

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

May 28, 2021

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

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

Charles A. Jones
Troutman Pepper
401 9th Street, N.W.
Suite 1000
Washington, DC 20004

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

Reid L. Ashinoff
Justin N. Kattan
Justine N. Margolis
Dentons US, LLP
1221 Avenue of the Americas
New York, NY 10020

George Fagan
Adam Whitworth
Leake Andersson
1100 Poydras Street
Suite 1700
New Orleans, LA 70163

Re: Donelon v. Milliman, *et al.*
Our File No.: 15142

Dear Counsel:

Enclosed please find plaintiff's Motion for Partial Summary Judgment Regarding the Application of Louisiana Law or, in the Alternative, Motion in Limine Regarding Choice-of-Law Issues, along with our supporting memoranda and all exhibits. We have filed this Motion today.

As always, please let us know of any questions or concerns you may have.

Sincerely,

WALTERS, PAPILLION,
THOMAS, CULLENS, LLC

J. E. Cullens, Jr.

JEC/kr
Enclosure

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

MOTION FOR PARTIAL SUMMARY JUDGMENT
REGARDING THE APPLICATION OF LOUISIANA LAW OR,
IN THE ALTERNATIVE,
MOTION IN LIMINE REGARDING CHOICE-OF-LAW ISSUES

NOW INTO COURT, through undersigned counsel, comes James J. Donelon, Commissioner of Insurance for the State of Louisiana (“Commissioner”), in his capacity as Court Appointed Rehabilitator of Louisiana Health Cooperative, Inc. (“LAHC”), through his duly Court appointed Receiver, Billy Bostick (“Plaintiff” or the “Receiver”), who moves for partial summary judgment disposing of the choice-of-law issue raised by defendants regarding which state’s law will be applied to Plaintiff’s contractual claims against Milliman and Buck at trial; alternatively, instead of summary judgment, Plaintiff respectfully requests that this Honorable Court consider and treat this filing as a Motion in Limine and consider and decide the immediate choice-of-law issue following a contradictory hearing. The specifics and bases for this Motion are set forth in the attached Memorandum in Support. In support of this Motion are the attached Exhibits:

- Exhibit 1 Answer by Milliman to Plaintiff’s Fifth Amended Petition, etc.
- Exhibit 2 Answer by Buck to Plaintiff’s Fifth Amended Petition, etc.
- Exhibit 3 “Consulting Services Agreement” between LAHC and Milliman dated August 4, 2011 (Milliman “Contract”)
- Exhibit 4 Letter Agreement between LAHC and Buck dated March 31, 2014 (Buck “Contract”)

WHEREFORE, for the reasons set forth in the attached memorandum in support, the Receiver prays that, following a contradictory hearing, this Honorable Court issue an ORDER stating that Louisiana law shall apply to determine whether any limitation-of-liability clauses found in LACH's contracts with Milliman and Buck are enforceable.

Respectfully submitted,



J. E. Cullens, Jr., T.A., La. Bar #23011
Edward J. Walters, Jr., La. Bar #13214
Darrel J. Papillion, La. Bar #23243
Andrée M. Cullens, La. Bar #23212
S. Layne Lee, La. Bar #17689
**WALTERS, PAPILLION,
THOMAS, CULLENS, LLC**
12345 Perkins Road, Bldg One
Baton Rouge, LA 70810
Phone: (225) 236-3636
Facsimile: (225) 236-3650
Email: cullens@lawbr.net

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via e-mail to all counsel of record as follows, this 28th day of May, 2021, in Baton Rouge, Louisiana.

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

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

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

Reid L. Ashinoff
Justin N. Kattan
Justine N. Margolis
Dentons US, LLP
1221 Avenue of the Americas
New York, NY 10020

Charles A. Jones
Troutman Pepper
401 9th Street, N.W.
Suite 1000
Washington, DC 20004

George Fagan
Adam Whitworth
Leake Andersson
1100 Poydras Street
Suite 1700
New Orleans, LA 70163



J. E. Cullens, Jr.

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

RULE TO SHOW CAUSE

CONSIDERING THE FOREGOING Motion for Partial Summary Judgment Regarding the Application of Louisiana Law or, in the Alternative, Motion in Limine Regarding Choice-of-Law Issues (the “Motion”) filed herein by Plaintiff:

IT IS HEREBY ORDERED that Defendants, Milliman, Inc. and Buck Global, LLC, appear and show cause on the ____ day of _____, 2021 at ____ a.m. (via _ Zoom; via _ Live) why the Motion should not be granted.

Signed at Baton Rouge, Louisiana this ____ day of _____, 2021.

HON. TIMOTHY KELLY
JUDGE, 19TH JUDICIAL DISTRICT COURT

**PLEASE NOTIFY AND SERVE
ALL COUNSEL OF RECORD FOR
MILLIMAN, INC. BUCK GLOBAL, LLC,
GROUP RESOURCES INC. AND IRONHORSE
SPECIALTY INSURANCE COMPANY**

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 TH JUDICIAL DISTRICT COURT
	:	
versus	:	PARISH OF EAST BATON ROUGE
	:	
CGI TECHNOLOGIES AND SOLUTIONS, INC., <i>ET AL.</i>	:	STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT
REGARDING THE APPLICATION OF LOUISIANA LAW OR,
IN THE ALTERNATIVE,
MOTION IN LIMINE REGARDING CHOICE-OF-LAW ISSUES

MAY IT PLEASE THE COURT:

Plaintiff¹ files this Memorandum in support of his “Motion for Partial Summary Judgment Regarding the Application of Louisiana Law or, in the Alternative, Motion in Limine Regarding Choice-of-Law Issues” (the “Motion”) and, for the following reasons, respectfully suggests that Louisiana law should apply to determine whether the limitation-of-liability clauses found in Milliman and Buck’s contracts with LAHC should be enforceable.

I. INTRODUCTION

Your Honor is no doubt familiar with the facts giving rise to this suit.² In brief, and to put the current dispute in better context, as affirmative defenses to Plaintiff’s Fifth Amending and Restated Petition for Damages (filed herein on April 1, 2021), the actuarial defendants, Milliman and Buck, have asserted that the choice-of-law provisions found in their respective pre-receivership contracts with LAHC require that the substantive laws of New York apply to limit their potential liability to the Receiver. Specifically, Milliman and Buck insist that even if the Receiver proves at trial that they were “grossly negligent” in their dealings with LAHC, New York law would mandate that the Receiver’s compensable damages would be limited to “three times the professional fees paid . . . or \$3,000,000, whichever is less,” as to Milliman, and a flat “\$500,000” as to Buck. In contrast, if Louisiana law applies, then upon a showing of “gross negligence” at

¹ James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Court Appointed Rehabilitator of Louisiana Health Cooperative, Inc., through his duly Court appointed Receiver, Billy Bostick (“Plaintiff” or the “Receiver”).

² This case arises out of the failure of Louisiana Health Cooperative, Inc. (“LAHC”), a Louisiana HMO created under the ACA and regulated by the Louisiana Department of Insurance (“LDI”) before its collapse. LAHC sold health insurance policies to the public for less than two years, from 2014 to the summer of 2015, before being placed in receivership after losing more than approximately \$54 million that year alone. Plaintiff Billy Bostick was appointed by the Receivership Court as the LAHC Receiver in September 2015 to take over LAHC and wind down its affairs. This suit was originally filed in August 2016. After many settlements, the defendants that remain in this action are Milliman, Inc. (“Milliman”), Buck Consultants, LLC n/k/a Buck Global, LLC (“Buck”), and Group Resources Incorporated (“GRI”) and its insurer, Ironshore Specialty Insurance Company (“Ironshore”).

trial, then these pre-receivership limitation-of-liability clauses would be unenforceable, and both Milliman and Buck would be potentially liable to the full extent of the compensable damages caused by their “grossly negligent” conduct.³

The Receiver files this Motion to determine whether New York law or Louisiana law regarding the “gross negligence” standard necessary to invalidate the contractual limitation-of-liability clauses found in Milliman and Buck’s pre-receivership contracts will apply at the trial of this matter. Because this pre-trial determination will necessarily influence ongoing discovery, expert analysis, settlement discussions, and trial presentation, the Receiver suggests that this important legal determination be made sooner rather than later. For all of the following reasons, the Receiver respectfully shows and prays that Louisiana law regarding “gross negligence” should apply at the trial of this case.

