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

STATE OF LOUISIANA

NO. 651069 SECTION 22

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 INC., BEAM PARTNERS, LLC, AND TRAVELERS AND SURETY COMPANY OF AMERICA.

FILED: _____ _____
DEPUTY CLERK

REPLY TO PLAINTIFF'S OPPOSITION TO BEAM PARTNERS, LLC'S EXCEPTION OF PREMATURITY OR, ALTERNATIVELY, MOTION TO STAY PROCEEDINGS

NOW INTO COURT, comes Beam Partners, Inc. ("Beam"), who files this reply to highlight why James J. Donelon ("plaintiff" or "Rehabilitator of LAHC") is bound by an agreement to arbitrate in a contract that was executed by a now insolvent insurer. The "Commissioner proceeds in management's place," La. R.S. § 22:2009, and steps into the contract shoes of LAHC. Nothing in sending this matter to contractually agreed arbitration prevents the rehabilitator of LAHC from vindicating the interest of policy holders and the public. It is nothing more than a permitted forum selection agreement. Beam agrees with plaintiff that this issue is one of first impression for Louisiana but respectfully suggests, in light of our statute's "may" venue language, and the cases cited herein, that the arbitration agreement should be enforced. The arbitration Contract should be enforced by this court because (1) the *Taylor* case on which plaintiff so heavily relies is distinguished from the facts and law here, (2) a number of rulings from other states analogously have enforced arbitration clauses in these circumstances, (3) plaintiff is in privity with the LAHC, (4) equitable estoppel and the language of Louisiana's Uniform Insurers Liquidation Law ("LUILL") prohibits plaintiff from seeking to enforce only some terms of a contract while disavowing others; (5) the Louisiana Binding Arbitration Law mandates arbitration, and arbitration is a permitted venue under the LUILL ("may" for Louisiana, not "shall" as used in Ohio), and (6) arbitration does not violate the Rehabilitation Order.

I. THE REHABILITATOR'S RELIANCE ON *TAYLOR V. ERNST & YOUNG* MISPLACED

The Rehabilitator erroneously states that *Taylor v. Ernst & Young, L.L.P.*, a case out of Ohio, is "directly on point both factually and legally." *Taylor v. Ernst & Young, L.L.P.*, 958 N.E.2d 1203 (Ohio 10/18/11). (See Opposition, p. 9). In that case, the liquidator for an insolvent insurer, American Chambers Life Insurance Company ("ACLIC"), sued Ernst & Young, LLP ("E&Y") for malpractice and fraud. *Id.* at 1206. E&Y had signed an engagement letter with ACLIC that contained an arbitration provision and, at issue, was whether the provision was enforceable. *Id.* Although the case has no precedence here, it nevertheless provides little guidance because the majority's opinion is distinguished from the facts and law as discussed below.

A. LUILL and LBAL are Not Irreconcilable

First, in addressing the venue tension between arbitration laws and those that control insolvent insurer receiverships, the *Taylor* Court held that the Ohio Liquidation Act prevailed over the irreconcilable conflict between it and the Ohio Arbitration Act. *Id.* at 1207. However, unlike Louisiana's statute, Ohio law provides that "all liquidation actions brought pursuant to R.C. 3903.02(D)(3) to 3903.59 '**shall** be brought in the court of common pleas of Franklin county' (the 'liquidation court')." (Emphasis added). *Id.* at 1209. As stated in Beams' Memorandum in Support, the venue provision of Louisiana's Uniform Insurers Liquidation Law ("LUILL") provides that "[a]n action under this Chapter brought by the commissioner of insurance, in that capacity, or as conservator, rehabilitator, or liquidator **may** be brought in the Nineteenth Judicial District Court for the parish of East Baton Rouge or any court where venue is proper under any other provision of law. (Emphasis added). La. Rev. Stat. 22:2004(A). This is the first distinction.

