out-of-pockets exceeded);
- x. Failed to pay interest on claims to providers;
- y. Failed to pay claims within the contractual timeframes;
- z. Failed to adjust claims after retroactive disenrollments;
- aa. Failure to examine claims for potential subrogation
- bb. Failed to maintain adequate customer service staffing and call center technology;
- cc. Failed to process APTC changes from CMS within an appropriate timeframe;
- dd. Failed to capture all claims diagnoses data from providers;
- ee. Failed to pass CMS data edits for Edge Server claims submissions to CMS;
- ff. Failed to load the 1,817 claims from the 4/29/16 and 5/2/16 check runs onto the EDGE Server;
- gg. Incorrectly calculated claim adjustments, especially as it pertains to a subscriber's maximum out-of-pocket limit;
- hh. Paid claims for members that never effectuated;
- ii. Failed to protect the personal health information of subscribers;

- jj. Failed to issue ID cards to members accurately and timely and without effective dates;
- kk. Failed to have in place and/or to implement a financial policy or procedure to verify credit card expenditures;
- ll. Failed to understand, implement, and enforce the applicable “grace period” pertaining to subscribers as per the ACA and Louisiana Law, La. R.S. 22:1260.31, *et. seq.*;
- mm. Failed to record and report LAHC’s claims reserves (IBNR) accurately;
- nn. Failed to report and appoint agents and brokers appropriately;
- oo. Failed to record and report the level of care provided to LAHC members, enrollees, and subscribers accurately; and
- pp. Failed to maintain an Information Technology environment with adequate controls and risk mitigation to protect the data, processes, and integrity of LAHC data.
- qq. Failed to maintain correct Taxpayer Identification Numbers for providers and submitted incorrect Taxpayer Identification Numbers on tax forms for approximately 135 providers, resulting in IRS penalties and fines of at least \$37,700.

59.

According to the Agreement, GRI was obligated to pay claims within the time frame required by applicable law; and if claims were paid untimely because of GRI’s conduct, GRI “shall be responsible for paying any required interest penalty to Providers.” Because of GRI’s gross negligence and non-performance of its contractual obligations owed to LAHC, numerous claims were paid late and significant interest penalties were incurred and paid by LAHC. GRI is obligated to pay all such interest penalties.

60.

GRI’s gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

### **Beam Partners**

61.

Beam Partners was not qualified to render the services as a manager and developer and/or third party administrator (“TPA”) that the start-up, LAHC, needed to be successful. Rather than decline taking on a job that was outside of its capabilities, Beam Partners wrongly orchestrated and agreed to manage, develop, and serve as TPA for LAHC from its inception. Beam Partner’s decision to manage, develop, and effectively serve as LAHC’s TPA constitutes gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors.

But for Beam's gross negligence, all of LAHC's substantial, compensatory damages would have been avoided.

62.

Given that numerous individuals who either owned, managed and/or worked for Beam Partners, including Terry Shilling, Alan Bayham, Mark Gentry, Jim McHaney, Deborah Sidener, Jim Krainz, Jim Pittman, Michael Hartnett, Eric LeMarbre, Etosha McGee, Diana Pitchford, Darla Coates, were also involved with and managed LAHC from the beginning as officers, directors, and employees of LAHC, for all intents and purposes, Beam Partners was closely related to and acted as LAHC.

63.

From approximately September 2012 through May 2014, LAHC paid more than \$3.7 million in the form of consulting fees, performance fees, and expenses to Beam Partners.

64.

LAHC and Beam Partners, LLC entered into a Management and Development Agreement whereby Beam Partners agreed to perform certain management, administrative, and developmental services for LAHC in exchange for certain monetary compensation as set forth in the Management and Development Agreement. Warner Thomas, as Chair of the Board of Directors of LAHC, signed this Management and Development Agreement on October 8, 2012; Terry Shilling signed the Management and Development Agreement on behalf of Beam Partners, LLC, with an effective date of August 28, 2012. At this time, Terry Shilling was simultaneously the Interim CEO of LAHC and a member and owner of Beam Partners. This Agreement was amended at least twice. A true and correct of the Management and Development Agreement, all Exhibits thereto (with the exception of Exhibit 2, "Performance Objectives for Services"; which is unavailable, Amendment 1, and Amendment 2), was attached and incorporated by reference om the original Petition for Damages as "Exhibit 3."

65.

According to the terms of the Agreement, Beam Partners agreed to provide "services essential to the formation of the Cooperative and its application for CO-OP program loans," including training all directors, securing the requisite licensure from LDI, developing a network of providers for LAHC, recruiting and vetting candidates for positions at LAHC, creating

processes, systems, and forms for the operation of LAHC, and identifying, negotiating and executing administrative services for the operation of LAHC.

66.

In short, Beam Partners agreed to transform the start-up LAHC into a well-organized, well-funded, and well-run HMO prior to January 1, 2014, the roll-out date of LAHC to the public. Beam Partners utterly failed to meet its contractual obligations owed to LAHC, and breached its obligations and warranties set forth in the Agreement in a grossly negligent manner, all in the following, non-exclusive ways:

- a. Failing to identify, select, and retain qualified third party contractors for LAHC, including but not limited to CGI and/or GRI;
- b. Failing to train all directors of LAHC regarding how to manage such an HMO;
- c. Failing to develop a network of providers for LAHC;
- d. Failing to recruit and adequately vet appropriate candidates for positions at LAHC;
- e. Failing to create adequate and/or functioning processes, systems, and forms for the operation of LAHC;
- f. Failing to to identify, negotiate, and execute adequate and/or functioning administrative services for the operation of LAHC;
- g. Failing to report and provide LAHC with complete, accurate, and detailed records of its performance of all services provided to LAHC;
- h. Failing to adequately disclose conflict of interests regarding Beam Partners and LAHC to any regulatory authority;
- i. Failing to provide sufficient and adequately trained personnel to perform the services Beam Partners agreed to perform under the Agreement; and
- j. In general, by completely failing to have LAHC ready and able to meet its obligations to the public, members, providers, and creditors on or before the roll-out date of January 1, 2014.

67.

The numerous failures of Beam Partners to perform its obligations owed to LAHC constitute gross negligence, if not a conscious disregard for the best interests of LAHC, its members, providers, and creditors.

68.

To the extent that Beam Partners made the decision to keep using CGI as TPA until it was too late, Beam Partners is grossly negligent in that it knew or should have known that CGI was unqualified to serve as TPA.

69.

To the extent that Beam Partners made the decision to replace CGI with GRI as TPA, Beam Partners is grossly negligent in that it knew or should have known that GRI was unqualified to serve as TPA.

70.

To the extent that Beam Partners made the decision to terminate the Verity contract, Beam Partners is grossly negligent in that it knew or should have known that terminating the Verity contract would be a substantial factor in causing LAHC to incur additional, unnecessary expense and, ultimately, to collapse.

71.

Beam Partners' gross negligence and breaches of its warranties and obligations in the Agreement have directly caused LAHC to incur substantial, compensatory damages which are recoverable by Plaintiff herein.

**Count Three: Gross Negligence and Negligence  
(Against the TPA Defendants and Beam Partners)**

72.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

73.

CGI, GRI, and Beam Partners each had a duty to ensure that its personnel who performed services for LAHC were adequately and appropriately trained, licensed, and certified to perform the services and functions delegated by LAHC to each of them.

74.

CGI, GRI, and Beam Partners each had a duty to accurately process and pay claims on LAHC's behalf in a timely manner at the correct rates and amounts.

75.

CGI, GRI, and Beam Partners each had a duty to perform their obligations in a reasonable, competent, and professional manner.

76.

CGI, GRI, and Beam Partners each breached their duties in that it negligently failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct rates and amounts.

77.

CGI, GRI, and Beam Partners each breached their duties in that they negligently and wholly failed to perform their obligations in a reasonable, competent, and professional manner.

78.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to provide a sufficient number of adequately trained personnel who had sufficient knowledge of the system program utilized by LAHC to process and pay health insurance claims at the correct rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

79.

CGI, GRI, and Beam Partners each were grossly negligent in that they wantonly failed to cause LAHC to accurately process and pay health insurance claims in a timely manner at the correct health insurance rates and amounts in complete and reckless disregard of the rights of LAHC, its members, providers, and creditors.

80.

As a direct and proximate result of CGI's, GRI's, and Beam Partners' negligence or gross negligence, LAHC has incurred substantial, compensatory damages, which are recoverable herein by Plaintiff.

**Count Four: Professional Negligence  
And Breach of Contract  
(Against the Actuary Defendants)**

81.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

**Milliman**

82.

At all relevant times, Milliman held itself out as having expertise to provide actuarial services and advice to health insurers like LAHC.

83.

In or around August 2011, Milliman was engaged by Shilling on behalf of Beam Partners and/or LAHC to provide "actuarial support" for LAHC, including the production of a "feasibility study and loan application as directed by the Funding Opportunity Announcement (Funding

Opportunity Number: 00-COO-11-001, CFDA 93.545) released from the U.S. Department of Health Services (“HHS”) on July 28, 2011.” This engagement letter pre-dated LAHC’s formal contract with Beam Partners by a year; the engagement letter dated August 4, 2011, was addressed to Shilling as “Owner/Partner” of “Beam Partners,” and was signed by Shilling on August 15, 2011, on behalf of LAHC. Indeed, this engagement letter pre-dated the incorporation of LAHC by about a month or so (LAHC was first registered with the Louisiana Secretary of State’s Office on or about September 12, 2011).

84.

In the feasibility study dated March 30, 2012, prepared by Milliman for LAHC to use in support of its loan application to CMS, Milliman concluded that, in general, LAHC “will be economically viable based upon our [Milliman’s] base case and moderately adverse scenarios.” According to Milliman’s actuarial analysis, “the projections for the scenarios are conservative, and in each of the scenarios modeled, LAHC remains financially solvent and is able to pay back federal loans within the required time periods.” Furthermore, Milliman estimated that “LAHC will be able to meet Louisiana’s solvency and reserve requirements.”

85.

The Milliman feasibility study was prepared using unrealistic assumption sets. None of the enrollment scenarios considered the possibility that LAHC would have trouble attracting an adequate level of enrollment (which is what actually happened in 2014 and 2015) and every economic scenario assumed that the loss ratio in nearly every modeled year would be 85% (an outlier loss ratio was never higher than 91%). These assumptions completely disregarded the very real possibility that there would be significant volatility in enrollment and/or the medical loss ratio. With all of the uncertainty within the ACA, a competent actuary would have understood that it was a very realistic possibility that LAHC would fail to be viable. Some of the modeled scenarios should have reflected this possibility. The Milliman feasibility study would imply that two “black swan” events occurred in 2014 and 2015 with low enrollment and very high medical costs. In actuality, these possibilities should have been anticipated by Milliman when they prepared the LAHC feasibility study.

86.

If CMS is considered to be a regulatory body, the actuary who prepared the feasibility study would be guided by Actuarial Standard of Practice (ASOP) No. 8 – Regulatory Filings for Health

Benefits, Accident & Health Insurance, and Entities Providing Health Benefits. The following paragraphs are applicable:

- Paragraph 3.4.2 of ASOP No. 8 states that the actuary “should consider the impact of future changes in the underlying covered population on the projected claims. These changes may include, but are not limited to, changes in demographics, risk profile, or family composition”. In the context of this feasibility study, Milliman should have considered the possibility that LAHC would not be able to successfully attract the level of enrollment necessary for LAHC to remain viable as an entity.
- Paragraphs 3.4.3 and 3.4.6 of ASOP No. 8 deal with claim morbidity and health cost trends. Given the enormous level of uncertainty with respect to the claim morbidity of the population that would be covered under the ACA (including many individuals who were previously uninsurable due to known medical conditions), Milliman should have generated economic scenarios that considered the possibility that the loss ratio of LAHC would have exceeded 91%. Established insurance entities with statistically credible claim experience will occasionally misprice their insurance products with resulting loss ratios exceeding 100%. Milliman should have recognized that high loss ratios were a very real possibility (given the known uncertainty of the covered population) for LAHC and illustrated such scenarios in the feasibility study.

87.

Milliman’s failure to consider the possibility of these adverse enrollment and/or medical loss ratio scenarios resulted in a feasibility study where every single scenario illustrated that LAHC would be generating significant cash earnings over the mid to long term time period. The only question to the reader of the feasibility study was how much money would be earned by LAHC.

88.

Upon information and belief, Milliman conditioned payment for its preparation of LAHC’s feasibility study upon LAHC being awarded a loan by CMS. That is, Milliman would only receive payment for its services if LAHC’s efforts to secure a loan from CMS were successful. By conditioning payment upon a successful result, Milliman may have compromised its independence as an actuary and thereby breached its duty to LAHC.

89.

Based in large part on the work performed by Milliman and relied upon by LAHC, in September 2012, LAHC was awarded a loan to become a qualified nonprofit health insurance issuer under the Consumer-Operated and Oriented Plan (CO-OP) Program established by Section 1322 of the ACA and applicable regulations. In other words, based in large part on the work performed by Milliman and relied upon by LAHC, the federal government authorized a Start-up Loan of \$12,426,560 to LAHC, and a Solvency Loan of \$54,614,100 to LAHC.

90.

In or around November 2012, Milliman was engaged by Shilling on behalf of LAHC to “develop 2014 premium rates in Louisiana” for LAHC. This engagement letter dated November 13, 2012, was addressed to Shilling as “Chief Executive” of LAHC and was signed by Shilling on behalf of LAHC on November 14, 2012.

91.

In the “Three Year Pro Forma Reports” dated August 15, 2013, prepared by Milliman and relied upon by LAHC, Milliman concluded and projected that, in general, LAHC would be economically viable, able to remain financially solvent, able to pay back federal loans within the required time periods, and would be able to meet Louisiana’s solvency and reserve requirements. In reliance upon Milliman’s professional services and actuarial estimates and projections, LAHC set its premium rate for 2014.

92.

The actuarial work performed by Milliman for LAHC, including the feasibility study and pro forma reports, were unreliable, inaccurate, and not the result of careful, professional analysis.

93.

For instance, according to the actuarial work performed by Milliman and relied upon by LAHC and the federal government as part of the ACA process, Milliman estimated that LAHC would lose \$1,892,000 in 2014 (i.e., that LAHC’s net income in 2014 would be negative \$1,892,000). In actuality, LAHC reported a statutory loss of more than \$20 million in 2014 (i.e., LAHC’s statutory net income in 2014 was actually negative \$20 million+). Milliman and LAHC’s projections for 2014 were off by a factor of more than 10. For 2015, Milliman’s projections were even more inaccurate: although Milliman projected that LAHC would earn \$1,662,000 in 2015 (i.e., LAHC’s net income in 2015 would be positive \$1,662,000), in actuality, LAHC reported a statutory loss of more than \$54 million in 2015 (i.e., LAHC’s statutory net income in 2015 was actually negative \$54 million+). Milliman and LAHC’s projections for 2015 were off by a factor of more than 32.

94.

Milliman owed a duty to LAHC to exercise reasonable care, and to act in accordance with the professional standards applicable to actuaries in providing its services to LAHC.

95.

Milliman's actuarial memorandums prepared as part of the 2014 rate filings for the individual and small group lines of business indicate that they assumed that LAHC would achieve provider discounts on their statewide PPO product that were equal to Blue Cross Blue Shield of Louisiana ("BCBSLA"). No support was provided for the basis of this assumption.

96.

Provider discounts are a key driver of the unit costs of medical (non-pharmacy) expenses that are incurred by LAHC members. Since providers (hospitals and physicians) typically provide the largest insurance carriers with the highest (compared to smaller carriers) discounts off billed charges, it was not reasonable for Milliman to assume that a start-up insurance entity with zero enrollment would be in a position to negotiate provider discounts as large as BCBSLA. Since LAHC was utilizing a rental network in 2014 (rather than building their own network), Milliman should have analyzed the level of discounts that would be present in the selected network (Verity Healthnet, LLC) and quantify the difference between these discounts and the BCBSLA discounts since a primary basis of the 2014 rate manual was the level of 2013 BCBSLA rates for their most popular individual and small group products.

97.

When developing estimates of the level of insured claims expense loads for 2014, Milliman would be guided by Actuarial Standard of Practice (ASOP) No. 5 – Incurred Health and Disability Claims. Paragraph 3.2.2 of ASOP No. 5 states that the actuary should consider economic influences that affect the level of incurred claims. ASOP No. 5 specifically says that should consider changes in managed care contracts and provider fee schedule changes when developing estimates of incurred claims.

98.

Based on a review of the LAHC actuarial memorandums for individual and small group, upon currently available information and belief, no support has been provided for the assumption that LAHC would achieve provider discounts equal to BCBSLA. This assumption was not reasonable; if Milliman assumed a lower level of provider discounts, the calculated premium rates would have been higher. As a result, LAHC's statutory losses in 2014 would have been lower.

99.

Milliman grossly underestimated the level of non-claim expenses in 2014. In Milliman's 2014 rate development, they assumed that the "per member per month" (PMPM) level of administrative expenses, taxes, and fees (non-claim expenses) would be \$70.85 PMPM for the individual line of business. For the small group line of business, the level of non-claim expenses built into the rate development was \$87.00 PMPM. Milliman projected total 2014 member months of 240,000 and 96,000 for the individual and small group lines of business respectively.

100.

The actual level of expenses in 2014 was significantly higher. On a composite basis, the PMPM level of non-claim expenses was \$145.70. Total member months were 111,689 of which 98.9% were from the individual line of business. At least part of the pricing error was due to Milliman significantly over-estimating the level of 2014 enrollment. For the component of LAHC expenses that were fixed, the impact of this incorrect enrollment estimate would be that they would need to be spread over a fewer number of members. This would result in the significantly higher level of expenses on a per member basis.

101.

When developing expense loads for 2014, Milliman would be guided by Actuarial Standard of Practice (ASOP) No. 8 – Regulatory Filings for Health Benefits, Accident & Health Insurance, and Entities Providing Health Benefits. The following sections of ASOP No. 8 are relevant for LAHC:

- Paragraph 3.4.2 of ASOP No. 8 states that the actuary "should consider the impact of future changes in the underlying covered population on the projected claims. These changes may include, but are not limited to, changes in demographics, risk profile, or family composition."
- Paragraph 3.4.4 of ASOP No. 8 instructs the actuary to "use appropriate methods and assumptions for calculating the non-benefit expenses component of premium rates. Possible methods include, but are not limited to, the use of a target loss ratio or the estimation of expenses appropriately attributed to the health benefit on a percentage of premium or fixed-dollar basis. When estimating the latter amounts, the actuary should consider the health plan entity's own experience, reasonably anticipated internal or external future events, inflation, and business plans. The actuary may also consider relevant external studies. The actuary should consider the reasonableness of the non-benefit expense component of premium rates relative to projected expenses."

102.

While there clearly was uncertainty about the overall size of the overall ACA Marketplace, it was unreasonable for Milliman to assume that LAHC, as an unknown entity in the Louisiana health insurance market, would be able to enroll 28,000 members (20,000 individual and 8,000

small group) in the first year of operation. While assuming a lower level of enrollment would have resulted in higher premiums, 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.

103.

Assuming 100% individual members, the impact of this expense miscalculation is 111,689 times (\$145.70 - \$70.85), or about \$8.4 million.

104.

When developing their estimate of the level of Risk Adjustment (“RA”) transfer payments to build into the 2014 premium rates, Milliman assumed that there would be no difference in coding intensity between LAHC and the other insurance carriers in the State of Louisiana. This assumption was not reasonable as Milliman should have known that a small start-up health insurance carrier would be in no position to code claims as efficiently as Blue Cross Blue Shield of Louisiana (“BCBSLA”) and other established insurance carriers.

105.

Whatever difference that Milliman assumed as the true morbidity difference between the members that LAHC would enroll and the average state enrollment, it was not reasonable to assume that there would be no difference in claim coding intensity. If Milliman had assumed a lower level of coding intensity for LAHC, this would have resulted in a lower assumed average risk score for LAHC for 2014. As a result, the calculated premiums would have been higher.

106.

When developing estimates of average LAHC risk scores for 2014, Milliman would have been guided by Actuarial Standard of Practice (ASOP) No. 45 – The Use of Health Status Based Risk Adjustment Methodologies. The following sections of ASOP No. 45 are relevant for LAHC with respect to the estimation of relative coding intensity:

- Paragraph 3.2.3 states that “Because risk adjustment model results are affected by the accuracy and completeness of diagnosis codes or services coded, the actuary should consider the impact of differences in the accuracy and completeness of coding across organizations and time periods.”

107.

There is no indication that any meaningful assessment of LAHC claim coding capabilities took place by Milliman which resulted in the unreasonable assumption that LAHC’s coding efficacy would be the same as larger established health insurance carriers which have years of

experience paying claims optimizing the RA coding for some of those claims under other RA programs such as the long established RA program in the Medicare Advantage product.

108.

In their 2014 rating, Milliman assumed that LAHC would actually receive \$3.20 PMPM for the individual line of business and \$0.00 for the small group line of business. In actuality, the company was assessed a 2014 RA liability of \$7,456,986 and \$36,622 for the individual and small group lines of business respectively in June 2015 by the Center for Medicare and Medicaid Services (CMS). If Milliman had used a more reasonable assumption with respect to claim coding intensity, some of this liability would have been built into the 2014 premium rates.

109.

Milliman breached its duty by failing to discharge its duties to LAHC with reasonable care, and to act in accordance with the professional standards applicable to actuaries, by failing to produce a feasibility study that was accurate and reliable, by failing to set premium rates for LAHC that were accurate and reliable, and, in general, by failing to exercise the reasonable judgment expected of professional actuaries under like circumstances.

110.

Milliman's failure to exercise reasonable care, and its failure to act in accordance with the professional standards applicable to actuaries, and its breach of contract, was the legal cause of all of, or substantially all of, LAHC's damages as set forth herein.

**Buck**

111.

At all relevant times, Buck held itself out as having expertise to provide actuarial services and advice to health insurers like LAHC.

112.

In or around March 2014, Buck was engaged by LAHC to perform "certain actuarial and consulting services" for LAHC, including but not limited to: a review of the actuarial work previously performed by Milliman, "develop cost models to prepare 2015 rates for Public Exchange," "present target rates for review and revision," "review and price new plan designs," and "prepare and submit rate filings and assist" LAHC with "state rate filing" with LDI. Buck's engagement letter was signed by Powers on behalf of LAHC on April 4, 2014, and had an effective date of April 1, 2014. On or about December 1, 2014, this contract was amended, inter alia, to

extend the term of Buck's engagement through November 30, 2015, and provided for an additional fee of \$380,000 to be paid to Buck for its actuarial services provided to LAHC.

113.

On or about April 2, 2015, Buck issued its "Statement of Actuarial Opinion" to LAHC which was relied upon by LAHC and used to support its periodic ACA reporting requirements to the federal government. In Buck's actuarial opinion, "the March 2015 pro forma financial report is a reasonable projection of LAHC's financial position, subject to the qualifications noted below." In effect, Buck vouched for LAHC's economic health and continuing viability. Buck's professional opinion was clearly inaccurate and unreliable. LAHC would close its doors about three (3) months after Buck issued its April report, and LAHC would ultimately lose more than approximately \$54 million in 2015 alone.

114.

The actuarial work performed by Buck was unreliable, inaccurate, and not the result of careful, professional analysis. Furthermore, upon information and belief, Buck may have been unqualified, given its limited experience with insurers like LAHC, to provide actuarial services to LAHC.

115.

Buck owed a duty to LAHC to exercise reasonable care, and to act in accordance with the professional standards applicable to actuaries in providing its services to LAHC.

116.

When Buck developed individual and small group premium rates for 2015, they essentially disregarded the claim experience that had emerged from the start of LAHC operations on January 1, 2014 until the filing was finalized in August 2014. Buck's explanation for not utilizing the claim experience was that it was not statistically credible. Although the claim data was not fully credible, it was unreasonable for Buck to completely disregard LAHC's claim data and incurred claim estimates that were made for statutory financial reporting.

117.

When analyzing credibility of claim data, the actuary would be guided by Actuarial Standard of Practice (ASOP) No. 25 – Credibility Procedures. ASOP No. 25 discusses the concept of two types of experience:

- Subject experience - A specific set of data drawn from the experience under consideration for the purpose of predicting the parameter under study.

- Relevant Experience - Sets of data, that include data other than the subject experience, that, in the actuary's judgment, are predictive of the parameter under study (including but not limited to loss ratios, claims, mortality, payment patterns, persistency, or expenses). Relevant experience may include subject experience as a subset.

118.

For the 2015 pricing exercise, the Subject Experience would be the LAHC claims data and the Relevant Experience was the manual claim data (obtained from Optum) that Buck used to develop rates for 2015. Buck judgmentally applied, through a credibility procedure, 100% weight to the manual claim data (Relevant Experience) and 0% weight to the actual claim experience of LAHC.

119.

By the time the 2015 rate filing was submitted, LAHC would have already prepared their June 30, 2014 statutory financial statements that reported a level of incurred claims of \$23.3 million gross of Cost Sharing Reductions (CSR). This level on claims, on a per capita level, implies that LAHC would need a rate increase in the range of at least 40%. The incurred claim estimate prepared for statutory reporting effectively amounts to a data set of "Subject Experience" that was ignored by Buck.

120.

ASOP No 25 provides the following guidance to actuaries:

- Paragraph 3.2 states that "The actuary should use an appropriate credibility procedure when determining if the subject experience has full credibility or when blending the subject experience with the relevant experience."
- Paragraph 3.4 states that "The actuary should use professional judgment when selecting, developing, or using a credibility procedure."

121.

Buck's professional judgement in this case was to completely disregard the LAHC data that was available because they concluded that it had no predictive value in their credibility procedure. They arrived at this conclusion even though the filed rate increase for 2015 was inconsistent with the necessary rate increase that was implied by the incurred claim estimates reported on the LAHC statutory financial statements.

122.

At the time the 2015 rate filing was submitted in August 2014, there were already claims incurred and paid in the period from 1/1/2014 to 6/30/2014 of \$220 PMPM (paid through July 2014) gross of Cost Sharing Reduction subsidies ("CSR"). It was readily apparent that there were

very significant claim adjudication issues with LAHC's TPA and that the actual ultimate level of incurred claims would be significantly higher than \$220 PMPM and much higher than Buck's estimate of the manual level of LAHC claims.

123.

Buck underestimated the level of non-claim expenses in 2015. In Buck's 2015 rate development, they assumed that the "per member per month" (PMPM) level of administrative expenses, taxes, and fees (non-claim expenses) would be \$96.24 PMPM for the individual line of business. For the small group line of business, the level of non-claim expenses built into the rate development was \$96.70 PMPM. Per Buck, the expense load was based on a May 2014 expense budget that was prepared by LAHC.

124.

When developing expense loads for 2015, Buck would be guided by Actuarial Standard of Practice (ASOP) No. 8 – Regulatory Filings for Health Benefits, Accident & Health Insurance, and Entities Providing Health Benefits. The following sections of ASOP No. 8 are relevant for LAHC:

- Paragraph 3.4.2 of ASOP No. 8 states that the actuary "should consider the impact of future changes in the underlying covered population on the projected claims. These changes may include, but are not limited to, changes in demographics, risk profile, or family composition".
- Paragraph 3.4.4 of ASOP No. 8 instructs the actuary to "use appropriate methods and assumptions for calculating the non-benefit expenses component of premium rates. Possible methods include, but are not limited to, the use of a target loss ratio or the estimation of expenses appropriately attributed to the health benefit on a percentage of premium or fixed-dollar basis. When estimating the latter amounts, the actuary should consider the health plan entity's own experience, reasonably anticipated internal or external future events, inflation, and business plans. The actuary may also consider relevant external studies. The actuary should consider the reasonableness of the non-benefit expense component of premium rates relative to projected expenses."

125.

The actual level of expenses in 2015 was moderately higher. On a composite basis, the PMPM level of non-claim expenses was \$111.05. Total member months were 165,682 of which 99.4% were from the individual line of business.

126.

When developing their estimate of the level of Risk Adjustment ("RA") transfer payments to build into the 2015 premium rates, Buck assumed that there would be no difference in coding intensity between LAHC and the other insurance carriers in the State of Louisiana. This assumption was not reasonable as Buck should have known that a small start-up health insurance

carrier would be in no position to code claims as efficiently as BCBSLA and other established insurance carriers.

127.

Whatever difference that Buck assumed as the true morbidity difference between the members that LAHC would enroll and the average state enrollment, it was not reasonable to assume that there would be no difference in claim coding intensity. If Buck had assumed a lower level of coding intensity for LAHC, this would have resulted in lower assumed average risk score for LAHC for 2015. As a result, the calculated premiums would have been higher.

128.

In their rate filing, Buck also noted that the average age of the LAHC enrollees was lower than the State of Louisiana average. Since age is component of the risk score calculation, the younger than average population provided some evidence that the average risk score for the LAHC would be lower than the state average. It was not reasonable for Buck to ignore this known difference in member ages between LAHC and the state average.

129.

When developing estimates of average LAHC risk scores for 2014, Buck would be guided by Actuarial Standard of Practice (ASOP) No. 45 – The Use of Health Status Based Risk Adjustment Methodologies. The following sections of ASOP No. 45 is relevant for LAHC with respect to the estimation of relative coding intensity:

- Paragraph 3.2.3 states that “Because risk adjustment model results are affected by the accuracy and completeness of diagnosis codes or services coded, the actuary should consider the impact of differences in the accuracy and completeness of coding across organizations and time periods.”

130.

There is no indication that any meaningful assessment of LAHC claim coding capabilities took place by Buck which resulted in the unreasonable assumption that LAHC’s coding efficacy would be the same as larger established health insurance carriers which have years of experience paying claims optimizing the RA coding for some of those claims under other RA programs such as the long established RA program in the Medicare Advantage product.

131.

Data Quality is also relevant with respect to Buck ignoring the known demographic data when developing an estimate of the RA transfer payment that should be built into the 2015 rates. Paragraph 3.2 of ASOP No. 23 states “In undertaking an analysis, the actuary should consider

what data to use. The actuary should consider the scope of the assignment and the intended use of the analysis being performed in order to determine the nature of the data needed and the number of Alternative data sets or data sources, if any, to be considered.” Because demographic data was available, Buck should have used it to build in some level of RA transfer payment just on that basis alone (without regard for the coding intensity issue).

132.

In their 2015 rating, Buck assumed that LAHC would have a \$0 RA transfer payment. In actuality, the company was assessed a 2015 RA liability of \$8,658,833 and \$177,963 for the individual and small group lines of business respectively in June 2016 by the Center for Medicare and Medicaid Services (CMS). If Buck had incorporated the known demographic information and used a more reasonable assumption with respect to claim coding intensity, some of this liability would have been built into the 2015 premium rates.

133.

Buck breached its duty by failing to discharge its duties to LAHC with reasonable care, and to act in accordance with the professional standards applicable to actuaries, by failing to produce a feasibility study that was accurate and reliable, by failing to set premium rates for LAHC that were accurate and reliable, and, in general, by failing to exercise the reasonable judgment expected of professional actuaries under like circumstances.

134.

Buck’s failure to exercise reasonable care, and its failure to act in accordance with the professional standards applicable to actuaries was the legal cause of all of, or substantially all of, LAHC’s damages as set forth herein.

**Count Five: Negligent Misrepresentation  
(Against the Actuary Defendants)**

135.

Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs as if fully set forth herein.

**Milliman**

136.

At all relevant times, Milliman held itself out as having expertise to provide actuarial services and advice to health insurers like LAHC.

137.

At all relevant times, Milliman held a special position of confidence and trust with respect to LAHC.

138.

LAHC justifiably expected Milliman to communicate with care when advising LAHC concerning its funding needs and the appropriate premium for LAHC.

139.

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.

140.

Milliman had a duty to provide accurate and up-to-date information to LAHC that Milliman knew or should have known LAHC would rely on in making its decision concerning the amount of premium to charge policyholders.

**Buck**

141.

At all relevant times, Buck held itself out as having expertise to provide actuarial services and advice to insurers such as LAHC.

142.

At all relevant times, Buck held a special position of confidence and trust with respect to LAHC.

143.

LAHC justifiably expected Buck to communicate with care when advising LAHC concerning its funding needs and the appropriate premium rates for LAHC.

144.

Buck's advice and/or reports to the LAHC and/or LDI and/or CMS concerning LAHC's funding needs negligently misrepresented the actual funding needs and premium rates of LAHC.

145.

Buck had a duty to provide accurate and up-to-date information to LAHC that Buck knew or should have known LAHC would rely on in making its decision concerning the amount of premium to charge policyholders.