II. PARTIAL SUMMARY JUDGMENT IS APPROPRIATE

La. C.C.P. art. 966(E) provides that a “summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties,” even if granting such relief does not dispose of the entire controversy. A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The Receiver alleges that there is no genuinely disputed fact bearing upon any choice-of-law issue raised as a defense by Milliman or Buck which would preclude partial summary judgment regarding the important choice-of-law issues before this Honorable Court. As such, the Receiver respectfully prays that a partial summary judgment be rendered in his favor which rules that, as a matter of law, the law of Louisiana regarding the “gross negligence” standard shall apply to determine whether the limitation-of-liability clauses found in Milliman and Buck’ pre-receivership are enforceable.

A. List of Essential Legal Elements

As required by Local Rule 9.10, the following is a list of essential legal elements necessary to render partial summary judgment:

1. Louisiana law is the *lex causea* pursuant to a conflict of laws analysis. La. C.C. arts. 3537 & 3515.

³ Although GRI’s pre-receivership contract also contains certain limitation-of-liability clauses, it selects Louisiana law to control the enforcement of these clauses; therefore, according to Louisiana law, upon a showing that GRI’s conduct was “grossly negligent,” then GRI will face unlimited exposure for all compensatory damages caused by its actionable conduct.

2. An actual conflict exists between New York and Louisiana law regarding whether “grossly negligent” conduct invalidates a limitation-of-liability clause. *Cf. Matter of Part 60 Put-Back Litigation*, 166 N.E.3d 189 (N.Y. 2020) and La.C.C. art. 2004.
3. Because New York law “contravenes the public policy” of Louisiana, the subject choice-of-law clauses are unenforceable and do not limit the Receiver’s contractual claims or damages asserted herein against Milliman and Buck. La. C.C. art. 3540.

B. List of Undisputed Material Facts

As required by Local Rule 9.10, the following is a list of essential of undisputed material facts:

1. In its Answer, attached Exhibit 1, Milliman alleged the following affirmative defenses, among others:

FIRST DEFENSE

Milliman affirmatively pleads, as though set forth herein in full, all terms and conditions of the Agreement, which are fully binding upon Plaintiff as the party vested by operation of law with the contractual rights and obligations of LAHC.

TWELFTH DEFENSE

Plaintiff’s claims and damages, if any, are contractually limited pursuant to the Agreement.

THIRTEENTH DEFENSE

Under the Agreement, Plaintiff has waived and is barred from asserting any claims for lost profits, incidental damages, indirect damages, consequential damages, special damages, exemplary damages and punitive damages. Plaintiff is fully bound to those contractual provisions as the successor to the contractual rights and obligations of LAHC.

2. In its Answer, attached Exhibit 2, Buck alleged the following affirmative defenses, among others:

FIRST DEFENSE

All of Plaintiff’s claims against Buck arise out of and are subject to the terms of a written Engagement Agreement (the “Engagement Agreement”) between Buck and Louisiana Health Cooperative, Inc. (“LAHC”). Buck affirmatively pleads, as though set forth herein in full, all terms and conditions of the Engagement Agreement, which are fully binding upon Plaintiff as the successor to the contractual rights and obligations of LAHC.

SIXTEENTH DEFENSE

Plaintiff’s claims and damages, if any, are contractually limited to \$500,000 pursuant to the Engagement Agreement, which is fully binding upon Plaintiff as the successor to the contractual rights and obligations of LAHC.

SEVENTEENTH DEFENSE

Under the Engagement Agreement, Plaintiff has waived and is barred from asserting any claims for lost profits, indirect damages, consequential damages, special damages, incidental damages, exemplary damages, and punitive damages. Plaintiff is fully bound to those contractual provisions as the successor to the contractual rights and obligations of LAHC.

EIGHTEENTH DEFENSE

Pursuant to the terms of the Engagement Agreement, Plaintiff's claims against Buck are subject to and governed exclusively by New York law.

3. Louisiana's connection and relationship to the parties and this dispute predominate over New York's interest in this dispute.

C. Reference to Relevant Documents

As required by Local Rule 9.10, the following is a list of those documents relevant to this Motion:

- | | |
|-----------|--|
| Exhibit 1 | Answer by Milliman to Plaintiff's Fifth Amended Petition, etc. |
| Exhibit 2 | Answer by Buck to Plaintiff's Fifth Amended Petition, etc. |
| Exhibit 3 | "Consulting Services Agreement" between LAHC and Milliman dated August 4, 2011 (Milliman "Contract") |
| Exhibit 4 | Letter Agreement between LAHC and Buck dated March 31, 2014 (Buck "Contract") |

III. IN THE ALTERNATIVE, A MOTION IN LIMINE TO DETERMINE CHOICE-OF-LAW ISSUES IS APPROPRIATE

In the event that either defendants and/or this Honorable Court maintains that one or more issues of material fact bearing upon the immediate conflict of laws analysis remain genuinely disputed and therefore precludes summary judgment, Plaintiff respectfully requests and prays that this Honorable Court consider this Motion as a Motion in Limine seeking a pre-trial ruling regarding this important choice-of-law issue. Pursuant to the authority granted to this Honorable Court by La. C.E. Articles 201 & 202 to make certain pre-trial determinations of fact and/or law, Plaintiff respectfully suggests that it is appropriate and customary for trial court judges to determine applicable law prior to trial and after sufficient briefing and argument of counsel. *See, e.g., Wooley v. Lucksinger*, 2009-0571 (La. 4/1/11), 61 So.3d 507; *Furlough v. Union Pacific R.R. Co.*, 766 So. 2d 751 (La. Ct. App. 2d Cir. 2000) (trial court has "great discretion" in considering motions in limine); *Gunter v. Plauche*, 428 So. 2d 1094 (La. Ct. App. 1st Cir. 1983), *judgment*

rev'd, 439 So. 2d 437 (La. 1983); *Russell v. Lake Sherwood Acres, Inc.*, 388 So. 2d 822 (La. Ct. App. 1st Cir. 1980).⁴

IV. THE CHOICE-OF-LAW DISPUTE AND ANALYSIS

A. Milliman and Buck's Pre-Receivership Contracts Choose New York Law

Putting aside any issue of whether the Receiver, a non-signatory, is bound by the choice-of-law clauses of these pre-receivership contracts,⁵ both the Milliman and Buck contracts provide that New York law should apply regarding the construction and enforcement of their contracts with LAHC. Milliman's choice-of-law clause provides:

5. **CHOICE OF LAW.** The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of New York without regard to its conflict of laws provisions. In the event any provision of this agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect.

(Ex. 3, p. 2, Milliman's contract). Buck's choice-of-law clause provides:

9. Miscellaneous. . . . The parties hereto expressly agree that this Agreement will be construed and enforced in accordance with the internal laws of the State of New York, without regard to New York choice of law provisions. . . .

(Ex. 4, p. 3, Buck's contract).

Furthermore, and significantly for the purposes of this Motion, both Milliman and Buck attempt to limit their respective liability to LAHC, and by extension the Receiver, by including limitation-of-liability clauses in their pre-receivership contracts. Milliman's limitation-of-liability clause provides:

3. **LIMITATION OF LIABILITY.** . . . The parties agree that Milliman, its officers, directors, agents and employees, shall not be liable to Company, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three times the professional fees paid to Milliman with respect to the work in question or \$3,000,000, whichever is less. In no event shall Milliman be liable for lost profits of Company or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Milliman.

(Ex. 3, p. 1). Buck's limitation-of-liability clause provides:

7. Remedies. Client shall not assert or seek, and Buck Consultants shall not be liable to Client for, any damages or other monetary claim or claims on any legal or equitable

⁴ See also, American Bar Association Civil Trial Practice Standard 18 (1998): "In advance of trial, counsel should seek, and the court should provide, judicial resolution of significant evidentiary and legal issues that are susceptible of pretrial adjudication and are likely to have an impact of consequence on the trial."

⁵ Whether a pre-receivership contract should be enforced against a non-signatory to that contract, like the Receiver here, is a matter of state contractual law. Louisiana courts have specifically recognized that the Commissioner, in his capacity as rehabilitator, does not simply "stand in the shoes" of the insurer, but that his responsibilities include protection of the general public and the policyholders and creditors as well as the insurer itself. See, e.g., *Donelon v. Shilling*, 2019-00514 (La. 4/27/20), --So.3d--; 2020 WL 2079362; *LeBlanc v. Bernard*, 554 So.2d 1378, 1381(La. App. 1st Cir.1989), writ denied, 559 So.2d 1357 (La.1990). Because the Commissioner does not simply "stand in the shoes" of LAHC, the direct-benefit estoppel doctrine is inapplicable against the Commissioner, a non-signatory, as a matter of Louisiana law. Plaintiff fully reserves his right to argue that he is not bound by any of the terms of the pre-receivership contracts with defendants at a later date.

theory of liability or recovery exceeding, in the aggregate, \$500,000. Client hereby waives and agrees not to assert any claims for lost profits, indirect damages, consequential damages, special damages, incidental damages, exemplary damages, and punitive damages, regardless of whether such claims arise pursuant to this Agreement or pursuant to another legal or equitable claim or relationship between the parties. The provisions of this Section 7 shall apply regardless of whether any such claim or claims arise by statute, contract, indemnity, this Agreement, or otherwise arising in law or equity in any jurisdiction. . . .