To overcome the permissive language in La. Rev. Stat. 22:2004(A), plaintiff here attempts to rely on another statute for venue, namely La.R.S. 22:257. However, the Permanent Order of Rehabilitation and Injunctive Relief relies only on statutory provisions found in the Rehabilitation, Liquidation, and Conservation Act, La. R.S. 22:2001 *et seq.* The Order mentions no statutory provisions concerning the receivership, rehabilitation, or liquidation of an HMO under La.R.S. 22:257. The Rehabilitator has already admitted that the "statutory scheme for the rehabilitation and/or liquidation of insurers is **comprehensive and exclusive** in scope." (emphasis supplied by the Rehabilitator) (See Opposition, p. at 4) (citing *Brown v. Associated Ins. Consultants, Inc.*, 97-1396 (La. App. 1 Cir. 6/29/98), 714 So. 2d 939, 941-42; *LeBlanc v. Bernard*, 554 So. 2d 1378, 1383 (La. App. 1 Cir. 1989)). Nonetheless, the Rehabilitator contradicts himself by arguing that the

permissive venue language of La.R.S. 22:2004(A) should not apply in this action, and that the "exclusive jurisdiction" of La.R.S. 22:257 is what controls. As demonstrated below, plaintiff is "venue statute shopping" by selectively citing whatever venue statute serves his wishes in a given moment.

First of all, there is no indication that the instant case (LAHC suing its consultants and contractors) is the type of case whose "exclusive jurisdiction" is controlled by La.R.S. 22:257. Read in its entirety, La.R.S. 22:257 provides the methods and procedures for the insurance commissioner to "suspend or revoke any certificate of authority issued to any health maintenance organization." Indeed, under La.R.S. 22:257(E), such suspension or revocation is a prerequisite to the commissioner's authority to enforce the contracts entered by LAHC. Yet, plaintiff's Amended Petition does not even mention any suspension or revocation of the certificate of authority issued to LAHC. La.R.S 22:257(B) also provides that such revocation can only be done by complying with the requirements of La.R.S. 22:259; but there is no evidence in the record that such procedures were ever followed. Basically, plaintiff is citing a jurisdiction provision from a statute that he has otherwise ignored and with which he has not otherwise complied.

Second, the exclusive jurisdiction provision of La.R.S. 22:257(F) is limited in scope. It applies to the commissioner's application to "take over and liquidate" the affairs of any HMO experiencing financial difficulty. It also is limited to "any suit arising out of such takeover or liquidation." Beam does not dispute that, were the commissioner to institute an action to revoke LAHC's certificate, or were there a dispute over the commissioner's decision to "take over and liquidate" LAHC, as provided for in La.R.S. 22:257, venue and jurisdiction would be proper in the Nineteenth Judicial District. However, LAHC's suit against Beam does not "arise out of" the commissioner's takeover or liquidation. At best, it can be said that LAHC's suit against Beam follows after the commissioner's takeover, but the nucleus of operative fact of the instant dispute concerns allegations that Beam performed its contractual services to LAHC in a deficient manner. The nucleus of operative fact of a suit under La.R.S. 22:257 concerns the commissioner's suspension and revocation of a certificate of authority.

Plaintiff's actions prove Beam's point when it comes to the allegedly "exclusive jurisdiction" of the Nineteenth Judicial District. On April 3, 2017, Plaintiff sought this court's permission to join an action (as a class action plaintiff) in the United States Court of Federal Claims. See Exhibit A.

Plaintiff certainly does not practice its belief that every claim involving LAHC can only be heard in the Nineteenth Judicial District. Plaintiff itself is bringing such claims in other courts.