## **PRESCRIPTION AND DISCOVERY OF TORTIOUS CONDUCT**

146.

Plaintiff shows that LAHC was adversely dominated by the Defendants named herein, who effectively concealed the bases for the causes of action stated herein. Plaintiff did not discover the causes of action stated herein until well after the Receiver was appointed and these matters were investigated as part of the pending Receivership proceeding. Furthermore, Plaintiff had no ability to bring these actions prior to receiving authority as a result of the Receivership orders entered regarding LAHC. Further, none of the creditors, claimants, policyholders or members of LAHC knew or had any reason to know of any cause of action for the acts and omissions described in this Petition until after LAHC was placed into Receivership.

147.

Plaintiff further shows that the activities of the Defendants named herein constituted continuing torts which began in 2011 and continued unabated until shortly before LAHC was placed into Receivership, or at least in the case of GRI, continued until its services were terminated by LAHC in May 2016.

148.

Applicable statutes of limitations and prescriptive/peremptive periods did not commence as to Plaintiff until shortly before LAHC was placed into Receivership, at the earliest.

149.

Further, according to applicable Louisiana law, once the Commissioner of Insurance filed suit seeking an order of rehabilitation regarding LAHC on September 1, 2015, the running of prescription and preemption as to all claims in favor of LAHC was immediately suspended and tolled during the pendency of the LAHC Receivership proceeding; La.R.S. 22:2008(B).

## **JURY DEMAND**

150.

Plaintiff is entitled to and hereby demands a trial by jury on all triable issues.

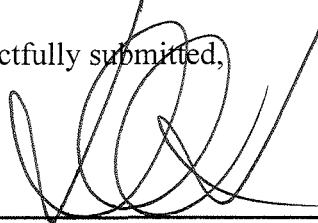
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, prays and demands that the following Defendants named herein, CGI Technologies and Solutions, Inc., Group Resources Incorporated, Beam Partners, LLC, Milliman, Inc., Buck Consultants, LLC, Allied World Specialty Insurance Company a/k/a Darwin National Assurance Company, Atlantic Specialty Insurance Company, Evanston Insurance Company, RSUI Indemnity Company, and Zurich American Insurance Company, be cited to appear and answer, and that upon a final hearing of the cause, judgment be entered against Defendants and in favor of Plaintiff for all compensable damages in an amount reasonable in the premises, including:

- a. All compensatory damages allowed by applicable law caused by Defendants' actionable conduct;
- b. the recovery from Defendants of all administrative costs incurred as a result of the necessary rehabilitation and/or liquidation proceedings;
- c. all fees, expenses, and compensation of any kind paid by LAHC to the D&O Defendants, Beam Partners, CGI, GRI, Milliman, and Buck;
- d. all recoverable costs and litigation expenses incurred herein;
- e. all judicial interest;
- f. any and all attorneys' fees recoverable pursuant to statute and/or contract;
- g. any and all equitable relief to which Plaintiff may appear properly entitled; and
- h. all further relief to which Plaintiff may appear entitled.

Respectfully submitted,



---

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

[SERVICE INFORMATION ON FOLLOWING PAGES]

***PLEASE SERVE A COPY OF:***

THE PETITION FOR DAMAGES AND JURY DEMAND

AND

THE FIRST SUPPLEMENTAL, AMENDING AND RESTATED PETITION

AND

THE SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION

***UPON THE FOLLOWING DEFENDANTS:***

**ALLIED WORLD SPECIALTY INSURANCE COMPANY a/k/a DARWIN  
NATIONAL ASSURANCE COMPANY**

**ATLANTIC SPECIALTY INSURANCE COMPANY**

**EVANSTON INSURANCE COMPANY**

**RSUI INDEMNITY COMPANY**

**ZURICH AMERICAN INSURANCE COMPANY**

All through their agent for service of process:

The Louisiana Secretary of State  
8585 Archives Avenue  
Baton Rouge, LA 70809

---

***PLEASE SERVE A COPY OF:***

THE SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION

***UPON THE FOLLOWING DEFENDANTS:***

**CGI TECHNOLOGIES AND  
SOLUTIONS, INC.**

VIA LONG ARM SERVICE

Through its agent for service of process:

Corporation Service Company

2711 Centerville Road

Suite 400

Wilmington, DE 19808

**GROUP RESOURCES  
INCORPORATED**

VIA LONG ARM SERVICE

Through its agent for service of process:

Philip H. Weener

5887 Glendridge Drive

Suite 275

Atlanta, GA 30328

**BEAM PARTNERS, LLC**

VIA LONG ARM SERVICE

Through its agent for service of process:

Terry Shilling

2451 Cumberland Parkway, #3170

Atlanta, GA 30339

**MILLIMAN, INC.**

VIA LONG ARM SERVICE

Through its agent for service of process:

CT Corporation System

505 Union Avenue SE

Suite 120

Olympia, WA 98501

**BUCK CONSULTANTS, LLC**

VIA LONG ARM SERVICE

Through its agent for service of process:

Corporation Service Company

2711 Centerville Road

Suite 400

Wilmington, DE 19808

**CERTIFICATE OF SERVICE**

In addition to requesting service on the previously named defendants as directed on the prior page, undersigned counsel hereby certifies that the following counsel of record have been served this date pursuant to La.C.C.P. art. 1313 by transmitting a copy of the SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL by electronic means to the following defense counsel:

Harry (Skip) J. Philips, Jr.  
Taylor Porter  
Post Office Box 2471  
Baton Rouge, LA 70821  
[Skip.philips@taylorporter.com](mailto:Skip.philips@taylorporter.com)

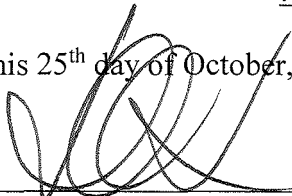
W. Brett Mason  
Stone Pigman  
301 Main Street, #1150  
Baton Rouge, LA 70825  
[bmason@stonepigman.com](mailto:bmason@stonepigman.com)

James A. Brown  
Liskow & Lewis  
One Shell Square  
701 Poydras Street, #5000  
New Orleans, LA 70139  
[jabrown@liskow.com](mailto:jabrown@liskow.com)

V. Thomas Clark, Jr.  
Adams and Reese, LLP  
450 Laurel Street  
Suite 1900  
Baton Rouge, LA 70801  
[Tom.clark@arlaw.com](mailto:Tom.clark@arlaw.com)

Frederic Theodore 'Ted' Le Clercq  
Deutsch Kerrigan, LLP  
755 Magazine Street  
New Orleans, LA 70130  
[ted@deutschkerrigan.com](mailto:ted@deutschkerrigan.com)

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

  
\_\_\_\_\_  
J. E. Cullens, Jr.

June 19, 2014

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

Re: Termination of Administrative Services Agreement

Dear Greg:

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

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



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

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

Sincerely,



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

SO AGREED:



Greg Cromer  
CEO  
Louisiana Health Cooperative, Inc.

6/19/2014

Date

## Attachment 1 – Wind Down Period Services

### 1. May and June 2014

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

#### In Scope

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

#### Not in Scope

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

**2. July to October 2014**

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

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

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

**NOTICE OF RECORDS ONLY DEPOSITION AND**  
**SUBPOENA DUCES TECUM**

TO:  
Louisiana Department of Insurance  
Through its custodian of records:  
James J. Donelon  
1702 N. Third Street  
Baton Rouge, LA 70802

PLEASE TAKE NOTICE that Buck Global, LLC f/k/a Buck Consultants, LLC (“Buck”) will take the records-only deposition of the Louisiana Department of Insurance (“LDI”) on **November 11, 2020, beginning at 10:00 a.m. at the offices of Liskow & Lewis, 451 Florida St., Suite 1150, Baton Rouge, La. 70801**, continuing from day to day until completed. LDI is hereby requested to designate and to make available for deposition at the stated time and place one or more officers, directors or managing agents, or other persons designated to testify on its behalf concerning the production of and identification of the documents specified in Attachment “A.”

All counsel are invited to participate as they deem fit.

**THIS IS A RECORDS ONLY DEPOSITION. NO APPEARANCE WILL BE NECESSARY IF THE DOCUMENTS REQUESTED ON ATTACHMENT “A” ARE PRODUCED BY THE ABOVE SPECIFIED DATE AND TIME. This deposition notice and subpoena may be satisfied by mailing certified copies of the subpoenaed materials to**

**EXHIBIT  
B**

**the following address: James A. Brown, Liskow & Lewis, 701 Poydras St., Suite 5000, New Orleans, La. 70139, Telephone: (504) 581-7979.**

**In lieu of producing hard copies, the records may be produced electronically to jabrown@liskow.com and scorales@liskow.com.**

A copy of article 1354 of the Louisiana Code of Civil Procedure is attached as Exhibit “B.”

Respectfully submitted,

/s/James A. Brown  
James A. Brown, T.A. (La. Bar #14101)  
Sheri L. Corales (La. Bar #37643)  
LISKOW & LEWIS  
701 Poydras Street, Suite 5000  
New Orleans, Louisiana 70139-5099  
Telephone: (504) 581-7979  
Facsimile: (504) 556-4108  
jabrown@liskow.com  
scorales@liskow.com

David R. Godofsky, pro hac vice (D.C. Bar #  
469602)  
ALSTON & BIRD LLP  
950 F Street NW  
Washington, DC 20004  
Telephone: (202) 239-3392  
Facsimile: (202) 654-4922  
David.Godofsky@alston.com

*Attorneys for Buck Global, LLC*

**Sheriff Please Serve:**

Louisiana Department of Insurance  
Through its custodian of records:  
James J. Donelon  
1702 N. Third Street  
Baton Rouge, LA 70802

**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 12th day of October, 2020.

/s/ James A. Brown

**EXHIBIT A TO SUBPOENA DUCES TECUM**

**INSTRUCTIONS**

A. These document requests and the terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

B. Each paragraph herein shall be construed independently and not with reference to any other paragraph for the purposes of limitation.

C. In construing these document requests, the singular shall include the plural and the plural shall include the singular.

D. Information shall not be withheld merely because such information is stored electronically (*e.g.*, word processing files, electronic mail, text messages, databases, accounting information, and spreadsheets). For retrievable information stored in computers, please provide a copy both on paper and on magnetic media, and provide or identify a suitable program or method of retrieving the information.

E. Should you have any questions or concerns about these requests, please immediately contact undersigned counsel.

**DEFINITIONS**

1. The term "Document" shall be broadly construed as provided by the Louisiana Code of Civil Procedure and shall include, without limitation, every writing, drawing, graph, chart, photograph, sound recording, image, or other data that is in your possession, custody, or control, including those kept by electronic, magnetic, photographic, or mechanical means, any drafts or revisions pertaining to any of the foregoing, and any other data compilations from which information may be obtained. Any document or copy of any document that contains any note, comment, addition, deletion, insertion, annotation, alteration or otherwise comprises a nonidentical copy of another document shall be treated as a separate document subject to production.

2. "Person" shall mean natural persons, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations, governments or political subdivisions thereof, and governmental agencies.

3. The terms "and" and "or," as used herein, shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this demand any document or information that might be deemed outside its scope by another construction of these terms.

4. The singular form of any noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine and neuter genders.

5. "You" and "your" and "LDI" mean the Louisiana Department of Insurance, its employees, directors, officers, members, agents and/or representatives.

6. "Rehabilitator" means James J. Donelon, the Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc, through his duly appointed Receiver, Billy Bostick.

7. "Buck" means Buck Global, LLC f/k/a Buck Consultants, LLC ("Buck"), its employees, directors, officers, agents and/or representatives.

8. “Milliman” means Milliman, Inc., its employees, directors, officers, agents and/or representatives.
9. “LAHC” means Louisiana Health Cooperative, Inc., its employees, directors, officers, members, agents and/or representatives.
10. “CMS” refers to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.
11. “SAP” refers to Plaintiff’s October 25, 2017 Second Supplemental, Amended and Restated Petition in the matter captioned *Donelon v. Shilling et al*, No. 651,069, 19th JDC, Parish of East Baton Rouge, State of Louisiana.
12. “Communication” shall mean any transmission or exchange of information by written, oral, pictorial, electronic, or other perceptible means, including, but not limited to, correspondence, hand deliveries, mailings, telefaxes, facsimiles, telecopies, telegraphs, cables, emails, cellular/telephone conversations, text messages, video conferences, instant messages or chats, video conversations through applications like Skype or FaceTime, personal conversations, meetings, and the like—whether in email accounts (including emails and attachments located in deleted folders), cellphones, laptops, netbooks/notebooks, workstations, servers, other drives, drive images, backup tapes and databases at your headquarters, one of your facilities, or hosted by your vendor.

## **DOCUMENTS TO BE PRODUCED**

1. All documents reflecting Buck's professional services and work for LAHC.
2. All documents reflecting Milliman's professional services and work for LAHC.
3. All documents, including e-mail, reflecting communications between LDI and Buck.
4. All documents, including e-mail, reflecting communications between LDI and Milliman.
5. All documents reflecting or analyzing the role and impact of expected risk corridor payments in the formation of LAHC and in the planning and projections for its financial performance following its formation.
6. All documents reflecting or analyzing the impact of the failure to make risk corridor payments to LAHC upon its operations and financial condition.
7. All documents reflecting LDI's review and approval of LAHC's 2014 and 2015 rates.
8. All documents reflecting LDI's and/or its consultants' review, assessments, findings and/or conclusions relating to Buck's and Milliman's actuarial analyses, reports and other work for LAHC.
9. All documents reflecting all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from Milliman's actuarial work for LAHC.
10. All documents reflecting all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from Buck's actuarial work for LAHC, including but not limited to, Lewis & Ellis's 2014 review of LAHC's 2015 QHP (Individual Health) filing for individual and catastrophic products and LAHC's 2015 Small Group filing.
11. All documents reflecting or analyzing Commissioner James J. Donelon's November 5, 2015 testimony before the U.S. House of Representatives Subcommittee on Oversight and Investigations, Committee on Energy and Commerce.

12. All documents reflecting any attempt by LAHC, LDI, and/or its consulting actuaries, or other person or entity to pressure or otherwise influence Milliman to lower the 2014 rates.
13. All documents reflecting or addressing 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 any consulting actuary or third-party administrator for LAHC, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party administrator or consultant for LAHC.
14. All documents, including e-mail, reflecting communications within LDI and /or with CMS 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 any consulting actuary or third-party administrator, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party administrator or consultant for LAHC.
15. All documents, including e-mail, reflecting communications between LDI and its consulting actuaries, including but not limited to Lewis & Ellis, regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.
16. All documents and communications, including e-mail, between LAHC and LDI regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.

17. All internal documents and communications, including e-mail, within LDI regarding the review of LAHC's premium rates.
18. All documents and communications, including e-mail, between LDI and CMS regarding the review of LAHC's premium rates.
19. All documents reflecting or analyzing LAHC financial statements for the 2014, 2015, 2016, and 2017 calendar years, including: (a) GAAP financial statements; (b) Financial statements prepared in accordance with statutory accounting principles, including convention statements filed with LDI; (c) Actuarial memoranda prepared by actuaries other than Buck supporting the calculation of claim reserves, IBNR (incurred but not reported) liabilities, and any other liabilities used in the preparation of the LAHC financial statements.
20. All documents and communications, including e-mail, between LDI and CMS regarding LAHC's projected financial condition and solvency.
21. All documents and communications, including e-mail, between LDI and CMS regarding LAHC's operational problems.
22. All engagement agreements and/or other agreements entered into between LDI and Lewis & Ellis or any other actuary pertaining to LAHC.
23. All documents and communications reflecting any instructions from LDI, or any agreements between LDI and Lewis & Ellis or other actuary, as to the method, standards, manner, procedure, and/or scope for reviews of premium rates and/or of the reports, analyses, recommendations or other work product of Buck, Milliman, or other actuaries.

**EXHIBIT “B” TO NOTICE OF RECORDS DEPOSITION AND**  
**SUBPOENA DUCES TECUM**

Louisiana Code of Civil Procedure Article 1354

A. A subpoena may order a person to appear and produce at the trial, deposition, or hearing, books, papers, documents, any other tangible things, or electronically stored information, in his possession or under his control, if a reasonably accurate description thereof is given. A subpoena may specify the form or forms in which electronically stored information is to be produced. A party or an attorney requesting the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to that subpoena. The court in which the action is pending in its discretion may vacate or modify the subpoena if it is unreasonable or oppressive. Except when otherwise required by order of the court, certified copies, extracts, or copies of books, papers, and documents may be produced in obedience to the subpoena duces tecum instead of the originals thereof. If the party or attorney requesting the subpoena does not specify that the named person shall be ordered to appear, the person may designate another person having knowledge of the contents of the books, papers, documents, other things, or electronically stored information, to appear as his representative.

B. A person commanded to respond to a subpoena duces tecum may within fifteen days after service of the subpoena or before the time specified for compliance, if such time is less than fifteen days after service, send to the party or attorney designated in the subpoena written objections, with supporting reasons, to any or all of the requests, including objection to the production of electronically stored information in the form or forms requested. If objection is so made, the party serving the subpoena may file a motion to compel compliance with the subpoena and may move for sanctions for failure to reasonably comply.

C. A person responding to a subpoena to produce books, papers, or documents shall produce them as they are kept in the usual course of business or may organize and label them to correspond with the categories in the demand.

D. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably useable.

E. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

F. A person responding to a subpoena need not produce books, papers, documents, or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash, the person from whom production is sought shall show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless

order production from such sources if the requesting party shows good cause. The court may specify conditions, including an allocation of the costs, for the production.

G. When the person subpoenaed is an adverse party, the party requesting the subpoena duces tecum may accompany his request with a written request under oath as to what facts he believes the books, papers, documents, electronically stored information, or tangible things will prove, and a copy of such statement shall be attached to the subpoena. If the party subpoenaed fails to comply with the subpoena, the facts set forth in the written statement shall be taken as confessed, and in addition the party subpoenaed shall be subject to the penalties set forth in Article 1357.

H. Subpoenas duces tecum shall reproduce in full the provisions of this Article.



D5114285

SUBPOENA DUCES TECUM  
and SUBPOENA for DEPOSITION

JAMES J DONELON, COMMISSIONER OF  
INSURANCE FOR THE STATE OF  
LOUISIANA  
(Plaintiff)

NUMBER C-651069 22

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

VS

PARISH OF EAST BATON ROUGE

TERRY S SHILLING, ET AL  
(Defendant)

STATE OF LOUISIANA

TO: LOUISIANA DEPARTMENT OF INSURANCE  
THROUGH ITS COUNSEL JAMES J. DONELON  
1702 N. THIRD STREET  
BATON ROUGE, LA 70802

You are hereby commanded to appear at the office of:  
LAW OFFICE OF LISKOW & LEWIS  
451 FLORIDA STE., STE. 1150  
BATON ROUGE, LA. 70801

at 10:00 A.M. on NOV. 11, 2020 and have your oral testimony taken in the above entitled and numbered cause, in accordance with Act No. 15 of 1960. And you are commanded to produce at the above time and place the following:

**\*\*SEE ATTACHED NOTICE OF RECORDS DEPOSITION  
FOR DOCUMENTS TO BE PRODUCED\*\***

**\*\*\*SEE ATTACHED CODE OF CIVIL PROCEDURE ARTICLE 1354\*\*\***

This SUBPOENA was requested by Attorney BROWN, JAMES ALCEE and was issued by the Clerk of Court on OCTOBER 13, 2020.



RECEIVED

OCT 20 2020

E.B.R. SHERIFF'S OFFICE

*Julia Gray*

Deputy Clerk of Court for  
Doug Welborn, Clerk of Court

SERVICE INFORMATION:

Received on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, served on the above named party as follows:

PERSONAL SERVICE: On the party herein named at \_\_\_\_\_

DOMICILIARY SERVICE: On the within named \_\_\_\_\_, by leaving the same at his domicile in the parish in the hands of \_\_\_\_\_, a person of suitable age and discretion residing in the said domicile at \_\_\_\_\_, made service at the Louisiana State Office in the parish of East Baton Rouge, by handing said copy on;

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named \_\_\_\_\_ legally authorized to represent him.

RETURNED: Parish of East Baton Rouge, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SERVICE: \$ \_\_\_\_\_  
MILEAGES: \$ \_\_\_\_\_  
TOTAL: \$ \_\_\_\_\_

Deputy Sheriff

To: *Dance Herin*

OCT 22 2020

SUBPOENA DUCES TECUM and SUBPOENA for DEPOSITION  
Deputy Sheriff, Parish of East Baton Rouge, LA

EXHIBIT  
C



East Baton Rouge Parish Clerk of Court  
PO Box 1991  
Baton Rouge, LA 70821-1991

PRESORTED  
FIRST CLASS MAIL  
US POSTAGE PAID  
PEREGRINE

Suit Number: C - 651069

JAMES J DONELON, COMMISSIONER OF INSU  
VS  
TERRY S SHILLING, ET AL

Item Served: SUBP and SDT OFFICE-CIV 2067  
Who:  
LOUISIANA DEPARTMENT OF INSURANCE  
How: Departmental Service  
Date Served: 10/22/2020

**DOUG WELBORN**  
EAST BATON ROUGE PARISH CLERK OF COURT  
NINETEENTH JUDICIAL DISTRICT

## NOTICE OF SHERIFF RETURNS

002260



JAMES BROWN  
LISKOW & LEWIS  
701 POYDRAS ST STE 5000  
NEW ORLEANS LA 70139-7758

585

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

**NOTICE OF RECORDS ONLY DEPOSITION AND**  
**SUBPOENA DUCES TECUM**

TO:

Louisiana Department of Insurance  
Through its custodian of records:  
James J. Donelon  
1702 N. Third Street  
Baton Rouge, LA 70802

PLEASE TAKE NOTICE that Buck Global, LLC f/k/a Buck Consultants, LLC ("Buck") will take the records-only deposition of the Louisiana Department of Insurance ("LDI") on **November 11, 2020, beginning at 10:00 a.m. at the offices of Liskow & Lewis, 451 Florida St., Suite 1150, Baton Rouge, La. 70801**, continuing from day to day until completed. LDI is hereby requested to designate and to make available for deposition at the stated time and place one or more officers, directors or managing agents, or other persons designated to testify on its behalf concerning the production of and identification of the documents specified in Attachment "A."

All counsel are invited to participate as they deem fit.

**THIS IS A RECORDS ONLY DEPOSITION. NO APPEARANCE WILL BE NECESSARY IF THE DOCUMENTS REQUESTED ON ATTACHMENT "A" ARE PRODUCED BY THE ABOVE SPECIFIED DATE AND TIME. This deposition notice and subpoena may be satisfied by mailing certified copies of the subpoenaed materials to**

the following address: James A. Brown, Liskow & Lewis, 701 Poydras St., Suite 5000, New Orleans, La. 70139, Telephone: (504) 581-7979.

In lieu of producing hard copies, the records may be produced electronically to jabrown@liskow.com and scorales@liskow.com.

A copy of article 1354 of the Louisiana Code of Civil Procedure is attached as Exhibit "B."

Respectfully submitted,

/s/James A. Brown  
James A. Brown, T.A. (La. Bar #14101)  
Sheri L. Corales (La. Bar #37643)  
LISKOW & LEWIS  
701 Poydras Street, Suite 5000  
New Orleans, Louisiana 70139-5099  
Telephone: (504) 581-7979  
Facsimile: (504) 556-4108  
jabrown@liskow.com  
scorales@liskow.com

David R. Godofsky, pro hac vice (D.C. Bar #  
469602)  
ALSTON & BIRD LLP  
950 F Street NW  
Washington, DC 20004  
Telephone: (202) 239-3392  
Facsimile: (202) 654-4922  
David.Godofsky@alston.com

*Attorneys for Buck Global, LLC*

**Sheriff Please Serve:**

Louisiana Department of Insurance  
Through its custodian of records:  
James J. Donelon  
1702 N. Third Street  
Baton Rouge, LA 70802

**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 12th day of October, 2020.

/s/ James A. Brown

**EXHIBIT A TO SUBPOENA DUCES TECUM**

**INSTRUCTIONS**

A. These document requests and the terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

B. Each paragraph herein shall be construed independently and not with reference to any other paragraph for the purposes of limitation.

C. In construing these document requests, the singular shall include the plural and the plural shall include the singular.

D. Information shall not be withheld merely because such information is stored electronically (e.g., word processing files, electronic mail, text messages, databases, accounting information, and spreadsheets). For retrievable information stored in computers, please provide a copy both on paper and on magnetic media, and provide or identify a suitable program or method of retrieving the information.

E. Should you have any questions or concerns about these requests, please immediately contact undersigned counsel.

**DEFINITIONS**

1. The term "Document" shall be broadly construed as provided by the Louisiana Code of Civil Procedure and shall include, without limitation, every writing, drawing, graph, chart, photograph, sound recording, image, or other data that is in your possession, custody, or control, including those kept by electronic, magnetic, photographic, or mechanical means, any drafts or revisions pertaining to any of the foregoing, and any other data compilations from which information may be obtained. Any document or copy of any document that contains any note, comment, addition, deletion, insertion, annotation, alteration or otherwise comprises a nonidentical copy of another document shall be treated as a separate document subject to production.

2. "Person" shall mean natural persons, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations, governments or political subdivisions thereof, and governmental agencies.

3. The terms "and" and "or," as used herein, shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this demand any document or information that might be deemed outside its scope by another construction of these terms.

4. The singular form of any noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine and neuter genders.

5. "You" and "your" and "LDI" mean the Louisiana Department of Insurance, its employees, directors, officers, members, agents and/or representatives.

6. "Rehabilitator" means James J. Donelon, the Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc, through his duly appointed Receiver, Billy Bostick.

7. "Buck" means Buck Global, LLC f/k/a Buck Consultants, LLC ("Buck"), its employees, directors, officers, agents and/or representatives.

8. "Milliman" means Milliman, Inc., its employees, directors, officers, agents and/or representatives.
9. "LAHC" means Louisiana Health Cooperative, Inc., its employees, directors, officers, members, agents and/or representatives.
10. "CMS" refers to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.
11. "SAP" refers to Plaintiff's October 25, 2017 Second Supplemental, Amended and Restated Petition in the matter captioned *Donelon v. Shilling et al*, No. 651,069, 19th JDC, Parish of East Baton Rouge, State of Louisiana.
12. "Communication" shall mean any transmission or exchange of information by written, oral, pictorial, electronic, or other perceptible means, including, but not limited to, correspondence, hand deliveries, mailings, telefaxes, facsimiles, telecopies, telegraphs, cables, emails, cellular/telephone conversations, text messages, video conferences, instant messages or chats, video conversations through applications like Skype or FaceTime, personal conversations, meetings, and the like—whether in email accounts (including emails and attachments located in deleted folders), cellphones, laptops, netbooks/notebooks, workstations, servers, other drives, drive images, backup tapes and databases at your headquarters, one of your facilities, or hosted by your vendor.

### **DOCUMENTS TO BE PRODUCED**

1. All documents reflecting Buck's professional services and work for LAHC.
2. All documents reflecting Milliman's professional services and work for LAHC.
3. All documents, including e-mail, reflecting communications between LDI and Buck.
4. All documents, including e-mail, reflecting communications between LDI and Milliman.
5. All documents reflecting or analyzing the role and impact of expected risk corridor payments in the formation of LAHC and in the planning and projections for its financial performance following its formation.
6. All documents reflecting or analyzing the impact of the failure to make risk corridor payments to LAHC upon its operations and financial condition.
7. All documents reflecting LDI's review and approval of LAHC's 2014 and 2015 rates.
8. All documents reflecting LDI's and/or its consultants' review, assessments, findings and/or conclusions relating to Buck's and Milliman's actuarial analyses, reports and other work for LAHC.
9. All documents reflecting all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from Milliman's actuarial work for LAHC.
10. All documents reflecting all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from Buck's actuarial work for LAHC, including but not limited to, Lewis & Ellis's 2014 review of LAHC's 2015 QHP (Individual Health) filing for individual and catastrophic products and LAHC's 2015 Small Group filing.
11. All documents reflecting or analyzing Commissioner James J. Donelon's November 5, 2015 testimony before the U.S. House of Representatives Subcommittee on Oversight and Investigations, Committee on Energy and Commerce.

12. All documents reflecting any attempt by LAHC, LDI, and/or its consulting actuaries, or other person or entity to pressure or otherwise influence Milliman to lower the 2014 rates.
13. All documents reflecting or addressing 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 any consulting actuary or third-party administrator for LAHC, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party administrator or consultant for LAHC.
14. All documents, including e-mail, reflecting communications within LDI and /or with CMS 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 any consulting actuary or third-party administrator, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party administrator or consultant for LAHC.
15. All documents, including e-mail, reflecting communications between LDI and its consulting actuaries, including but not limited to Lewis & Ellis, regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.
16. All documents and communications, including e-mail, between LAHC and LDI regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.

17. All internal documents and communications, including e-mail, within LDI regarding the review of LAHC's premium rates.
18. All documents and communications, including e-mail, between LDI and CMS regarding the review of LAHC's premium rates.
19. All documents reflecting or analyzing LAHC financial statements for the 2014, 2015, 2016, and 2017 calendar years, including: (a) GAAP financial statements; (b) Financial statements prepared in accordance with statutory accounting principles, including convention statements filed with LDI; (c) Actuarial memoranda prepared by actuaries other than Buck supporting the calculation of claim reserves, IBNR (incurred but not reported) liabilities, and any other liabilities used in the preparation of the LAHC financial statements.
20. All documents and communications, including e-mail, between LDI and CMS regarding LAHC's projected financial condition and solvency.
21. All documents and communications, including e-mail, between LDI and CMS regarding LAHC's operational problems.
22. All engagement agreements and/or other agreements entered into between LDI and Lewis & Ellis or any other actuary pertaining to LAHC.
23. All documents and communications reflecting any instructions from LDI, or any agreements between LDI and Lewis & Ellis or other actuary, as to the method, standards, manner, procedure, and/or scope for reviews of premium rates and/or of the reports, analyses, recommendations or other work product of Buck, Milliman, or other actuaries.

**EXHIBIT "B" TO NOTICE OF RECORDS DEPOSITION AND**  
**SUBPOENA DUCES TECUM**

Louisiana Code of Civil Procedure Article 1354

A. A subpoena may order a person to appear and produce at the trial, deposition, or hearing, books, papers, documents, any other tangible things, or electronically stored information, in his possession or under his control, if a reasonably accurate description thereof is given. A subpoena may specify the form or forms in which electronically stored information is to be produced. A party or an attorney requesting the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to that subpoena. The court in which the action is pending in its discretion may vacate or modify the subpoena if it is unreasonable or oppressive. Except when otherwise required by order of the court, certified copies, extracts, or copies of books, papers, and documents may be produced in obedience to the subpoena duces tecum instead of the originals thereof. If the party or attorney requesting the subpoena does not specify that the named person shall be ordered to appear, the person may designate another person having knowledge of the contents of the books, papers, documents, other things, or electronically stored information, to appear as his representative.

B. A person commanded to respond to a subpoena duces tecum may within fifteen days after service of the subpoena or before the time specified for compliance, if such time is less than fifteen days after service, send to the party or attorney designated in the subpoena written objections, with supporting reasons, to any or all of the requests, including objection to the production of electronically stored information in the form or forms requested. If objection is so made, the party serving the subpoena may file a motion to compel compliance with the subpoena and may move for sanctions for failure to reasonably comply.

C. A person responding to a subpoena to produce books, papers, or documents shall produce them as they are kept in the usual course of business or may organize and label them to correspond with the categories in the demand.

D. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably useable.

E. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

F. A person responding to a subpoena need not produce books, papers, documents, or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash, the person from whom production is sought shall show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless

order production from such sources if the requesting party shows good cause. The court may specify conditions, including an allocation of the costs, for the production.

G. When the person subpoenaed is an adverse party, the party requesting the subpoena duces tecum may accompany his request with a written request under oath as to what facts he believes the books, papers, documents, electronically stored information, or tangible things will prove, and a copy of such statement shall be attached to the subpoena. If the party subpoenaed fails to comply with the subpoena, the facts set forth in the written statement shall be taken as confessed, and in addition the party subpoenaed shall be subject to the penalties set forth in Article 1357.