(Ex. 4, p. 3). Although the primary focus of this Motion is on the monetary damages caps found in these contracts, any limitation-of-liability clause which attempts to restrict the number or types of claims that the Receiver may bring or limits the nature of damages the Receiver may recover at trial from Milliman or Buck, are also unenforceable upon a showing of “gross negligence” according to Louisiana law. As such, the Receiver prays that all limitation-of-liability clauses found in Milliman and Buck’s contracts with LAHC be subject to this Honorable Court’s ruling, not just the monetary caps on contractual damages.

B. Milliman and Buck’s Choice-of-Law Clause are Unenforceable

Louisiana Civil Code Article 3540 contains Louisiana’s rule regarding choice-of-law clauses. Party autonomy refers to the parties’ general right to select the law that will govern their contract. Art. 3540 provides:

All other issues of conventional obligations are governed by the law expressly chosen or clearly relied upon by the parties, except to the extent that law contravenes the public policy of the state whose law would otherwise be applicable under Article 3537.

La. C.C. art. 3540. The first step of Louisiana’s conflict of laws analysis is to determine the law that would have been applied in the absence of a choice-of-law clause, typically referred to as the *lex causae*.⁶ The second step of this analysis is to determine whether an actual conflict of laws exists; that is, does the law selected by the choice-of-law clause conflict with the *lex causae*? If the chosen law and the *lex causae* are the same, then there is no conflict to analyze. The third step is to examine whether the dispute at issue falls within the scope of the subject choice-of-law clause. If the subject choice-of-law clause does not apply to the dispute at issue, then again, there is no conflict and the *lex causae* will apply. The fourth and last step of this analysis is to determine whether the application of the chosen law will violate a strong public policy of the *lex causae*. If the chosen law “contravenes the public policy” of the *lex causae*, then the choice-of-law clause will not be enforced, and the law that would have otherwise applied (i.e., the *lex causae*) should

⁶ In essence, *lex causae* is shorthand for and means “the law of the state whose law would otherwise be applicable but for the choice-of-law clause.”

be applied to resolve the issue. Each of these steps in the conflict of laws analysis will be addressed and analyzed in turn.

1. Louisiana's Law is the *Lex Causae*

As directed by Art. 3540, one must look to and analyze Article 3537 to determine “the law of the state whose policies would be most seriously impaired if its law were not applied to that issue”; *i.e.*, the *lex causae*. Art. 3537 provides:

Except as otherwise provided in this Title, an issue of conventional obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.

That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the transaction, including the place of negotiation, formation, and performance of the contract, the location of the object of the contract, and the place of domicile, habitual residence, or business of the parties; (2) the nature, type, and purpose of the contract; and (3) the policies referred to in Article 3515, as well as the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other.

La.C.C. art. 3537. There should be no doubt that Louisiana is the state whose policies would be most seriously impaired if its laws were not applied to the immediate issue of what standard of “gross negligence” should be applied when determining the enforceability of the limitation-of-liability clauses found in Milliman and Buck’s contracts.

a. Pertinent Contacts of Each State—Louisiana

Both the Milliman and Buck contracts were negotiated and formed, at least in part if not exclusively, in Louisiana. The object of both contracts—to provide actuarial services for LAHC—related primarily, if not exclusively, to setting premium rates and otherwise determining the financial condition and viability of a regulated Louisiana HMO, namely LAHC. LAHC sold its policies primarily, if not exclusively, to Louisiana residents. The medical providers who relied upon and cared for LAHC policyholder were primarily, if not exclusively, located in Louisiana. LAHC’s entire business was conducted in Louisiana. Other than Milliman having two (2) of its approximately 32 offices in New York (Milliman is based in Seattle, Washington) and Buck being domiciled in New York, none of the pertinent contacts identified by Article 3537(1) point to any state other than Louisiana. None of these facts can be genuinely disputed.

b. Nature and Purpose of Contract—Louisiana

LAHC contracted with Milliman and Buck to perform professional actuarial work for the start-up health insurance company in Louisiana. Milliman created the feasibility study that

allowed LACH to secure a \$12 million start-up loan and a \$52 million solvency loan from the federal government. Milliman also set the premium rates charged by LAHC in 2014. Buck set the premium rates charged by LAHC in 2015 and, *inter alia*, “prepare[d] and submit[ed] rate filing and assist [LAHC] with state rate filing.” Ex. A to Ex. 4. In short, the nature and purpose of both of these contracts was to perform essential actuarial services for LAHC so that it could first acquire sufficient loans from the federal government to open its doors, and then so it could charge sufficient premiums to its policyholders so that it could pay claims, repay its loans to the federal government, and be viable health insurance company in Louisiana. The subject contracts did not serve any meaningful purpose involving the state of New York.

c. General Policy Concerns—Louisiana

i. “Most Seriously Impaired” State—Louisiana

Article 3537 specifically refers to “the policies referred to in Article 3515” when making the *lex causae* determination. Article 3515 provides:

Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.

That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state.

La.C.C. art. 3515. In comparison to Louisiana’s significant contacts with and interest in this contract involving a Louisiana health insurance company, New York has essential no pertinent contacts with this dispute other than being the domicile of Buck and a business location of Milliman.

ii. Relationship of Each State to Parties and Dispute

Other than having an interest in protecting its domiciliary, Buck, and to a much lesser degree Milliman, from unlimited liability upon a showing of “gross negligence,” New York really has no pertinent contacts with or interest in this dispute. LACH sold no policies in New York or to New York citizens. No medical providers in New York provided care to LAHC policyholders. The New York Department of Insurance did not regulate LAHC and has no interest in the fate of LAHC or its creditors or, for that matter, the general population of Louisiana.

In *Robinson v. Robinson*, 1999-3097 (La. 1/17/01), 778 So.2d 1105, the Louisiana Supreme Court observed and emphasized that the state whose law is chosen by the parties must have some meaningful connection with the dispute or parties to be applied. According to the Louisiana Supreme Court:

While a choice of law is permissible, it should have some inherent link to the contracting parties. To choose a state's law that would unfairly benefit one [party] over another, absent some significant connection to that state is not just, and more importantly, against the public policy of our state.

Id. at 1117. Although *Robinson* was a divorce proceeding involving a partition agreement, the reasoning of the Court is sound. Just as our state's "paramount" interest in *Robinson* was to "safeguard economically and politically disadvantaged spouses," an overriding interest in this insurance dispute revolves around Louisiana's significant interest in protecting the creditors and policyholders of LAHC and the general public, all of whom are represented by the Receiver. Because New York has no real connection to this insurance dispute rooted in Louisiana, *Robinson* strongly supports a finding that Louisiana law is the *lex causea* in this case.

iii. Minimizing Adverse Consequences

Article 3515 directs this Honorable Court to consider "the policies and needs of the interstate" systems when making this *lex causae* determination. Each state has its own department of insurance which regulates and makes sure that domestic insurance companies follow the law and, to the greatest extent possible, protect its citizens. Whether a domestic insurance company like LAHC secures competent actuarial services is vitally important to and of great interest to the state where that insurance company does business: Louisiana. New York, on the other hand, is not really interested in whether insurance companies operating in other states and regulated by other insurance departments secure competent actuarial help.

The "justified expectations of the parties" in a post-receivership proceeding are not met if a foreign state's law is applied, in effect, to lower the standard of conduct that would typically apply to professionals who provide "grossly negligent" services to a domestic insurance company. In other words, absent an enforceable choice-of-law clause, one would justifiably expect that an actuary who provides "grossly negligent" services to a Louisiana insurance company, would be judged against a standard set by Louisiana law, and not by a much lower standard that, if applied, would effectively exonerate the "grossly negligent" professional from being responsible for the full extent of the damages she caused. Indeed, the "adverse effects that might follow" from

subjecting the Receiver and the interests he represents are dramatically increased if New York's law is applied here. All of the relevant factors identified by Article 3515 point overwhelmingly to Louisiana as being the state whose laws would be most seriously impaired if its laws were not applied in this case involving, at its core, a failed insurance company doing business in Louisiana.

d. Orderly Planning, Protection, and Undue Imposition

Article 3537(3) directs this Honorable Court to consider “the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other” when determining the *lex causea*. This consideration strongly points to Louisiana law being the *lex causea* here. How could Louisiana Receivers plan for the “orderly” disposition of a failed insurance company's claims if a private party whose “grossly negligent” conduct caused the insurance company to suffer tremendous damages, could effectively avoid Louisiana law through a pre-receivership choice-of-law clause that selected the law of another state that would, if applied, shield that “grossly negligent” party from full liability? Allowing private parties to contractually avoid the typical recovery rights of insurance Receivers in post-receivership proceedings would frustrate “multistate commercial intercourse,” not promote it. Indeed, the Receiver, and the creditors, policyholders, and providers he represents, would be “unduly imposed upon” by both Milliman and Buck if they are allowed to escape being held fully responsible for all damages caused by their “gross negligence” through a choice-of-law clause.