Third, the Louisiana Binding Arbitration Law ("LBAL") provides that a contractual provision to arbitrate "**shall** be valid, irrevocable, and enforceable . . ." See La. Rev. Stat. 9:4201 (emphasis added). The Louisiana statutes are not irreconcilable. Louisiana courts have addressed the alleged conflict between "exclusive jurisdiction" and arbitration provisions under the LBAL. In *E.C. Durr Heavy Equipment Co., Inc. v. Board of Com'rs of Orleans Levee Bd. and Design Engineering, Inc.*, 98-0325 (La. App. 4 Cir., 1998); 719 So.2d 136, the Fourth Circuit addressed the Levee Board's contention that it could not be compelled to arbitrate because district courts had "exclusive jurisdiction" over disputes against state subdivisions:

> The Levee District argues that the arbitration clause of the contract is invalid because Louisiana district courts have exclusive jurisdiction over a suit against the state or its political subdivision. La. Const. Art. 5, s16 (A)(2). They argue that the Louisiana Governmental Claims Act, La. R.S. 13:5101 et seq., provides the exclusive procedure to resolve a contract claim against the state and requires that suit be instituted in a state district court. Therefore, the Levee District submits that a claim cannot be adjudicated by arbitration and the arbitration clause is an absolutely nullity. That argument has no merit.
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> * * *
>
> The Levee District is correct that the Act establishes procedural rules governing certain actions against the state and requires that a suit against the state be filed in Louisiana district court. That does not conflict with the Louisiana Arbitration Law, La. R.S. 9:4201 et seq. That a lawsuit is subject to certain limitations and rules under the Act does not restrict the right of a party (including the state) to contract for alternative dispute resolution.

The allegedly "exclusive" jurisdiction and venue provisions do not prohibit arbitration. To the extent that there is a valid arbitration agreement and the dispute here falls within the scope of the agreement, plaintiffs should be compelled to arbitrate.

B. The Rehabilitator's Claims Here Arise from the Agreement

Another distinction is that the *Taylor* court found that the claims alleged against E&Y did not stem from the engagement letter containing the arbitration clause. *Taylor*, 958 N.E.2d at 1213. The court noted that the malpractice claim arose from the accountant's statutory duties and not contractual obligations. *Id.* at 1214-16.[1] The other claim involved ACLIC's improper or fraudulent

[1] The liquidator in *Taylor* did not allege a claim for breach contract or ask the court to interpret the contract at issue. *Id.* at 1214-15. The liquidator's complaint alleged the defendant accountant breached duties required by Ohio statutes that required the filing of financial statements, registration of the name of the CPA auditor of the insurance company, conducting audits according to generally accepted auditing standards, and informing the insurance company if it detected material misstatements in financial statements. *Id.* at 1215. The liquidator's claims arose from the

transfer of money after to E&Y after the ACLIC's insolvency which clearly did not derive from the obligations in the engagement letter. *Id.* at 1216-17. Here, all claims, whether styled breach of contract or negligence, stem from the obligations of the Agreement.

Trying to force an analogy with *Taylor*, the Rehabilitator makes the disingenuous argument in his Opposition that the claims against Beam do not arise from the Agreement between it and the LAHC even though he had pled at least fourteen claims of breaches of contract in his Petition. Plaintiff argues, instead, that his claims against Beam are based on negligence and are not contractual. (See Opposition, p. 15).[2] Plaintiff's reliance on *Kroger Co. v. L.G. Barcus & Sons, Inc.*, 44,200 (La. App. 2 Cir. 6/17/09), 13 So.3d 1232 for support is not only misplaced but buttresses Beam's position. That court noted:

> The distinction between damages *ex contractu* and damages *ex delicto* is that the former flow from the breach of a special obligation contractually assumed by the obligor, whereas the latter flow from the violation of a general duty owed to all persons.

Whether the claims here are styled as negligent performance of the contract or as breach of contract, all claims arise out and/or relate to the obligations under that Contract. That is, but for the contract between Beam and the LAHC, the Rehabilitator would have no causes of action against Beam.

Furthermore, the pertinent language in the Arbitration Clause dictates its scope: "The parties agree that any claim or dispute arising under, or relating to this Agreement shall be resolved through this dispute resolution process." (See Plaintiff's Petition, Exh. 3, ¶ 10.6). Pretermitting that the negligence claims are prescribed, every claim against Beam, regardless of whether it is styled as a breach of contract or negligence in contractual performance, derives from the Contract between the parties, falls under the scope of the Arbitration Clause, and must be arbitrated.