H. Subpoenas duces tecum shall reproduce in full the provisions of this Article.



SINCE 1912  
November 9, 2020

JOHN ASHLEY MOORE  
Partner  
(225) 381-0218 TELEPHONE  
(225) 346-8049 FACSIMILE  
ashley.moore@taylorporter.com

**VIA EMAIL AND U.S. MAIL**

Mr. James A. Brown  
Ms. Sheri L. Corales  
Liskow & Lewis  
701 Poydras Street, Suite 5000  
New Orleans, LA 70139-5099

Re: **James J. Donelon, Commissioner of Insurance for the State of Louisiana, in His Capacity as Rehabilitator of Louisiana Health Cooperative, Inc. v. 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, and Travelers Casualty and Surety Company of America State of Louisiana, No. 651,069, Section 22, 19<sup>th</sup> Judicial District Court, State of Louisiana, Parish of East Baton Rouge**

Dear Mr. Brown and Ms. Corales:

Enclosed, please find Objections of Louisiana Department of Insurance to ***Subpoena Duces Tecum*** Incompletely and Improperly Served by Defendant, Buck Global, LLC.

With best wishes, I remain

Very truly yours,

  
John Ashley Moore

JAM:dvj

**EXHIBIT  
D**

2444500v.1

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

BATON ROUGE

LAKE CHARLES

[www.taylorporter.com](http://www.taylorporter.com)

450 Laurel Street, Suite 800  
Baton Rouge, Louisiana 70801

Post Office Box 2471  
Baton Rouge, LA 70821

225.387.3221 PHONE  
225.346.8049 FAX

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

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

JAMES J. DONELON, COMMISSIONER : SUIT NO.: 651,069  
OF INSURANCE FOR THE STATE OF :  
LOUISIANA, IN HIS CAPACITY AS : SECTION: 22  
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, AND TRAVELERS CASUALTY :  
AND SURETY COMPANY OF :  
AMERICA STATE OF LOUISIANA :

**OBJECTIONS OF LOUISIANA DEPARTMENT OF INSURANCE TO *SUBPOENA DUCES TECUM*, INCOMPLETELY AND IMPROPERLY SERVED BY DEFENDANT, BUCK GLOBAL, LLC**

NOW INTO COURT, through undersigned counsel, comes the “Louisiana Department on Insurance” (“LDI”), which objects to the subpoena duces tecum (“SDT”), incompletely and improperly served without pages 5-7, DOCUMENTS TO BE PRODUCED, by Defendant, Buck Global, LLC, f/k/a Buck Consultants, LLC (“Buck”), as follows:

**1. All documents reflecting Buck's professional services and work for LAHC.**

LDI objects to SDT Request No. 1 as incomprehensible and lacking a reasonably accurate description of the documents being requested. The word “work” is undefined, vague and indefinite, and the request lacks a subject designation and a temporal limitation. Furthermore, the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

**2. All documents reflecting Milliman's professional services and work for LAHC.**

LDI objects to SDT Request No. 2 as incomprehensible and lacking a reasonably accurate description of the documents being requested. The word “work” is undefined, vague and indefinite, and the request lacks a subject designation and a temporal limitation. Furthermore, the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

**3. All documents, including e-mail, reflecting communications between LDI and Buck.**

LDI objects to SDT Request No. 3 as lacking a reasonably accurate description of the documents being requested. The request lacks a subject designation and a temporal limitation. Furthermore, LDI objects to this request on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

**4. All documents, including e-mail, reflecting communications between LDI and Milliman.**

LDI objects to SDT Request No. 4 as lacking a reasonably accurate description of the documents being requested. The request lacks a subject designation and a temporal limitation. Furthermore, LDI objects to this request on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

**5. All documents reflecting or analyzing the role and impact of expected risk corridor payments in the formation of LAHC and in the planning and projections for its financial performance following its formation.**

LDI objects to SDT Request No. 5 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding Louisiana Health Cooperative, Inc. (“**LAHC**”), subject to production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**6. All documents reflecting or analyzing the impact of the failure to make risk corridor payments to LAHC upon its operations and financial condition.**

LDI objects to SDT Request No. 6 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**7. All documents reflecting LDI's review and approval of LAHC's 2014 and 2015 rates.**

LDI objects to SDT Request No. 7 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of

Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**8. All documents reflecting LDI's and/or its consultants' review, assessments, findings and/or conclusions relating to Buck's and Milliman's actuarial analyses, reports and other work for LAHC.**

LDI objects to SDT Request No. 8 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential

treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate."

**9. All documents reflecting all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from Milliman's actuarial work for LAHC.**

LDI objects to SDT Request No. 9 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to "All Defense Counsel in LAHC," and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

"A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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."

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**10. All documents reflecting all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from Buck's actuarial work for LAHC, including but not limited to, Lewis & Ellis's 2014 review of LAHC's 2015 QHP (Individual Health) filing for individual and catastrophic products and LAHC's 2015 Small Group filing.**

LDI objects to SDT Request No. 10 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding Louisiana Health Cooperative, Inc. (“**LAHC**”), subject to production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**11. All documents reflecting or analyzing Commissioner James J. Donelon's November 5, 2015 testimony before the U.S. House of Representatives Subcommittee on Oversight and Investigations, Committee on Energy and Commerce.**

LDI objects to SDT Request No. 11 as grossly overbroad, lacking a reasonably accurate description of the documents being requested, and incomprehensible. Carried to its extreme, this request would necessarily include Commissioner Donelon's birth certificate, social security card, driver's license, wedding license and similar documents. Furthermore, LDI objects to this request on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

**12. All documents reflecting any attempt by LAHC, LDI, and/or its consulting actuaries, or other person or entity to pressure or otherwise influence Milliman to lower the 2014 rates.**

LDI objects SDT Request No. 12 as vague, indefinite, and lacking a reasonably accurate description of the documents being sought. Furthermore, LDI objects to this request on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

**13. All documents reflecting or addressing 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 any consulting actuary or third-party administrator for LAHC, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party administrator or consultant for LAHC.**

LDI objects to SDT Request No. 13 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to "All Defense Counsel in LAHC," and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

"A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**14. All documents, including e-mail, reflecting communications within LDI and/or with CMS 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 any consulting actuary or third-party administrator, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party administrator or consultant for LAHC.**

LDI objects to SDT Request No. 14 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, *et seq.*, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation

of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**15. All documents, including e-mail, reflecting communications between LDI and its consulting actuaries, including but not limited to Lewis & Ellis, regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.**

LDI objects to SDT Request No. 15 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**16. All documents and communications, including e-mail, between LAHC and LDI regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.**

LDI objects to SDT Request No. 16 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to "All Defense Counsel in LAHC," and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

"A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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."

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

"A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the

course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate."

**17. All internal documents and communications, including e-mail, within LDI regarding the review of LAHC's premium rates.**

LDI objects to SDT Request No. 17 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to "All Defense Counsel in LAHC," and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

"A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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."

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**18. All documents and communications, including e-mail, between LDI and CMS regarding the review of LAHC's premium rates.**

LDI objects to SDT Request No. 18 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**19. All documents reflecting or analyzing LAHC financial statements for the 2014, 2015, 2016, and 2017 calendar years, including: (a) GAAP financial statements; (b) Financial statements prepared in accordance with statutory accounting principles, including convention statements filed with LDI; (c) Actuarial memoranda prepared by actuaries other than Buck supporting the calculation of claim reserves, IBNR (incurred but not reported) liabilities, and any other liabilities used in the preparation of the LAHC financial statements.**

LDI objects to SDT Request No. 19 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel,

comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**20. All documents and communications, including e-mail, between LDI and CMS regarding LAHC's projected financial condition and solvency.**

LDI objects to SDT Request No. 20 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense

Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**21. All documents and communications, including e-mail, between LDI and CMS regarding LAHC's operational problems.**

LDI objects to SDT Request No. 21 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or

developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

**22. All engagement agreements and/or other agreements entered into between LDI and Lewis & Ellis or any other actuary pertaining to LAHC.**

LDI objects to SDT Request No. 22 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to “All Defense Counsel in LAHC,” and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

“A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the

course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate."

**23. All documents and communications reflecting any instructions from LDI, or any agreements between LDI and Lewis & Ellis or other actuary, as to the method, standards, manner, procedure, and/or scope for reviews of premium rates and/or of the reports, analyses, recommendations or other work product of Buck, Milliman, or other actuaries.**

LDI objects to SDT Request No. 23 on the grounds that the documents requested are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the objection, LDI respectfully submits that public records regarding LAHC, subject to the production pursuant to La. R.S. 44:1, **et seq.**, were produced to J.E. Cullens, Jr. of Walters, Papillion, Thomas, Cullens, LLC, who produced all such documents to "All Defense Counsel in LAHC," and that same or similar document requests directed to LAHC in Receivership have been previously and properly responded to.

Subject to the objection, LDI further states that La. R.S. 22:2043.1 provides as follows:

"A. No prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. However, the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. A principal under a surety bond or a surety undertaking shall be entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or the insurer or its agents misappropriated or commingled such property. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

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.”

Subject to the objection, LDI further states that La. R.S. 22:2045 provides as follows:

“A. All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner, or any other person, in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

B. All working papers, recorded information, documents, and copies thereof disclosed by the commissioner, or any other person, to the receiver in the course of an action pursuant to this Chapter, which are confidential or privileged pursuant to any other provision of law, shall be given confidential treatment and shall not be subject to subpoena or disclosed pursuant to the Public Records Law.

C. Nothing contained in this Chapter shall be construed to limit the commissioner's authority to use any working papers, recorded information, documents, and copies thereof or any other information discovered or developed during the course of any action pursuant to this Chapter in the furtherance of any legal or regulatory action that the commissioner may, in his sole discretion, deem appropriate.”

By Attorneys

**TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.**

By: 

John Ashley Moore, LBRN 09635  
450 Laurel Street, 8<sup>th</sup> floor (78001)  
P.O. Box 2471  
Baton Rouge, LA 70821  
Telephone: (225) 381-0218  
Facsimile: (225) 346-8049  
Email: [ashley.moore@taylorporter.com](mailto:ashley.moore@taylorporter.com)

*Attorneys for Louisiana Department of Insurance*

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections of Louisiana Department of Insurance to *Subpoena Duces Tecum*, Incompletely and Improperly Served by Defendant, Buck Global, LLC, was this day sent via U.S. Mail, properly addressed and postage pre-paid, and via electronic mail to all counsel, as follows:

James A. Brown  
Sheri L. Corales  
Liskow & Lewis  
701 Poydras Street, Suite 5000  
New Orleans, LA 70139-5099  
Telephone: (504) 581-7979  
Facsimile: (504) 556-4108  
Email: [jabrown@liskow.com](mailto:jabrown@liskow.com)  
Email: [scorales@liskow.com](mailto:scorales@liskow.com)

Baton Rouge, Louisiana, this 9<sup>th</sup> day of November, 2020.



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John Ashley Moore

19TH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

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

NO. 651,069

VERSUS

SECTION 22

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

\*\*\*\*\*

TRANSCRIPT OF THE PROCES VERBAL GIVEN ON BEHALF OF THE  
DEFENDANT, BUCK GLOBAL, LLC, REPORTED IN THE ABOVE  
ENTITLED AND NUMBERED CAUSE BY KELLY RUTH CARLSON,  
CERTIFIED COURT REPORTER FOR THE STATE OF LOUISIANA.

\*\*\*\*\*

REPORTED AT THE LAW OFFICES OF:

LISKOW & LEWIS

450 LAUREL STREET, SUITE 1601

BATON ROUGE, LOUISIANA 70801

COMMENCING AT 10:21 A.M., ON NOVEMBER 11, 2020.

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APPEARANCES  
FOR THE DEFENDANT, BUCK GLOBAL, LLC:  
LISKOW & LEWIS  
(BY: SHERI L. CORALES, ESQ.)  
701 POYDRAS STREET, SUITE 5000  
NEW ORLEANS, LOUISIANA 70139

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CERTIFICATE .....6

LIST OF EXHIBITS

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EXHIBIT NO. 1 .....4  
(Subpoena Duces Tecum and Return Copy of Service)

EXHIBIT NO. 2 .....5  
(Objections of Louisiana Department of Insurance To  
Subpoena Duces Tecum, Incompletely and Improperly  
Served by Defendant, Buck Global, LLC)

P R O C E S      V E R B A L

MS. CORALES: My name is Sheri Corales with  
Liskow & Lewis. We represent Buck Global, LLC,  
in Case No. 651,069, Donelon versus Shilling.

We are here today in our  
Baton Rouge office for a previously scheduled  
records deposition of the Louisiana Department of  
Insurance. A subpoena duces tecum and records  
deposition notice were issued by the clerk on  
October 13th, 2020, and served by the sheriff on  
October 22nd, 2020.

I spoke with Ashley Moore with  
Taylor & Porter, who represents the Louisiana  
Department of Insurance, and was advised that, in  
light of his objections, he will not be attending  
the records deposition scheduled today,  
November 11th, at 10:00 a.m.

I would like to enter into the  
record Exhibit 1, which is a subpoena duces tecum  
issued to the Louisiana Department of Insurance  
through its custodian of record, James Donelon,  
along with a return copy of service by the  
sheriff.

(EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

1 MS. CORALES: I would also like to introduce  
2 Exhibit 2, LDI's objections to the subpoena duces  
3 tecum.

4 (EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION.)

5 MS. CORALES: The time now is 10:23 on  
6 November 11th, 2020.

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8 (PROCES VERBAL CONCLUDED AT 10:23 A.M.)  
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REPORTER'S CERTIFICATE

I, Kelly Ruth Carlson, Certified Court Reporter in and for the State of Louisiana, Registered Professional Reporter, and as the officer before whom this proces verbal was taken, do hereby certify that the foregoing 5 pages were reported by me in the Stenotype reporting method, was prepared and transcribed by me or under my direction and supervision, and is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board and that I have been informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition services.

I further certify that I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434, and in rules and advisory opinions of the board.

I further certify that I am not an attorney or counsel for any of the parties, that I am neither related to nor employed by any attorney or counsel connected with this action, and that I have no financial interest in the outcome of this matter.

This certificate is valid only for this

1 transcript accompanied by my original signature and  
2 original raised seal on this page.

3 Baton Rouge, Louisiana, this 11th day of  
4 November, 2020.

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7 KELLY RUTH CARLSON, CCR, RPR  
8 CCR NO. 2016002, RPR NO. 976783  
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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 <sup>TH</sup> JUDICIAL DISTRICT COURT
TERRY S. SHILLING, GEORGE G.	:	
CROMER, WARNER L. THOMAS, IV,	:	
WILLIAM A. OLIVER, CHARLES D.	:	
CALVI, PATRICK C. POWERS, CGI	:	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

---

**OPPOSITION MEMORANDUM TO DEFENDANTS'  
MOTION TO COMPEL**

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MAY IT PLEASE THE COURT:

Plaintiff herein, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. (“LAHC”), through his duly appointed Receiver, Billy Bostick (“Plaintiff” or “Receiver”), respectfully files this Opposition Memorandum to Defendants’ Motion to Compel Production of Responsive LDI Documents (“Motion to Compel”), currently set for Zoom hearing before this Honorable Court on Friday, September 25, 2020. For all of the following reasons, defendants’ Motion to Compel should be DENIED because, as a matter of law and fact, the Receiver of LAHC, Plaintiff herein, is not the legal custodian of the regulatory records sought by defendants.

**A. Introduction**

As correctly stated by defendants in their supporting memorandum, defendants’ motion to compel is limited to the discrete issue of whether, according to Louisiana law, the Receiver of LAHC is the custodian of all records, including the internal regulatory documents maintained by LDI, relating to LAHC.<sup>1</sup> The immediate issue of custody is separate and distinct from the issue of whether the regulatory records maintained by LDI are discoverable. Regardless of whether the Receiver is deemed to be the custodian of these regulatory records—records which the Receiver does not have possession of and has not reviewed—whether these regulatory records are

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<sup>1</sup> “Hence, the *sole* issue for resolution by the Court is whether or not responsive records of the LDI are within Plaintiff’s ‘possession and control.’” Memo., p. 4 (emphasis in original)..

Nor is the plaintiff the Department of Justice or any other agency or entity of the federal government.

*Id.* at 2 (citations omitted)(emphasis in original). Again, the reasoning and result in *Wachovia* should be the same here.

In another case directly on point, *Nichols v. FDIC*, 2017 WL 434426 (W.D. Wash. 2017), the federal district court once again corrected addressed and rejected defendants' erroneous position taken here. In *Nichols*, as here, plaintiff propounded numerous discovery requests to the FDIC in its capacity as receiver which sought the production of regulatory records maintained by the FDIC in its corporate capacity as regulator. According to *Nichols*:

As an initial matter, the Court points out the distinction between the FDIC as receiver and as a corporate entity. The FDIC has three main responsibilities: (1) to act as an insurer, (2) to act as a supervisor, and (3) to act as a receiver. As a rule, the FDIC's role as receiver is independent of its corporate roles as supervisor and insurer. . . . The courts have long recognized the FDIC's legal ability to operate in different capacities, with its different capacities conducting arms' length transactions with each other. . . . Because FDIC Corporate and FDIC Receiver perform two different functions and protect wholly different interests, courts have been careful to keep the rights and liabilities of these two entities legally separate. . . . This distinction is important for discovery purposes. In fact, federal courts have applied this distinction in the context of discovery. . . . In this case it appears that Plaintiff has requested information from FDIC corporate as to any investigations it may have conducted into WaMu's lending practices. To the extent that the FDIC-Receiver has objected to discovery on the basis that it seeks information in the possession, custody or control of FDIC corporate, the objection is valid and it is not required to produce information sought from that entity.

*Id.* at pp. 7-8 (citations omitted). The distinction recognized and embraced by the court in *Nichols* applies here: The Commissioner's role as regulator is independent of his role as Receiver. To the extent that defendants seek the production of regulatory records, they must direct their requests to the Commissioner in his capacity as regulator (i.e., the LDI)—not to the Receiver of LAHC.

Similarly, in *FDIC v. Nason Yeager*, 2014 WL 12617802 (M.D. Fla. 2014), the legally distinct and separate capacity of the FDIC as regulator as opposed to the FDIC as receiver was recognized to block defendants' discovery requests seeking regulatory records which were erroneously directed to the receiver.

The FDIC "has the authority to serve in two separate and legally distinct capacities: (1) in its corporate capacity as an insurer of deposits and a regulator of member banks (the "FDCI-C") and (2) in its receivership capacity as a receiver of failed banks (the "FDIC-R")." The FDIC-R is a separate legal entity from the FDIC-C and cannot be compelled to produce documents that are not in the FDIC-R's possession or control.

*Id.* at 2 (citations omitted).

In a case involving a discovery dispute between an accounting defendant and an Insurance Commissioner in his capacity as Liquidator of a failed insurance company, *Ario v. Deloitte & Touche*, 934 A.2d 1290 (Pa. 2007), the district court correctly recognized and applied the "separate

affidavit in support of the Commissioner's position in his capacity as regulator. In a very real sense, by issuing the identical discovery requests to both LDI and the Receiver, the issue of whether the Commissioner was custodian of the regulatory records in his regulatory capacity or his receiver capacity was rendered academic. One way or the other, the Commissioner was present, was represented by counsel, and was in a position to protect the disclosure of confidential regulatory records according to Louisiana law in 2006. Even the magistrate judge in *Herbert Clough* acknowledged that the "Commissioner in his or her capacity as 'regulator' or 'director,' is technically a third party to the action." *Id.* at 1. Given that the Commissioner was before her in both capacities at the time, the magistrate judge considered the argument regarding whether the Commissioner as regulator or the Commissioner as receiver was the proper custodian of the subject records to be a "semantical problem." *Id.* at 6. Here, however, unlike the situation in *Herbert Clough*, defendants refuse to issue a subpoena to LDI or to make a public records request and the LDI and the Commissioner in his capacity of regulator is not currently before this Honorable Court.

Furthermore, although the magistrate judge in *Herbert Clough* ordered the Commissioner, whether in his capacity as regulator or liquidator, to produce "all non-privileged documents responsive to the subpoena directed to it," we do not know whether, what, and when the Commissioner produced any such documents. *Herbert Clough* only addressed in passing (and erroneously) the preliminary issue of whether the Commissioner, in any capacity, has custody over the records sought by defendants; the federal magistrate did not address the more substantive issue of what regulatory records—regardless of who has custody of them—are discoverable.

In fact, it is telling that the magistrate judge admonished defense counsel and advised them that they should have "attempted to confer with counsel for the DOI, Staff Attorney Arlene D. Knighten, prior to filing this motion to compel." *Id.* at 6. In other words, defendants needed to work with independent, outside counsel for LDI in its regulatory capacity (as opposed to counsel of record for the Commissioner in his capacity as Liquidator in the federal proceeding) in an effort to determine which records were privileged and/or non-discoverable for any reason. This makes sense given that, as a practical matter and as explained in greater detail in Section C.2, *infra*, neither the Receiver nor his counsel have access to or control over the regulatory records sought by defendants in *Herbert Clough* or here. See the attached Affidavit of the Receiver for LAHC (Ex. 1). Unless and until the Commissioner in his capacity of regulator is presented a request to produce regulatory records, neither the Receiver for LAHC nor his counsel are in a position to access or

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CIVIL SECTION 22

. . . . .

JAMES DONELON, COMM. OF INSURANCE .

V. . NO. 651069

TERRY S. SHILLING, ET AL .

. . . . .

FRIDAY, SEPTEMBER 25, 2020

\* \* \* \* \*

HEARING AND ORAL REASONS FOR JUDGMENT

\* \* \* \* \*

THE HONORABLE TIMOTHY KELLEY, JUDGE PRESIDING

APPEARANCES

FOR

**EXHIBIT  
G**

J.E. CULLENS

PLAINTIFF

JAMES A. BROWN

DEFENDANTS

REPORTED AND TRANSCRIBED BY KRISTINE M. FERACHI, CCR  
#87173

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FRIDAY, SEPTEMBER 25, 2020

\* \* \* \* \*

THE COURT: ALL RIGHT. GOOD MORNING,  
GUYS. WHAT WE WILL DO IS, I AM GOING TO WALK  
THROUGH APPEARANCES RATHER THAN HAVE YOU JUST  
MAKE AN APPEARANCE BECAUSE WE HAVE GOT SO MANY  
PEOPLE YOU MIGHT TALK OVER EACH OTHER. I AM  
JUST GOING TO GO THROUGH THEM IN THE ORDER THAT  
THEY ARE ON MY SCREEN, OKAY.

THIS IS CASE NUMBER 651069, DONELON VS  
SCHILLING, ET AL. WE ARE HERE BOTH FOR A  
MOTION TO COMPEL, AND ALSO, ONCE WE ARE DONE  
WITH THAT, WE WILL DO A STATUS CONFERENCE.

THANK Y'ALL FOR COMING. WE WILL

WALK-THROUGH APPEARANCES AT THIS TIME.

MR. BIECK, ANNOUNCE YOUR NAME AND WHO YOU ARE  
HERE FOR.

MR. BIECK: ROB BIECK FOR THE NOVA  
DEFENDANTS.

MR. BALASCIO: MICHAEL BALASCIO HERE,  
JUDGE, FOR ALLIED WORLD SPECIALTY INSURANCE.

MR. SCHMEECKLE: ATLANTIC SPECIAL  
INSURANCE COMPANY, SETH SCHMEECKLE.

MR. AMON: SIMON ALMON HERE FOR EVANSTON  
INSURANCE COMPANY.

MR. LEE: LANE LEE ON BEHALF OF THE  
PLAINTIFFS WITH THE JAY CULLENS FIRM.

MR. BROWN: JAMES BROWN FOR THE DEFENDANT  
BULK GLOBAL, YOUR HONOR.

MR. GODOFSKY: DAVID GODOFSKY FOR BULK  
GLOBAL.

MR. MASON: BRENT MASON ON BEHALF OF

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DEFENDANT GROUP RESOURCES, INC.

MS. MARGOLIS: GOOD MORNING, YOUR HONOR.  
JUSTINE MARGOLIS FOR MILLIMAN, INC.

THE COURT: MS. SMITH.

MS. SMITH: WAS THAT ME? I AM SORRY.

THE COURT: THAT IS YOU, MS. SMITH.

MS. SMITH: ON BEHALF OF EVANSTON  
INSURANCE COMPANY AS WELL.

MR. HITE: JOHN HITE ON BEHALF OF ZURICH  
AMERICAN INSURANCE COMPANY, YOUR HONOR.

MR. ROSENBERG: MORNING, JUDGE KELLEY.  
HARRY ROSENBERG FOR MILLIMAN WITH MS. MARGOLIS.

THE COURT: MS. CULLENS?

MS. CULLENS: YES, YOUR HONOR. I AM HERE.

MR. CULLENS: MORNING, YOUR HONOR. JAY  
CULLENS ON BEHALF OF THE PLAINTIFF.

MR. WHITWORTH: ADAM WHITWORTH FOR  
R.S.U.I., YOUR HONOR. GOOD MORNING.

MR. KATTAN: GOOD MORNING, YOUR HONOR.  
JUSTIN KATTAN ON BEHALF OF MILLIMAN.

THE COURT: BILLY BOSTICK. I AM THE  
RECEIVER OF LOUISIANA HEALTH COOPERATIVE.

MS. FLYNT: GOOD MORNING, YOUR HONOR.  
A'DAIR FLYNT FOR BUCK GLOBAL.

THE COURT: THANK YOU. AGAIN, THIS IS A  
MOTION TO COMPEL. WHO WANTS TO TAKE THE LEAD  
ON THIS? IS THIS YOURS, HARRY, OR WHOSE IS  
THIS?

MR. BROWN: YOUR HONOR, THIS WILL BE FROM  
ME.

THE COURT: I AM SORRY. GO AHEAD, JAMES.

MR. BROWN: YES. I AM GOING TO TAKE A

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STAB AT THIS FOR THE DEFENDANTS, YOUR HONOR.

MR. CULLENS: AND YOUR HONOR, AND JAMES,  
IF I MAY, WE HAVE THE POTENTIAL OF HAVING LIVE  
TESTIMONY, MR. BOSTICK, AND WITH EVERYBODY'S  
OKAY, MR. BOSTICK HAS ANOTHER COURT ZOOM  
APPEARANCE AT 11:00 A.M. HE IS ON STAND-BY, SO  
WITH THAT LOGISTICAL PROBLEM, IF YOUR HONOR IS  
OKAY WITH IT, AND JAMES AND DEFENSE COUNSEL  
ARE, I WOULD LIKE TO POSSIBLY TAKE THE ISSUE OF  
WHETHER HE NEEDS TO TESTIFY AT ALL FIRST BEFORE  
WE ARGUE THE MOTION; IS THAT OKAY?

MR. BROWN: JUDGE, LET ME OFFER THIS ON  
BEHALF OF THE DEFENSE THAT MIGHT CUT THROUGH  
THIS IF I MIGHT.

WE OBJECT TO BOTH MR. BOSTICK'S AFFIDAVIT  
AND ANY LIVE TESTIMONY ON THE GROUNDS OF  
RELEVANCE. WE SUBMIT IT IS NOT RELEVANT TO ANY  
ISSUE BEFORE THE COURT TODAY. WE DO NOT OBJECT  
ON THE GROUNDS OF HEARSAY OR ANYTHING LIKE  
THAT. SO, WE HAVE THE RELEVANCE OBJECTION, BUT  
IF THE COURT IS INCLINED TO ALLOW THE AFFIDAVIT

NOTWITHSTANDING THAT OBJECTION, WE DO NOT SEE ANY NEED FOR LIVE TESTIMONY.

THE COURT: I AM -- THANK YOU, MR. BROWN. I AM INCLINED TO ACCEPT THE AFFIDAVIT FOR PURPOSES OF THIS, AND I WILL GIVE IT WHAT WEIGHT I THINK IT DESERVES. MR. CULLENS, IS THE AFFIDAVIT SUFFICIENT OR WOULD YOU LIKE MR. BOSTICK'S LIVE TESTIMONY?

MR. CULLENS: NO, YOUR HONOR, AND THANK YOU, JAMES. IF THERE IS NO HEARSAY OBJECTION AND WE CAN SIMPLY INTRODUCE EXHIBIT 1,

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MR. BOSTICK'S AFFIDAVIT IN LIEU OF HIS LIVE TESTIMONY, THAT IS PERFECTLY ACCEPTABLE TO PLAINTIFF.

THE COURT: I WILL GO AHEAD AND ACCEPT IT OVER THE OBJECTION OF DEFENDANTS. THE OBJECTION IS OVERRULED.

ALL RIGHT, JAMES, GO AHEAD.

MR. CULLENS: THANK YOU, YOUR HONOR.

MR. BROWN: THANK YOU, YOUR HONOR. I WILL PROCEED IF I MIGHT.

FIRST, YOUR HONOR, WE WOULD SUBMIT TO THE COURT THERE CAN BE SIMPLY NO QUESTION THAT THE

PLAINTIFF HERE IS THE LOUISIANA COMMISSIONER OF INSURANCE IN HIS CAPACITY AS REHABILITATOR. THE PLAINTIFF IS NOT MR. BILLY BOSTICK. THE COURT NEEDS ONLY LOOK TO THE EXAMINATION OF THE CASE, JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE LOUISIANA IN HIS CAPACITY AS REHABILITATOR OF THE LOUISIANA HEALTH COOPERATIVE, INC. TO SEE THAT, AND THIS HAS BEEN THE THRUST OF THE COMMISSIONER'S ENTIRE CASE UP UNTIL THIS POINT. IN HIS BRIEFING TO THE LOUISIANA SUPREME COURT, HE REPEATEDLY URGED THAT THE PLAINTIFF IS THE COMMISSIONER OF INSURANCE WHO WAS PERFORMING THESE IMPORTANT GOVERNMENTAL PURPOSES, AND THEREFORE, IS NOT BOUND BY FORUM SELECTION AND ARBITRATION CLAUSES. THE LOUISIANA SUPREME COURT VERY MUCH AGREED WITH THAT AND EMBRACED THAT. THAT THE PLAINTIFF IS THE LOUISIANA COMMISSIONER OF INSURANCE IN A REHABILITATOR CAPACITY PERFORMING THESE GOVERNMENTAL

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FUNCTIONS, AND EVEN BEYOND ALL OF THAT, THE INSURANCE CODE, LOUISIANA REVISED STATUTE 22:2008 LEAVES ABSOLUTELY NO QUESTION THAT THE

COMMISSIONER OF INSURANCE AS REHABILITATOR, AND ONLY THE COMMISSIONER OF INSURANCE AS REHABILITATOR IS VESTED BY LAW WITH THE RIGHTS OF ACTION OF THE INSURER. SO, ONLY THE COMMISSIONER OF INSURANCE AS PLAINTIFF COULD HAVE BROUGHT THIS ACTION, AND ONLY HE BROUGHT THE ACTION. HE AS THE REHABILITATOR IS THE PLAINTIFF, A GOVERNMENT OFFICIAL, THE COMMISSIONER OF INSURANCE ACTING AS REHABILITATOR.

MR. BILLY BOSTICK IS SIMPLY NOT THE PLAINTIFF. THE COMMISSIONER HERE PURPORTS TO APPEAR THROUGH HIM, SO AT MOST HE APPEARS AS AN AGENT ON BEHALF OF THE PLAINTIFF. THE ONLY PLAINTIFF THAT LOUISIANA LAW WILL ALLOW, AND THAT IS, THE COMMISSIONER OF INSURANCE. SO, UNDER THE CODE OF CIVIL PROCEDURE ARTICLE 694, QUOTE, FOR ALL PROCEDURAL PURPOSES, THE PLAINTIFF IS AND MUST BE THE COMMISSIONER OF INSURANCE AS REHABILITATOR.

NOW, WE DO NOT DISPUTE THAT THE COMMISSIONER OF INSURANCE, A GOVERNMENTAL OFFICIAL, APPEARS HEREIN IN HIS CAPACITY AS REHABILITATOR. WE DO NOT DISPUTE THAT, SO WE WOULD SUBMIT THAT ALL OF THE COMMISSIONER'S

BRIEFING ON THAT POINT IS NOT, IS NOT BEFORE THE COURT AND IS NOT RELEVANT. ALSO, AS THE COMMISSIONER HAS AGREED, ISSUES OF WHETHER PARTICULAR L.D.I., LOUISIANA DEPARTMENT OF

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INSURANCE RECORDS ARE DISCOVERABLE OR NOT, OR IRRELEVANT OR NOT IS NOT BEFORE THE COURT TODAY.

THE COMMISSIONER'S BRIEFING AGREES IN ITS FIRST PARAGRAPH WITH US THAT THE ONLY ISSUE BEFORE THE COURT TODAY IS WHETHER LOUISIANA DEPARTMENT OF INSURANCE RECORDS ARE IN THE POSSESSION, CUSTODY OR CONTROL OF THE PLAINTIFF, THE COMMISSIONER OF INSURANCE AS REHABILITATOR, AND ISSUES AS TO THE RELEVANCE OR DISCOVERABILITY OF PARTICULAR L.D.I. RECORDS ARE FOR ANOTHER DAY. THAT IS NOT BEFORE THE COURT. THAT IS AN ISSUE FOR ANOTHER DAY.