That Louisiana law is the *lex causae* is obvious in this case. The relative strength and pertinence of Louisiana's connection to and interest in this insurance dispute is overwhelming in comparison to New York's practically non-existent interest. There can be no genuine dispute that Louisiana, “in light of its relationship to the parties and the dispute and its policies rendered pertinent by that relationship, would bear the most serious legal, social, economic, and other consequences if its law were not applied to that issue.” Revision Comment (b) to Art. 3515. Any argument advanced by Milliman and Buck to the contrary should be dismissed out of hand.

2. An Actual Conflict Exists Between New York Law and Louisiana Law

“Grossly negligent” actors may limit their contractual damages under New York Law, while that same “grossly negligent” conduct will invalidate any limitation-of-liability clause under Louisiana law.

a. New York Law

The Court of Appeals of New York (the highest state court in New York)⁷ recently addressed whether limitation-of-liability clauses are invalidated by “grossly negligent” conduct in *Matter of Part 60 Put-Back Litigation*, 166 N.E.3d 180 (N.Y. 2020). In *Matter of Part 60*, the contractual clause at issue was not an exculpatory clause or a nominal damages clause, but rather a true limitation-of-liability clause, which purportedly limited the plaintiff to either cure of the breach or repurchase of the complained-of loan. The issue was whether the jurisprudential “gross negligence” exception under New York law would apply to invalidate such a contractual limitation-of-liability clause. New York’s highest state court held that the “gross negligence” exception would not apply to a reasonable limitation-of-liability clause. The Court held that the “gross negligence” exception applies only when the limitation-of-liability clause is completely exculpatory (*i.e.*, renders the breacher completely immune) or allows only nominal damages such as \$250 or less. In other words, according to New York law, if more than nominal damages are allowed by the limitation-of-liability clause, it does not matter if gross negligence is involved, because the limitation-of-liability clause will be enforced anyway.

The New York Court of Appeal in *Matter of Part 60*, after reviewing New York law regarding whether “grossly negligent” conduct will invalidate limitation-of-liability clauses, held:

We have not yet determined whether grossly negligent conduct may render unenforceable contractual provisions that do not wholly insulate a party from liability for its breach, but instead impose reasonable limitations on either liability or the remedies available to the non-breaching party. We conclude that, in a breach of contract case, grossly negligent conduct will render unenforceable only exculpatory or nominal damages clauses, and the public policy rule does not extend to limitations on the remedies available to the non-breaching party.

Id. at 187.⁸ In light of the recent holding of *Matter of Part 60*, because both Milliman and Buck’s limitation-of-liability clauses are not exculpatory or nominal in nature,⁹ if New York law is applied to determine the limit of their contractual damages potentially owed to the Receiver in this case, then the limitation-of-liability clauses found in their respective, pre-receivership contracts would probably be enforced to dramatically limit the Receiver’s recoverable damages caused by their allegedly “grossly negligent” conduct. In other words, if applied, New York law would excuse

⁷ The New York Court of Appeals is the highest court in the Unified Court System of the State of New York; in essence, the New York Court of Appeals is the equivalent of the Louisiana Supreme Court.

⁸ The New York Court cited Williston on Contracts with approval, which provides: “‘A total immunity clause is bad; a limitation provision, if reasonable, is not. In truth, the rule rests not so much on the basis that the immunity provision may be avoided for fraud in the inducement of the contract, but on the principle that the provision is illegal, and therefore null, because it violates public policy’” 15 Williston on Contracts § 1750A at 147 (3d ed 1972)(citations omitted).

⁹ See Ex.3, p. 1 and Ex. 4, p. 3.

Milliman and Buck's "grossly negligent" conduct and limit the Receiver's potential recovery to a maximum of \$3 million against Milliman and a flat \$500,000 against Buck. According to New York law, the "public policy rule" that holds "grossly negligent" actors responsible for all of the damages caused by their egregious conduct does not extend to contractual limitation-of-liability clauses.

Significantly, it is important to note that *Matter of Part 60* did not involve a limitation-of-liability clause found in a pre-receivership contract that was being enforced against an insurance receiver seeking compensatory damages caused by the breacher's "grossly negligent" conduct. Plaintiff respectfully suggests that the highest court in New York may very well have held differently in such a post-receivership suit brought by a New York insurance receiver seeking damages for the benefit of the failed insurance company's policyholders, creditors, and the general public at large, which were caused by the "grossly negligent," pre-receivership conduct of the party trying to limit its liability. Indeed, it is conceivable, if not probable, that a New York court facing the immediate issue in the context of an insurance receivership proceeding may very well recognize and rely upon the strong public policy of New York insurance receivership laws and hold that "grossly negligent" actors may not enforce their pre-receivership limitation-of-liability clauses against an insurance receiver. For this reason, in the unlikely event that New York law is determined to apply in this Louisiana proceeding, Plaintiff fully reserves his right to argue that *Matter of Part 60* is distinguishable and that even New York law would not enforce the subject limitation-of-liability clauses given the strong public policy interests inherent in this and any state receivership proceeding.¹⁰

Moreover, and equally significant, is the recognition that the holding of *Matter of Part 60* is narrowly restricted to cases involving contractual damages only. According to New York's highest court:

As we have repeatedly emphasized, where, as here, the causes of action alleged in the complaint sound purely in breach of contract, the gross negligence public policy exception may render unenforceable only exculpatory or nominal damages clauses. Notably, some cases do not clearly sound in either tort or contract and instead fall into the "borderland

¹⁰ Conceptually, if New York law would invalidate the subject limitation-of-liability clauses in the insurance receivership context because of the overriding public policy concerns at play, then no actual conflict of laws would exist, because the same result would follow regardless of whether New York or Louisiana law is applied; namely, "grossly negligent" actors would not be able to limit their potential exposure to insurance receivers through a private, pre-receivership limitation-of-liability clause. Because no reported New York decision has addressed this precise issue, however, it would be necessary for a Louisiana Court to make an educated guess regarding how New York's highest court would rule if ever faced with this issue. Rather than force Louisiana courts to guess regarding what New York courts would do given the facts of this case, the better and more sound approach is for this Honorable Court to engage in a conflicts of law analysis to determine whether the holding of *Matter of Part 60*, if extended and applied in the insurance receivership context, contravenes the strong public policy of Louisiana. Of course, that is the essential purpose of this Motion.

between tort and contract.” In some of those cases, where the relationship between the parties is formed by contract, the defendant’s conduct also gives rise to separate liability in tort arising from a duty of care independent of the contract, which duty of care may be breached by the same conduct constituting the contractual breach. For the reasons explained below, that is not the case here. . . . Our holding about the scope of the public policy rule today applies solely to cases that, like this one, sound purely in breach of contract. We express no opinion on the scope of the gross negligence public policy rule in cases that involve cognizable tort claims or claims that straddle the line between contract and tort.

Id. at 358-59 (citations omitted). In cases like the present one, where the Receiver has brought both contract and tort claims against Milliman and Buck and is seeking both contract and tort damages from them, *Matter of Part 60* and New York law arguably does not apply to limit the Receiver’s tort damages in any way even if the subject limitation-of-liability clauses are enforced. These limitation-of-liability clauses simply do not apply to the Receiver’s tort claims. Indeed, as discussed in detail in Section IV.B.3 below, because both Milliman and Buck’s choice-of-law clauses only apply to contractual claims (and not tort claims), New York law certainly does not apply to limit the Receiver’s tort claims and damages against Milliman and Buck in any way.

b. Louisiana Law

In sharp contrast to New York’s jurisprudential rule that “grossly negligent” actors may effectively limit their contractual liability through the use of limitation-of-liability clauses, positive, statutory Louisiana law strictly prohibits “grossly negligent” actors from doing so. Louisiana Civil Code Article 2004 provides, in pertinent part:

Any clause is null that, in advance, excludes or limits the liability of one party for intentional or gross fault that causes damage to the other party.