C. The Rehabilitator Is in Privity with LAHC

Important here is that the Rehabilitator is pursuing claims against Beam that the LAHC could itself pursue if it were not in rehabilitation. Thus, the Rehabilitator "stands in the shoes" of LAHC by asserting claims that derive from LAHC's rights under the contract *and from no other source*. While the Ohio rehabilitation law had unique sections which materially differ from the Louisiana

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accountant's filing of a false certification of the insurance company's financial statement in violation of Ohio law, not from the accountant's breach of its contract with the insurance company. *Id.* at 1216. Here, unlike the liquidator in *Taylor*, the Rehabilitator has alleged claims of breach of contract and negligent performance of the contract, claims which necessarily arise from the Contract and require the Court to interpret the Contract.

[2] Notably, it is anticipated that when addressing prescription issues, plaintiff will argue that all of his claims arise out of contract because the negligence claims are prescribed on the face of the Petition which was filed a year and four months after the contract had expired.

rehabilitation law, we think the reasoning of the dissent in *Taylor* makes better sense when applied to the language of Louisiana's different law.

Judge O'Donnell reasoned that when a liquidator takes possession of the assets and contracts of the insolvent insurer, it becomes in privity with the insolvent insurer citing

> Cf. *Morris v. Jones* (1947), 329 U.S. 545, 550, 67 S.Ct. 451, 91 L.Ed. 488 ("Nor is there any lack of privity between Chicago Lloyds and the Illinois liquidator. There is no difference in the cause of action, whether Chicago Lloyds or the liquidator is sued" [citations omitted]); *Whitehead v. Gen. Tel. Co.* (1969), 20 Ohio St.2d 108, 49 O.O.2d 435, 254 N.E.2d 10, paragraph four of the syllabus, overruled on other grounds, *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 653 N.E.2d 226 ("Generally, a person is in privity with another if he succeeds to an estate or an interest formerly held by another").
>
> When a liquidator prosecutes or commences an action on behalf of the insolvent insurer or its creditors, members, policyholders, or shareholders, seeking to recover their assets or protect or enforce their rights, the liquidator stands in the shoes of the insolvent insurer. E.g., *Hudson v. Petrosurance*, 10th Dist. No. 08AP–1030, 2009-Ohio-4307, 2009 WL 2596962, ¶ 39, and cases cited therein; *Bennett v. Liberty Natl. Fire Ins. Co.* (C.A.9 1992), 968 F.2d 969, 972; *Costle v. Fremont Indemn. Co.* (D.Vt.1993), 839 F.Supp. 265, 272; *Foster v. Monsour Med. Found.* (Pa.Commw.1995), 667 A.2d 18, 20; *Reider v. Arthur Andersen, L.L.P.* (Conn.Super.2001), 47 Conn.Supp. 202, 205, 784 A.2d 464.

Id.at 1220 (dissent).

Other courts, in states whose law is more closely aligned with the Louisiana law, have agreed. In *Rich v. Cantilo & Bennett, L.L.P.*, 492 S.W. 3d 755 (Tex. App. 2016), an insurance receiver brought suit against an insolvent insurer's former attorney for fraudulent transfers under the Uniform Fraudulent Transfer Act and the Insurance Receivership Act and for voidable preferences under the Insurance Receivership Act; and for breach of fiduciary duty, conspiracy, and negligence. *Id.* at 758-59. The receiver based those claims on allegations that the attorney had billed and was paid for services he did not perform on behalf of the insurer, the attorney had acted on behalf of the insurer's officers to the detriment of the insurer by receiving weekly fee payments, and the attorney represented one of the insurer's officers despite a conflict of interest with the insurer. *Id.* at 758. The arbitration provision at issue in Rich provided that "Any dispute regarding payment shall be submitted to arbitration." Id. at 758.

The Texas Court of Appeals held that the insurance receiver was bound by the insolvent insurer's agreement to arbitrate for actions arising out of the insurer's representation agreement with the attorney (breach of fiduciary duty, conspiracy, and negligence) but not for actions belonging

solely to the receiver in its representative capacity (statutory claims arising only after insolvency proceedings commenced). *Id.* at 762.

