

SEC. 22

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

SUIT NO.: 651069 DIVISION: _____

versus :

19TH JUDICIAL DISTRICT COURT

TERRY S. SHILLING, GEORGE G. :
CROMER, WARNER L. THOMAS, IV, :
WILLIAM A. OLIVER, CHARLES D. :
CALVI, PATRICK C. POWERS, CGI :
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

PETITION FOR DAMAGES
AND JURY DEMAND

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 represents:

JURISDICTION AND VENUE

1.

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.

2.

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.

3.

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

4.

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").

5.

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.

6.

A Petition for Rehabilitation of LAHC was filed in the 19th 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.

7.

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.

8.

Defendants

Named Defendants herein are the following:

9.

D&O Defendants

a. **TERRY S. SHILLING (“Shilling”)**, an individual of the full age of majority domiciled in the State of Georgia. Shilling was the Chief Executive Officer, President and Director of LAHC, from 2011 until approximately 2013.

b. **GEORGE G. CROMER (“Cromer”)**, an individual of the full age of majority domiciled in the State of Louisiana. Cromer was the Chief Executive Officer of LAHC after Shilling, from 2013 until approximately August 2015.

c. **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.

d. **WILLIAM A. OLIVER (“Oliver”)**, an individual of the full age of majority domiciled in the State of Louisiana. Oliver was s Director of LAHC from 2011 through 2015.

e. **CHARLES D. CALVI (“Calvi”)**, an individual of the full age of majority domiciled in the State of Louisiana. Calvi was the Executive Vice President and Marketing Officer of LAHC from 2014 until approximately August 2015.

f. **PATRICK C. POWERS (“Powers”)**, an individual of the full age of majority domiciled in the State of Louisiana. Powers was the Chief Financial Officer and Treasurer of LAHC from 2014 until approximately April 2015.

10.

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 May 2014, CGI served as the Third Party Administrator of LAHC. 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.

11.

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.

12.

Insurer Defendant

a. **TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA (“Travelers”)**, 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 LAHC that provide coverage for claims asserted herein.

DEFINED TERMS

13.

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 defendants herein, specifically: Terry S. Shilling, George G. Cromer, Warner L. Thomas, IV, William A. Oliver, Charles D. Calvi, and Patrick C. Powers.

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: Travelers Casualty and Surety Company of America (“Travelers”).

4. **“LDOI”** shall refer to and mean the Louisiana Department of Insurance.

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

FACTUAL BACKGROUND

14.

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 (“LDOI”), have the primary oversight of CO-OP’s as health insurance issuers.

15.

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 LDOI. 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.

16.

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.

17.

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.

18.

By July 2015, only eighteen months after it started issuing policies, LAHC decided to stop doing business. The LDOI 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.

19.

The various parties who created, developed, and managed 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 LDOI 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.

20.

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

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CAUSES OF ACTION

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

21.

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

22.

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.

23.

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.

24.

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.

25.

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

26.

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

27.

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.

28.

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 LDOJ, 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.

29.

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.

30.

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

31.

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.

32.

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.

33.

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.

34.

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 Defendant are liable, and for which Plaintiff is entitled to recover in this action.

35.

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.

36.

The Insurer Defendant is 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. Travelers Casualty and Surety Company of America issued a Private Company Directors and Officers Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of \$3,000,000.00, 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. Travelers Casualty and Surety Company of America issued a Managed Care Errors and Omissions Liability Insurance Policy to LAHC, with policy limits, upon information and belief, of \$3,000,000.00, 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.

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

37.

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

CGI

38.

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 is attached hereto and incorporated herein by reference as "Exhibit 1."

39.

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.

40.

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 task expected and required of a Third Party Administration, whether specified in the Agreement or not.

41.

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 provide proper notice (delinquency letters) so subscribers prior to terminating coverage; and
- e. Other acts of gross negligence as may be later discovered.

42.

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.

43.

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

GRI

44.

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

45.

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 are attached hereto, incorporated herein by reference and designated as "Exhibit 2."

46.

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.”

47.

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 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
- d. Competently perform all of those task expected and required of a Third Party Administration, whether specified in the Agreement or not.

48.

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.

49.

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.

50.

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

51.

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.

52.

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.

53.

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.

54.

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), is attached hereto and incorporated by reference as "Exhibit 3."

55.

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 LDOI, 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.

56.

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 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.

57.

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.

58.

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.

59.

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.

60.

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.

61.

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)**

62.

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

63.

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.

64.

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.

65.

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

66.

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.

67.

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.

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.

68.

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.

69.

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.

JURY DEMAND

70.

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

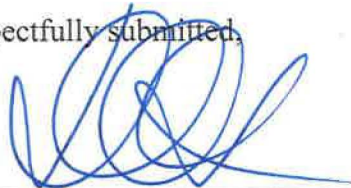
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PRAYER FOR RELIEF

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 Defendants named herein, 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, 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, and GRI;
- d. any and all equitable relief to which Plaintiff may appear properly entitled;
- e. all recoverable costs and litigation expenses incurred herein;
- f. all judicial interest;
- 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,



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**PLEASE WITHHOLD
SERVICE AT THIS TIME**