La.C.C. art. 2004. This Civil Code Article is the “solemn expression of legislative will” and in Louisiana, as in other civil law jurisdictions, legislation is superior to any other source of law—including jurisprudence. La.C.C. arts. 1, 2, 3, 4. According to the official comments to Article 2004, “such [limitation-of-liability] clauses are against public policy because the overriding principle of good faith would be destroyed if it were possible to contract away liability” in cases involving “intentional or gross fault.” La.C.C. art. 2004; Revised Comments (a). Article 2004 embodies Louisiana’s strong public policy that fraudulent or “grossly negligent” actors should not be able to limit their liability through private contract.

Louisiana courts have applied Article 2004 in various contexts to invalidate limitation-of-liability clauses upon a showing of “gross negligence.” *See, Wadick v. General Heating*, 2014-0187 (La. App. 4th Cir. 7/23/14), 145 So.3d 586; *Tudor Chateau v. D.A. Exterminating*, 96-0951 (La. App. 1st Cir. 2/14/97), 691 So.2d 1259; *Sportsman Store v. Sonitrol Security*, 98-851 (La.

App. 3rd Cir. 12/23/98), 725 so.2d 74, 82 (“We find that the cumulative acts of negligence by Sonitrol in installing the system constitute such an extreme lack of ordinary and reasonable care as to compromise gross negligence”; therefore, Article 2004 invalidates limitation-of-liability clause); *Houston Exploration v. Halliburton*, 269 F.3d 528 (5th Cir. 2001).

According to Louisiana law, the kind of “gross negligence” necessary to invalidate a limitation-of-liability clause pursuant to Article 2004 lies between simple negligence and intentional conduct.

The Louisiana statutes and cases generally define gross negligence as conduct which falls below that which is expected of a reasonably careful person under like circumstances, or which is less than the diligence which even careless men are accustomed to exercise. Gross negligence is also “reckless disregard” or “careless indifference,” and may involve a gross or substantial deviation from an expected or defined standard of care.

Rosenblath’s, Inc. v. Baker Indust., Inc., No. 25685 (La. 2d Cir. 3/30/94), 634 So.2d 969, 973.

The Fifth Circuit recently applied Article 2004 to invalidate a limitation-of-liability clause upon a showing of “gross negligence.” According to the Fifth Circuit:

Louisiana law provides that any “clause is null that, in advance, excludes or limits the liability of one party for intentional or gross fault that causes damage to the other party.” La.C.C. art. 2004. The term “gross fault” in that provision “encompasses not only gross negligence, but also bad faith breach of contract or fraud.” . . . There was sufficient evidence from which the jury could reasonably conclude that [defendant] breached the contract in bad faith. Therefore, the provision of the subcontract barring delay damages was unenforceable under Louisiana law.

Alonso v. Westcoast Corp., 920 F.3d 878, 885 (5th Cir. 2019)(citations omitted). As specifically plead by the Receiver and as discussed below, the ultimate fact finder may easily consider Milliman and Buck’s conduct here to constitute “gross negligence,” “careless indifference,” and “bad faith.”

The actual conflict here between New York law and Louisiana law is apparent: if New York law (*i.e.*, the holding of *Matter of Part 60*) is applied, even if the Receiver proves that Milliman and Buck’s “grossly negligent” conduct caused LAHC to sustain contractual damages in excess of \$30 million, the most the Receiver can recover from these “grossly negligent” actors is about \$3.5 million.¹¹ If, however, Louisiana law applies as it should, then upon a showing that Milliman and Buck were “grossly negligent” regarding their work done for LAHC, then the subject limitation-of-liability clauses are unenforceable, and the Receiver may recover the full damages caused by their egregious conduct without limitation.

¹¹ This composite amount is probably less than \$3.5 million, given that “three times” the professional fees paid by LAHC to Milliman appears to be considerably less than the \$3 million cap found in Milliman’s contract.

3. Only the Receiver's Contractual Damage Claims are Within the Scope of Milliman and Buck's Choice-of-Law Clauses

The next step of the conflicts of law analysis is to determine the scope of the subject choice-of-law clauses. If the resolution of the immediate issue falls outside of the contractual language used by Milliman and Buck, then the *lex causae* (i.e., Louisiana law) applies, as there is no choice-of-law issue to be decided.

Both the Milliman and Buck choice-of-law clauses only apply to contractual claims asserted against them by the Receiver. "The construction, interpretation, and enforcement of the Agreement," reads Milliman's clause, "shall be governed by the substantive contract law of the State of New York without regard to its conflict of law provisions." Ex. 3, p. 2. Similarly, Buck's clause reads, "The parties hereto expressly agree that this Agreement will be construed and enforced with the internal laws of the State of New York, without regard to New York choice of law provisions." Ex. 4, p. 3. Significantly, neither Milliman nor Buck used expansive or broad language to increase the scope of their choice-of-law clauses to include non-contractual claims, like tort claims. The Receiver has asserted both contract and tort claims¹² against Milliman and Buck. To the extent the ultimate trier of fact evaluates and awards damages to the Receiver which are rooted in the Receiver's tort claims against them, according to the language of the subject contracts, the law of Louisiana (i.e., *the lex causae*) applies to those tort claims and damages.

The Eastern District Court of Louisiana confronted a similar issue regarding the scope of a given choice-of-law clause. In *Dorsey v. Northern Life Ins. Co.*, 2005 WL 2036738 (E.D. La. 2005), an agreement between independent insurance agents and a life insurance company contained the following choice-of-law clause:

This agreement is governed by the laws of the State of Washington. In any action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement, you agree (1) to submit to the jurisdiction of any court sitting in King County, Washington, (2) to waive any objection you may have now or in the future to the laying of venue in any such action or proceeding in any such court, and (3) if you are not the prevailing party, to pay all of our expenses, including reasonable attorneys' fees, incurred by us to enforce our rights.

¹² The Receiver has asserted independent tort claims (i.e., "professional negligence" and "negligent misrepresentation" and "breach of fiduciary duty" claims) against both Milliman and Buck that are rooted in and arise out of the professional standards and general law which exist separate and apart from defendants' pre-receivership contracts with LAHC. Here, the Receiver is not asserting purely contractual claims against Milliman and Buck and he is not solely seeking a declaration of Milliman and Buck's obligations under their respective contracts with LAHC. Instead, as alleged by Plaintiff, Milliman and Buck owed a duty to LAHC to exercise reasonable care and to act in accordance with the professional standards applicable to actuaries and, further, that Milliman and Buck breached this duty by, *inter alia*: conditioning payment upon a successful result, which compromised Milliman's independence as an actuary; performing actuarial work for LAHC that was unreliable, inaccurate, and not the result of careful, professional analysis (i.e., "grossly negligently").

Id. at *4. Like Milliman and Buck’s choice-of-law clauses here, the clause at issue in *Dorsey* did not refer to or attempt to encompass extra-contractual or tort issues. Because the clause was narrow in scope, the federal court in *Dorsey* correctly agreed with plaintiff in that case and held that although this clause establishes that Washington law will govern the interpretation and construction of the contract, the narrowly-worded choice-of-law provision does not control tort claims. *Id.* at *6 (“Courts in this circuit have repeatedly construed similarly worded choice of law clauses to apply only to contract claims and not to tort claims arising out of the contractual relationship.”)(citations omitted).

Because both Milliman and Buck’s choice-of-law clauses only refer to “this Agreement,” they do not encompass tort claims arising from their contractual relationship with LAHC. Milliman and Buck could have easily worded their clauses more broadly to refer to the entire relationship resulting from the underlying contract, but they did not. Although a more broadly worded choice-of-law clause referring to the entire relationship, for example, and “any and all claims arising thereunder,” may have arguably encompassed tort claims, that is an academic debate for another day and in another case.¹³ Here, Louisiana law applies with full force to all of the Receiver’s tort claims asserted against Milliman and Buck because their own choice-of-law clauses do not choose New York law to apply to tort claims. This Motion, therefore, is only concerned with determining which state’s law applies to the Receiver’s contractual claims and damages against Milliman and Buck.¹⁴

¹³ Indeed, although this Honorable Court need not address or decide the rather “academic” issue of whether parties may or may not contractually chose which state’s law will apply to future tort claims, this issue is provocative. As acknowledged by the Louisiana Civil Law Treatise regarding Sales, the drafter of Louisiana’s Conflict of Laws Articles, Prof. Symeonides, agreed with the ruling in *Dorsey* because “article 3540 of the Louisiana Civil Code confines party autonomy to ‘conventional obligations’ ... [and] that the choice of words in article 3540 was intentional.” 24 La.Civ.L. Treatise, Sales, § 1:18 (citations omitted.). Prof. Symeonides suggests that, in Louisiana at least, parties only have the contractual power to choose a law other than the *lex causea* in matters involving “conventional obligations.” According to Prof. Symeonides, although “most American courts assume that [parties may choose the law for future tort claims is] a matter of contractual intent and then spend their energies in dissecting the wording of the clause ... [t]he problem with this trend is that, over time, more explicit clauses of the “any and all claims” type will become routine. When that happens, the courts will have to employ all available safeguards (and a few more) if they are to continue protecting weak parties like employees and consumers.” Symeonides, “Choice of Law in the American Courts in 2005: Nineteenth Annual Survey,” 53 Am.J. Comp. L. 559, 630 (2005)(citations omitted).