NOW, ON THE ONLY RELEVANT ISSUE BEFORE THE COURT THAT WE HAVE RAISED IN OUR MOTION TO COMPEL, WHETHER L.D.I. RECORDS ARE IN THE POSSESSION, CUSTODY OR CONTROL OF THE LOUISIANA COMMISSIONER OF INSURANCE AS REHABILITATOR. THE ANSWER CAN ONLY BE AN OVERWHELMING YES.

THEY ARE HIS DOCUMENTS. HE CAN GET THEM  
WHENEVER HE WANTS THEM. STATE STATUTES UNDER  
THE LOUISIANA CONSTITUTION PROVIDE THAT THE  
HEAD OF A DEPARTMENT; HERE THE COMMISSIONER OF  
INSURANCE, IS THE CUSTODIAN OF ALL OF THE  
RECORDS OF HIS AGENCY, HERE THE LOUISIANA  
DEPARTMENT OF INSURANCE, REGARDLESS OF  
CAPACITY, AND TO LEAVE NO DOUBT ABOUT THAT, A  
PROVISION OF THE INSURANCE CODE, LOUISIANA  
REVISED STATUTE 22:1984(F) EXPLICITLY  
GUARANTEES THE COMMISSIONER, REGARDLESS OF  
CAPACITY, FULL ACCESS TO AND USE OF ALL  
LOUISIANA DEPARTMENT OF INSURANCE DOCUMENTS IN

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ANY PROCEEDING REGARDLESS OF CAPACITY. THE  
STATUTE IN NO WAY LIMITS CAPACITY, AND IT MAKES  
CLEAR THAT THE COMMISSIONER OF INSURANCE HAS  
FULL ACCESS TO HIS OWN RECORDS REGARDLESS OF  
THE CAPACITY AND IN ANY PROCEEDING. HE CLEARLY  
HAS THE CUSTODY AND CONTROL OF THESE DOCUMENTS  
BECAUSE HE HAS THE RIGHT TO THEM. HE CAN GET  
THEM WHENEVER HE WANTS, AND THAT IS THE  
WELL-ACCEPTED, LONG-ACCEPTED TEST WHETHER A  
PARTY TO A CASE HAS POSSESSION, CUSTODY OR

CONTROL OF DOCUMENTS.

YOUR HONOR, IN THESE CASES, LOUISIANA COURTS LOOK TO FEDERAL CASES THAT OUR DISCOVERY RULES WERE MODELED AFTER, AND BASED UPON THE FEDERAL RULES, AND BECAUSE IN LOUISIANA DISTRICT COURT DECISIONS ABOUT DISCOVERY ARE VERY RARELY REPORTED, IT IS NO ACCIDENT THAT STATE COURTS LOOK REPEATEDLY AT FEDERAL DECISIONS CONSTRUING THE ANALOGOUS DISCOVERY RULES UNDER THE FEDERAL RULES OF CIVIL PROCEDURE.

AND YOUR HONOR, I AM GOING TO SUBMIT TO YOU THAT IN RECEIVERSHIP CASES, BOTH STATE AND FEDERAL WHERE A GOVERNMENTAL ACTOR IS THE PLAINTIFF, WHETHER THE INSURANCE COMMISSIONER ACTING AS REHABILITATOR, LIQUIDATOR, ET CETERA, OR THE F.D.I.C. ACTING AS RECEIVER OF A FAILED BANK, WHEN THE GOVERNMENTAL ACTOR IN THAT CAPACITY IS THE PLAINTIFF, THE COURTS HAVE UNIFORMLY HELD THAT THE GOVERNMENTAL RECEIVER HAS CUSTODY AND CONTROL OF REGULATORY DOCUMENTS, DOCUMENTS THAT HE HOLDS IN A

REGULATORY CAPACITY, WHETHER AS REGULATOR OF AN

INSURANCE COMPANY OR F.D.I.C. IN ITS CORPORATE CAPACITY AS REGULATOR OF A BANK.

NOW, THERE IS ONE CASE RIGHT ON POINT FROM THE MIDDLE DISTRICT OF LOUISIANA HERE IN BATON ROUGE, DONELON VERSUS HERBERT CLOUGH, WHICH RULED AGAINST COMMISSIONER DONELON ON THIS VERY POINT BECAUSE OF THIS OVERWHELMING LAW THAT HAS DEVELOPED OVER MANY YEARS IN BOTH THE FEDERAL AND STATE COURTS. CONTRARY TO WHAT THE COMMISSIONER SUGGESTS IN HIS BRIEF, AND AS WE POINTED OUT IN OUR REPLY BRIEF, WHICH WE SUBMITTED TO THE COURT LAST WEDNESDAY, TWO DAYS AGO, DONELON VERSUS HERBERT CLOUGH IS NOT AN OUTLIER. IT IS IN LINE WITH THE GREAT AND OVERWHELMING WEIGHT OF AUTHORITY ON THIS POINT. AND IN OUR REPLY BRIEF, YOUR HONOR, AT PAGES 4 AND 5, WE HAVE CITED TO NUMEROUS RECEIVERSHIP CASES, BOTH INSURANCE RECEIVERSHIP CASES AND FEDERAL BANK, FAILED BANK CASES WHERE THE GOVERNMENTAL ACTOR IS THE PLAINTIFF. THE SAWICZ CASE, THE IN RE: IDEAL MUTUAL CASE, THE BERLING CASE, THE BEAR CASE, THE DOSLAND CASE, THE APPLETON CASE, THE ROUGH CASE, THE WISE CASE (SIC), AND THE SEMINAL DECISIONS IN R.T.C. VERSUS (INAUDIBLE). ALL OF WHICH ARE DIRECTLY

ON POINT AND RULE EXACTLY AS I AM ARGUING TO  
THE COURT RIGHT NOW.

WHEN A GOVERNMENTAL RECEIVER,  
REHABILITATOR, LIQUIDATOR HAULS DEFENDANTS INTO  
COURT AGAINST THEIR WILL LIKE IS HAPPENING HERE  
AND ACCUSES US OF WRONGDOING, THE COURTS WILL

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NOT ALLOW THE GOVERNMENT PLAINTIFF TO PLAY A  
SHELL GAME. TO SAY, I DO NOT HAVE POSSESSION,  
CUSTODY AND CONTROL OF THESE DOCUMENTS BECAUSE  
I HOLD THEM IN SOME OTHER CAPACITY, THE  
GOVERNMENTAL PLAINTIFF HAS POSSESSION AND  
CONTROL OF WHAT HE CAN GET, AND HERE THERE IS  
ABSOLUTELY NO QUESTION THAT UNDER STATE LAW,  
JUST LIKE THE FEDERAL STATUTE 1821 IN PLAY IN  
THE FEDERAL BANK CASES, HERE THERE IS A STATE  
STATUTE JUST LIKE 1821 THAT SPECIFICALLY GIVES  
AND GUARANTEES THE LOUISIANA COMMISSIONER OF  
INSURANCE, REGARDLESS OF CAPACITY, FULL ACCESS  
AND USE OF LOUISIANA DEPARTMENT OF INSURANCE  
RECORDS IN ANY PROCEEDING AND FOR ANY PURPOSE,  
AND THE STATUTE COULD NOT BE ANY CLEARER THAN  
THAT. THAT IS L.A.R.S. 22:1984(F) WHICH IS THE  
STATE ANALOGUE TO THE FEDERAL STATUTE SECTION

1821(0). LOUISIANA STATUTES UNMISTAKABLY  
GUARANTEE THE COMMISSIONER, REGARDLESS OF  
CAPACITY, FULL CUSTODY, CONTROL AND ACCESS TO  
RECORDS OF HIS OWN AGENCY, THE LOUISIANA  
DEPARTMENT OF INSURANCE, IN ANY PROCEEDING.  
THEY ARE HIS DOCUMENTS, HE CAN GET THEM  
WHATEVER HE WANTS.

AND YOUR HONOR, THERE IS A THIRD CIRCUIT,  
LOUISIANA THIRD CIRCUIT DECISION, LANDRY VERSUS  
COMEAX, IN WHICH THE COURT HELD A PERSON, AN  
INDIVIDUAL IN CONTEMPT FOR FAILING TO PRODUCE  
FINANCIAL RECORDS OF HIS BANK, AND HE SAID,  
WELL, THOSE FINANCIAL RECORDS ARE NOT AT MY  
HOUSE. THEY ARE NOT IN MY PERSONAL POSSESSION.  
THEY ARE AT THE BANK, SO THEY ARE NOT IN MY

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CUSTODY AND CONTROL. THE COURT NOT ONLY  
REJECTED THAT ARGUMENT, BUT HELD THEM IN  
CONTEMPT. JUDGE, IF THOSE RULES WERE APPLIED  
TO MERE MORTAL INDIVIDUALS, THEY HAVE GOT TO  
APPLY TO THE GOVERNMENT. THE GOVERNMENT SHOULD  
BE AND MUST BE SUBORDINATED, PARTICULARLY WHEN  
IT IS THE PLAINTIFF SUING DEFENDANTS WHO VERY  
MUCH BELIEVE THEY DID NOTHING WRONG IN HAULING

US INTO COURT. THE GOVERNMENT MUST TURN SQUARE CORNERS AND SUBJECT ITSELF TO THE SAME DISCOVERY RULES THAT APPLY TO POOR MR. COMEAUX IN THE LANDRY VERSUS COMEAUX CASE. FAIR IS FAIR, YOUR HONOR.

NOW, THE COMMISSIONER'S CITATIONS ARE NOT ON POINT AND/OR HAVE BEEN DISCREDITED. MOST OF THEM DO NOT EVEN ADDRESS THE CUSTODY AND CONTROL ISSUE. IN THE ARIO CASE, THE DEFENDANT TRIED TO GET DISCOVERY FROM THE GOVERNOR'S OFFICE, AND THE COURT PROPERLY SAID, THAT IS NOT RELEVANT, BUT IT DID NOT ADDRESS THE CUSTODY AND CONTROL ISSUE. WE ARE NOT TRYING TO GET DISCOVERY FROM THE GOVERNOR OF THE STATE OF LOUISIANA. IN THE COKIN ONE BEACON CASE, THE COURT ALSO SAID DISCOVERY WAS NOT RELEVANT, AND WE HAVE AGREED, THE COMMISSIONERS AGREED THAT RELEVANCE IS NOT PROVEN. THE COURT DID NOT TOUCH THE CUSTODY AND CONTROL ISSUE, OR IN ANY WAY SUGGEST THAT AN INSURANCE LIQUIDATOR DOES NOT HAVE CUSTODY AND CONTROL OF DOCUMENTS HE HOLDS IN A REGULATORY CAPACITY. THE WACHOVIA CASE WAS A RULE 30(B)6 CASE. THE COURT DID NOT SUGGEST OR EVEN TOUCH ON THE

ISSUE OF THE FACT THAT THE F.D.I.C. AS RECEIVER THERE HAD CUSTODY AND CONTROL OF REGULATORY DOCUMENTS. THE COURT SIMPLY FOUND THAT THE RULE 30(B)6 NOTICE WAS OVERBROAD AND ABUSIVE.

THE HARRISON, THE TREGO CASE, THE BAY BUSINESS CASE, THE BERNSTEIN CASE, THE RON CASE AND THE SCOWL CASE (SIC) THAT THE COMMISSIONER CITES DO NOT TOUCH THE CUSTODY AND CONTROL ISSUE IN ANY WAY. THEY ARE SEPARATE CAPACITY CASES THAT SAY THINGS LIKE, YOU CANNOT IMPUTE F.D.I.C. CORPORATE'S CONDUCT TO F.D.I.C. AS RECEIVER. YOU CANNOT IMPUTE F.D.I.C. RECEIVER'S CONDUCT TO F.D.I.C. CORPORATE. SOME DOCUMENTS ARE NOT DISCOVERABLE BECAUSE THEY HAVE TO DO WITH REGULATORY. UNLIKE HERE, THE LAWYERS THERE WERE NOT ABLE TO ARTICULATE REASONS FOR DISCOVERY THAT RELATED TO LIABILITY, WHICH WE CAN HERE, BUT THOSE ISSUES ARE NOT BEFORE THE COURT, AND WE HAVE AN AGREEMENT THAT RELEVANCE AND DISCOVERABILITY IS NOT BEFORE THE COURT TODAY. THE ONLY ISSUE IS ONE OF CUSTODY AND CONTROL. NONE OF THOSE CASES CITED BY THE COMMISSIONER HAVE ANYTHING TO DO WITH THAT ISSUE.

NOW, THE F.D.I.C. VERSUS NATION YAGER CASE WAS A CUSTODY AND CONTROL CASE, BUT IT WAS REJECTED BY THE VERY SAME JUDGE IN A LATER DECISION, THE F.D.I.C. VERSUS BEAR CASE (SIC), WHICH WE HAVE CITED, IN WHICH THE SAME JUDGE REJECTED HIS EARLIER DECISION BECAUSE THE LAWYERS IN THE EARLIER CASE, THE NATION YAGER CASE HAD FAILED TO POINT OUT THE FEDERAL

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STATUTE WHICH GAVE THE F.D.I.C. AS RECEIVER THE RIGHT TO GET O.T.S. REGULATORY DOCUMENTS; WHEREAS HERE WE HAVE A STATE STATUTE THAT SPECIFICALLY GUARANTEES THAT JUST LIKE (INAUDIBLE). SO, THE NATION YAGER CASE IS BAD LAW. THE LATER DECISIONS BY THE SAME JUDGE, WHICH IS F.D.I.C. VERSUS BEAR, WHICH LEAVES NO QUESTION THAT THE F.D.I.C. AS RECEIVER HAS CUSTODY AND CONTROL OF F.D.I.C. CORPORATE REGULATORY DOCUMENTS BECAUSE OF THAT FEDERAL STATUTE, JUST LIKE WE HAVE A STATE STATUTE HERE.

NOW, THE HAGGARD OSSEGE CASE WAS NOT A CASE BROUGHT BY THE F.D.I.C. THAT WAS AN INTERNECINE DISPUTE BETWEEN THE OFFICERS OF A

FAILED BANK. THE F.D.I.C. WAS BROUGHT IN BY SOME OF THE OFFICERS AS A THIRD PARTY DEFENDANT, AND THE COURT THERE OVERLOOKING THE FEDERAL STATUTE SIMPLY BELIEVED CORRECTLY THAT IT WAS NOT FAIR TO BURDEN A THIRD PARTY -- THE F.D.I.C.'S RECEIVER WHEN IT IS A THIRD-PARTY DEFENDANT, AN UNWILLING THIRD-PARTY DEFENDANT WITH HAVING TO PRODUCE F.D.I.C. CORPORATE DOCUMENTS.

THE NICHOLS CASE CITED BY -- WAS A PRO SE HARASSMENT NUISANCE CASE BROUGHT BY AN INDIVIDUAL AGAINST THE F.D.I.C. AS RECEIVER. F.D.I.C. AS RECEIVER WAS NOT THE PLAINTIFF. IT WAS AN UNWILLING DEFENDANT SUED BY A DISGRUNTLED PRO SE PERSON, I THINK IT WAS A BORROWER ON A LOAN. YOU CANNOT REALLY TELL, BUT IT APPEARS TO ME TO HAVE BEEN AN UNHAPPY

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BORROWER WHO WAS UNHAPPY THAT HE WAS MADE TO REPAY HIS LOAN. I AM NOT SURE ABOUT THAT, BUT AGAIN, THE F.D.I.C. AS RECEIVER UNLIKE HERE WAS NOT THE PLAINTIFF.

YOUR HONOR, I AM NOT AWARE OF A SINGLE CASE, A SINGLE CASE WHERE A GOVERNMENTAL

LIQUIDATOR WHO IS THE PLAINTIFF DRAGGING PEOPLE INTO COURT AGAINST THEIR WILL, ACCUSING THEM OF WRONGDOING ARISING OUT OF AN INSTITUTION THAT FAILED THAT HAS BEEN HELD NOT TO HAVE CUSTODY AND CONTROL OF DOCUMENTS IN THE REGULATORY CAPACITY. NOW, THERE COULD BE ONE, THERE MIGHT BE, BUT I AM NOT AWARE OF IT. I HAVE HANDLED F.D.I.C. WORK FOR A LONG TIME. I NEVER WOULD HAVE DREAMED OF MAKING THIS ARGUMENT, AND I NEVER DID MAKE THE ARGUMENT, YOUR HONOR, BECAUSE IT IS A LOSER. IT REQUIRES THE COURT TO SUSPEND DISBELIEF. TO NOT LOOK AT WHAT IS REALLY IN THE CASE. THE COMMISSIONER OF INSURANCE, REGARDLESS OF HIS CAPACITY, HAS ACCESS TO HIS OWN RECORDS REGARDLESS OF CAPACITY, AND THE LAW OF DISCOVERY IS IS THAT YOU ARE DEEMED TO HAVE POSSESSION, CUSTODY AND CONTROL OF THE DOCUMENTS YOU CAN GET, AND THERE IS JUST NO QUESTION HERE THAT THE PLAINTIFF, THE COMMISSIONER AS REHABILITATOR, CAN GET THEM.

AND YOUR HONOR, THIS BUSINESS OF THE COMMISSIONER ISSUING A PUBLIC RECORDS REQUEST TO HIMSELF IS JUST NONSENSE. THAT IS JUST BUREAUCRATIC SHELL GAMES, BUREAUCRATIC

MACHINATIONS. YOUR HONOR, THIS IS A SERIOUS

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CASE. WE HAVE BEEN SUED FOR TENS OF MILLIONS OF DOLLARS. WE HAVE THE RIGHT TO DEFEND OURSELVES, AND WE SHOULD NOT BE SUBJECTED TO BUREAUCRATIC SHELL GAMES BY A PLAINTIFF THAT WANTS TO INTERPOSE ONE CAPACITY AGAINST ANOTHER, AND OF COURSE, THE PUBLIC RECORDS REQUEST IS NOT ONLY RIDICULOUS, IT IS TOTALLY INSUFFICIENT. IT ONLY GOES TO A FRACTION OF RELEVANT DOCUMENTS. IT TOTALLY IGNORES INTERNAL LOUISIANA DEPARTMENT OF INSURANCE DOCUMENTS GOING DIRECTLY TO THE ISSUE OF WHETHER OR NOT ANYTHING WE MIGHT HAVE SAID OR DONE ACTUALLY MISLED THE L.D.I. AS THE PLAINTIFF'S PETITION ALLEGES.

AND WHILE THEY SAY NOW THEY WILL WITHDRAW THE CLAIM THAT WE DIRECTLY MISLED THE L.D.I., THEY WANT TO PRESERVE THE CLAIM THAT SOMETHING WE SAID OR DID RELATIVE TO THE INSTITUTION INDIRECTLY MISLED THE L.D.I. WELL, JUDGE, WE GET DISCOVERY ABOUT IT. WE GET TO SEE WHETHER THE L.D.I. WAS ACTUALLY MISLED OR NOT, AND WE GET TO LOOK AT THE INTERNAL DOCUMENT TO SEE

THAT, RIGHT? FOR EXAMPLE, THE PETITION ACCUSES MY CLIENT AND MILLIMAN OF MISSTATING ACTUARIAL RATES, AND HAVING BAD ASSUMPTIONS ABOUT PREMIUMS AND THE NEEDS OF THE COMPANY. WELL, WHAT IF THERE ARE INTERNAL L.D.I. DOCUMENTS BY ITS OWN ACTUARIES? YOU KNOW, THE L.D.I. HAS IT'S OWN ACTUARIES. WHAT IF THERE IS DOCUMENTS THAT SAY, OH, NO, WE AGREE WITH WHAT (INAUDIBLE) SAID, WE AGREE WITH WHAT MILLIMAN SAID, RIGHT? THE ISSUE -- THE DOCUMENTS ALSO

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GO TO CAUSATION, RIGHT? WE CONTEND THAT WHAT CAUSED THIS COMPANY TO FAIL WAS THE FAILURE OF THE FEDERAL GOVERNMENT TO HONOR ITS RISK CORRIDORS PAYMENTS. WHAT IF THERE ARE L.D.I. INTERNAL DOCUMENTS, THAT EMPLOYEE WITH THAT, AND SAY, WE HAVE GOT A PROBLEM HERE, GUYS. THE GOVERNMENT IS NOT FUNDING WHAT IT IS SUPPOSED TO BE FUNDING AND THAT IS DRIVING THIS COMPANY DOWN. THAT DOES NOT GO TO DEFENSES. THAT TENDS TO SHOW THAT WE ARE RIGHT AND THAT WE HAVE NO LIABILITY. THOSE ARE LIABILITY ISSUES AND YOU CANNOT DECIDE THAT IN A VACUUM, JUDGE. WE CANNOT BE FORCED TO LITIGATE IN THE BLIND.

DISCOVERY RULES ARE DESIGNED SO THAT THEY ARE BROAD, AND NUMEROUS F.D.I.C. CASES THAT WE HAVE CITED HAVE RECOGNIZED THAT, THE DAWSON CASE, THE BERLING CASE. WHAT THEY SAY IS, LET'S HAVE DISCOVERY FIRST AND THEN WE WILL SEE WHAT REGULATORY DOCUMENTS ARE RELEVANT OR NOT. THEN WE WILL SEE WHAT REGULATORY DOCUMENTS TEND TO PROVE OR DISPROVE NEGLIGENCE OR CAUSATION. THEN WE WILL SEE WHAT REGULATORY DOCUMENTS MAY BE RELEVANT ONLY TO REGULATORY DEFENSES THAT MAY NOT BE ALLOWED, AND THAT IS AN ISSUE FOR A LATER DAY AS THE COMMISSIONER AGREES.

JUDGE, WE CANNOT BE REQUIRED TO LITIGATE IN THE BLIND, AND WE SHOULD NOT BE RELEGATED TO A PUBLIC RECORDS REQUEST. WHY? BECAUSE WE ARE NOT THE PUBLIC. WE ARE DEFENDANTS WHO HAVE BEEN SUED FOR TENS OF MILLIONS OF DOLLARS, AND WE HAVE DISCOVERY RIGHTS THAT ARE MUCH BROADER THAN THE PUBLIC MIGHT HAVE IN A PUBLIC RECORDS

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REQUEST. WE SHOULD NOT HAVE TO DO THAT. WE GET BROADER RIGHTS BECAUSE WE HAVE GOT TO DEFEND OURSELVES. WE HAVE DUE PROCESS RIGHTS TO SEE ALL POTENTIALLY RELEVANT DOCUMENTS, THEN

WE DECIDE WHETHER THEY ARE ADMISSIBLE OR NOT,  
WHETHER THEY WERE NOT ALLOWED TO BE USED AT  
TRIAL BECAUSE OF BANS ON REGULATORY DEFENSES OR  
OTHER THINGS. WE SIMPLY CANNOT BE FORCED TO  
LITIGATE IN THE BLIND AND THAT IS WHY F.D.I.C.  
CASES, INCLUDING THE THREE WE HAVE CITED,  
DOSLAND, BERLING AND CLEMENTZ, SAY THAT EVEN IF  
REGULATORY DEFENSES ARE NOT ALLOWED, THE  
DEFENDANTS GET TO SEE THE PAPER, THEY GET TO  
SEE THE REGULATORY PAPER TO DETERMINE TO WHAT  
EXTENT IT RELATES TO LIABILITY OR NEGLIGENCE OR  
CAUSATION AS OPPOSED TO REGULATORY DEFENSES.

BUT AGAIN, NONE OF THAT IS ON THE TABLE  
TODAY. THE ONLY ISSUE ON THE TABLE TODAY IS  
WHETHER THE PLAINTIFF, THE COMMISSIONER AS  
REHABILITATOR, HAS IN HIS POSSESSION, CUSTODY  
OR CONTROL THESE LOUISIANA DEPARTMENT OF  
INSURANCE DOCUMENTS.

THE COURT: JAMES, LET ME JUST MAKE SURE  
THAT I AM CLEAR ON SOMETHING.

DO ANY OF YOUR DISCOVERY REQUESTS SEEK  
INFORMATION THAT WOULD FALL UNDER 22:1983,  
WHICH IS THE STATUTE THAT SAYS THAT THE  
RECEIVER PAPERS ARE CONFIDENTIAL AND NOT  
SUBJECT TO A SUBPOENA, ET CETERA?

MR. BROWN: I DO NOT THINK, I DO NOT THINK  
SO, BECAUSE THOSE ARE DOCUMENTS THAT I DO NOT  
THINK FALL WITHIN THAT STATUTE. WHY? WHY?

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BECAUSE A BUNCH OF THEM ARE PROBABLY ALREADY IN  
THE INSTITUTION'S RECORDS, RIGHT? AND THEY  
HAVE ALREADY SAID DO NOT PRODUCE THOSE, BUT  
THEY MAY NOT ALL BE IN THE INSTITUTION'S  
RECORDS. WE DO NOT KNOW THAT.

THE CONFIDENTIALITY STATUTE TALKS ABOUT  
DOCUMENTS GENERATED DURING AN EXAMINATION, BUT  
WHAT WE REALLY WANT TO SEE IS WHAT THEIR  
ACTUARIES WERE DOING WITH OUR RATES. THAT IS  
NOT AN EXAMINATION. I CANNOT SAY THAT ALL OF  
OUR REQUESTS MAY NOT IMPINGE ON THAT STATUTE,  
BUT -- I AM SORRY.

THE COURT: JUST TO CLARIFY, AN ARGUMENT  
COULD BE MADE THAT DOCUMENTATION THAT WAS  
GENERATED PRIOR TO RECEIVERSHIP WAS, IN FACT,  
UTILIZED IN THE RECEIVER'S EXAMINATION ANALYSIS  
OF EVERYTHING, AND THEREFORE WOULD FALL UNDER  
1983, BUT THAT IS KIND OF A DIFFICULT ARGUMENT  
TO MAKE, ISN'T IT? BECAUSE CERTAINLY THEY  
WOULD BE DISCOVERABLE, ANYTHING PRIOR TO

RECEIVERSHIP WOULD BE DISCOVERABLE. THE FACT THAT PRE-RECEIVERSHIP DOCUMENTS WERE UTILIZED BY THEM DOES NOT MAKE THEM SUBJECT TO 1983, DOES IT?

MR. BROWN: I WOULD NOT THINK IT WOULD, YOUR HONOR, AND THAT HAS TO BE DECIDED ON AN INDIVIDUALIZED BASIS. WE DO NOT KNOW THE ANSWER TO THAT QUESTION BECAUSE WE HAVE NOT SEEN THE PAPER. WE HAVE A PROTECTIVE ORDER IN THE CASE, YOUR HONOR.

THE COURT: AND YOUR CONCERN HERE IS THAT THE ALTERNATIVE RELIEF SUGGESTED BY THE

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PLAINTIFF, DO A PUBLIC RECORDS REQUEST, IS INSUFFICIENT BECAUSE THE DISCOVERY RULES WOULD ALLOW YOU TO OBTAIN THINGS THAT WOULD NOT FALL WITHIN TITLE 44. YOU CAN ONLY GET SO MUCH THROUGH A PUBLIC RECORDS REQUEST. YOU CAN GET, YOU ARE ENTITLED TO MUCH MORE THROUGH THE DISCOVERY OF PARTIES, CORRECT?

MR. BROWN: RIGHT, AND THAT IS BECAUSE WE HAVE BEEN SUING -- I AM SORRY.

THE COURT: YES. AND THAT IS WHY WE ARE FIGHTING THIS BATTLE; I SAY "WE;" NOT ALL OF

US. I AM NOT A PART OF IT, BUT Y'ALL ARE. THE BATTLE IS BEING FOUGHT OVER THE CUSTODY AND CONTROL ISSUE BECAUSE THERE IS NOT AN ALTERNATIVE AVENUE THROUGH WHICH TO OBTAIN THE INFORMATION. ISN'T THAT BASICALLY THE CRUX OF IT? ON THE FACE ONE WOULD SAY, WHY THE HELL ARE Y'ALL FIGHTING ABOUT THIS, BUT IN REALITY THERE IS A BIG DISTINCTION BETWEEN WHAT YOU ARE ABLE TO OBTAIN THROUGH DISCOVERY VERSUS WHAT YOU ARE ABLE TO OBTAIN THROUGH A PUBLIC RECORDS REQUEST, AND THAT IS WHY WE ARE BATTLING OVER SOMETHING THAT SEEMS TO BE SO MEANINGLESS.

MR. BROWN: YES, YOUR HONOR, THAT IS EXACTLY CORRECT.

THE COURT: IT IS VERY MUCH MEANINGFUL (SIC) IS THE CRUX OF WHAT YOU ARE SAYING.

MR. BROWN: THAT IS EXACTLY CORRECT.

THE COURT: OKAY. WELL, I UNDERSTAND THAT. WHAT I WOULD LIKE TO DO IS ASK MR. CULLENS, BECAUSE I UNDERSTAND YOUR POSITION VERY WELL, AND OF COURSE, HIS POSITION IS GOING

TO BE THAT THE RECEIVER ONLY HAS CUSTODY AND CONTROL OVER THOSE MATTERS ASSOCIATED WITH THE

RECEIVERSHIP, AND NOT OVER REGULATORY MATERIALS, AND SO, I WILL LET HIM EXPLAIN THAT TO ALL OF US. MR. CULLENS.

MR. CULLENS: THANK YOU, YOUR HONOR, AND I WILL START ON THE VERY BIG POINT THAT MR. JAMES, MR. BROWN AND I AGREE ON, THAT THE SOLE ISSUE BEFORE THIS COURT TODAY IS THE ISSUE OF THE LEGAL CUSTODY OF THE REGULATORY DOCUMENTS SOUGHT. I DID NOT PLAN TO START HERE, BUT I WILL ADDRESS YOUR HONOR'S INSIGHT, WHICH IS A GOOD ONE. THAT ISSUE, THAT IS THE REAL CRUX OF THIS FIGHT, IS OVER WHETHER THESE ARE DISCOVERABLE OR NOT. I WOULD SUGGEST TO YOU REGARDLESS OF THE ULTIMATE DECISION ON CUSTODY, THAT ISSUE IS NOT ONLY FOR ANOTHER DAY, THERE ARE OTHER VEHICLES. I MEAN, A THIRD-PARTY SUBPOENA. YOU DO NOT HAVE TO NECESSARILY DO A PUBLIC RECORDS REQUEST, ALTHOUGH THAT WOULD BE THE MOST EFFICIENT. NOTHING PREVENTS THE DEFENDANTS FROM ISSUING A THIRD-PARTY SUBPOENA TO THE DEPARTMENT OF INSURANCE, WHICH WOULD BE BOUND BY THE DISCOVERY RULES SET BY YOUR HONOR.

THE COURT: I WAS KIND OF HOLDING THAT IN MY POCKET FOR WHEN HE DID HIS REPLY, BUT THAT

WAS GOING TO BE ONE OF MY QUESTIONS ON THE  
REPLY IS, DON'T YOU HAVE RELIEF THROUGH A  
SUBPOENA, BUT GO AHEAD.

MR. CULLENS: WELL, YES.

SO, THIS AGAIN, TRYING TO KEEP OUR EYES ON

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THE BALL, IT IS THEIR ABILITY (INAUDIBLE) LEGAL  
CUSTODY, AND I APPRECIATE THE DEFENDANTS  
AGREEING NOT TO PUT US THROUGH LIVE TESTIMONY,  
BUT THE FACTUAL STATEMENTS IN THE AFFIDAVIT,  
WHICH IS NOW IN EVIDENCE, MAKE IT CLEAR THAT  
BILLY BOSTICK AS RECEIVER DOES NOT HAVE  
POSSESSION, AND IN HIS EXPERIENCE AS A  
RECEIVER, DOES NOT HAVE CONTROL. HE CANNOT --  
IN FACT, HE DID IN THIS CASE, AFTER THIS CAME  
AHEAD, PICKED UP THE PHONE --

THE COURT: I AM SORRY TO INTERRUPT, BUT  
YOU MAKE THAT DISTINCTION OF BOSTICK VERSUS THE  
COMMISSIONER, BUT ISN'T THE PERSON WITH  
AUTHORITY AND RESPONSIBILITY OVER THE  
RECEIVERSHIP, AND IN FACT, THE COMMISSIONER,  
AND HE APPOINTS SOMEONE TO HANDLE THAT MATTER  
FOR HIM; IN THIS CASE, MR. BOSTICK. SO, ISN'T  
THE REAL PARTY AND INTEREST THE COMMISSIONER?