In Texas, as here, a receiver (or rehabilitator) is an officer of the court who represents the interests of all persons, including creditors, shareholders, and the public, in the property subject to the receivership (or rehabilitation). *Id.* at 760-61; *cf. Green v. Louisiana Underwriters Ins. Co.*, 571 So. 2d 610, 615 (La. 1990) ("As liquidator or rehabilitator of an insurance company, the Insurance Commissioner acts as an officer of the state to protect the interests of the public, the policy holders, the creditors, and the insurer"). Under the Texas Insurance Code, as under the LUILL, the receiver has "the power to prosecute any action that may exist on behalf of the creditors, members, policyholders, shareholders of the insurer, or the public against any person, except to the extent that a claim is personal to a specific creditor, member, policyholder, or shareholder and recovery on such claim would not inure to the benefit of the estate and is vested with all the rights of the entity" in receivership. *Rich v. Cantilo & Bennett, L.L.P.*, 492 S.W. 3d at 761 (quoting Tex. Ins. Code § 443.154(m), (w)).

However, a receiver who maintains a suit based on an insolvent insurer's claims has no greater rights than the insolvent insurer had and is subject to any agreements the insolvent insurer entered. *Id.* at 761; *see also Reider v. Arthur Andersen, L.L.P.*, 784 A.2d 464 (Conn. Super. Ct.2001) (liquidator stands in the shoes of the insolvent insurer when maintaining a claim the insurer could have brought were it not in liquidation). **An insurance receiver is therefore bound to an insolvent insurer's agreement to arbitrate if the insolvent insurer would have been bound to that agreement to arbitrate.** *Id.* (Emphasis added) (citing *Forex Capital Mkts., LLC v. Crawford*, No. 05-14-00341-CV, 2014 WL 7498051 at *3 (Tex. App. Dec. 31, 2014); *Javitch v. First Union Secs., Inc.*, 315 F. 3d 619, 627 (6th Cir. 2003).

Likewise, in *Foster v. Philadelphia Manufacturers*, 592 A.2d 131 (Pa. Commw. Ct. 1991), the court found that a statutory insurance rehabilitator was bound to arbitration provisions in insurance treaties to which the insolvent insurer was bound. The arbitration provisions were not abrogated just because the insurer was under rehabilitation. *Id.* at 133. The Pennsylvania court noted that, as is the case here, the highest court of that state had never expressly or impliedly interpreted that state's insurer rehabilitation statute to require all disputes involving an insurance rehabilitator to be brought only in a single jurisdiction or venue. *Id.* The court rejected the rehabilitator's arguments that the contractual right to arbitration was unavailable in insurer

insolvency proceedings. *Id.*; *see also In re Rehabilitation of Manhattan Reinsurance Co.*, No. 2844-VCP, 2011 WL 4553582 at * 7 (Del. Ch. Oct. 4, 2011) (holding Delaware law permits enforcement of an arbitration clause in reinsurance agreements against receiver in insurance insolvency proceedings).

In the instant case, the Rehabilitator's suit attempts to prosecute claims for breach of contract, negligence, and gross negligence that all arise out of the Contract. (See Petition ¶¶ 37, 51-69, Exhibit E and Supplemental Petition ¶¶ 41, 54-73, Exhibit F). The factual bases of those claims necessarily implicate the Contract. The arbitration provision contained in the Contract between Beam and the LAHC provides that "any claim or dispute arising under, or relating to this Agreement shall be resolved through this dispute resolution process." Contract § 10.6. Construing the arbitration provision in the Contract broadly as required by Louisiana law, *Aguillard v. Auction Management Corp.*, 04-3804 (La. 6/29/05), 908 So. 2d 1, 18, the Rehabilitator's claims of breach of contract, negligence, and gross negligence are within the scope of the arbitration provision. The Rehabilitator is bound by the arbitration clause in the Contract between Beam and the LAHC, as all the claims pursued by the Rehabilitator arise out of the Contract and are entirely derivative of claims the LAHC could bring were it not in insolvency proceedings.