¹⁴ Plaintiff reserves his right to challenge other unenforceable clauses found in these contracts at a later time. For example, Part 9 of Buck’s contract, labeled “Miscellaneous,” provides that “The parties consent to the waiver of trial by jury in any dispute arising between the parties.” Ex. 4, p. 4. Although Buck specifically makes a jury demand in its most recent Answer filed herein (“Buck is entitled to and demands trial by jury on all issues triable by jury.”; Ex. 2, p. 20), if Buck’s position advanced here is correct (*i.e.*, that its pre-receivership contract is binding upon the Receiver in this post-receivership proceeding), it follows that Buck has likewise waived its right to a jury trial. In any event, the Receiver fully reserves his right to challenge Buck’s “entitlement” to a jury trial at a later date. Milliman, in contrast, alleges in its Answer that “Plaintiff has waived any right to a jury trial and that Plaintiff’s claims against Milliman must be arbitrated.” Ex. 1, p. 15. Putting aside that Milliman has no right to demand arbitration, as previously decided by a unanimous Louisiana Supreme Court, *Donelon v. Shilling*, 2019-00514 (La. 4/27/20), -- So.3d.--; 2020 WL 2079362, and the subsequent denial of Milliman’s writ application to the SCOTUS, the Receiver fully reserves his right to challenge Milliman’s erroneous contention at a later date.

4. Because New York Law Contravenes the Public Policy of Louisiana, Milliman and Buck's Choice-of-Law Clauses are Unenforceable and Therefore Do Not Limit the Receiver's Contractual Claims or Damages

Article 2004 reflects Louisiana's strong public policy in deterring "grossly negligent" conduct by making any limitation-of-liability clauses that tries to limit a grossly negligent actor's liability unenforceable as a matter of positive law. If this case involved a pre-receivership dispute between LAHC, on the one hand, and Milliman and Buck, on the other, then a Louisiana court would likely find that because the application of New York law would "contravene the public policy" of Louisiana law, Milliman and Buck's choice-of-law clauses would be deemed unenforceable and Louisiana law would apply to LAHC's contractual claims against Milliman and Buck. In other words, prior to receivership when LAHC was a solvent, viable insurance company, if LAHC sued Milliman and/or Buck for breach of contract, then even in this hypothetical case, it is unlikely that a Louisiana court would apply New York to allow Milliman and Buck, in effect, to avoid Louisiana law and escape responsibility to the full extent of damages caused by their egregious conduct. *See, e.g., Barnett v. American Const.*, 2011-1261 (La. App. 1st Cir. 2/10/12), 91 So.3d 345, 349 ("Parties may not, by simply choosing another law, evade the public policy of the state whose law would have been applicable but for the parties' choice.")(citing Article 3540).

Now that LAHC has been placed into receivership and the court-appointed Receiver has sued Milliman and Buck for their "grossly negligent" conduct, the public policy concerns of Louisiana are even more pronounced and significant. This is no longer a pre-receivership dispute between a solvent insurance company and professional actuaries. This is now a post-receivership dispute between the Receiver trying to recover all of the damages caused by the "grossly negligent" conduct of the actuaries who egregiously evaluated the financial condition and viability of LAHC. To allow Milliman and Buck to limit their respective liability in this suit brought by an insurance Receiver through the application of a choice-of-law clause, would be to subvert the significant public policy interests of Louisiana in making sure "grossly negligent" actors are held responsible for the full measure of the damages caused by their egregious conduct—especially in the context of a failed insurance company.

In large part, Louisiana has a comprehensive statutory scheme regarding the insurance industry, the Louisiana Rehabilitation, Liquidation, Conservation Act ("RLCA"), La. R.S. 22:2001, *et seq.* because of the special role of the insurance industry in protecting the public from personal and business hardships associated with insurance losses. Insurance is a safety net and

policyholders are not the same as private parties entering a contract or even general creditors in a bankruptcy. The state has an important interest in minimizing the economic impact associated with an insurer's failure and has designed the RLCA to ensure an orderly and fair disposition of the insurer's assets and to provide additional protection to Louisiana citizens against hardships associated with the insolvency of an insurance company like LAHC.¹⁵

As stated by the Louisiana Supreme Court when ruling upon Milliman's arbitration clause in this very case:

This holding is consistent with the purpose and spirit of the RLCA. The Commissioner is a protector of public interests, and the legislature designed the statutory scheme to ensure the protection of such interests. . . . The Commissioner of Insurance as rehabilitator or liquidator owes an overriding duty to the people of the State of Louisiana. The *raison d'être* of his office is because the insurance industry is "affected with the public interest." La. R.S. 22:2. Any duties imposed upon that office, therefore, must be performed with the public interest foremost in mind. The commissioner's responsibilities as rehabilitator or liquidator include, additionally, protection of the policyholders, creditors, and the insurer itself. *Republic of Texas Savings Assoc. v. First Republic Life Ins. Co.*, 417 So. 2d 1251, 1254 (La. App. 1 Cir.) *writ denied*, 422 So.2d 161 (La. 1982). This court has previously held that defendant, as rehabilitator, "does not stand precisely in the shoes of *First Republic*."

Donelon v. Shiling, 2019-00514. (La. 4/27/20), —So.3d—; 2020 WL 2079362. Louisiana jurisprudence suggests that the fair and equitable treatment of all creditors and maximization of creditor distributions through efficient administration and recovery of estate assets, including the pursuit of lawsuits, are among the top priorities of Louisiana's significant interest in Receivership proceedings like this one. To allow private parties like Milliman and Buck to completely undermine and thwart Louisiana's significant interest in making sure that the stakeholders of a failed insurance company are made whole, by applying the law of a foreign state with no meaningful connection to this dispute, not only contravenes Louisiana's strong public policy, but it frustrates an essential purpose of Louisiana's RLCA. The public policy of Louisiana would clearly be defeated by the application of New York law.

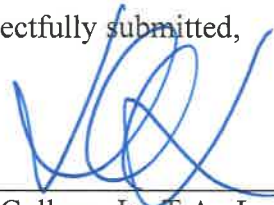
¹⁵ Louisiana law recognizes the inherently public purpose of insurance regulation and gives the Commissioner broad authority to manage, oversee, and regulate the business of insurance from before an insurance company begins selling insurance, during its existence, and in the event of insolvency, until it is either rehabilitated or liquidated. "Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases. Pursuant to the authority contained in the Constitution of Louisiana, the office of the commissioner of insurance is created. It shall be the duty of the commissioner of insurance to administer the provisions of this Code." La. R.S. 22:2(A)(1)

V. CONCLUSION

That this is a case involving an insolvent insurance company domiciled and doing business primarily, if not exclusively, in Louisiana, permeates both the conflict of laws analysis and the violation of public policy analysis required by Article 3540. This is not simply a commercial contract dispute between private parties of relatively equal stature and sophistication. The Receiver's claims are inextricably tied to the regulation of insurance companies in Louisiana. But for Milliman's negligent feasibility study, LAHC would have never sold a single policy to Louisiana's citizens. But for Milliman's failure to properly assess the financial condition of LAHC and adjust its premiums accurately for 2014, LAHC would not have lost more than \$20 million in its first year of operation. But for Buck's failure to evaluate and set LAHC's premiums accurately for 2015, LAHC would not have lost more than \$50 million that year. The very contractual claims which Milliman and Buck would have this Honorable Court evaluate pursuant to New York law (so their potential exposure will be limited) arise directly out of Louisiana's intense interest in the regulation of Louisiana HMOs like LAHC. Whether the Receiver's contractual claims are limited in any way by Milliman and Buck's contract with LAHC raise serious public-policy issues integral to Louisiana's interests both in regulating the business of insurance and in ensuring that policyholders, healthcare providers, and other creditors who did business with LAHC are protected.

For all of the foregoing reasons, Plaintiff respectfully prays that this Honorable Court issue an ORDER stating that Louisiana law shall apply to determine whether any limitation-of-liability clauses found in LAHC's contracts with Milliman and Buck are enforceable.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via e-mail to all counsel of record as follows, this 28th day of May, 2021, in Baton Rouge, Louisiana.