MR. CULLENS: IN HIS CAPACITY AS  
REHABILITATOR THROUGH HIS APPOINTED AGENT, THE  
RECEIVER, BILLY BOSTICK.

NOW, THAT IS THE CRUX OF THIS ISSUE.  
DEFENDANTS MAINTAIN THAT THE COMMISSIONER OF  
INSURANCE, WHETHER IN HIS CAPACITY AS REGULATOR  
OR WHETHER IN HIS CAPACITY AS REHABILITATOR,  
LIQUIDATOR, CONSERVATOR, RECEIVER IS  
SYNONOMOUS, IT IS THE SAME. HE SHOULD NOT BE  
TREATED AS A SEPARATE, LEGAL, DISTINCT ENTITY  
WHEN HE IS OPERATING AS -- WHEN HE IS EXECUTING  
HIS REGULATORY FUNCTIONS AS OPPOSED TO WHEN  
THROUGH HIS AGENTS HE IS EXECUTING HIS  
RECEIVERSHIP DUTIES. THAT IS THE ISSUE THAT IS

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SQUARELY BEFORE THIS COURT. MR. BROWN TRIES  
VALIANTLY TO DISTINGUISH ALL OF THE MANY OF THE  
CASES WE CITED WHICH ARE DIRECTLY ON POINT ON  
THE SEMINAL ISSUE OF THE SEPARATE CAPACITY  
DOCTRINE. IF, IN FACT, YOUR HONOR ADOPTS, THIS  
WOULD BE, I AM SURE, LOOK AT THE QUALITY AND  
NUMBER OF ATTORNEYS INVOLVED IN THIS CASE, WE  
HAVE ALL SCORED, WE HAVE ALL RESEARCHED  
LOUISIANA LAW. IF THERE WAS A REPORTED

LOUISIANA DECISION, STATE THAT ADDRESSED THE SEPARATE CAPACITY DOCTRINE, I AM SURE WE WOULD HAVE CITED IT TO YOU. WE HAVE NOT BECAUSE IT DOES NOT EXIST. THIS I WILL RESPECTFULLY SUGGEST IS THE FIRST TIME, EVEN THOUGH IT IS COMMON PRACTICE, MR. BROWN SAID HE HAS GOT A LONG HISTORY OF REPRESENTING THE F.D.I.C. IN FEDERAL CASES. I HAVE BEEN DOING THIS FOR 20 YEARS REPRESENTING THE DEPARTMENT OF INSURANCE, THE COMMISSIONER THROUGH HIS RECEIVER IN RECEIVERSHIP CASES. THIS IS THE PRACTICE OF THE RECEIVER IN THESE CASES. THERE IS AN ARMS-LENGTH RELATIONSHIP BETWEEN THE RECEIVER. TECHNICALLY THE COMMISSIONER OF INSURANCE APPOINTED BY THE COURT AS REHABILITATOR THROUGH HIS APPOINTED AGENT BILLY BOSTICK IN THIS CASE, AND THE COMMISSIONER AS REGULATOR OF L.D.I. I AM JUMPING AHEAD.

THE CONCLUSION IS, THE RECEIVER IN THIS CASE IN HIS CAPACITY AS RECEIVER IS ESSENTIALLY JUST LIKE ANY OTHER PARTY IS TO THE REGULATOR, BE THAT A MEMBER OF PUBLIC, BE THAT THE DEFENDANTS, BE THAT THE MEDIA IF THE SEPARATE

CAPACITY DOCTRINE IS ADOPTED. IF IT IS NOT, IF THE COMMISSIONER IN ANY CAPACITY NO MATTER WHAT HE IS DOING IS THE CUSTODIAN OF ALL RECORDS, THAT FLIES IN THE FACE OF OUR STATUTORY SCHEME, THE INSURANCE CODE, AND WE CITED THE REHABILITATION, LIQUIDATION AND CONSERVATOR ACT. IT MAKES IT CLEAR THAT WHEN THE COMMISSIONER ACTING AS REGULATOR, YOUR HONOR, I AM ASSUMING YOU ARE FAMILIAR WITH ANY INSURANCE REGULATORY DUTIES DONE BY THE COMMISSIONER OF INSURANCE, THEY DO NOT COME TO DISTRICT COURT UNLESS THEY FILE A DOCET(SIC). THEY ARE SUBJECT TO ADMINISTRATIVE RULINGS. IT IS A REGULATORY CONTEXT WHEN THE COMMISSIONER IS ACTING IN HIS CAPACITY AS REGULATOR.

WHEN AS CONTEMPLATED BY THE INSURANCE CODE AND THE CODE OF CIVIL PROCEDURE AN INSURANCE COMPANY FAILS, THE INSURANCE COMMISSIONER VERY MUCH ADOPTS A TOTALLY DEFINITE CAPACITY, THAT OF REHABILITATOR IN THIS CASE, RECEIVER WHICH IS SUBJECT TO NOT HIS OWN EXECUTORY AUTHORITY PROVIDED BY THE CONSTITUTION, BUT IS SUBJECT TO, HE HAS GOT TO REPORT TO THE COURT. THE RECEIVERSHIP COURT APPOINTMENTS HIM. HE REPORTS UNDER THE JURISDICTION, SUPERVISION OF

THE COURT. VERY DIFFERENT THAN WHEN HE IS  
ACTING AS A REGULATOR.

THE COURT: YOUR ARGUMENT PUT IN  
SIMPLISTIC TERMS IS THAT THE COMMISSIONER AS AN  
INDIVIDUAL ISN'T THE ONE SUING. THE ONE THAT  
IS SUING IS THE REHABILITATOR. HE JUST HAPPENS  
TO ALSO BE THE REGULATORY HEAD OF THE AGENCY,

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BUT THE REGULATORY, THE REGULATOR IS NOT SUING,  
THE RECEIVER IS SUING, AND THAT IS THE CRUX OF  
YOUR CAPACITY ISSUE, IN WHAT CAPACITY IS THIS  
INDIVIDUAL BRINGING THIS LAWSUIT, OKAY.

ONE OF THE HYPOS I WAS GOING TO ASK JAMES,  
BUT I WILL ASK YOU AND HE CAN THINK ABOUT IT,  
AND OF COURSE, THIS IS -- FORGET ANY STATUTORY  
IMPEDIMENTS TO MY POSITION AS A JUDGE, BUT JUST  
THINK OF IT INSTEAD OF AS A JUDGE, IT IS AS  
SOMETHING ELSE, OKAY. CAN YOU GET, CAN THE  
DEFENDANT -- IF I SUE IN MY CAPACITY AS JUDGE,  
OR IN MY CAPACITY AS WHATEVER, CAN THE  
DEFENDANTS OBTAIN DISCOVERY AS TO MY MARITAL  
ASSETS, MY BUSINESS DEALINGS IN OTHER  
BUSINESSES, ET CETERA, SIMPLY BECAUSE I AM THE  
INDIVIDUAL WHO MAY HAVE CUSTODY OR CONTROL OVER

THAT DOCUMENTATION, BUT I AM NOT SUING AS TIM KELLEY? I AM SUING IN MY CAPACITY AS JUDGE, OR AS WHATEVER I AM SUING AS. IT KIND OF GETS TO EXACTLY WHO IS BRINGING THE ACTION, RIGHT? THE REGULATOR -- YOUR ARGUMENT IS THE REGULATOR IS NOT BRINGING THE ACTION. THE REHABILITATOR IS BRINGING THE ACTION, AND THE COURT HAS TO LOOK AT WHO IT IS, IN WHAT CAPACITIES IT IS BEING BROUGHT, AND IN THE REHABILITATOR'S CAPACITY, HE DOES NOT HAVE THE AUTHORITY TO GAIN ACCESS TO ALL OF THE REGULATOR'S RECORDS IS YOUR POINT, RIGHT?

MR. CULLENS: I THINK THAT WAS AN EXCELLENT EFFORT...

THE COURT: I AM TRYING TO PUT IT IN SIMPLE TERMS FOR SIMPLE MINDS LIKE MINE.

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OBVIOUSLY WE CAN ARGUE THIS BOTH WAYS. I JUST WANT YOU TO KNOW I UNDERSTAND WHAT YOUR POSITION IS, BUT GO AHEAD AND ARTICULATE IT.

MR. CULLENS: AND THAT IS EXACTLY RIGHT.

THIS IS -- NOT ONLY HAS THE RECEIVER NOT ASSERTED ANY CAUSES OF ACTION THAT MAY HAVE BEEN AVAILABLE TO THE COMMISSIONER AS

REGULATOR, I WOULD ARGUE HE DOES NOT HAVE LEGAL AUTHORITY TO DO SO. WHEN A RECEIVER IS APPOINTED, OR WHEN THE COMMISSIONER IS APPOINTED TO TAKE OVER A FAILED INSURANCE COMPANY AS REHABILITATOR, HE IS ONLY VESTED WITH THE RIGHTS TO ASSERT THOSE CLAIMS AND CAUSES OF ACTION WHICH ARE AVAILABLE TO THE FAILED INSURANCE COMPANY. IN EFFECT, AND I READ IT A THOUSAND TIMES IN THE MANY BRIEFS THAT WERE FILED WITH THE SUPREME COURT, THE RECEIVER STEPS INTO THE SHOES OF A FAILED INSURANCE COMPANY. NO MORE COULD L.A.H.C. SUE ON BEHALF OF THE REGULATOR THAN CAN THE PLAINTIFF IN THIS CASE THE RECEIVER SUE ON BEHALF OF L.D.I.

L.D.I. DOES HAVE, IF YOU LOOK THROUGH THE INSURANCE CODE, THE COMMISSIONER OF INSURANCE AS REGULATOR. OFF THE TOP OF MY HEAD 22:1994 GIVES THE DEPARTMENT OF INSURANCE THE RIGHT TO SUE PEOPLE WHO HAVE DIRECTLY MISLED THEM FOR CIVIL PENALTIES AND OTHERWISE. BILLY BOSTICK COULD NOT ASSERT THAT CLAIM EVEN IF HE WANTED TO, AND IT CERTAINLY WAS NOT ASSERTED IN THIS CASE. THE DEPARTMENT OF INSURANCE AND OTHER ATTORNEYS COULD ASSERT THAT CLAIM IF THEY

WANTED TO. IT LAYS BARE THE VERY DISTINCTION THAT YOUR HONOR SHOWED IN YOUR EXAMPLE. WE NEED LOOK NO FURTHER THAN CODE OF CIVIL PROCEDURE ARTICLE 693, WHICH IS NOT -- I DO NOT BELIEVE MR. BROWN ADDRESSED IT TODAY IN ORAL ARGUMENT, THEY DID NOT ADDRESS IN EITHER THEIR ORIGINAL MEMO OR THEIR REPLY. IT LAYS BARE THE DISTINCTION, THE SEPARATE CAPACITY DOCTRINE. ACCORDING TO 693 OF THE CIVIL CODE OF PROCEDURE, THE RECEIVER APPOINTED TO THE 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.

WE CAN LOOK TO THE INSURANCE CODE, THERE ARE MANY EXAMPLES, BUT JUST FOR ONE, AND THIS IS ALL CITED IN OUR BRIEF, BUT IF YOUR HONOR LOOKS TO THE VENUE STATUTE, WHICH IS 22:2004, SECTION A, IT PROVIDES, QUOTE, AN ACTION UNDER THIS CHAPTER BROUGHT BY THE COMMISSIONER OF INSURANCE IN THAT CAPACITY, OR AS CONSERVATOR, REHABILITATOR OR LIQUIDATOR MAY BE BROUGHT IN THE 19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE, OR ANYWHERE WHERE PROPER

VENUE PURSUANT TO OTHER LAW. SO, THAT LANGUAGE IS NOT HAPPENSTANCE. IT IS NOT LOSE LANGUAGE. IT IN STATUTORY FORM RECOGNIZES THAT THE COMMISSIONER OF INSURANCE EXECUTES HIS ROLE IN THE DIFFERENT CAPACITIES.

NOW, IF YOU REJECT THE SEPARATE CAPACITY DOCTRINE AND SAY THE COMMISSIONER IS THE COMMISSIONER REGARDLESS IN WHAT CAPACITY HE SUES, THEN THE LOGIC IF YOU WILL OF DEFENDANT'S

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ARGUMENT FOLLOWS, BUT THAT IS CLEARLY NOT THE LAW. IT IS CLEARLY NOT THE PRACTICE, AND IT IS CLEARLY NOT IN ACCORD WITH THE NUMEROUS CASES THAT WE HAVE CITED. MR. BROWN TRIES VERY HARD TO DISTINGUISH ALL THOSE CASES BY SAYING THAT THE F.D.I.C. OR THE R.T.C. WAS NOT A PLAINTIFF.

SOME OF THOSE CASES WERE THE PLAINTIFF, SPECIFICALLY THE WACHOVIA CASE WAS PLAINTIFF. I WOULD RESPECTFULLY SUGGEST TO YOUR HONOR, THAT IS NOT THE POINT OF THE CAPACITY ARGUMENT.

I THINK THAT MAY GO TO THE DISCOVERABILITY ISSUE, BUT IT CERTAINLY DOES NOT GO TO THE CUSTODY ISSUE WHICH IS THE ONLY ISSUE BEFORE THE COURT THIS MORNING, AND THAT ISSUE IN ALL

OF THOSE CASES THAT WE HAVE CITED, EACH OF THOSE FEDERAL CASES IN TWO PENNSYLVANIA STATE COURTS IN THE CONTEXT OF INSURANCE RECEIVERSHIP RECOGNIZED VERY CLEARLY THAT WHEN ACTING IN ITS CAPACITY -- F.D.I.C., WHEN ACTING IN ITS CAPACITY AS REGULATOR, IS TO BE TREATED AS A SEPARATE, LEGAL ENTITY PURSUANT TO THE SEPARATE CAPACITY DOCTRINE. THEN THE F.D.I.C., THE SAME CORPORATION, WHEN ACTING AS A RECEIVER.

LOOKING TO A FAIRLY RECENT DECISION THAT WAS QUOTED, THE HAGGARD CASE, WHICH IS OHIO FEDERAL COURT 2011, CLEARLY RECOGNIZING AND APPLYING THE SEPARATE CAPACITY DOCTRINE, THIS IS WHAT THAT FEDERAL COURT SAID. THE F.D.I.C. FUNCTIONS IN SEVERAL DIFFERENT GUISES, PARENS, AS RECEIVER, AS CONSERVATOR AND AS CORPORATION, CLOSE PARENS, AND EACH ORGANIZATION CAN CONDUCT ARMS-LENGTH TRANSACTIONS WITH ITSELF IN THESE

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VARIOUS CAPACITIES. ON THE ONE HAND, THE F.D.I.C. ACTS AS RECEIVER FOR A FAILED BANK MARSHALING ITS ASSETS IN ORDER TO PAY THE BANK'S CREDITORS. ON THE OTHER HAND, F.D.I.C. CORPORATE ACTS AS THE INSURER OF MEMBER BANKS.

COURTS HAVE APPLIED THIS DISTINCTION IN THE CONTEXT OF DISCOVERY. THE F.D.I.C. IN ITS CORPORATE CAPACITY IS SIMPLY NOT A PARTY TO THIS LAWSUIT. AS SUCH, THE DOCUMENTS CREATED ARE SUBMITTED DURING THE COURSE OF THE ADMINISTRATIVE PROCEEDING INITIATED BY THE F.D.I.C. IN ITS CORPORATE CAPACITY ARE NOT IN THE POSSESSION OR CONTROL OF F.D.I.C. (SIC), WHICH IS THE RECEIVER, AND THE DEFENDANTS CANNOT OBTAIN THEM THROUGH A RULE 34 REQUEST TO THE RECEIVER.

OF COURSE, THE DEFENDANTS MAY PURSUE THESE DOCUMENTS FROM THE F.D.I.C. IN ITS CORPORATE CAPACITY THROUGH WHATEVER LEGAL MEANS ARE AVAILABLE JUST AS THEY WOULD BE PERMITTED TO DO WITH RESPECT TO ANY OTHER DISCOVERY SOUGHT FROM A NON-PARTY. AND THAT INCAPSULATES EXACTLY THE SITUATION HERE. ACCEPTING THE SEPARATE CAPACITY DOCTRINE, WHICH IS NOT, IT IS NOT UNCONTROVERSIAL. IT IS THE PRACTICE, CUSTOM AND PROCEDURE OF THE WAY RECEIVERSHIPS HAVE ALWAYS BEEN HANDLED, AT LEAST AS LONG AS I HAVE BEEN INVOLVED WITH THEM, AND THAT IS THE PRACTICE OF THE LOUISIANA DEPARTMENT OF INSURANCE.

IT HAS BEEN RECOGNIZED BY INNUMERABLE  
FEDERAL CASES IN THE CONTEXT OF F.D.I.C.

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LITIGATION, AND I AM NOT GOING TO GO THROUGH  
EVERY CASE, YOUR HONOR, BUT SOME OF THE  
LANGUAGE FROM THESE CASES I THINK ARE WORTH  
REPEATING. THE WACHOVIA CASE IN WHICH F.D.I.C.  
WAS, IN FACT, THE PLAINTIFF. THIS IS 2007  
FEDERAL COURT IN CONNECTICUT. ACCORDING TO  
THAT COURT, AFTER RECOGNIZING THE SEPARATE  
CAPACITY DOCTRINE IT WROTE THAT THE, QUOTE,  
DISTINCTION PLAINTIFF DRAWS BETWEEN THE  
F.D.I.C. AS A RECEIVER AS AND THE F.D.I.C. AS A  
CORPORATE REGULATOR IS A VALID ONE. IT IS NOT  
AS WACHOVIA, THE DEFENDANTS, SUGGESTS, MERELY A  
PLOY TO OBSTRUCT DISCOVERY. SO, I MEAN, THERE  
IS JUST ONE 2007 CASE DIRECTLY ON POINT WHERE  
F.D.I.C. IS, IN FACT, PLAINTIFF IN A DISCOVERY  
DISPUTE WHERE OUR POSITION WAS UPHELD.

THE LAST ONE I AM GOING TO READ FROM, YOUR  
HONOR; WE COULD READ FROM MORE BECAUSE WE HAVE  
CITED THEM ALL IN OUR BRIEF, IS THIS ONE IS  
FROM ACTUALLY -- IT IS NOT AN F.D.I.C. CASE.  
THIS IS IN THE CONTEXT OF A RECEIVERSHIP CASE

UP IN PENNSYLVANIA. THIS IS THE ARIIO VERSUS  
DELOITTE AND TOUCHE CASE, PENNSYLVANIA 2007.  
THAT STATE COURT WROTE --

THE COURT: DO YOU HAVE A CITATION ON THAT  
SO I CAN LOOK AT THAT?

MR. CULLENS: CERTAINLY, YOUR HONOR. THE  
CITATION IS 934 A SECOND, ATLANTIC SECOND,  
1290, PENNSYLVANIA 2007. IT IS CITED AT PAGE 7  
OF OUR OPPOSITION MEMO.

ACCORDING TO THAT STATE COURT, WHICH  
RECOGNIZED THE SEPARATE CAPACITY DOCTRINE,

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QUOTE, UNDER THE SEPARATE CAPACITY DOCTRINE, A  
GOVERNMENTAL ENTITY WHEN ACTING IN ONE CAPACITY  
IS TREATED AS A SEPARATE ENTITY WHEN ACTING IN  
ANOTHER CAPACITY. THAT IS SOLID, GOOD, RECENT  
LAW THAT HAS BEEN AFFIRMED BY THE NUMEROUS  
CASES THAT WE HAVE CITED TO YOUR HONOR, AND IT  
SHOULD APPLY WITH FULL EFFECT HERE IN THIS  
CASE. YES, YOUR HONOR.

THE COURT: I APOLOGIZE FOR INTERRUPTING,  
BUT DID YOU CITE THAT IN YOUR BRIEF, THAT CASE?

MR. CULLENS: YES, YOUR HONOR. IT IS  
CITED AT PAGE 7.

THE COURT: OKAY. FOR SOME REASON I DID NOT HAVE A COPY, I JUST DID NOT REMEMBER THAT ONE. I AM GOING TO TAKE A QUICK LOOK AT IT. GO AHEAD, MR. CULLENS, YOU CAN CONTINUE. IT IS ONE I DO NOT REMEMBER. I READ A LOT OF THEM, BUT I DO NOT REMEMBER THAT ONE.

MR. CULLENS: YES. I MEAN, THAT ONE IS VERY COMPELLING, AND THE POINT HERE IS, RECOGNIZING THE VERY WELL-ESTABLISHED SEPARATE CAPACITY DOCTRINE, IT IS NOT FARFETCHED, ABSURD, ILLOGICAL. I FORGET SOME OF THE WORDS THAT DEFENSE USED IN THEIR REPLY MEMORANDUM. THIS IS STRAIGHTFORWARD CONVENTIONAL. THIS IS HOW IT WORKS IN RECEIVERSHIPS.

SO, WE ARE NOT TRYING TO OBSTRUCT ANYTHING. WE ARE NOT TRYING TO DO ANYTHING OTHER THAN RECOGNIZE WHAT IS VERY PLAIN ACCORDING TO LOUISIANA LAW IN THESE OTHER CASES, OTHER COURTS AROUND THE NATION WHO HAVE ADDRESSED THE ISSUE THAT THE COMMISSIONER

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QUA (SIC) -- I AM A RECOVERING PHILOSOPHY MAJOR, SO COMMISSIONER QUA REGULATOR VERSUS COMMISSIONER QUA RECEIVER ARE VERY DIFFERENT.

THEY ARE SEPARATE, DISTINCT, LEGAL ENTITIES THAT TRANSACTS ARMS-LENGTH BUSINESS BETWEEN EACH OTHER, AND THE RECEIVER IN THIS CASE ASSERTING CLAIMS ON BEHALF OF L.A.H.C. STANDS IN DIRECT RELATION TO THE DEPARTMENT OF INSURANCE AS REGULATOR, AS DO DEFENDANTS, AS DO THE PUBLIC, AS DO THE MEDIA. THE ISSUE OF WHETHER DEFENDANTS HAVE GREATER DISCOVERY RIGHTS AS TO THE DEPARTMENT OF INSURANCE GIVEN THE SPECIFIC ALLEGATIONS, THE POSTURE OF THIS SUIT IS AN ISSUE FOR ANOTHER DAY. THAT MAY VERY WELL BE THE CASE, BUT THAT DOES NOT INFORM IN ANY WAY THE DISCREET ISSUE BEFORE THIS COURT THIS MORNING, WHICH IS WHETHER OR NOT BILLY BOSTICK AS THE COURT-APPOINTED RECEIVER FOR THE REHABILITATOR OF THE COMMISSIONER OF INSURANCE IN THAT CAPACITY IS THE LEGAL CUSTODIAN OF THESE REGULATORY RECORDS.

THE COURT: ALL RIGHT. I AM GOING TO INTERRUPT YOUR TRAIN OF THOUGHT A SECOND. WOULD YOU JUST GIVE ME A MOMENT TO LOOK AT SOMETHING ON HIS SCREEN?

MR. CULLENS: SURE.

THE COURT: JAY, READ OUT THE CITE AGAIN FOR ME, PLEASE.

MR. CULLENS: IT IS 934 A SECOND, ATLANTIC SECOND, 1290, PENNSYLVANIA 2007.

MR. BROWN: IS THAT THE ARIO CASE OR THE COKIN CASE YOU ARE REFERRING TO?

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MR. CULLENS: THE ARIO CASE.

THE COURT: (PERUSING CASE PREVIOUSLY CITED.

MR. CULLENS: AND THE PINPOINT CITE IS 1293, 94.

THE COURT: I APOLOGIZE FOR THE DELAY. IT IS A SHORT CASE, SO I HAD TO CHECK IT OUT. THE HEAD NOTES I THINK ARE SEVEN AND EIGHT OR WHATEVER. BUT, YES, I HAVE REVIEWED IT.

GO AHEAD, JAY, I APOLOGIZE. THAT PARTICULAR CASE, FOR SOME REASON I DID NOT READ AND I WANT TO MAKE SURE I READ ALL OF THEM, SO WE ARE GOOD NOW.

MR. CULLENS: NO PROBLEM, YOUR HONOR.

AGAIN, SO JUST TO KIND OF RECAP WHAT I HAVE ARGUED ALREADY, THE INSURANCE CODE OF LOUISIANA CLEARLY CONTEMPLATES AND EMBODIES A SEPARATE CAPACITY, DEPENDING ON WHETHER THE COMMISSIONER IS ACTING AS REGULATOR AS OPPOSED

TO REHABILITATOR, LIQUIDATOR, CONSERVATOR OR RECEIVER. THE CODE OF CIVIL PROCEDURE ARTICLE 693 RECOGNIZES THAT SEPARATE CAPACITY, AND THE NUMEROUS CASES AND THE ANALOGOUS F.D.I.C./R.T.C. CASES CITED THROUGHOUT THE COUNTRY RECOGNIZE THE SEPARATE CAPACITY DOCTRINE AND APPLY IT WITHOUT ANY CONSTERNATION OR PROBLEM.

THE BASIS OF DEFENDANT'S ARGUMENT, THAT YOU SHOULD IGNORE THE SEPARATE CAPACITIES THAT THE COMMISSIONER PROTECTS THE PUBLIC'S INTEREST IN THE INSURANCE CONTEXT, THEY BOIL DOWN TO TWO CASES, THE HERBERT CLOUGH CASE, MIDDLE DISTRICT

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2006, AND THE R.T.C. VERSUS DELOITTE AND TOUCHE CASE, THAT IS A COLORADO FEDERAL COURT OPINION FROM 1992.

THE COURT: THE HERBERT CLOUGH CASE THOUGH WAS NEVER REVIEWED BY AN APPELLATE COURT IN ANY WAY, WAS IT?

MR. CULLENS: NO. HERBERT CLOUGH WAS A MAGISTRATE DECISION THAT WAS NOT APPEALED TO THE DISTRICT BENCH. IT WAS NOT APPEALED OBVIOUSLY TO THE FIFTH CIRCUIT. IT HAS NOT

BEEN CITED BY ANY COURT IN THE LAST 14 YEARS.  
SIGNIFICANTLY, I CANNOT STRESS ENOUGH --

THE COURT: JAMES, HOW THE HELL DID YOU  
FIND THAT CASE? THAT IS PRETTY GOOD RESEARCH  
RIGHT THERE, FINDING THAT CASE, MR. BROWN.

MR. BROWN: A'DAIR FLYNT IS THE BRAINS  
BEHIND MY OPERATION, YOUR HONOR. SHE GETS ALL  
THE CREDIT. I DO NOT THINK IT WAS TOO HARD TO  
FIND, BUT.

THE COURT: SHE GETS A GOLD STAR. GO  
AHEAD, MR. CULLENS.

MR. CULLENS: AND THIS IS A DIRECT QUOTE  
AT -- IT IS NOT A REPORTED DECISION, SO I  
CANNOT GIVE YOU A PINPOINT, BUT IT IS AT PAGE 1  
OF THE HERBERT CLOUGH DECISION, QUOTE, THE  
COMMISSIONER IN HIS OR HER CAPACITY AS  
REGULATOR OR DIRECTOR IS TECHNICALLY A THIRD  
PARTY TO THIS ACTION, CLOSED QUOTE.

SO, EVEN THE UNAPPEALED MAGISTRATE JUDGE  
IN HERBERT CLOUGH RECOGNIZED WHAT WE ARE  
ARGUING OVER TODAY. IT IS NOT A TECHNICALITY.  
IT IS VERY MUCH A REALITY. THE COMMISSIONER OF

INSURANCE AS REGULATOR IS A THIRD PARTY TO THIS

ACTION. AS A PRACTICAL MATTER IN THE CLOUGH CASE, THE DEFENDANTS THERE DID WHAT THE DEFENDANTS IN THIS CASE CATEGORICALLY REFUSE TO DO, WHICH IS TO ISSUE A THIRD-PARTY SUBPOENA, PUBLIC RECORDS REQUEST, WHICHEVER DISCOVERY VEHICLE THEY CHOOSE TO DO TO THE DEPARTMENT OF INSURANCE, AND THE DEPARTMENT OF INSURANCE ENGAGED THEIR COUNSEL, IN-HOUSE COUNSEL ARLENE KNIGHTEN WHO MADE AN APPEARANCE AND WHO REPRESENTED AND ARGUED IN FRONT OF THE FEDERAL COURT, MAGISTRATE COURT ON BEHALF OF THE COMMISSIONER OF INSURANCE AS REGULATOR. SO, THEY HAD SEPARATE COUNSEL OF RECORD IN THAT CASE WHO REPRESENTED THE RECEIVER. ARLENE KNIGHTEN REPRESENTED THE COMMISSIONER OF INSURANCE, AND I TRIED TO AS BEST I CAN CUT THROUGH THESE -- THIS IS AN IMPORTANT ISSUE, BUT IT IS A VERY LEGAL-DRIVEN ISSUE.

AS A PRACTICAL MATTER, IN THAT CASE, BECAUSE THE INTEREST OF THE COMMISSIONER OF INSURANCE AS REGULATOR WAS BEING PROTECTED BY OTHER ATTORNEYS, I BELIEVE THE MAGISTRATE RECOGNIZED HER LANGUAGE WAS, THIS IS A SEMANTIC DIFFERENCE. SHE BASICALLY CAUGHT THE DISPUTE AS AN ACADEMIC BECAUSE THE COMMISSIONER OF

INSURANCE, WHATEVER HIS CAPACITY, WAS IN FRONT OF THE COURT.

THE HEBERT COURT VERY -- THE CLOUGH COURT VERY SIGNIFICANTLY DOES NOT GET INTO THE ISSUE OF WHAT WAS ULTIMATELY DETERMINED TO BE DISCOVERABLE OR WHAT WAS PRODUCED. IT IS

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SIMPLY, I RESPECTFULLY SUGGEST YOU ERRONEOUSLY DISREGARDED THE VERY REAL APPLICATION OF THE SEPARATED CAPACITIES DOCTRINE IN CASES LIKE THIS WHERE FOR WHATEVER REASON DEFENDANTS REFUSE TO SIMPLY DO A PUBLIC RECORDS REQUEST, ISSUE A THIRD-PARTY SUBPOENA, TRY TO GET DOCUMENTS THAT THEY BELIEVE ARE RELEVANT, WHETHER THEY WERE OR NOT, FROM THE CUSTODIAN OF THOSE RECORDS, THE COMMISSIONER OF INSURANCE IN HIS CAPACITY AS REGULATOR. THE FACT THAT IT HAS NOT BEEN CITED BY ANYONE IN 14 YEARS, I RESPECTFULLY SUGGEST TO YOUR HONOR SPEAKS VOLUMES.

THE CASES THAT WE HAVE CITED, THE DOZEN OR SO THAT WE HAVE CITED HAVE BEEN CITED ROUGH-HANDEDLY. THE SECOND CASE, AND THIS CASE IS THE BASIS -- IN THEIR REPLY MEMO, YOUR

HONOR, THEY CITE ABOUT A DOZEN OR SO CASES THAT WERE NOT CITED IN THEIR ORIGINAL BRIEF. THEY ALL STEM OUT OF R.T.C. VERSUS DELOITTE CASE, THAT FEDERAL COLORADO 1992. IT WAS A CASE, AS YOUR HONOR MAY KNOW, RESOLUTION TRUST CORPORATION. R.T.C. AS PLAINTIFF SUES SOME FOLKS, AND THE DEFENDANTS TAKE THE POSITION IN THAT CASE EXACTLY THE SAME POSITION THEY DO IN THIS CASE. HEY, WE NEED THE REGULATORY DOCUMENTS WHICH R.T.C. AS RECEIVER CLAIMS ARE BEING HELD BY A SEPARATE GOVERNMENTAL ENTITY, THE OFFICE OF THRIFT SUPERVISION, RIGHT? THE DEFENDANTS ARGUE, YOU SHOULD DO SEPARATE CAPACITY DOCTRINE, IT IS ONE IN THE SAME. THE COURT ESSENTIALLY, IF YOU READ THE OPINION, I

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AM SURE YOUR HONOR HAS, IT WAS NOT DECIDED -- THEY ACCEPTED THEIR SEPARATE LEGAL ENTITIES. THE COURT DID NOT DECIDE IT SAYING, NO, O.T.S. AND THE R.T.C. ARE ONE IN THE SAME. THEY RECOGNIZE AND ACCEPT THAT THEY ARE TWO SEPARATE, LEGALLY DISTINCT ENTITIES. ONE IS A REGULATOR, ONE IS A RECEIVER. IN THAT CASE, AND IN EVERY OTHER CASE CITED BY DEFENDANTS,

THEY RELY ON 12 U.S.C 1281(O), WHICH SAYS, WHEN  
A RECEIVER DOCUMENTS -- WHEN THEY WANT  
REGULATORY DOCUMENTS FROM O.T.S., ALL THEY HAVE  
GOT TO DO IS DEMAND IT AND O.T.S. HAS TO GIVE  
IT TO THEM. THAT IS -- I WILL READ YOU  
SPECIFICALLY 12 U.S.C. 12:1821(O) PROVIDES  
SUPERVISORY RECORDS. IN ADDITION TO THE  
REQUIREMENTS OF SECTION 1817(A) OF THIS TITLE  
TO PROVIDE THE CORPORATION COPIES OF REPORTS OF  
EXAMINATION AND REPORTS OF CONDITION WHETHER  
THE CORPORATION HAS BEEN APPOINTED AS RECEIVER  
OR AN INSURED DEPOSITORY INSTITUTION. THE  
APPROPRIATE FEDERAL BANKING AGENCY SHALL MAKE  
ALL AVAILABLE SUPERVISORY RECORDS TO THE  
RECEIVER, WHICH MAY BE USED BY THE RECEIVER IN  
ANY MANNER THE RECEIVER DETERMINES TO BE  
APPROPRIATE. GAME SET IN MATCH. ACCORDING TO  
THAT FEDERAL STATUTE, YOU BETTER BELIEVE THAT  
THE RECEIVER HAS CUSTODY AND CONTROL OVER THOSE  
REGULATORY RECORDS WHICH ARE MAINTAINED BY  
O.T.S.