Additionally, Beam suggests the more persuasive reasoning as applied to the Louisiana law is the *Taylor* dissent's discussion regarding the liquidator being bound by the arbitration provision, regardless of whether "he stands in the shoes of the LAHC":

> Even if the liquidator did not stand in ACLIC's shoes, the liquidator is still bound to arbitrate this claim. The majority determines that this claim does not arise from the engagement letter because it does not seek a declaration of ACLIC's rights and obligations under the engagement letter, and it arises from the liquidator's statutory duties, which exist independently of the engagement letter. As previously explained, however, the duties imposed by Ohio law that E & Y allegedly failed to perform are the same as those set forth in the engagement letter, and whether cast in tort or contract, the issue is one that falls within the broad scope of the arbitration provision. It also bears repeating that the claim alleges that ACLIC "retained" E & Y to conduct its audit and that retention occurred only because of the engagement letter. Moreover, although the liquidator may be empowered by statute to assert this claim, the basis for the claim is E & Y's alleged negligence, which arose from the services it rendered pursuant to the engagement letter. In fact, the complaint alleges the foregoing to establish venue and jurisdiction. Thus, because this claim arises from the engagement letter, the arbitration provision is enforceable against the liquidator.

Id. at 1222 (dissent).[3]

II. EQUITABLE ESTOPPEL SUPPORTS ARBITRATION

The plaintiff should not be allowed to cherry-pick only those provisions of the contract he wants enforced. La. Rev. Stat. 22:2009(E)(4) authorizes the plaintiff as the Rehabilitator "[t]o enter into such agreements or contract as necessary to carry out the full or partial plan for rehabilitation or the order to liquidate and to affirm or **disavow any contract** to which the insurer is a party." (Emphasis added). That is, the plain language of the statute allows the rehabilitator to disavow contract as a whole, not just selected provisions of the contract.[4] See *Fed. Deposit Ins. Co. v. Ernst & Young, L.L.P.* (N.D.Ill. 2003), 256 F.Supp.2d 798, 805 (construing an analogous federal statute that permits a receiver to repudiate "any contract or lease" to allow only the repudiation of a contract as a whole and not "those provisions of a contract with which [the receiver] is dissatisfied").

The Rehabilitator here should not be allowed to prosecute an action for breach of contract and yet seek to escape arbitration by disavowing the arbitration provision contained in that contract. Cf. *Bennett,* 968 F.2d 969; *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (C.A.3 1989), 885 F.2d 1149; *Costle,* 839 F.Supp. at 272 ("if a liquidator seeks to enforce an insolvent company's rights under a contract, she must also suffer that company's contractual liabilities"); *Koken v. Cologne Reinsurance, Ltd.* (D.C.Pa.1999), 34 F.Supp.2d 240; *Foster v. Philadelphia Mfrs.* (1991), 140 Pa.Cmwlth. 186, 592 A.2d 131.

Last, the Permanent Order of Rehabilitation and Injunctive Relief issued by this Court is silent as to mandated venues for derivative or collateral suits. Because there are no statutory exceptions under these circumstances, this Court should order arbitration because it is mandated by the Louisiana Binding Arbitration Law and the parties' contract to arbitrate.

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[3] The dissent also explained why reliance on *Equal Emp. Opportunity Comm. v. Waffle House* (2002), 534 U.S. 279, 122 S.Ct. 754, 151 L.Ed.2d 755, was inappropriate:

> The question in Waffle House involved "whether an agreement between an employer and an employee to arbitrate employment-related disputes bars the Equal Employment Opportunity Commission (EEOC) from pursuing victim-specific judicial relief, such as backpay, reinstatement, and damages, in an enforcement action alleging that the employer has violated Title I of the Americans with Disabilities Act of 1990(ADA), 104 Stat. 328, 42 U.S.C. § 12101 et seq. (1994 ed. and Supp. V)." *Id.* at 282, 122 S.Ct. 754, 151 L.Ed.2d 755. The court held that the employee's agreement to arbitrate did not bind the EEOC from exercising the enforcement authority granted it by Congress, and the "provisions of Title VII defining the EEOC's **1222 authority" served as the predicate for its decision. *Id.* at 285–286, 122 S.Ct. 754, 151 L.Ed.2d 755. The court explained that "[t]o hold otherwise would undermine the detailed enforcement scheme created by Congress [for the EEOC] * * *." *Id.* at 296, 122 S.Ct. 754, 151 L.Ed.2d 755.