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

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

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

Reid L. Ashinoff
Justin N. Kattan
Justine N. Margolis
Dentons US, LLP
1221 Avenue of the Americas
New York, NY 10020

Charles A. Jones
Troutman Pepper
401 9th Street, N.W.
Suite 1000
Washington, DC 20004

George Fagan
Adam Whitworth
Leake Andersson
1100 Poydras Street
Suite 1700
New Orleans, LA 70163



J. E. Cullens, Jr.

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

GROUP RESOURCES INCORPORATED, MILLIMAN, INC., BUCK GLOBAL, LLC, AND
IRONSHORE SPECIALTY COMPANY

FILED: _____

DEPUTY CLERK

**ANSWER OF MILLIMAN, INC. TO FIFTH SUPPLEMENTAL, AMENDING AND
RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL**

NOW INTO COURT, through undersigned counsel, comes Defendant Milliman, Inc. (hereinafter, "Milliman"), who asserts the following Defenses and Answer to the Fifth Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial (the "Fifth Amended Petition") filed on or about April 1, 2021 by Plaintiff James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. ("Plaintiff") as follows:

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

Plaintiff's claims against Milliman arise out of or relate to, and are subject to the terms of, the August 4, 2011 Consulting Services Agreement (the "Agreement") between Milliman and Louisiana Health Cooperative, Inc. ("LAHC"). Milliman affirmatively pleads, as though set forth herein in full, all terms and conditions of the Agreement, which are fully binding upon Plaintiff as the party vested by operation of law with the contractual rights and obligations of LAHC. If the terms of the Agreement are for any reason not enforced against Plaintiff, Plaintiff's claims are barred due to failure of consideration.

SECOND DEFENSE

Plaintiff's Fifth Amended Petition fails to state a cause of action against Milliman.

THIRD DEFENSE

Plaintiff's Fifth Amended Petition fails to state a right of action against Milliman.



FOURTH DEFENSE

Plaintiff's claims are extinguished by prescription, peremption, statute of limitations and/or laches.

FIFTH DEFENSE

As Plaintiff itself has alleged, Plaintiff's damages, if any, were caused or contributed to by the negligence, gross negligence, wrongdoing, misconduct, want of care and fault or comparative fault of other parties, persons and entities for whom Milliman is not responsible and over whom Milliman had no control, including but not limited to the Receiver, LAHC, the federal government, third parties, other defendant(s) and/or each such person or entity's respective employees or agents.¹

SIXTH DEFENSE

Plaintiff's claims are barred in whole or in part, by its own actions, omissions, and/or negligence.

SEVENTH DEFENSE

Plaintiff and/or the Receiver have failed to mitigate the damages that were incurred, if any.

EIGHTH DEFENSE

Plaintiff's claims are barred by unclean hands.

NINTH DEFENSE

The negligence, wrongdoing and fault of LAHC and its officers, managers, directors, shareholders, employees, agents, third party administrators, consultants and other contractors are imputed to Plaintiff and bar the claims presented.

TENTH DEFENSE

LAHC did not rely on Milliman in taking the actions complained of, and intended to take the actions complained of regardless of any advice or counseling from Milliman.

¹ By order signed on January 12, 2021, the Court struck certain defenses that, the Court determined, were based in whole or in part on the pre-insolvency conduct of the Commissioner of Insurance acting in his regulatory capacity. To comply with the Court's order, Milliman does not assert such defenses in this Answer. However, Milliman reserves all rights and arguments with respect to its stricken defenses, including all appellate rights and the right to seek discovery of the Louisiana Department of Insurance.

ELEVENTH DEFENSE

Milliman at all times complied with all relevant actuarial standards of practice and all applicable standards of care and practice.

TWELFTH DEFENSE

Plaintiff's claims and damages, if any, are contractually limited pursuant to the Agreement.

THIRTEENTH DEFENSE

Under the Agreement, Plaintiff has waived and is barred from asserting any claims for lost profits, incidental damages, indirect damages, consequential damages, special damages, exemplary damages and punitive damages. Plaintiff is fully bound to those contractual provisions as the successor to the contractual rights and obligations of LAHC.

FOURTEENTH DEFENSE

Plaintiff lacks standing, right or interest to assert claims for losses or damages allegedly suffered by the creditors, providers, policyholders, members, or subscribers of LAHC, or by any other person or entity other than LAHC.

FIFTEENTH DEFENSE

Milliman had no professional relationship with and owed no duties to the Plaintiff, the Louisiana Department of Insurance, the State of Louisiana, or to the members, subscribers, policyholders, providers or creditors of LAHC.

ANSWER

AND NOW, in response to the individually numbered paragraphs of the Fifth Amended Petition, Milliman avers as follows, denying all allegations not hereinafter specifically admitted:

1.

Paragraph 1 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman admits that Plaintiff seeks to amend the caption of this matter and otherwise denies the allegations of Paragraph 1.

JURISDICTION AND VENUE

2.

Milliman admits that LAHC is a Louisiana Nonprofit Corporation that did business in the State of Louisiana, but Milliman otherwise denies the allegations of Paragraph 2 and avers that this Court lacks jurisdiction over Plaintiff's claims against Milliman, which must be arbitrated.

3.

Milliman denies the allegations of Paragraph 3.

4.

Milliman denies the allegations of Paragraph 4.

PARTIES

Plaintiff

5.

Milliman admits the allegations of Paragraph 5.

6.

Milliman denies the allegations of Paragraph 6 for lack of sufficient information to justify a belief therein.

7.

To the extent Paragraph 7 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies the allegations in Paragraph 7 to the extent they do not comport with the documents referenced therein.

8.

Paragraph 8 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman admits that Plaintiff may pursue legal remedies available to LAHC and otherwise denies the allegations of Paragraph 8.

Defendants

9.

The allegations of Paragraph 9 of Plaintiff's Fifth Amended Petition require no answer from Milliman.

TPA Defendant

10.

Milliman denies the allegations of Paragraph 10 for lack of sufficient information to justify a belief therein.

Actuary Defendants

11.

Milliman admits the allegations in Paragraph 11(a). Milliman denies the allegations in Paragraph 11(b) for lack of sufficient information to justify a belief therein.

Defined Terms

12.

Milliman admits that Plaintiff purports to define terms as set forth in Paragraphs 12(1)-(4), and Milliman admits so much of Paragraph 12 that alleges that Milliman has provided actuarial services to LAHC but denies the remaining allegations of Paragraphs 12(1)-(4) for lack of sufficient information to justify a belief therein.

Factual Background

13.

To the extent that Paragraph 13 purports to describe the content of the Patient Protection and Affordable Care Act ("ACA"), the ACA speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to the ACA for its full content and context. Milliman denies any and all other allegations in Paragraph 13 for lack of sufficient information to justify a belief therein.

14.

To the extent Paragraph 14 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman admits that LAHC was a CO-OP created pursuant to the ACA; and that at some point, LAHC applied for and received loans from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS"). Milliman denies any and all other allegations in Paragraph 14 for lack of sufficient information to justify a belief therein.

15.

Milliman denies the allegations in the first sentence of Paragraph 15 in so far as they pertain to Milliman, and denies the allegations in the first sentence of Paragraph 15 for lack of sufficient information to justify as a belief therein insofar as they pertain to any other Defendant(s). Milliman denies the remaining allegations in Paragraph 15 for lack of sufficient information to justify a belief therein.

16.

Milliman denies the allegations of Paragraph 16 insofar as they pertain to Milliman. Milliman denies the allegations of Paragraph 16 for lack of sufficient information to justify a belief therein insofar as they pertain to any other Defendant(s).

17.

Milliman denies the allegations of Paragraph 17 for lack of sufficient information to justify a belief therein.

18.

To the extent Paragraph 18 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies any and all remaining allegations, if any, as set forth in Paragraph 18 for lack of sufficient information to justify a belief therein.

19.

Milliman denies the allegations of Paragraph 19 insofar as they pertain to Milliman. Milliman denies the allegations in Paragraph 19 for lack of sufficient information to justify a belief therein insofar as they pertain to any other Defendant(s).

20.

Milliman denies the allegations of Paragraph 20 insofar as they pertain to Milliman. Milliman denies the allegations in Paragraph 20 for lack of sufficient information to justify a belief therein insofar as they pertain to any other Defendant(s).

CAUSES OF ACTION

Count One: Breach of Contract (Against GRI, the TPA Defendant)

21–28.

No response is required to Count One of Plaintiff's Fifth Amended Petition because this Count is not directed against Milliman. To the extent, however, that any of the allegations contained in Count One could be construed against Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

Count Two: Gross Negligence and Negligence (Against GRI, the TPA Defendant)

29–37.

No response is required to Count Two of Plaintiff's Fifth Amended Petition because this Count is not directed against Milliman. To the extent, however, that any of the allegations contained in Count Two could be construed against Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

Count Three: Professional Negligence, Gross Negligence And Breach of Contract (Against the Actuary Defendants)

38.