NOW TODAY IN ORAL ARGUMENT, IT WAS NOT  
CITED IN THEIR ORIGINAL BRIEF; IT MAY HAVE BEEN  
CITED IN THEIR REPLY BRIEF, I DO NOT BELIEVE IT

WAS, BUT I MAY BE MISTAKEN, MR. BROWN SUGGESTED TO THIS COURT THAT THE EQUIVALENT OF THIS FEDERAL STATUTE IS L.A.R.S. 22:1984(F). NOW, IT IS NOT CITED, BUT I READ IT WHILE HE WAS ARGUING. THAT DOES NOT -- THEY ARE NOT EQUIVALENT AT ALL. IF, IN FACT, LOUISIANA LAW PROVIDES LIKE FEDERAL LAW DOES, THAT UPON DEMAND THE RECEIVER CAN GET WHATEVER REGULATORY RECORDS FROM THE REGULATOR THAT IT WANTS, I WOULD NOT BE ARGUING THIS. THAT WOULD BE FRONT AND CENTER IN DEFENDANTS' MOTION, AND WE WOULD SAY, YES. YOU KNOW WHAT, THE LEGISLATURE DECIDED THAT THE RECEIVER, IF THEY WANT THOSE REGULATORY RECORDS, THEY DEMAND IT FROM L.D.I. AND THEY GET IT. THAT IS THE EXACT OPPOSITE OF THE CASE UNDER LOUISIANA LAW.

THE STATUTES THAT WE HAVE CITED, 1984 AMONG THEM, 22:1984(D) CLEARLY PROVIDES THE EXACT OPPOSITE OF FEDERAL LAW IN THOSE OTHER CASES THAT ARE RELIED UPON WRONGLY BY DEFENDANTS, SO THAT THE REGULATORY RECORDS ARE CONFIDENTIAL. THE COMMISSIONER IN HIS CAPACITY AS REGULATOR HAS SOLE DISCRETION ON WHETHER THEY WERE GOING TO BE RELEASED OR NOT. IT

COULD NOT BE MORE NIGHT AND DAY. SO, THE SUGGESTION THAT THESE 12 OR SO CASES CITED BY DEFENDANTS IN THEIR REPLY BRIEF SOMEHOW UNDERMINE OUR POSITION BECAUSE OF A LOUISIANA STATUTE THAT IS EQUIVALENT TO THE FEDERAL STATUTE IS FLAT WRONG. THAT IS NOT THE CASE. IT IS THE EXACT OPPOSITE, YOUR HONOR.

THE COURT: ANYTHING ELSE, JAY?

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MR. CULLEN: JUST VERY QUICKLY, YOUR HONOR, TO WRAP IT UP. I AM NOT GOING TO GET INTO THE DISCOVERABILITY ISSUE. THAT IS FOR ANOTHER DAY. I DO APPRECIATE DEFENDANTS WAIVING THEIR HEARSAY OBJECTION.

THE DEFINITION OF CONTROL AS SUGGESTED BY DEFENDANTS IN THEIR MEMO, WE ACCEPT IT. IT IS CORRECT. IT IS WHETHER YOU HAVE POSSESSION. WE DO NOT HAVE POSSESSION OF THESE RECORDS AS TESTIFIED TO THROUGH THAT AFFIDAVIT. CONTROL, WE DO NOT HAVE CONTROL. THAT IS TESTIFIED BY THE RECEIVER IN THIS CASE. THERE IS NO STATUTORY AUTHORITY IN LOUISIANA THAT ALLOWS THE RECEIVER TO DEMAND FROM THE L.D.I. TO PRODUCE THOSE DOCUMENTS. WHEN WE CONTACTED THE

L.D.I. AFTER DEFENDANTS MADE THESE REQUESTS, WE CALLED THEM AND SAID, HEY, THEY WANT ALL THESE REGULATORY RECORDS AND WE WERE TOLD JUST LIKE IN EVERY OTHER CASE, WELL, HAVE THEM ISSUE A THIRD-PARTY SUBPOENA OR DO A PUBLIC RECORDS REQUEST THAT THOSE MAY OR MAY NOT BE DISCOVERABLE. IN DETERMINING YOUR ROLE, IN DETERMINING YOUR ROLE, YOUR HONOR, AS YOU WELL KNOW, FIRST PRONG OF THE CONTROL TEST IS THE COURTS SHOULD PAY PARTICULAR ATTENTION TO THE FOCUS ON THE PRACTICABILITY TO OBTAIN RECORDS. I MEAN, GIVEN THE TRUTHFUL STATEMENTS IN EXHIBIT 1, THE AFFIDAVIT, THERE MAY BE PRIVILEGE. THERE PROBABLY ARE PRIVILEGED DOCUMENTS. WE DO NOT KNOW. WE HAVE NOT SEEN THEM. THERE MAY NOT BE THE STATUTORY GROUNDS FOR NOT PRODUCING THIS STUFF THAT WE HAVE

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IDENTIFIED, BUT THERE MAY BE OTHERS. WE DO NOT KNOW. AS A PRACTICAL MATTER, BECAUSE WE DO NOT HAVE POSSESSION OR THE ABILITY TO DEMAND THEM, HOW ARE WE -- WE ARE NOT THE CUSTODIAN OF THESE RECORDS. MR. BROWN CITES THE COMEAUX LANDRY CASE. THAT CASE IS A RECALCITRANT PARTY

PLAINTIFF WHO WAS ORDERED BY A COURT IN A FAMILY DISPUTE TO PRODUCE HIS BANK RECORDS, AND HE THOUGHT HE WAS CUTE, HA-HA, I AM NOT IN POSSESSION OF BANK RECORDS; YOU HAVE GOT TO GO TO THE BANK. WELL, THAT IS RIDICULOUS. IF YOU CALL OR WRITE THE BANK AND SAY, GIVE ME MY RECORDS, THE BANK GIVES THEM TO YOU. SO, THAT GUY WAS IGNORING AND -- HE SHOULD HAVE BEEN HELD IN CONTEMPT OF COURT.

NOW, IF THE DEFENDANTS IN THE LANDRY COMEAUX CASE WOULD HAVE SAID, WE WANT THE INTERNAL BANKING RECORDS RELATING TO YOUR ACCOUNT WHEN THEY APPROVED OPENING THE ACCOUNT, GET THOSE FOR US, THAT IS ANALOGOUS TO THIS SITUATION. WHEN THAT BANK CUSTOMER CALLS THE BANK AND SAYS, I AM INVOLVED IN FAMILY LITIGATION, I WANT THE BANK TO PRODUCE ITS INTERNAL RECORDS RELATED TO WHEN THEY OPEN MY ACCOUNT, WHAT WOULD THE BANK SAY? THOSE ARE NOT YOUR RECORDS, SIR. THOSE ARE THE BANK RECORDS. HAVE THOSE ATTORNEYS CONTACT OUR ATTORNEYS AND WE WILL FIGURE OUT WHAT IS DISCOVERABLE AND WHAT IS NOT. THAT IS THE ANALOGY. ANY RELIANCE ON COMEAUX IS WAY OUT IN LEFT FIELD, YOUR HONOR.

AND JUST TO WRAP IT UP, THAT IS ALL. I

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MEAN, ANYTHING I THINK IS REPETITIVE AT THIS POINT, YOUR HONOR. THIS IS NOT -- I BELIEVE THIS IS A GOOD-FAITH LEGAL DISPUTE. I AGREE WITH MR. BROWN, THIS IS A BIG CASE, IT IS A SIGNIFICANT CASE. I ASSURE YOU EVERYONE IN THIS HEARING ON THIS ZOOM CALL IS TAKING IT SERIOUSLY. THIS IS AN IMPORTANT ISSUE. IT IS NOT JUST AN IMPORTANT ISSUE IN THIS CASE. IT IS AN IMPORTANT ISSUE TO THE DEPARTMENT OF INSURANCE, AND TO THE EXTENT THERE HAS BEEN ANY SUGGESTION THAT WE HAVE TAKEN A POSITION TO OBSTRUCT OR IN ANY WAY DELAY DISCOVERY, I CATEGORICALLY REJECT THAT, JUST AS I REJECT ANY SUGGESTION I WILL TAKE DEFENDANT'S POSITION IN GOOD FAITH THAT THEY ARE TRYING -- THEY BELIEVE THAT THEIR POSITION IS A GOOD-FAITH ARGUMENT FOR THE CUSTODIAN ISSUE, BUT I RESPECTFULLY REQUEST AND I RESPECTFULLY PRAY, YOUR HONOR, THAT THIS COURT RECOGNIZES THE SEPARATE CAPACITY DOCTRINE AND STRAIGHTFORWARDLY SAY, THESE DOCUMENTS, THE RECEIVER, BILLY BOSTICK, IS NOT THE CUSTODIAN OF THESE RECORD, AND ANY

DISCOVERY REQUESTS RELATING TO THESE REGULATORY RECORDS SHOULD BE AND MUST BE PROPERLY DIRECTED TO THE DEPARTMENT OF INSURANCE AS REGULATOR. THANK YOU, YOUR HONOR.

THE COURT: MR. BROWN, I AM SURE YOU HAVE GOT A RESPONSE.

MR. BROWN: BRIEFLY. IT SEEMS TO ME THAT JAY AND I ARE JUST TWO SHIPS PASSING IN THE NIGHT.

THE COURT: YOU ARE SPEAKING DIFFERENT

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LANGUAGES, AREN'T YOU?

MR. BROWN: WE ARE NOT ARGUING ABOUT THE COMMISSIONER'S SEPARATE CAPACITY. WE DO NOT DISPUTE THAT HE APPEARS IN THIS CASE IN A CAPACITY AS REHABILITATOR. IT IS DIFFERENT FROM HIS CAPACITY AS REGULATOR. THE QUESTION IS, WHAT CAN HE GET IN HIS CAPACITY AS REHABILITATOR? WHAT IS IN HIS POSSESSION, CUSTODY AND CONTROL? WHAT DOES HE HAVE THE RIGHT TO GET, AND WHAT JAY IS TRYING TO CONVINCE YOU OF IS THAT THE COMMISSIONER AS REHABILITATOR CANNOT PRACTICALLY GET THE RECORDS OF THE DEPARTMENT OF INSURANCE. NOW,

YOUR HONOR, WITH ALL DUE RESPECT TO JAY CULLENS, THAT IS A RIDICULOUS POSITION.

YOUR HONOR, YOU WENT BACK TO THE HYPOTHETICAL INVOLVING YOU SUING AS A JUDGE AND SOME FOOLISH LITIGANT TRYING TO DISCOVER YOUR PERSONAL RECORDS. WELL, THE LAW WOULD BE THAT THOSE PERSONAL RECORDS ARE IN YOUR CUSTODY AND CONTROL, BUT, OF COURSE, THE DISCOVERY REQUESTS WOULD BE TOTALLY ABUSIVE AND CONTEMPTUOUS AND SANCTIONABLE, BUT THAT IS NOT AN ISSUE OF CUSTODY OR CONTROL. JAY IS REPEATEDLY CONFUSING ISSUES OF RELEVANCE AND DISCOVERABILITY WITH POSSESSION AND CONTROL, BUT AT THE SAME TIME HE AGREES THAT THAT IS FOR ANOTHER DAY. HE KEEPS TALKING ABOUT SEPARATE CAPACITIES. WE ARE TALKING ABOUT CUSTODY AND CONTROL.

YOUR HONOR, THE R.T.C. VERSUS DELOITTE CASE COULD NOT HAVE BEEN STRONGER FOR US.

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THERE, BECAUSE THE FEDERAL STATUTE GAVE THE R.T.C. AS RECEIVER THE RIGHT TO GET THE REGULATORY DOCUMENTS OF A COMPLETELY SEPARATE AGENCY BECAUSE OF A FEDERAL STATUTE, HOW CAN IT

BE ARGUED WITH A STRAIGHT FACE THAT THE COMMISSIONER OF INSURANCE AS REHABILITATOR CANNOT WALK DOWN THE HALL AND GET ACCESS TO THE DEPARTMENT OF INSURANCE'S DOCUMENTS? NOW, HE IS RIGHT THAT MS. KNIGHTEN MADE ARGUMENTS IN THAT CASE, BUT THE POINT IS, THE COURT REJECTED THOSE ARGUMENTS. THE COURT REJECTED MS. KNIGHTON'S ARGUMENTS AND SAYS, NO.

THE COMMISSIONER OF INSURANCE -- I AM MOVING NOW TO THE HERBERT CLOUGH, COMMISSIONER, THIS IS THE HERBERT CLOUGH CASE. IN THAT CASE MS. KNIGHTEN MADE THOSE ARGUMENTS BUT THE COURT REJECTED THEM. THE FEDERAL COURT IN BATON ROUGE SAID, NO, THE COMMISSIONER, REGARDLESS OF HIS CAPACITY, LIQUIDATOR, REHABILITATOR, WHATEVER, HAS CUSTODY AND CONTROL OF THOSE DOCUMENTS, SO HE HAS TO PRODUCE THEM; NOT SOME THIRD-PARTY DEPARTMENT OF INSURANCE. HE HAS TO PRODUCE THEM.

NOW, I WOULD LIKE TO READ TO YOUR HONOR L.A.R.S. 22:1984. THIS IS THE EQUIVALENT IN LOUISIANA TO THE FEDERAL STATUTE THAT JAY WAS TALKING ABOUT. NOTHING CONTAINED IN THIS --

THE COURT: BUT IT DOES NOT SAY THE SAME THING, DOES IT?

MR. BROWN: WELL, LET ME READ TO YOUR  
HONOR WHAT IT SAYS.

THE COURT: ALL RIGHT.

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MR. BROWN: NOTHING CONTAINED IN THIS  
CHAPTER SHALL BE CONSTRUED TO LIMIT THE  
COMMISSIONER'S AUTHORITY TO USE ANY FINAL OR  
PRELIMINARY ANALYSIS FINDINGS, ANY DEPARTMENT  
OF INSURANCE OR COMPANY WORK PAPERS OR OTHER  
DOCUMENTS, OR ANY OTHER INFORMATION  
DEVELOPED -- DISCOVERED OR DEVELOPED DURING THE  
COURSE OF ANY ANALYSIS IN THE FURTHERANCE OF  
ANY LEGAL OR REGULATORY ACTION WHICH THE  
COMMISSIONER MAY IN HIS SOLE DISCRETION DEEM  
APPROPRIATE.

ANY LEGAL ACTION, YOUR HONOR. HOW CAN HE  
THEN SAY THAT THE COMMISSIONER DOES NOT HAVE  
POSSESSION, CUSTODY OR CONTROL, AND THE ABILITY  
TO GET THE RECORDS OF THE DEPARTMENT OF  
INSURANCE?

SO, IN HERBERT CLOUGH THE COURT REJECTED  
MS. KNIGHTON'S ARGUMENT, AND SAYS, NO, THE  
ISSUE IS NOT ONE OF SEPARATE CAPACITIES. THE  
ISSUE IS WHAT DOCUMENTS CAN THE COMMISSIONER IN

HIS CAPACITY AS LIQUIDATOR WHEN HE IS THE PLAINTIFF SUING DEFENDANTS GET ACCESSED, AND IT IS CLEARLY THE CASE, IT REALLY CANNOT BE SERIOUSLY ARGUED THAT WE SHOULD PRETEND THAT HE DOES NOT HAVE ACCESS TO THOSE RECORDS.

SO, WE DO HAVE A STATUTE THAT IS JUST LIKE 18210. ALSO, THE LOUISIANA CONSTITUTION SAYS THAT THE HEAD OF AN AGENCY, REGARDLESS OF CAPACITY, IS THE CUSTODIAN OF ITS RECORDS. HERE THAT IS THE COMMISSIONER. OTHER STATUTES SAY THAT THE CUSTODIAN OF AN AGENCY'S RECORDS ARE THE HEAD OF THE AGENCY. HERE THE

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COMMISSIONER, REGARDLESS OF CAPACITY, SO WE DO HAVE A STATUTE THAT IS RIGHT ON POINT WHICH WE HAVE CITED. THE ISSUE ABOUT MR. BOSTICK IS NOT RELEVANT BECAUSE HE IS NOT THE PLAINTIFF.

NOW, YOUR HONOR, AT ONE POINT IN THE COMMISSIONER BRIEF HE ADMITS THE COMMISSIONER IS RECEIVER. IF YOU LOOK AT PAGE 4 OF THE COMMISSIONER'S OPPOSITION BRIEF HE SAYS, THE COMMISSIONER AS RECEIVER MUST ACCOUNT TO AND BE RESPONSIBLE TO THE DISTRICT COURT, BUT THEN LATER HE SAYS MR. BOSTICK IS THE RECEIVER. I

DO NOT REALLY MUCH CARE, AND I WOULD SUBMIT IT SHOULD NOT BE RELEVANT TO THE COURT WHAT MR. BOSTICK'S ROLE IS, WHETHER OR NOT HE IS THE RECEIVER. THE POINT IS HE IS NOT THE PLAINTIFF. THERE IS NO DISPUTE THAT THE PLAINTIFF IS THE COMMISSIONER OF INSURANCE IN A PARTICULAR CAPACITY, AND THE LAW IS CLEAR THAT WITHOUT RESPECT TO THAT CAPACITY, HIS CUSTODY, POSSESSION AND CONTROL EXTENDS TO WHAT HE CAN GET, AND THERE JUST CAN BE NO QUESTION THAT HIS CUSTODY AND CONTROL EXTENDS THERE.

NOW, JAY SAYS THAT THE -- LET ME GO BACK HERE. HE SAYS THAT THE OSSEGE CASE IS RIGHT ON POINT, BUT IT IS NOT RIGHT ON POINT BECAUSE THE F.D.I.C. WAS NOT THE PLAINTIFF. IT WAS A THIRD-PARTY DEFENDANT. IT WAS NOT A PLAINTIFF SUING INDIVIDUAL DEFENDANTS AND BRINGING THEM TO COURT, OR OTHER DEFENDANTS. IT WAS NOT THE PLAINTIFF. IT WAS A THIRD-PARTY DEFENDANT. SO, IT IS NOT LIKE THIS CASE.

AND THE WACHOVIA CASE WAS NOT A CUSTODY

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AND CONTROL CASE AT ALL. IN F.D.I.C. VERSUS WACHOVIA, THE COURT WAS DEALING WITH A RULE

30(B)6 DEPOSITION THAT SUGGESTED THAT THE F.D.I.C. AS RECEIVER WAS THE SAME PARTY AS F.D.I.C. CORPORATE. WE ARE NOT CONTENDING THAT, RIGHT? THE DEPOSITION NOTICE IGNORED THE SEPARATE CAPACITIES. SO, THE COURT PROPERLY SAID THAT IS NOT RIGHT, BUT THE COURT NEVER SUGGESTED OR IMPLIED THAT IN THAT CASE THE F.D.I.C. AS RECEIVER DID NOT HAVE CUSTODY AND CONTROL OF THE DOCUMENTS OF F.D.I.C. CORPORATE. SO, WACHOVIA IS NOT ON POINT. IT DOES NOT EVEN ADDRESS THE RELEVANT ISSUE CONTRARY TO WHAT JAY IS SAYING.

AND THE ARIO CASE WAS NOT A CUSTODY AND CONTROL CASE, JUDGE. THAT IS THE CASE YOU TOOK A MINUTE TO LOOK AT. YOU WILL SEE THAT IN THAT CASE THE DEFENDANTS WERE TRYING TO DEPOSE THE GOVERNOR'S OFFICE, AND THE COURT SAID THAT ABUSIVE, THAT IS IRRELEVANT, THAT IS RIDICULOUS. THAT CASE NOWHERE SUGGESTS ANYWHERE THAT WHEN THE COMMISSIONER OF INSURANCE APPEARS AS LIQUIDATOR AND SUES A BUNCH OF DEFENDANTS, THAT IT DOES NOT HAVE CUSTODY AND CONTROL OF THE RECORDS OF OF ITS OWN REGULATORY OFFICE.

THE COURT: YOU MAY HAVE MISSPOKE. YOU

SAID IN THE CAPACITY OF THE LIQUIDATOR; YOU MEANT AS REHABILITATOR, BUT I UNDERSTOOD YOUR ARGUMENT.

MR. BROWN: ACTUALLY, IN ARIO, THE COMMISSIONER APPEARED AS LIQUIDATOR, BUT IT

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DOES NOT MAKE ANY DIFFERENCE BECAUSE AS JAY POINTS OUT IN HIS BRIEF, COMMISSIONER REHABILITATOR, COMMISSIONER LIQUIDATORS ARE TREATED THE SAME, BUT ARIO WAS A LIQUIDATOR CASE. BUT THE POINT IS THAT CASE HAS NOTHING TO DO WITH THE ISSUES BEFORE THE COURT BECAUSE THE ISSUE OF CUSTODY AND CONTROL OVER DOCUMENTS WAS NOT EVEN BEFORE THE COURT, AND NEITHER WAS COKIN. THE COKIN CASE WAS ANOTHER ONE WHERE THE COURT FOUND THE DISCOVERY REQUESTS TO BE IRRELEVANT AND ABUSIVE FOR VARIOUS REASONS. IN THAT CASE, THE COKIN CASE, THE DEFENDANTS WERE NOT ABLE TO ARTICULATE A RELEVANCE OF REGULATORY DOCUMENTS THAT RELATED TO NEGLIGENCE, LIABILITY OR CAUSATION --

THE COURT: YES, IT WAS NOT A CAPACITY CASE, YES.

MR. BROWN: PARDON ME, JUDGE?

MR. BROWN: IT WAS NOT A CAPACITY OR POSSESSION CASE. IT WAS A RELATIVE CASE, YES.

MR. BROWN: RIGHT. NEITHER OF THOSE CASES HAD TO DO WITH CUSTODY OR CONTROL. THE WACHOVIA CASE HAD NOTHING TO DO WITH CUSTODY AND CONTROL. THE HAGGARD OSSEGE CASE, THE F.D.I.C. WAS NOT THE PLAINTIFF. IT WAS A THIRD-PARTY DEFENDANT, AND IN THAT CASE THE COURT OVERLOOKED THE FEDERAL STATUTE WHICH GAVE THE RECEIVER CUSTODY AND CONTROL OF REGULATORY DOCUMENTS. WE HAVE A STATUTE HERE THAT MAKES THAT CLEAR. NOT JUST THE STATUTE FROM THE INSURANCE CODE, BUT THE CONSTITUTION AND OTHER STATUTES THAT MAKE CLEAR THAT THE COMMISSIONER

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HAS CUSTODY AND CONTROL OF ITS OWN RECORDS REGARDLESS OF WHAT CAPACITY HE APPEARS IN.

SO, WE ARE JUST SHIPS PASSING IN THE NIGHT. HE IS TALKING ABOUT SEPARATE CAPACITIES. I AM TALKING ABOUT CUSTODY AND CONTROL. THE MANY F.D.I.C. RECEIVER AS PLAINTIFF CASES I HAVE CITED ALL UNIFORMLY SAY THAT WHEN THE F.D.I.C. OR COMMISSIONER OF INSURANCE AS RECEIVER SUES AS THE PLAINTIFF,

ITS CUSTODY AND CONTROL EXTENDS TO REGULATORY DOCUMENTS, AND THEY ARE DISCOVERABLE, FROM THE COMMISSIONER, FROM THE PLAINTIFF IF THEY ARE RELEVANT, AND WE HAVE CITED I THINK A DOZEN CASES. THAT IS THE WEIGHT OF AUTHORITY. THE MASON CASE WHICH THEY CITED WAS DISCREDITED BY A LATER DECISION, AND THE OTHER TWO CASES, THE F.D.I.C. WAS NOT THE DEFENDANT.

SO, I THINK I CAN FAIRLY SAY THAT THE OVERWHELMING WEIGHT OF AUTHORITY, BOTH STATE AND FEDERAL, IS ON OUR SIDE OF THIS. REGARDLESS OF CAPACITY, A GOVERNMENTAL PLAINTIFF HAS POSSESSION AND CONTROL OF DOCUMENTS HELD IN A DIFFERENT CAPACITY, AND ISSUES OF RELEVANCE AND DISCOVERABILITY, THAT IS ALL FOR A LATER DAY AS THE COMMISSIONER AGREES WITH US HERE.

THE COURT: ALL RIGHT. LET ME ASK YOU, MR. CULLENS, VERY QUICKLY. I DO NOT NEED A TREATISE ON IT, BUT HOW DO YOU REBUT MR. BROWN'S CITATION, THE CONSTITUTIONAL PROVISION REGARDING THE COMMISSIONER OF INSURANCE BEING THE CUSTODIAN OF THE DOCUMENTS

REGARDLESS OF HIS CAPACITY, WHAT CAPACITY HE IS BRINGING IT IN?

MR. CULLEN: I MEAN, I UNDERSTAND, I APPRECIATE THAT THAT IS MR. BROWN'S ARGUMENT. THERE HAS CERTAINLY BEEN NO STATUTORY LANGUAGE THAT IN POSITIVE LAW PROVIDES THAT. THAT IS HIS ARGUMENT. DEFENDANT'S POSITION AS YOU KNOW IS, REGARDLESS OF THE CAPACITY, THE COMMISSIONER HAS POSSESSION OF THOSE DOCUMENTS, HE HAS POSSESSION OF THEM. YOU CANNOT, AS A MATTER OF LOGIC, YOU CANNOT ARGUE WITH THAT. SURE, THE COMMISSIONER HAS POSSESSION OF THOSE RECORDS. THE ISSUE HERE IS VERY SQUARELY ONE OF WHETHER THIS COURT WILL RECOGNIZE THE VERY WELL-ENTRENCHED SEPARATE CAPACITY DOCTRINE. WHEN THE COMMISSIONER IS ACTING AS REGULATOR AND IS MAINTAINING DOCUMENTS AS REGULATOR, HE IS TO BE TREATED AS A SEPARATE LEGAL ENTITY WHEN THE OTHER ENTITY THAT HE ACTS IN CAPACITY OF, THE RECEIVER, IS BRINGING THE CAUSES OF ACTION AS RECOGNIZED BY THE MAGISTRATE JUDGE IN HERBERT CLOUGH. YES, IT IS NOT A TECHNICALITY; IT IS A THIRD PARTY.

AND LASTLY, YOUR HONOR, YOU LOOK AT THE LANGUAGE OF, AGAIN IT IS A STATUTE THAT WE JUST

DISCUSSED THIS MORNING; IT WAS NOT CITED IN A BRIEF, COMPARE THAT LANGUAGE TO THE FEDERAL STATUTE WHICH RELIEVES -- THERE IS NO DOUBT WHATSOEVER, IF THE RECEIVER REQUESTS TO THE REGULATOR DOCUMENTS, THE REGULATOR HAS GOT TO GIVE THEM TO HIM. THAT IS SO FAR AFIELD FROM WHAT 1984(F) PROVIDES, THAT DEFENDANTS ARE OUT

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ON A LIMB THERE, YOUR HONOR.

THE COURT: OKAY. GUYS, I THINK THAT ANY JUDGE, APPELLATE, SUPREME COURT, WHATEVER, THAT HAS BROUGHT THIS ISSUE, THE INITIAL IMPRESSION IS ONE OF, THIS IS ALL A-DO ABOUT NOTHING, BUT, IN FACT, IT IS NOT ALL A-DO ABOUT NOTHING. IT IS AN INCREDIBLY IMPORTANT DISTINCTION THAT IS ATTEMPTING TO BE UTILIZED BY THE PLAINTIFF IN THIS MATTER, AND IN PARTICULAR, WITH REGARD TO IT, I AGREE THAT THE PLAINTIFF'S POSITION IS CORRECT. DOES THE COMMISSIONER HAVE CUSTODY OF THESE THINGS? IT DOES IN ITS POSITION, IN ITS CAPACITY AS REGULATOR. DOES HE HAVE CUSTODY OF IT IN HIS CAPACITY AS REHABILITATOR? NO. NO, AND THE STATUTE SET UP A SEPARATE ENTITY WITHIN THAT DEPARTMENT, AND THE SAME HUMAN BEING

OCCUPIES THOSE TWO POSITIONS, BUT WITH DIFFERENT CAPACITIES. TWENTY-TWO 2008 AND 22:2009 SET FORTH THE DISTINCTIONS BETWEEN A RECEIVER AND A REGULATOR; ALBEIT THEY MAY BE THE SAME HUMAN BEING.

AND ALSO, THE CAPACITY UNDER WHICH AN ACTION IS BROUGHT BY THAT ONE HUMAN BEING, THE HAT THAT HE HAS TO PUT ON IN ORDER TO BRING CERTAIN ACTIONS IS UNDER CODE OF CIVIL PROCEDURE ARTICLE 693. CAN THE REGULATOR BRING THIS ACTION? NO, THE REGULATOR CANNOT. THE RECEIVER -- THE REHABILITATOR MUST BRING IT. THERE IS A DISTINCTION BETWEEN THE JURIDICAL ENTITY THAT IS BRINGING THIS ACTION AND THAT WITH WHICH HE WEARS HIS OTHER HAT. THE REGULATOR IS ONE THING. THE REHABILITATOR IS A

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SEPARATE, DISTINCT ENTITY, LEGAL ENTITY AND HAS CERTAIN RESTRICTIONS ON IT THAT THE REGULATOR DOES NOT, AND THE REGULATOR HAS RESTRICTIONS ON IT THAT ARE ACTUALLY AVAILABLE TO THE REGULATOR -- TO THE REHABILITATOR, BUT NOT TO THE REGULATOR.

SO, IT IS CLEAR WHEN YOU LOOK THROUGH THE

STATUTORY CONSTRUCTION OF ALL OF THIS THAT WE ARE TALKING ABOUT TWO JURIDICAL ENTITIES, ALBEIT THE SAME PERSON, THE SECRETARY -- COMMISSIONER OF INSURANCE, OKAY, AND WHILE THE COMMISSIONER OF INSURANCE HAS CUSTODY, CONTROL AS A REGULATOR, HE DOES NOT HAVE CUSTODY AND CONTROL AS A REHABILITATOR, AND I BELIEVE THAT -- I KNOW Y'ALL THINK I AM WRONG AND THE APPELLATE COURT MIGHT THINK I AM WRONG, BUT IT IS A VERY, VERY DISTINCT DIFFERENCE. THERE HAS TO BE RESPECT IN THE LAW. THE ARGUMENTS THAT THE DEFENDANTS DO NOT HAVE RELIEF OTHER THAN THROUGH THIS DISCOVERY UPON THE REHABILITATOR RINGS HOLLOW.