Taylor v. Ernst & Young, L.L.P, 958 N.E.2d at 1221-22 (dissent).

[4] The *Taylor* court did not rule on this issue as it was moot because the claims did not arise from the engagement letter. *Id.* at 1219.

CONCLUSION

The Binding Arbitration Law requires that when there is an agreement to arbitrate issues that are within the scope of the arbitration clause, the court shall issue an order directing the parties to proceed to arbitration. Enforcing this mandate is consistent with the permissive venue provisions of the LUILL.

In addition, the Rehabilitator cannot avoid his obligations to arbitrate when the claims could have been alleged by the LAHC. Under that circumstance, the Rehabilitator of LAHC does stand in the shoes of the LAHC. Beam respectfully urges this Court to maintain this exception and dismiss the claims against Beam. Alternatively, Beam prays that this Court grant its motion to stay all proceedings against it in this action until arbitration between the parties has been convened and completed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all known counsel of record by email, facsimile and/or by placing same in the U.S. Mail, properly addressed and postage prepaid, this 25th day of May, 2017.

FREDERIC THEODORE LE CLERCQ

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

STATE OF LOUISIANA

NUMBER: 641 928 SECTION: 26

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

VERSUS

LOUISIANA HEALTH COOPERATIVE, INC.

FILED: STATE APR - 3 2017 DEPUTY CLERK

BY DEPUTY CLERK OF COURT

NOTICE OF INTENT TO PARTICIPATE IN CLASS ACTION LAWSUIT FOR RECOVERY OF RISK CORRIDOR PAYMENTS OWED TO LAHC

NOW INTO COURT, through undersigned counsel, comes James Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator, (hereinafter referred to as "the Commissioner"), and Billy Bostick, Court appointed Receiver, of Louisiana Health Cooperative, Inc. in Rehabilitation ("LAHC"), who hereby gives notice of LAHC's intent to participate in pending class action litigation for recovery of Risk Corridor payments[1] due to LAHC from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS") in the matter entitled "*Health Republic Insurance Company v. United States of America*", case number 1:16-cv-00259-MMS, on the docket of the United States Court of Federal Claims filed on February 24, 2016 (the "Health Republic Class Action Suit"), and certified as a class action opt-in suit by order of the Court on January 3, 2017, without opposition from CMS. See attached order of January 3, 2017, **Exhibit A,** which provided for notice to each Qualified Health Plan ("QHP") operating under the ACA of the right to opt into the class action suit to seek recovery of Risk Corridor payments due under the ACA. See attached Notice and Class Action Opt-In Notice Form, attached as **Exhibit B,** which was received by LAHC on or about March 14, 2017.

NOTICE IS HEREBY GIVEN of the intent of LAHC to participate in the Health Republic Class Action suit for recovery of Risk Corridor payments LAHC claims are owed to LAHC by CMS for LAHC's operations as a QHP for plan years 2014 and 2015.

[1] The Patient Protection and Affordable Care Act, Public Law 111-148) (the "ACA"), provided for certain payments to Qualified Health Plans ("QHP") for losses sustained during the first three years of the ACA implementation, 2014 to 2017, ACA section 1343 and implementing federal regulation, 45 CFR 153.510.

EXHIBIT "A"

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have not served a copy of the foregoing pleading on any counsel in these proceedings because there are no other parties in these proceedings, this 3rd day of April, 2017.

_____

Respectfully Submitted,

JEFF LANDRY
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CERTIFICATE OF SERVICE

I hereby certify that I have not served a copy of the foregoing pleading on any counsel in these proceedings because there are no other parties in these proceedings, this ____ day of April, 2017.

_____