THE COURT AGREES THAT THEY ARE LIMITED WITH REGARD TO THEIR RELIEF AVAILABLE UNDER TITLE 44 FOR PUBLIC RECORDS REQUESTS. THEY ARE NOT HOWEVER LIMITED WITH REGARD TO A THIRD-PARTY SUBPOENA, WHICH THE COURT BELIEVES IS THE PROPER VEHICLE THROUGH WHICH TO OBTAIN THE DOCUMENTATION. IS IT FORM OVER SUBSTANCE? NO, IT IS NOT. IT MAY SEEM AS THOUGH IT IS FORM OVER SUBSTANCE, BUT IT IS NOT. IT IS A VERY IMPORTANT DISTINCTION; OTHERWISE, THE OBLIGATIONS AND AUTHORITY OF THE REHABILITATOR

WILL FAR EXTEND PAST WHAT THE LEGISLATURE INTENDED ITS AUTHORITY TO BE WHEN YOU BLUR THE DISTINCTIONS BETWEEN THE TWO CAPACITIES. SO, I AGREE WITH THE PLAINTIFF'S POSITION ON THIS, THAT THERE IS A SEPARATE CAPACITY. THE SEPARATE CAPACITY DOCTRINE HAS TO BE RESPECTED, AND AS ADDITIONAL REASONS FOR RULING, I WILL ADOPT THE WELL-BRIEFED MEMORANDA OF THE PLAINTIFF IN THIS MATTER. SO, MOTION TO COMPEL DENIED. COSTS FOR THIS HEARING, FOR THE PAPERWORK WITH THE CLERK OF COURT ARE CAST AGAINST THE MOVER.

## C E R T I F I C A T E

I, KRISTINE M. FERACHI, CCR, OFFICIAL OR  
DEPUTY OFFICIAL COURT REPORTER IN AND FOR THE STATE  
OF LOUISIANA EMPLOYED AS AN OFFICIAL OR DEPUTY  
OFFICIAL COURT REPORTER BY THE 19TH JUDICIAL  
DISTRICT COURT FOR THE STATE OF LOUISIANA AS THE  
OFFICER BEFORE WHOM THIS TESTIMONY WAS TAKEN DO  
HEREBY CERTIFY THAT THIS TESTIMONY WAS REPORTED BY  
ME IN THE STENOGRAPHIC REPORTING METHOD, WAS PREPARED  
AND TRANSCRIBED BY ME OR UNDER MY DIRECTION AND  
SUPERVISION, AND IS A TRUE AND CORRECT TRANSCRIPT TO  
THE BEST OF MY ABILITY AND UNDERSTANDING. THE  
TRANSCRIPT HAS BEEN PREPARED IN COMPLIANCE WITH

TRANSCRIPT FORMAT GUIDELINES REQUIRED BY THE STATUTE  
OR BY RULES OF THE BOARD OR BY THE SUPREME COURT OF  
LOUISIANA, AND THAT I AM NOT RELATED TO COUNSEL OR  
THE PARTIES HEREIN, NOR AM I OTHERWISE INTERESTED IN  
THE OUTCOME OF THIS MATTER.

WITNESS MY HAND THIS 25TH DAY OF  
SEPTEMBER, 2020.

---

KRISTINE M. FERACHI  
OFFICIAL COURT REPORTER  
19TH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
NO. 87,173

Edward J. Walters, Jr. \*  
Darrel J. Papillion  
David Abboud Thomas  
J. Cullens \* †  
Andrée Matherne Cullens  
Hayden A. Moore  
Jennifer Wise Moroux  
Reneé C. Crasto

\*Board Certified in Civil Trial Advocacy, NBTA  
†American Board of Professional Liability Attorneys

WALTERS  
PAPILLION  
THOMAS  
CULLENS  
ATTORNEYS AT LAW

Of Counsel  
John S. McLindon, LLC  
Michelle McCune Sorrells, LLC

Colleen C. Milfelt,  
Business Manager

P: 225.236.3636  
F: 225.236.3650

LAWBR.NET

September 3, 2020

Custodian of Records  
Louisiana Department of Insurance  
1702 North 3rd Street  
Baton Rouge, LA 70802-5143

AND

Custodian of Records  
Louisiana Department of Insurance  
P.O. Box 94214  
Baton Rouge, LA 70804-9214

Re: James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. v. Terry S. Shilling, *et al.*  
Suit No.: 651,069, Section 22, 19<sup>th</sup> Judicial District Court  
Our File No.: 15142

To Whom It May Concern:

Please consider this a formal public records request for the Louisiana Department of Insurance ("LDI") to produce the following records pursuant to applicable law:

All communications, whether in the form of paper correspondence, email, or otherwise, regarding Louisiana Health Cooperative, Inc. ("LAHC") at any time between January 1, 2011 and September 1, 2015 (the date LAHC was placed into Receivership), between LDI, on the one hand, and any of the following individuals, agencies, or entities, on the other hand:

- (1) CGI Technologies and Solutions, Inc.;
- (2) Group Resources Incorporated;
- (3) Beam Partners, LLC;
- (4) Milliman, Inc.;
- (5) Buck Consultants, LLC;
- (6) LAHC;
- (7) Any directors or officers of LAHC, including by not limited to:
  - (a) Terry S. Shilling;
  - (b) George G. Cromer;
  - (c) Warner L. Thomas, IV;

**EXHIBIT  
H**

- (d) William A. Oliver;
  - (e) Charles D. Calvi;
  - (f) Patrick C. Powers;
  - (g) Scott Posecai;
  - (h) Patrick Quinlan;
  - (i) Peter November;
  - (j) Michael Hulefeld; AND
- (8) U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services

Depending upon the relative size of this production, LDI may email these documents to me (cullens@lawbr.net) and/or arrange for these documents to be delivered to me via DropBox (or its equivalent) and/or deliver a paper copy of these documents to my office at my firm's address here in Baton Rouge, or advise me when they are ready to be picked up from the LDI.

Please email or call me with any questions or concerns LDI may have regarding this public records request.

We appreciate and thank LDI for its attention to this request, and look forward to hearing from you.

Sincerely,

**WALTERS, PAPILLION,  
THOMAS, CULLENS, LLC**

  
J. E. Cullens, Jr.

JECjr/kr  
Enclosure

cc: All Defense Counsel in LAHC

# The Louisiana Department of Insurance

James J. Donelon, Commissioner

## PUBLIC RECORDS REQUEST FORM

**STEP 1. PRINT & COMPLETE** all information. BE SURE TO DATE AND SIGN REQUEST.

If you are requesting free or reduced copy of your request, you must complete the Certification for Free or Reduced Rates form.

**STEP 2: SUBMIT** completed form to: Custodian of Records, Louisiana Department of Insurance, 1702 North 3<sup>rd</sup> Street, P.O. Box 94214, Baton Rouge, LA 70802-9214, FAX: 225-342-1632. DO NOT ATTACH PAYMENT TO THIS FORM. WAIT to receive a notice of estimated cost.

**STEP 3. PAY FEE** if applicable. Once you have received a notice of estimated cost, submit fees PAYABLE TO THE LOUISIANA DEPARTMENT OF INSURANCE AND A COPY OF THE INVOICE to: Assessment & Data Management, Louisiana Department of Insurance, 1702 North 3<sup>rd</sup> Street, P.O. Box 94214, Baton Rouge, LA 70802-9214. If payment is not received within 10 working days after notice of estimated cost is forwarded, it may be necessary to initiate a new request. CHECK OR MONEY ORDER ONLY. RECORDS ARE NOT RELEASED BEFORE FEES ARE PAID.

### COMPLETE BELOW:

DATE 9/3/2020

LAST NAME Cullens FIRST NAME Joseph MIDDLE INITIAL E.

NAME OF ORGANIZATION/COMPANY Walters, Papillion, Thomas, Cullens, LLC

MAILING ADDRESS 12345 Perkins Rd., Bldg. 1

CITY Baton Rouge STATE LA ZIP 70810

TELEPHONE ( 225 ) 236-3636 FAX ( 225 ) 236-3650

E-MAIL cullens@lawbr.net

**Description of Records Requested (Type or Print):** To expedite request, be as specific as possible. You may attach additional pages to the form as necessary. Clearly mark attachments.

Please see attached correspondence to LDI Custodian of Records dated September 3, 2020, for a list of specific public records requested.

**Delivery Information—Check appropriate box.** Cost of copies shall be paid in advance of delivery.

- ☐ Make public records available for viewing. The requestor will be notified when records are available for review at the Department of Insurance. There is NO COST to view the public record.
- ☒ Make copies for pick up by requestor. The requestor will be invoiced and must pay for the copies before the copies are released
- ☐ Make copies and mail to requestor. The requestor will be invoiced and must pay for the copies before the copies are released.
- ☐ Make copies and fax to requestor. The requestor may be invoiced, and if so, the requestor must pay for the copies before the copies are released. NOTE: The LDI is unable to fax high-volume requests.

**SUBMISSION OF REQUEST IS CERTIFICATION THAT REQUESTOR UNDERSTANDS AND ACCEPTS OBLIGATION TO PAY APPLICABLE FEES FOR COPIES OF RECORDS REQUESTED AND THAT NO COPIES MAY BE RETURNED FOR CREDIT.**

SIGNATURE OF REQUESTOR: 

If submitted electronically, signature and date on line above unnecessary.

If you have any questions please email us at [publicrecrequest@ldi.state.la.us](mailto:publicrecrequest@ldi.state.la.us).  
This form is available at <http://www.lidi.state.la.us/Programs/publicrecords/RequestForm.pdf>.

(Orig.0104)

## Sheri Corales

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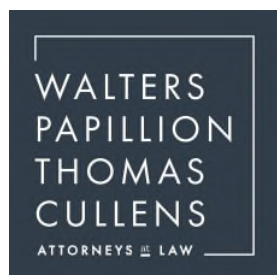
**From:** J. Cullens <cullens@lawbr.net>  
**Sent:** Thursday, September 10, 2020 4:25 PM  
**To:** Ashinoff, Reid; Barrasso, Judy; James A Brown; Burst, Bonnie; Crohan, Blake; sdegan@degan.com; Dorothy Sullivan (dsullivan@stonepigman.com); Doug Cochran (dcochran@stonepigman.com); Fagan, George D. (gfagan@leakeandersson.com); A'Dair Flynt; Godofsky, David; Hite, John W., III (jhite@shmlaw.com); Johnson, H. Alston, III (alston.johnson@phelps.com); Kattan, Justin; Lemaire, Justin; Licciardi, Connie; Luo, Catharine; Margolis, Justine; Mason, Brett; McFall, Shaun P.; Michael A. Balascio (mbalascio@barrassousdin.com); Mike McKay (mmckay@stonepigman.com); Nicole Babb; Phillips, Charlotte L.; Robert B. Bieck Jr. (rbieck@joneswalker.com); Rosenberg, Harry (harry.rosenberg@phelps.com); sschmeeckle@lawla.com; Schmid, Karl H. (kschmid@degan.com); Simone Almon (salmon@degan.com); Smith, Jena; Whitworth, Adam  
**Cc:** S. Layne Lee; Andrée M. Cullens; Kristi Rojas  
**Subject:** FW: Public Records Request :: W006063-090320

### [EXTERNAL EMAIL]

Below is the hyperlink to the documents produced by LDI to our recent records request.

As always, please call or email me with any questions or concerns.

J. Cullens



### J. Cullens

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

cullens@lawbr.net

**Tel:** 225.236.3636 **Fax:** 225.236.3650

www.lawbr.net

CONFIDENTIALITY NOTICE: The information contained in this electronic message, including any attachment hereto, is privileged and confidential information intended only for the use of the individual entity or entities named above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or reproduction of this communication is strictly prohibited. If received in error, please notify me immediately and delete all content. Thank you.

**From:** Louisiana Department of Insurance  
**Sent:** Thursday, September 10, 2020 11:33 AM  
**To:** J. Cullens  
**Subject:** Public Records Request :: W006063-090320

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

--- Please respond above this line ---

09/10/2020

Joseph Cullens  
12345 Perkins Rd. Bldg. 1  
Baton Rouge, LA 70810

RE: PUBLIC RECORDS REQUEST of 9/3/2020, Reference # W006063-090320

Dear Mr. Cullens,

The Department has reviewed its files and have attached a link below with all responsive records to your request. This link will expire a week from today, 09-17-2020.

[https://ladoi-my.sharepoint.com/:f:/g/personal/nina\\_graham\\_ldi\\_la\\_gov/EhDFdfcc-6pKuK7g-aFNkkgBLu-RATYKqKoGk\\_lA1kw-oQ?e=3XaSL1](https://ladoi-my.sharepoint.com/:f:/g/personal/nina_graham_ldi_la_gov/EhDFdfcc-6pKuK7g-aFNkkgBLu-RATYKqKoGk_lA1kw-oQ?e=3XaSL1)

If you have any questions, or wish to discuss this further, please contact me.

Sincerely,

Nina Graham  
Office of Management and Finance

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

**PLAINTIFF’S OBJECTIONS TO BUCK GLOBAL, LLC’S FIRST 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 objects to Buck Global, LLC’s (“Buck’s”) First Set of Interrogatories and Requests for Production of Documents as follows:

**INTERROGATORIES**

**INTERROGATORY NO. 4:**

Explain in detail LDI's review and approval of LAHC’s 2014 and 2015 rates.

**RESPONSE TO INTERROGATORY 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. 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 order of the Receivership Action court. Put simply, Plaintiff is not a representative of LDI in this litigation. “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. Without waiving these objections, to the extent

that there are responsive pre-Receivership documents related to LAHC's 2014 or 2015 rates by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**INTERROGATORY NO. 5:**

Explain in detail LDI's and/or its consultants' review, assessments, findings and/or conclusions relating to Milliman's actuarial analyses, reports and other work for LAHC.

**RESPONSE TO INTERROGATORY NO. 5:**

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 order of the Receivership Action court. Put simply, Plaintiff is not a representative of LDI in this litigation. "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. Without waiving these objections, to the extent that there are responsive pre-Receivership documents reflecting actuarial documents by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**INTERROGATORY NO. 6:**

Explain in detail LDI's and/or its consultants' review, assessments, findings and/or conclusions relating to Buck's actuarial analyses, reports and other work for LAHC.

**RESPONSE TO INTERROGATORY NO. 6:**

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 order of the Receivership Action court. Put simply, Plaintiff is not a representative of LDI in this litigation. “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. Luck singer*, 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. Without waiving these objections, to the extent that there are responsive pre-Receivership documents reflecting actuarial documents by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**INTERROGATORY NO. 7:**

Explain in detail all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from or related to Milliman's actuarial work for LAHC.

**RESPONSE TO INTERROGATORY NO. 7:**

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 order of the Receivership Action court. Put simply, Plaintiff is not a representative of LDI in this litigation. “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. Without waiving these objections, to the extent that there are responsive pre-Receivership documents reflecting actuarial documents by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**INTERROGATORY NO. 8:**

Describe in detail all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from or related to Buck's actuarial work for LAHC, including but not limited to, Lewis & Ellis's October 1, 2014 review of LAHC's 2015 QHP (Individual Health) filings for individual and catastrophic products and review of LAHC's 2015 filings for Small Group products.

**RESPONSE TO INTERROGATORY NO. 8:**

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 order of the Receivership Action court. Put simply, Plaintiff is not a representative of LDI in this litigation. “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. Without waiving these objections, to the extent that there are responsive pre- Receivership documents reflecting actuarial documents by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**INTERROGATORY NO. 13:**

Explain in detail Commissioner James J. Donelon's November 5, 2015 testimony before the U.S. House of Representatives Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, and your position as to how that testimony impacts Buck's purported liability in this case.

**RESPONSE TO INTERROGATORY NO. 13:**

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. Plaintiff in this matter is the Receiver of LAHC, not the Commissioner of Insurance in his capacity as regulator. Plaintiff was appointed as the representative of LAHC by order of the Court in the Rehabilitation Action. "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. Put simply, Commissioner Donelon is not a representative of Plaintiff in this litigation, nor did Commissioner Donelon act as LAHC's agent in giving this testimony. Without waiving these objections, Plaintiff states that Commissioner Donelon's testimony on November 5, 2015 has no impact on Buck's liability in this case. See, La. R.S. 22:2043.1.

**INTERROGATORY NO. 19:**

During the preparation of the 2014 premium rates, did LAHC, LDI, LDI's consulting actuaries, or other person or entity pressure or otherwise influence Milliman to lower the 2014 rates and, if so, how?

**RESPONSE TO INTERROGATORY NO. 19:**

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. La. R.S. 22:2043.1. Moreover, Plaintiff in this matter is the Receiver of LAHC, not the Commissioner of Insurance in his capacity as regulator. Plaintiff was appointed as the representative of LAHC

by order of the Court in the Rehabilitation Action. “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. Put simply, Plaintiff is not a representative of LDI or Commissioner Donelon in this litigation, nor did Commissioner Donelon act as LAHC’s agent in giving this testimony. Without waiving these objections, to the extent that there are responsive pre-Receivership documents reflecting rate change requests by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**INTERROGATORY NO. 22:**

Identify every actuary, accountant, financial professional, and every other professional of any kind, and every outside consulting firm, who participated in the review of Buck's and/or Milliman's reports, proposed rates or other work product relating to LAHC on behalf of LDI.

**RESPONSE TO INTERROGATORY NO. 22:**

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. To the extent that this request seeks information regarding LDI’s review of LAHC’s rate determination, Plaintiff objects to this interrogatory as it seeks information that is irrelevant and not likely to lead to the discovery of other relevant information. Plaintiff in this matter is the Receiver of LAHC, not LDI. Plaintiff was appointed as the representative of LAHC by order of the Court in the Rehabilitation Action. “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. Put simply, Plaintiff is not a representative of LDI and any review of Buck and Milliman’s work on behalf of LDI is irrelevant and unlikely to lead to the discovery of other relevant information. Without waiving these objections, to the extent that there are responsive pre-Receivership documents reflecting actuarial documents by anyone including LDI, Buck and/or Milliman, which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 3:**

All documents, including e-mail, reflecting or pertaining to communications between LDI and Buck.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

See Response to Interrogatory No. 22. Furthermore, to the extent that this request seeks information reflecting or pertaining to communications between LDI and Buck post-receivership, the Receiver objects to this request on the grounds that it is vague and ambiguous. Plaintiff is not in possession or control of any communications between LDI and Buck unless LAHC was copied on the communication or provided with a communication. Put simply, the Receiver is not a representative of LDI in this litigation. To the extent that there are responsive pre-Receivership documents which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**REQUEST FOR PRODUCTION NO. 4:**

All documents, including e-mail, reflecting or pertaining to communications between LDI and Milliman.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

See Response to Request for Production No. 3.

**REQUEST FOR PRODUCTION NO. 7:**

All documents, including e-mail, reflecting or pertaining to communications between the Receiver and Buck.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

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. There is no cause of action against the Receiver and he has no liability for any action taken by him in the performance of his powers and duties under the Louisiana Insurance Code. La. R.S. 22:2043.1.

**REQUEST FOR PRODUCTION NO. 8:**

All documents, including e-mail, reflecting or pertaining to communications between the Receiver and Milliman.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

See Response to Request for Production No. 7.

**REQUEST FOR PRODUCTION NO. 12:**

All documents reflecting or pertaining to LDI's review and approval of LAHC's 2014 and 2015 rates.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

See Response to Interrogatory No. 4.

**REQUEST FOR PRODUCTION NO. 13:**

All documents reflecting or pertaining to LDI's and/or its consultants' review, assessments, findings and/or conclusions relating to Milliman's actuarial analyses, reports and other work for LAHC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

See Response to Interrogatory No. 5.

**REQUEST FOR PRODUCTION NO. 14:**

All documents reflecting or pertaining to LDI's and/or its consultants' review, assessments, findings and/or conclusions relating to Buck's actuarial analyses, reports and other work for LAHC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

See Response to Interrogatory No. 6.

**REQUEST FOR PRODUCTION NO. 15:**

All documents reflecting or pertaining to all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from or related to Milliman's actuarial work for LAHC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

See Response to Interrogatory No. 7.

**REQUEST FOR PRODUCTION NO. 16:**

All documents reflecting or pertaining to all assessments and reviews by LDI's consulting actuaries and/or any other third party of LAHC's rates arising from or related to Buck's actuarial work for LAHC, including but not limited to, Lewis & Ellis 's October 1, 2014 review of LAHC's 2015 QHP (Individual Health) filings for individual and catastrophic products and review of LAHC's 2015 filings for Small Group products.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

See Response to Interrogatory No. 8.

**REQUEST FOR PRODUCTION NO. 19:**

All documents reflecting or pertaining to Commissioner James J. Donelon's November 5, 2015 testimony before the U.S. House of Representatives Subcommittee on Oversight and Investigations, Committee on Energy and Commerce.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

See Response to Interrogatory No. 13.

**REQUEST FOR PRODUCTION NO. 26:**

All documents supporting or pertaining to all other contentions of the SAP.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

Plaintiff objects to this request on the grounds that it is vague and ambiguous. Without appropriate specification regarding "all other contentions," it is logically and practically impossible to answer this request. Furthermore, this request seeks information that is irrelevant and not likely to lead to the discovery of admissible information to the extent it seeks documents related to any wrongful or negligent action by a director, officer, or agent of LAHC. La. R.S. 22:2043.1.

**REQUEST FOR PRODUCTION NO. 28:**

All documents reflecting or pertaining to any attempt by LAHC, LDI, and/or its consulting actuaries, or other person or entity to pressure or otherwise influence Milliman to lower the 2014 rates.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

See Response to Interrogatory No. 19.

**REQUEST FOR PRODUCTION NO. 31:**

All documents, including e-mail, reflecting or pertaining to communications between LDI and its consulting actuaries, including but not limited to Lewis & Ellis, regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

See Response to Interrogatory No. 22.

**REQUEST FOR PRODUCTION NO. 32:**

All documents and communications, including e-mail, between LAHC and LDI regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services

performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

Plaintiff objects to this request on the grounds that it is vague and ambiguous. Furthermore, to the extent that this request seeks documents and communications between LDI and LAHC post-receivership, it seeks information that is irrelevant and not likely to lead to the discovery of admissible information. See, La. R.S. 22:2043.1. 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 order of the Court in the Rehabilitation Action. “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. Without waiving these objections, to the extent that there are responsive pre-Receivership documents which Plaintiff has in his possession and control, those documents will be produced in connection with his Electronic Discovery Responses.

**REQUEST FOR PRODUCTION NO. 33:**

All internal documents and communications, including e-mail, within LDI regarding the review of any and all of LAHC's premium rates for any and all years.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

See Response to Interrogatory No. 22.

**REQUEST FOR PRODUCTION NO. 34:**

All documents and communications, including e-mail, between LDI and CMS regarding the review of any and all of LAHC's premium rates for any and all years.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

See Response to Interrogatory No. 22.

**REQUEST FOR PRODUCTION NO. 37:**

All documents and communications, including e-mail, between LDI and CMS regarding LAHC's projected financial condition and solvency.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

See Response to Interrogatory No. 22.

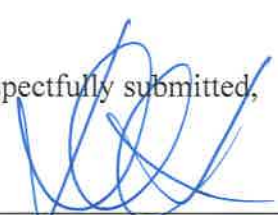
**REQUEST FOR PRODUCTION NO. 38:**

All documents and communications, including e-mail, between LDI and CMS regarding LAHC's operational problems.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

See Response to Interrogatory No. 22.

Respectfully submitted,



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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 and U.S.

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

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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 10<sup>TH</sup> day of August, 2020.

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J. E. Cullens, Jr.

# Louisiana Department of Insurance

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## Rate Review Summary

### Section I. Filing Information

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Name of Health Insurance Issuer: Louisiana Health Cooperative Inc

State Filing Number: 311976

SERFF Filing Number: LHCO-129615054

Product Name: 2015CATPOS

Form Number(s): 2015CATHPOSOC, et al

Rate Request Effective Date: 1/1/2015

Percent Rate Weighted Average Change Requested: 10.12%

Minimum: -1.8%

Maximum: 11.8%

Number of Affected Policyholders: 63

Number of Affected Covered Lives: 63

### Section II. Effective Rate Review Program Summary

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	Yes	No	N/A
<b>Did the review include an examination of:</b>			
1) The reasonableness of the assumptions used by the issuer to develop the proposed rate increase and the validity of the historical data underlying the assumptions:	X		
2) The issuer's data related to past projections and actual experience:	X		
3) The reasonableness of assumptions used by issuer to estimate the rate impact of the reinsurance and risk adjustment programs:	X		
4) The issuer's data related to the market-wide single risk pool, EHB, AVs, and other market reform rules:	X		

<b>EXHIBIT J</b>
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# Louisiana Department of Insurance

Did the review take into consideration the following factors to the extent applicable:	Yes	No	N/A
1) The impact of medical trend changes by major service categories:	X		
2) The impact of utilization changes by major service categories:	X		
3) The impact of cost-sharing changes by major service categories:	X		
4) The impact of benefit changes , including EHBs and non-EHBs:	X		
5) The impact of enrollee risk profile and pricing, including rating limitations for age and tobacco use:	X		
6) The impact of overestimate or underestimate of medical trend for prior year periods:	X		
7) The impact of changes in reserve needs:	X		
8) The impact of changes in administrative costs related to programs that improve health care:	X		
9) The impact of changes in other administrative costs:	X		
10) The impact of changes in applicable taxes, licensing or regulatory fees:	X		
11) Medical loss ratio (both Federal and non-Federal):	X		
12) The health insurer's capital and surplus:	X		
13) The impact of geographic factors and variations:	X		
14) The impact of changes within a single risk pool to all products or plans within the risk pool:	X		
15) The impact of reinsurance and risk adjustment payments and charges:	X		

## Section III. Reviewers

Primary Reviewer Name: Brian Stentz, ASA, MAAA

Primary Reviewer Title: Assistant Vice President, Lewis & Ellis, Inc.

Additional Reviewer Name: Dave Dillon, FSA, MAAA

Additional Reviewer Title: Vice President & Principal, Lewis & Ellis, Inc.

# Louisiana Department of Insurance

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## Section IV. Rate Review Determination

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Final Rate % Change Proposed:	11.17%
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<b>Do the proposed rates appear:</b>	Yes	No	N/A
Excessive?		X	
Inadequate?		X	
Unfairly discriminatory?		X	
Unjustified?		X	
Compliant with laws, regulations, or bulletins?	X		

### The rates were determined to be:

Unreasonable	
Unreasonable (Modified)	
Not Unreasonable	
Not Unreasonable (Modified)	X
Withdrawn Prior to Determination	

## RATE REVIEW DETAIL

### Section I. Filing Information

**Name of Health Plan:** Louisiana Health Cooperative Inc

**State tracking number:** 311976

**SERFF filing number:** LHCO - 129615054

**Plan Actuary:** Harvey Sobel, FSA, MAAA, Buck Consultants

**Type of product:** Individual Major Medical - POS

**Product Name:** 2015CATPOS

**Is this a new product?** ☐ Yes ☒ No

**Reviewer Name:** Brian Stentz, ASA, MAAA Assistant Vice President, Lewis & Ellis, Inc.

**Requested:** ☒ Increase ☐ Decrease ☐ No change or New Filing

**Effective Date:** 1/1/2015

#### Questions & Response Information:

Date Submitted on SERFF: 06/30/2014

Date of Inquiry #1: 07/23/2014

Date of Response #1: 07/31/2014

Date of Inquiry #2: 08/08/2014

Date of Response #2: 08/14/2014

Date of Inquiry #3: 08/18/2014

Date of Response #3: 08/21/2014

Date of Inquiry #4: 08/27/2014

Date of Response #4: 08/29/2014

Date of Inquiry #5:

Date of Response #5:

### Section II. Topical Review

#### L&E's Recommendation:

The proposed rate is actuarially sound and is supported by the actuarial memorandum submitted.

After modifications, the proposed rate is reasonable, not excessive or inadequate and not unfairly discriminatory.

#### Main Comments/Concerns:

##### ■ General Observations:

- Louisiana Health Cooperative Inc (LAHC) submitted 4 SERFF filings for the Individual market which were 2 PPO products and 2 HMO products.

- LA Filing #: 311989 – Product name: 2015INDVPOS
- LA Filing #: 311976 – Product name: 2015CATPOS
- LA Filing #: 311990 – Product name: 2015INDVHMO
- LA Filing #: 311978 – Product name: 2015CATHMO

- The Actuarial Memorandums and documentation items are similar for all filings as expected since each are included in LAHC's individual single risk pool.
- The proposed rate increase varied by product.

LA Filing #	Product Name	Avg	Max	Min
311989	2015INDVPOS	10.17%	14.8%	-5.8%
311976	2015CATPOS	10.12%	11.8%	-1.8%
311990	2015INDVHMO	New	New	New

311978	2015CATHMO	New	New	New
<ul style="list-style-type: none"> <li>▪ The primary reasons for the varying rate increases are changes to relativities by region and by product. <ul style="list-style-type: none"> <li>○ Region – The Company used competitive data and Buck’s rate manual to conclude that the New Orleans region had been overpriced in 2014. The rates for New Orleans decreased from 137% of Baton Rouge rates to 120%.</li> <li>○ Product – Based on Buck’s rate manuals, the Company modified the Silver Plus plan rate to fall more in line with the Gold Plus and Bronze Plus plans.</li> <li>○ The combination of these two changes in relativities generated the rate variation.</li> </ul> </li> <li>▪ LAHC changed consulting actuaries from 2014. Since the Company was a startup, it was difficult to compare some of the underlying manual rate assumption changes from the previous filing.</li> </ul> <p>➤ Other rate increase factors were:</p> <ul style="list-style-type: none"> <li>▪ Anticipated medical trend, both utilization and cost of services;</li> <li>▪ Changes in the Federal Transitional Reinsurance Program;</li> <li>▪ Increase in Non-Benefit Expenses - Admin, Taxes/Fees, Profit</li> </ul>				
<p><b>Experience Basis:</b></p> <p>➤ Experience period:</p> <ul style="list-style-type: none"> <li>▪ The Company was new in 2014 therefore no 2013 experience was available.</li> <li>▪ The manual rates for each plan of benefits were developed using an average of statewide claim costs PMPM. This was developed from a combination of the OptumInsight Comprehensive Pricing Model Version CY 2013, and market research.</li> <li>▪ Since experience was no available, the consulting actuaries used its proprietary pricing software to develop the rate manual. We were provided very detailed assumptions, final allowed costs by service category, final adjustments and the weighting between the POS and HMO products. After our review we concluded the final manual rate allowed costs were reasonable.</li> <li>▪ The starting final allowed costs used in the development of the proposed 2015 rates were approx. 10% lower than the allowed costs used in the development of the 2014.</li> </ul>				
<p><b>Medical Cost Change/Support for Rating Period Projected Claims Costs:</b></p> <p>➤ Projected: The Company’s annual trend assumption is 7.3% per year. The utilization and unit cost trends used in the development of the rates are based on the Company’s consulting actuary’s medical trend assumptions. The Company was new in 2014 and therefore had no trend experience. Overall, based on our overall perspective of the market, the proposed trends appear reasonable.</p> <p>➤ The Company stated the only two calibration factors used in the development of the Plan Adjusted Index Rate and the Consumer Adjusted Premium Rate were Age and Geography. In addition, the resulting calibration factors for Age and Geography were applied uniformly to all plans in the market.</p> <p>➤ Tobacco: The tobacco load is a flat 1.15. Based on the expected smoking population the allowed costs were</p>				

reduced by a factor of .9789 to account for the increased revenue for the smoking load. This appeared reasonable and no further support was requested.

### **Non-Medical Cost Change/Support for Rating Period Projected Non-Claims Costs:**

- The primary driver of the rate increase was the increase in non-benefit expenses
- The expected Non-benefit costs being used in the development of the proposed 2015 rates are:

Administrative Expense Load	20.8%
Profit & Risk Load	-1.3%
Taxes & Fees	4.3%

- The Company said that the 2015 NBE is based on LAHC's 2014 budget, projected to 2015. At this time, LAHC is staffed and has a reasonably good idea of its cost structure. In contrast, LAHC was still in start-up mode in mid-2013 when the 2014 rates were priced.
- The Company provided the current expenses from the first and second quarter in 2014 which supported the increase in expense assumption. In fact, the actual expenses would have supported an even higher load in the rate development.
- We requested support for LAHC's assumption that it would be exempt from the Health Insurance tax being imposed in 2015. The Company responded by stating the following: "LAHC, being a non-profit, to be exempt from the Federal Insurer Tax. As a result of your question, we have further researched the issue and now believe LAHC will be obligated to pay a tax in 2015. If permitted, we request the ability to revise our rate filing to reflect the tax."
- The Company is currently pricing to a -1% profit margin. When additional support was requested for this margin, the Company stated that the initial year was a 4% loss. Given this company is a startup, it would be reasonable to assume a loss in the first couple of years due to experience levels. The Company stated that their business model has them expecting a profit in the following year.
- The proposed average rate increase of 10.2% did not include the health insurance tax and if not included, the company could expect an even greater loss.
- After inclusion of the health insurance tax, the average increase went from -10.2% to -11.2%.

### **AV Metal & Pricing Values:**

- AV Metal Values
  - The sampled AV metal values were appropriately calculated using the AV Calculator and reasonable adjustments were made for plan designs didn't fit into the AV calculator.
- AV Pricing Values
  - LAHC developed the AV Pricing Values included based on the rate manuals. Expected differences in utilization were based on the HHS induced demand utilization factors and were equal to or less than the HHC factors. The Company reduced the AV Pricing Values for Catastrophic by 35%, reflecting the younger population expected. We reviewed the proposed factors and have determined they are reasonable. No additional support was requested.

## **Morbidity Change & Membership Projections:**

- Membership Projection: 186, 827 Member Months
  - We requested a breakdown of the company's projected membership used in the 2014 rate development, the actual 2014 Membership & the assumed projected membership. The Company provided a spreadsheet showing how it determined the projected membership based on current experience. The development appeared reasonable and no further support was requested.

## **Index Rate, Market Adjusted Index Rate EHB & Non-EHB:**

- The Index Rate is equal to Projected Allowed Experience Claims PMPM (\$534.49)
- The Market adjusted Index Rate is equal to Projected Allowed Experience Claims PMPM (\$531.60), and is calculated as follows:
  - Market Adjusted Index Rate (\$531.60) = Index Rate (\$534.49) - Risk Adjustment program adjustment (\$0.08) - Federal reinsurance program adjustment (\$16.45) + Exchange User Fees (\$13.48)

## **3 R's (Federal Reinsurance, Risk Adjustment & Risk Corridors):**

- Projected Risk Adjustment: \$0.08 PMPM net of the user fee
  - Since HHC risk score data was not available the Company compared it's own demographic data to demographics of the Louisiana Health Exchange marketplace. The analysis suggested that LAHC's demographics were slightly younger. Since risk adjustment is based on health status, not just age, they assumed no Risk Adjustment payment recovery. The \$.08 shown in the URRT is the CMS Risk Adjustment Program fee.
  - Since the Company has no actual experience to estimate risk scores, we believe this to be a reasonable assumption.
- Risk Corridors: No explicit consideration; such are not allowed as rating factors
- Reinsurance: \$16.45 net of the 2015 Reinsurance Contribution (\$44.00 PMPY or approximately \$3.67 PMPM)
  - LAHC used the Federal Transitional Reinsurance Program assumptions of 50% of specific large claims between \$70,000 and \$250,000. LAHC projects it will recover 5.92% of claims, based on the claim distributions underlying their rate manual. The reduced expected reinsurance based on its rate manual resulted in an increase of approx. 6.8% over the expected recoveries in 2014. We requested and were provided support for the development and found it reasonable.

## **Gain/Loss & Plan Finances:**

- -1.3% Profit and Risk load. The Company was a startup in 2014 and therefore it could be expected the company would need to price with a negative profit margin due to experience levels. The Company stated that its business plan has them expecting to be profitable in 2016. LDI reviewed the Company's financials and decided that it was acceptable for the Company to price with a negative profit margin for 2015.

## **Compliance with Quantitative Tests:**

- Projected Loss Ratio: Approx. 76.2% medical loss ratio calculated from Wks 2 of the URRT
- Adjusted Federal Minimum Loss Ratio: 81.1%
  - Based on the breakdown provided, the proposed rates can reasonable expect to meet the minimum loss

ratio of 80%.

**Provision for Reforms & Fees:**

- PCORI: .04% of premium (\$0.19 PMPM)
- Risk adjustment user fee: \$0.08 PMPM
- Reinsurance premium: \$3.67 PMPM
- Exchange fee: 3.23% of premium
- Health Insurer fee: Originally 0% but revised to be .90% of premium
- Premium tax: .11% of premium

**Unreasonableness Determination:**

- Federal criteria:
  - Inadequate? No.
  - Excessive? No.
  - Unfairly Discriminatory? No.
  - Unjustified? No.
- Other Comments
  - N/A

**Actuarial Certification & Memorandum:**

- All required certifications and disclosures were provided in the Memorandum.

# Louisiana Department of Insurance

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## ASOP 41 Disclosures

The Actuarial Standards Board (ASB), vested by the U.S.-based actuarial organizations<sup>1</sup>, promulgates actuarial standards of practice (ASOPs) for use by actuaries when providing professional services in the United States. Each of these organizations requires its members, through its Code of Professional Conduct<sup>2</sup>, to observe the ASOPs of the ASB when practicing in the United States. ASOP 41 provides guidance to actuaries with respect to actuarial communications and requires certain disclosures which are contained in the following.

Identification of the Responsible Actuary: The responsible actuary is Brian Stentz, ASA, MAAA, Assistant Vice President at Lewis & Ellis, Inc. ("L&E"). This actuary is available to provide supplementary information and explanation. The actuary also acknowledges that he/she may be acting as an advocate.

Identification of Actuarial Documents: The date of this document is October 1, 2014. The date (aka "latest information date") through which data or other information has been considered in performing the rate review is April 30, 2014. Its subject is rate review summary of a health insurance rate filing, and the document version identification is Version 2014.08.15. As an ordinary practice, this actuary and L&E do not retain drafts of such work products.

### Disclosures

- The contents of this summary are intended for the use of the officers, and employees of the Louisiana Department of Insurance (LDI). The limitations on the use or applicability of the actuarial findings are that it is limited to internal documentation for LDI and these communications should not be relied upon for any other purpose.
- Lewis & Ellis Inc. is financially and organizationally independent from the health plan submitting the rate filing. There is nothing in our relationship with the carrier that would impair or seem to impair the objectivity of our work.
- The purpose of this document was to provide the Department with a summary of the rate review work on a particular rate filing under the Department's regulatory purview.
- The responsible actuary identified above is qualified as specified in the *Qualification Standards* of the American Academy of Actuaries.
- Lewis & Ellis reviewed this rate filing based on the data, files, communications, and documents uploaded in SERFF by the carrier. Neither L&E nor the responsible actuary assumes responsibility for these items but has a material impact on the rate review. We have reviewed the data for reasonableness, but have not audited it. To the extent that there are material inaccuracies in, misrepresentations in, or lack of adequate disclosure by the data, the rate review results may be accordingly affected.
- We are not aware of any subsequent events that may have a material effect on the actuarial findings.
- There are no other documents or files that accompany this rate review summary.
- The findings of this rate review summary, as well as the methods, procedures, assumptions, and data, can be found in Section II. Topical Review.
- The rate review summary was prepared according to federal law and regulations, Louisiana law and regulations, as well as LDI guidance thereto.

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<sup>1</sup> The American Academy of Actuaries (Academy), the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries.

<sup>2</sup> These organizations adopted identical *Codes of Professional Conduct* effective January 1, 2001

## Rate Review Summary

### Section I. Filing Information

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Name of Health Insurance Issuer: Louisiana Health Cooperative Inc

State Filing Number: 311989

SERFF Filing Number: LHCO-129614404

Product Name: 2015INDVPOS

Form Number(s): 2015INDVPOSCOC, et al

Rate Request Effective Date: 1/1/2015

Percent Rate Weighted Average Change Requested: 10.2%

Minimum: -5.8%

Maximum: 14.8%

Number of Affected Policyholders: 1,592

Number of Affected Covered Lives: 1,989

### Section II. Effective Rate Review Program Summary

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	Yes	No	N/A
<b>Did the review include an examination of:</b>			
1) The reasonableness of the assumptions used by the issuer to develop the proposed rate increase and the validity of the historical data underlying the assumptions:	X		
2) The issuer's data related to past projections and actual experience:	X		
3)The reasonableness of assumptions used by issuer to estimate the rate impact of the reinsurance and risk adjustment programs:	X		
4)The issuer's data related to the market-wide single risk pool, EHB, AVs, and other market reform rules:	X		

# Louisiana Department of Insurance

Did the review take into consideration the following factors to the extent applicable:	Yes	No	N/A
1) The impact of medical trend changes by major service categories:	X		
2) The impact of utilization changes by major service categories:	X		
3) The impact of cost-sharing changes by major service categories:	X		
4) The impact of benefit changes , including EHBs and non-EHBs:	X		
5) The impact of enrollee risk profile and pricing, including rating limitations for age and tobacco use:	X		
6) The impact of overestimate or underestimate of medical trend for prior year periods:	X		
7) The impact of changes in reserve needs:	X		
8) The impact of changes in administrative costs related to programs that improve health care:	X		
9) The impact of changes in other administrative costs:	X		
10) The impact of changes in applicable taxes, licensing or regulatory fees:	X		
11) Medical loss ratio (both Federal and non-Federal):	X		
12) The health insurer's capital and surplus:	X		
13) The impact of geographic factors and variations:	X		
14) The impact of changes within a single risk pool to all products or plans within the risk pool:	X		
15) The impact of reinsurance and risk adjustment payments and charges:	X		

## Section III. Reviewers

Primary Reviewer Name: Brian Stentz, ASA, MAAA

Primary Reviewer Title: Assistant Vice President, Lewis & Ellis, Inc.

Additional Reviewer Name: Dave Dillon, FSA, MAAA

Additional Reviewer Title: Vice President & Principal, Lewis & Ellis, Inc.

# Louisiana Department of Insurance

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## Section IV. Rate Review Determination

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Final Rate % Change Proposed:	11.2%
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<b>Do the proposed rates appear:</b>	Yes	No	N/A
Excessive?		X	
Inadequate?		X	
Unfairly discriminatory?		X	
Unjustified?		X	
Compliant with laws, regulations, or bulletins?	X		

### The rates were determined to be:

Unreasonable	
Unreasonable (Modified)	
Not Unreasonable	
Not Unreasonable (Modified)	X
Withdrawn Prior to Determination	

## RATE REVIEW DETAIL

### Section I. Filing Information

**Name of Health Plan:** Louisiana Health Cooperative Inc

**State tracking number:** 311989

**SERFF filing number:** LHCO - 129614404

**Plan Actuary:** Harvey Sobel, FSA, MAAA, Buck Consultants

**Type of product:** Individual Major Medical - POS

**Product Name:** 2015INDVPOS

**Is this a new product?** ☐ Yes ☒ No

**Reviewer Name:** Brian Stentz, ASA, MAAA Assistant Vice President, Lewis & Ellis, Inc.

**Requested:** ☒ Increase ☐ Decrease ☐ No change or New Filing

**Effective Date:** 1/1/2015

#### Questions & Response Information:

Date Submitted on SERFF: 06/30/2014

Date of Inquiry #1: 07/23/2014

Date of Response #1: 07/31/2014

Date of Inquiry #2: 08/08/2014

Date of Response #2: 08/14/2014

Date of Inquiry #3: 08/18/2014

Date of Response #3: 08/21/2014

Date of Inquiry #4: 08/27/2014

Date of Response #4: 08/29/2014

Date of Inquiry #5:

Date of Response #5:

### Section II. Topical Review

#### L&E's Recommendation:

The proposed rate is actuarially sound and is supported by the actuarial memorandum submitted.

After modifications, the proposed rate is reasonable, not excessive or inadequate and not unfairly discriminatory.

#### Main Comments/Concerns:

##### General Observations:

- Louisiana Health Cooperative Inc (LAHC) submitted 4 SERFF filings for the Individual market which were 2 PPO products and 2 HMO products.
  - LA Filing #: 311989 – Product name: 2015INDVPOS
  - LA Filing #: 311976 – Product name: 2015CATPOS
  - LA Filing #: 311990 – Product name: 2015INDVHMO
  - LA Filing #: 311978 – Product name: 2015CATHMO
- The Actuarial Memorandums and documentation items are similar for all filings as expected since each are included in LAHC's individual single risk pool.
- The proposed rate increase varied by product.

LA Filing #	Product Name	Avg	Max	Min
311989	2015INDVPOS	10.17%	14.8%	-5.8%
311976	2015CATPOS	10.12%	11.8%	-1.8%
311990	2015INDVHMO	New	New	New

311978	2015CATHMO	New	New	New
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- The primary reasons for the varying rate increases are changes to relativities by region and by product.
  - Region – The Company used competitive data and Buck’s rate manual to conclude that the New Orleans region had been overpriced in 2014. The rates for New Orleans decreased from 137% of Baton Rouge rates to 120%.
  - Product – Based on Buck’s rate manuals, the Company modified the Silver Plus plan rate to fall more in line with the Gold Plus and Bronze Plus plans.
  - The combination of these two changes in relativities generated the rate variation.
- LAHC changed consulting actuaries from 2014. Since the Company was a startup, it was difficult to compare some of the underlying manual rate assumption changes from the previous filing.
- Other rate increase factors were:
  - Anticipated medical trend, both utilization and cost of services;
  - Changes in the Federal Transitional Reinsurance Program;
  - Increase in Non-Benefit Expenses - Admin, Taxes/Fees, Profit

## Experience Basis:

- Experience period:
  - The Company was new in 2014 therefore no 2013 experience was available.
  - The manual rates for each plan of benefits were developed using an average of statewide claim costs PMPM. This was developed from a combination of the OptumInsight Comprehensive Pricing Model Version CY 2013, and market research.
  - Since experience was no available, the consulting actuaries used its proprietary pricing software to develop the rate manual. We were provided very detailed assumptions, final allowed costs by service category, final adjustments and the weighting between the POS and HMO products. After our review we concluded the final manual rate allowed costs were reasonable.
  - The starting final allowed costs used in the development of the proposed 2015 rates were approx. 10% lower than the allowed costs used in the development of the 2014.

## Medical Cost Change/Support for Rating Period Projected Claims Costs:

- Projected: The Company’s annual trend assumption is 7.3% per year. The utilization and unit cost trends used in the development of the rates are based on the Company’s consulting actuary’s medical trend assumptions. The Company was new in 2014 and therefore had no trend experience. Overall, based on our overall perspective of the market, the proposed trends appear reasonable.
- The Company stated the only two calibration factors used in the development of the Plan Adjusted Index Rate and the Consumer Adjusted Premium Rate were Age and Geography. In addition, the resulting calibration factors for Age and Geography were applied uniformly to all plans in the market.
- Tobacco: The tobacco load is a flat 1.15. Based on the expected smoking population the allowed costs were

reduced by a factor of .9789 to account for the increased revenue for the smoking load. This appeared reasonable and no further support was requested.

### **Non-Medical Cost Change/Support for Rating Period Projected Non-Claims Costs:**

- The primary driver of the rate increase was the increase in non-benefit expenses
- The expected Non-benefit costs being used in the development of the proposed 2015 rates are:

Administrative Expense Load	20.8%
Profit & Risk Load	-1.3%
Taxes & Fees	4.3%

- The Company said that the 2015 NBE is based on LAHC's 2014 budget, projected to 2015. At this time, LAHC is staffed and has a reasonably good idea of its cost structure. In contrast, LAHC was still in start-up mode in mid-2013 when the 2014 rates were priced.
- The Company provided the current expenses from the first and second quarter in 2014 which supported the increase in expense assumption. In fact, the actual expenses would have supported an even higher load in the rate development.
- We requested support for LAHC's assumption that it would be exempt from the Health Insurance tax being imposed in 2015. The Company responded by stating the following: "LAHC, being a non-profit, to be exempt from the Federal Insurer Tax. As a result of your question, we have further researched the issue and now believe LAHC will be obligated to pay a tax in 2015. If permitted, we request the ability to revise our rate filing to reflect the tax."
- The Company is currently pricing to a -1% profit margin. When additional support was requested for this margin, the Company stated that the initial year was a 4% loss. Given this company is a startup, it would be reasonable to assume a loss in the first couple of years due to experience levels. The Company stated that their business model has them expecting a profit in the following year.
- The proposed average rate increase of 10.2% did not include the health insurance tax and if not included, the company could expect an even greater loss.
- After inclusion of the health insurance tax, the average increase went from -10.2% to -11.2%.

### **AV Metal & Pricing Values:**

- AV Metal Values
  - The sampled AV metal values were appropriately calculated using the AV Calculator and reasonable adjustments were made for plan designs didn't fit into the AV calculator.
- AV Pricing Values
  - LAHC developed the AV Pricing Values included based on the rate manuals. Expected differences in utilization were based on the HHS induced demand utilization factors and were equal to or less than the HHC factors. The Company reduced the AV Pricing Values for Catastrophic by 35%, reflecting the younger population expected. We reviewed the proposed factors and have determined they are reasonable. No additional support was requested.

## **Morbidity Change & Membership Projections:**

- Membership Projection: 186, 827 Member Months
  - We requested a breakdown of the company's projected membership used in the 2014 rate development, the actual 2014 Membership & the assumed projected membership. The Company provided a spreadsheet showing how it determined the projected membership based on current experience. The development appeared reasonable and no further support was requested.

## **Index Rate, Market Adjusted Index Rate EHB & Non-EHB:**

- The Index Rate is equal to Projected Allowed Experience Claims PMPM (\$534.49)
- The Market adjusted Index Rate is equal to Projected Allowed Experience Claims PMPM (\$531.60), and is calculated as follows:
  - Market Adjusted Index Rate (\$531.60) = Index Rate (\$534.49) - Risk Adjustment program adjustment (\$0.08) - Federal reinsurance program adjustment (\$16.45) + Exchange User Fees (\$13.48)

## **3 R's (Federal Reinsurance, Risk Adjustment & Risk Corridors):**

- Projected Risk Adjustment: \$0.08 PMPM net of the user fee
  - Since HHC risk score data was not available the Company compared it's own demographic data to demographics of the Louisiana Health Exchange marketplace. The analysis suggested that LAHC's demographics were slightly younger. Since risk adjustment is based on health status, not just age, they assumed no Risk Adjustment payment recovery. The \$.08 shown in the URRT is the CMS Risk Adjustment Program fee.
  - Since the Company has no actual experience to estimate risk scores, we believe this to be a reasonable assumption.
- Risk Corridors: No explicit consideration; such are not allowed as rating factors
- Reinsurance: \$16.45 net of the 2015 Reinsurance Contribution (\$44.00 PMPY or approximately \$3.67 PMPM)
  - LAHC used the Federal Transitional Reinsurance Program assumptions of 50% of specific large claims between \$70,000 and \$250,000. LAHC projects it will recover 5.92% of claims, based on the claim distributions underlying their rate manual. The reduced expected reinsurance based on its rate manual resulted in an increase of approx. 6.8% over the expected recoveries in 2014. We requested and were provided support for the development and found it reasonable.

## **Gain/Loss & Plan Finances:**

- -1.3% Profit and Risk load. The Company was a startup in 2014 and therefore it could be expected the company would need to price with a negative profit margin due to experience levels. The Company stated that its business plan has them expecting to be profitable in 2016. LDI reviewed the Company's financials and decided that it was acceptable for the Company to price with a negative profit margin for 2015.

## **Compliance with Quantitative Tests:**

- Projected Loss Ratio: Approx. 76.2% medical loss ratio calculated from Wks 2 of the URRT
- Adjusted Federal Minimum Loss Ratio: 81.1%
  - Based on the breakdown provided, the proposed rates can reasonable expect to meet the minimum loss

ratio of 80%.

**Provision for Reforms & Fees:**

- PCORI: .04% of premium (\$0.19 PMPM)
- Risk adjustment user fee: \$0.08 PMPM
- Reinsurance premium: \$3.67 PMPM
- Exchange fee: 3.23% of premium
- Health Insurer fee: Originally 0% but revised to be .90% of premium
- Premium tax: .11% of premium

**Unreasonableness Determination:**

- Federal criteria:
  - Inadequate? No.
  - Excessive? No.
  - Unfairly Discriminatory? No.
  - Unjustified? No.
- Other Comments
  - N/A

**Actuarial Certification & Memorandum:**

- All required certifications and disclosures were provided in the Memorandum.

# Louisiana Department of Insurance

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## ASOP 41 Disclosures

The Actuarial Standards Board (ASB), vested by the U.S.-based actuarial organizations<sup>1</sup>, promulgates actuarial standards of practice (ASOPs) for use by actuaries when providing professional services in the United States. Each of these organizations requires its members, through its Code of Professional Conduct<sup>2</sup>, to observe the ASOPs of the ASB when practicing in the United States. ASOP 41 provides guidance to actuaries with respect to actuarial communications and requires certain disclosures which are contained in the following.

Identification of the Responsible Actuary: The responsible actuary is Brian Stentz, ASA, MAAA, Assistant Vice President at Lewis & Ellis, Inc. ("L&E"). This actuary is available to provide supplementary information and explanation. The actuary also acknowledges that he/she may be acting as an advocate.

Identification of Actuarial Documents: The date of this document is October 1, 2014. The date (aka "latest information date") through which data or other information has been considered in performing the rate review is April 30, 2014. Its subject is rate review summary of a health insurance rate filing, and the document version identification is Version 2014.08.15. As an ordinary practice, this actuary and L&E do not retain drafts of such work products.

### Disclosures

- The contents of this summary are intended for the use of the officers, and employees of the Louisiana Department of Insurance (LDI). The limitations on the use or applicability of the actuarial findings are that it is limited to internal documentation for LDI and these communications should not be relied upon for any other purpose.
- Lewis & Ellis Inc. is financially and organizationally independent from the health plan submitting the rate filing. There is nothing in our relationship with the carrier that would impair or seem to impair the objectivity of our work.
- The purpose of this document was to provide the Department with a summary of the rate review work on a particular rate filing under the Department's regulatory purview.
- The responsible actuary identified above is qualified as specified in the *Qualification Standards* of the American Academy of Actuaries.
- Lewis & Ellis reviewed this rate filing based on the data, files, communications, and documents uploaded in SERFF by the carrier. Neither L&E nor the responsible actuary assumes responsibility for these items but has a material impact on the rate review. We have reviewed the data for reasonableness, but have not audited it. To the extent that there are material inaccuracies in, misrepresentations in, or lack of adequate disclosure by the data, the rate review results may be accordingly affected.
- We are not aware of any subsequent events that may have a material effect on the actuarial findings.
- There are no other documents or files that accompany this rate review summary.
- The findings of this rate review summary, as well as the methods, procedures, assumptions, and data, can be found in Section II. Topical Review.
- The rate review summary was prepared according to federal law and regulations, Louisiana law and regulations, as well as LDI guidance thereto.

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<sup>1</sup> The American Academy of Actuaries (Academy), the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, the Conference of Consulting Actuaries, and the Society of Actuaries.

<sup>2</sup> These organizations adopted identical *Codes of Professional Conduct* effective January 1, 2001

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

SUIT NO.: 651,069 SECTION: 22

VERSUS

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

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

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

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**AFFIDAVIT OF RICHARD BLAKEMAN CROHAN**

I, Richard Blakeman Crohan, declare under penalty of perjury that the following is true and correct:

1. My name is Richard Blakeman Crohan. I am over twenty-one (21) years of age, and I have personal knowledge of, and am fully competent to testify to, the matters set forth herein.
2. I am an Associate Attorney at Alston & Bird, LLP in Atlanta, Georgia.
3. On November 24, 2020, I accessed the Louisiana Department of Insurance's website (<https://www.lda.la.gov/onlineservices/HealthRates/>) (last accessed November 24, 2020) and the "Health Rate Filing Search for Individual and Small Group Markets" webpage.
4. A true and accurate screenshot of the Louisiana Department of Insurance's "Health Rate Filing Search for Individual and Small Group Markets" webpage as of November 24, 2020, is attached hereto as Exhibit "A".
5. While on <https://www.lda.la.gov/onlineservices/HealthRates/> I toggled the "Year Filed" under "Rate Filing Summaries" to 2014. A true and accurate screenshot of the Louisiana

**EXHIBIT  
K**

Department of Insurance's website <https://www.ldi.la.gov/online services/HealthRates/> toggled to "Year Filed: 2014" as of November 24, 2020 is attached hereto as Exhibit "B".

6. After I toggled the "Year Filed" to 2014, the "Rate Filings of 10% and Above" revealed two "Proposed Rate Changes" by the Louisiana Health Cooperative, Inc. of 10.12% and 10.17% (See Exhibit B.)

7. While on the webpage seen in Exhibit B, I selected the "View" link to the right of the Louisiana Department of Insurance's "Proposed Rate Change" of 10.12%. (Exhibit B.)

8. After selecting the "View" link to the right of the Louisiana Department of Insurance's "Proposed Rate Change" of 10.12%, the "Filing Details" revealed a file named LACOOB – 2015 ACA Ind QHP Filing – Rate Review Summary 311976 9 13 14.pdf. A true and accurate screenshot of the Louisiana Department of Insurance's webpage after selecting the "View" link to the right of the Louisiana Department of Insurance's proposed rate change of 10.12% is attached hereto as Exhibit "C".

9. While on the webpage seen in Exhibit C, a "View" link was available to the right of the LACOOB – 2015 ACA Ind QHP Filing – Rate Review Summary 311976 9 13 14.pdf. (Exhibit C). I selected this "View" link, which revealed Lewis & Ellis, Inc.'s "Rate Review" Report of the Louisiana Health Cooperative, Inc.'s Individual Major Medical – POS ("Lewis & Ellis 2015CATPOS Report").

10. A copy of the Lewis & Ellis 2015CATPOS Report was available in PDF format on the Louisiana Department of Insurance's public website. See [LACOOB- 2015 ACA IND QHP Filing - Rate Review Summary 311976 9 13 14 \(1\).pdf](#) (last accessed December 12, 2020). See Exhibit D.

11. A true and correct copy of the Lewis & Ellis 2015CATPOS Report I downloaded from the Louisiana Department of Insurance's public website is attached hereto as Exhibit "D".
12. The Lewis & Ellis 2015CATPOS Report revealed the following "Reviewers" of the Report:
  - a. Primary Reviewer Name: Brian Stentz, ASA, MAAA; Primary Reviewer Title: Assistant Vice President, Lewis & Ellis, Inc. (Exhibit D at p. 2.)
  - b. Additional Reviewer Name: Dave Dillon, FSA, MAA; Additional Reviewer Title: Vice President & Principal, Lewis & Ellis, Inc. (Exhibit D at p. 2.)
13. The Lewis & Ellis 2015CATPOS Report determined that the proposed rates did not appear excessive, inadequate, unfairly discriminatory, or unjustified. (Exhibit D at p. 3.)
14. The Lewis & Ellis 2015CATPOS Report provided that "the rates were determined to be 'Not Unreasonable (Modified)'" (Exhibit D at p. 3.)
15. The Lewis & Ellis 2015CATPOS Report provides the following identification information: State tracking number – 311976; SERFF filing number – LHCO – 129615054. (Exhibit D at p. 4.)
16. The Lewis & Ellis 2015CATPOS Report states it was "Submitted on SERFF" on June 30, 2014. (Exhibit D at p. 4)
17. The Lewis & Ellis 2015CATPOS Report is marked "Lewis & Ellis, Inc. – Actuaries & Consultants 10/1/14" on the bottom of each page of the report. (Exhibit D.)
18. On November 24, 2020, I again accessed the Louisiana Department of Insurance's website (<https://www.lidi.la.gov/online services/HealthRates/>) (last accessed November 24, 2020) and specifically the "Health Rate Filing Search for Individual and Small Group Markets" page.

19. A true and accurate screenshot of the Louisiana Department of Insurance's "Health Rate Filing Search for Individual and Small Group Markets" webpage as of November 24, 2020, is attached hereto as Exhibit "A".
20. While on the <https://www.lidi.la.gov/onlineservices/HealthRates/> webpage, I toggled the "Year Filed" under "Rate Filing Summaries" to 2014. A true and accurate screenshot of the Louisiana Department of Insurance's website <https://www.lidi.la.gov/onlineservices/HealthRates/> toggled to "Year Filed: 2014" is attached hereto as Exhibit "B".
21. After I toggled the "Year Filed" to 2014, the "Rate Filings of 10% and Above" revealed two "Proposed Rate Changes" by the Louisiana Health Cooperative Inc. of 10.12% and 10.17% (See Exhibit B.)
22. While on the webpage seen in Exhibit B, I selected the "View" link to the right of Louisiana Department of Insurance's proposed rate change of 10.17%. (See Exhibit B.)
23. After selecting the "View" link next to the Louisiana Department of Insurance's proposed rate change of 10.12%, the "Filing Details" revealed a file name of LACOOB – 2015 ACA Ind QHP Filing – Rate Review Summary 311989 9 13 14.pdf.
24. A true and accurate screenshot of the Louisiana Department of Insurance's website after selecting the "View" link next to the Louisiana Department of Insurance's proposed rate change of 10.17% is attached hereto as Exhibit "E".
25. While on the webpage seen in Exhibit E, I selected the "View" link to the right of the file name of LACOOB – 2015 ACA Ind QHP Filing – Rate Review Summary 311989 9 13 14.pdf., which revealed Lewis & Ellis, Inc.'s "Rate Review" Report of the Louisiana Health Cooperative, Inc.'s Product Name 2015INDVPOS ("Lewis & Ellis 2015INDVPOS Report").

26. A copy of the Lewis & Ellis 2015INDVPOS Report was available in PDF format on the Louisiana Department of Insurance's public website. *See* LACOOB- 2015 ACA IND QHP Filing - Rate Review Summary 311989 9 13 14 (2).pdf (last accessed December 12, 2020).
27. A true and correct copy of the Lewis & Ellis 2015INDVPOS Report I downloaded from the Louisiana Department of Insurance's public website is attached hereto as Exhibit "F".
28. The Lewis & Ellis 2015INDVPOS Report revealed the following "Reviewers" of the Report:
- a. Primary Reviewer Name: Brian Stentz, ASA, MAAA; Primary Reviewer Title: Assistant Vice President, Lewis & Ellis, Inc. (Exhibit F at p. 2.)
  - b. Additional Reviewer Name: Dave Dillon, FSA, MAAA; Additional Reviewer Title: Vice President & Principal, Lewis & Ellis, Inc. (Exhibit F at p. 2.)
29. The Lewis & Ellis 2015INDVPOS Report determined that the proposed rates did not appear excessive, inadequate, unfairly discriminatory, or unjustified. (Exhibit F at p. 3.)
30. The Lewis & Ellis 2015INDVPOS Report found that "the rates were determined to be 'Not Unreasonable (Modified).'" (Exhibit F at p. 3.)
31. The Lewis & Ellis 2015INDVPOS Report provided the following identification information: State tracking number/State filing number – 311989; SERFF filing number – LHCO – 129614404. (Exhibit F at p. 1, 4.)
32. The Lewis & Ellis 2015INDVPOS Report was "Submitted on SERFF" on June 30, 2014. (Exhibit F at p. 4.)
33. The Lewis & Ellis 2015INDVPOS Report is marked "Lewis & Ellis, Inc. – Actuaries & Consultants 10/1/14" on the bottom of each page of the report. (Exhibit F.)
34. I affirm that I personally took all of the screenshots attached hereto as Exhibits.

35. I affirm that all of the Exhibits attached hereto fairly and fully capture the material for which they are cited.

36. I affirm that all of the information and Exhibits attached hereto were available on the Louisiana Department of Insurance's publicly available website.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

FURTHER AFFIANT SAITH NOT.

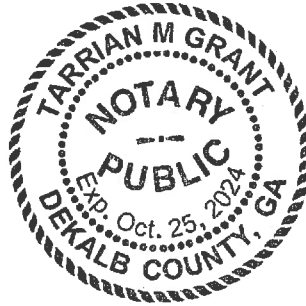
Executed this 12<sup>th</sup> day of December, 2020, in Dunwoody, Georgia.

  
Richard Blakeman Crohan

Sworn to and subscribed before me  
this 12<sup>th</sup> day of December, 2020.

  
Notary Public

My commission expires: 10-25-2024



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

**RULE TO SHOW CAUSE**

Considering the Foregoing Motion to Compel the Louisiana Department of Insurance to  
Comply with Subpoena *Duces Tecum* filed by Defendant Buck Global, LLC,

IT IS ORDERED that a hearing will be conducted on the \_\_\_\_\_ day of \_\_\_\_\_,  
202\_\_ at \_\_\_\_\_ .m. on the Motion to Compel. The hearing will be held by Zoom for the  
safety of all participants due to the COVID-19 pandemic.

Baton Rouge, Louisiana, this \_\_\_\_\_ day of December, 2020.

\_\_\_\_\_  
HONORABLE JUDGE TIMOTHY KELLEY

**Movant will serve the foregoing  
Rule to Show Cause upon The Louisiana Department of Insurance  
through counsel, John Ashley Moore,  
450 Laurel Street, Suite 800  
Baton Rouge, LA 70801  
by CERTIFIED MAIL, RETURN RECEIPT REQUESTED  
in accordance with La. CCP art. 1313(C).**