Milliman asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

Milliman

39.

Milliman denies the allegations of Paragraph 39, except admits that it had the expertise needed to provide the actuarial services and advice that it provided to LAHC.

40.

To the extent Paragraph 40 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman otherwise denies the allegations of Paragraph 40 for lack of sufficient information to form a belief therein.

41.

Milliman admits that it prepared a report entitled "Louisiana Health Cooperative, Inc. Feasibility Study and Business Plan Support for Consumer Operated and Oriented Plan (CO-OP) Application" for Louisiana Health Cooperative dated March 30, 2012. To the extent Paragraph 41 purports to describe the content of that report or any other document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context.

42.

Milliman denies the allegations of Paragraph 42.

43.

To the extent Paragraph 43 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 43 otherwise states a legal conclusion to which no response is required.

44.

Milliman denies the allegations of Paragraph 44.

45.

Milliman denies the allegations of Paragraph 45.

46.

Milliman admits that it provided actuarial services to other CO-OPs created pursuant to the ACA and that certain of the CO-OPs are no longer operating. Milliman performed work for other CO-OPs pursuant to written agreements, and Milliman denies any allegations inconsistent with the terms of those agreements.

47.

Milliman denies the allegations of Paragraph 47.

48.

Milliman denies the allegations of Paragraph 48.

49.

Milliman denies the existence of a conflict of interest. To the extent Paragraph 49 purports to describe the content of the American Academy of Actuaries code of professional conduct (the “Code”), Milliman denies any characterizations thereof and respectfully refers the Court to the Code for its full content and context.

50.

Milliman denies the existence of a conflict of interest. To the extent Paragraph 50 purports to describe the content of Actuarial Standard of Practice 41 (“ASOP 41”), Milliman denies any characterizations thereof and respectfully refers the Court to ASOP 41 for its full content and context.

51.

Milliman admits that it performed work related to LAHC's loan application 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, but otherwise denies the allegations in the first sentence of Paragraph 51 for lack of sufficient information to justify a belief therein. Milliman further admits that 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, but otherwise denies the allegations in the second sentence of Paragraph 51 for lack of sufficient information to justify a belief therein. Milliman denies the allegations in the third sentence of Paragraph 51.

52.

Milliman denies the allegations of Paragraph 52.

53.

To the extent Paragraph 53 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman otherwise denies any and all remaining allegations as set forth in Paragraph 53.

54.

To the extent Paragraph 54 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies any and all remaining allegations as set forth in Paragraph 54.

55.

Milliman denies the allegations of Paragraph 55.

56.

Milliman denies the allegations of Paragraph 56.

57.

Paragraph 57 of Plaintiff's Fifth Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman

denies the allegations of Paragraph 57 insofar as they are inconsistent with the statutes, rules or other authority or obligations governing this dispute.

58.

To the extent Paragraph 58 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Milliman denies any and all remaining allegations as set forth in Paragraph 58.

59.

Milliman denies the allegations of Paragraph 59.

60.

To the extent Paragraph 60 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 60 otherwise states a legal conclusion to which no response is required.

61.

Milliman denies the allegations of Paragraph 61.

62.

Milliman denies the allegations of Paragraph 62.

63.

Milliman denies the allegations of Paragraph 63.

64.

To the extent Paragraph 64 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 64 otherwise states a legal conclusion to which no response is required.

65.

Milliman admits that, prior to the conclusion of ACA enrollment, there was uncertainty about the overall size of the overall ACA Marketplace. Milliman further admits that it was aware that some percentage of individual enrollees would be receiving government subsidies. Milliman otherwise denies any and all remaining allegations in Paragraph 65.

66.

Milliman denies the allegations of paragraph 66.

67.

Milliman denies the allegations of paragraph 67.

68.

Milliman denies the allegations of paragraph 68.

69.

To the extent Paragraph 69 purports to describe the content of any document, said document speaks for itself. Milliman denies any characterizations thereof and respectfully refers the Court to said document for its full content and context. Paragraph 69 otherwise states a legal conclusion to which no response is required.

70.

Milliman denies the allegations of Paragraph 70.

71.

To the extent the first sentence of Paragraph 71 purports to describe the content of any document or statement, said document or statement speaks for itself; Milliman denies any characterizations thereof and respectfully refers the Court to said document or statement for its full content and context. Milliman denies the allegations in the second sentence of Paragraph 71 for lack of sufficient information to justify a belief therein. Milliman denies the allegations in the third sentence of Paragraph 71.

72.

Milliman denies the allegations of Paragraph 72.

73.

Milliman denies the allegations of Paragraph 73.

74.

Milliman denies the allegations of Paragraph 74.

Buck

75-99.

No response is required to Paragraphs 75 through 99 of Plaintiff's Fifth Amended Petition because these Paragraphs are not directed against Milliman. To the extent, however, that any of the allegations contained in Paragraphs 75 through 99 could be construed against

Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

Count Four: Negligent Misrepresentation (Against the Actuary Defendants)

100.

Milliman asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

Milliman

101.

Milliman denies the allegations of Paragraph 101, except admits that it had the expertise needed to provide the actuarial services and advice it provided to LAHC.

102.

Milliman denies the allegations of Paragraph 102.

103.

Milliman denies the allegations of Paragraph 103 for lack of sufficient information to justify a belief therein.

104.

Milliman denies the allegations of Paragraph 104.

105.

Paragraph 105 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of Paragraph 105 insofar as they are inconsistent with the statutes, rules or other authority or obligations governing this dispute.

106.

Milliman denies the allegations of Paragraph 106.

Buck

107–112.

No response is required to Paragraphs 107 through 112 of Plaintiff's Fifth Amended Petition because these Paragraphs are not directed against Milliman. To the extent, however, that any of the allegations contained in Paragraphs 107 through 112 could be construed against

Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

Count Five: Breach of Fiduciary Duty (Against GRI and the Actuary Defendants)

GRI

113–118.

No response is required to Paragraphs 113 through 118 of Plaintiff's Fifth Amended Petition because these Paragraphs are not directed against Milliman. To the extent, however, that any of the allegations contained in Paragraphs 113 through 118 could be construed against Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

Milliman

119.

Milliman asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

120.

Milliman denies the allegations of Paragraph 120.

121.

Milliman denies the allegations of Paragraph 121 for lack of sufficient information to justify a belief therein. Milliman denies that LAHC was detrimentally affected by its reliance on Milliman.

122.

Milliman denies the allegations of Paragraph 122.

123.

Milliman admits so much of Paragraph 123 that alleges that Milliman performed work for other CO-OPs created pursuant to the ACA, but denies the remaining allegations of Paragraph 123.

124.

Milliman denies the allegations of Paragraph 124.

125.

Milliman denies the allegations of Paragraph 125 for lack of sufficient information to justify a belief therein.

126.

Milliman denies the allegations of Paragraph 126.

127.

Milliman denies the allegations of Paragraph 127.

Buck

128–133.

No response is required to Paragraphs 128 through 133 of Plaintiff's Fifth Amended Petition because these Paragraphs are not directed against Milliman. To the extent, however, that any of the allegations contained in Paragraphs 128 through 133 could be construed against Milliman, Milliman denies those allegations. Milliman also asserts and incorporates by reference each and every denial, exception, answer and defense it has set forth in response to the other Counts and allegations of Plaintiff's Fifth Amended Petition as if fully stated herein.

DAMAGES

134.

Milliman denies the allegations of Paragraph 134 in their entirety as those allegations relate to Milliman. Milliman denies the allegations of Paragraph 134 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

135.

Milliman denies the alleged damages of Paragraph 135 in their entirety as those allegations relate to Milliman. Milliman denies the alleged damages of Paragraph 135 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

PRESCRIPTION AND DISCOVERY OF TORTIOUS CONDUCT

136.

Milliman denies the allegations of Paragraph 136 in their entirety as those allegations relate to Milliman. Milliman denies the allegations of Paragraph 136 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

137.

Milliman denies the allegations of Paragraph 137 in their entirety as those allegations relate to Milliman. Milliman denies the allegations of Paragraph 137 for lack of sufficient information to justify a belief therein, as those allegations relate to any other Defendant(s).

138.

Milliman denies the allegations of Paragraph 138.

139.

Paragraph 139 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of Paragraph 139 insofar as they are inconsistent with the statutes, rules or other authority or obligations governing this dispute.

JURY DEMAND

140.

Paragraph 140 of Plaintiff's Fifth Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of Paragraph 140 and avers that pursuant to the Agreement, Plaintiff has waived any right to a jury trial and that Plaintiff's claims against Milliman must be arbitrated.

PRAYER FOR RELIEF

The Prayer For Relief in Plaintiff's Fifth Amended Petition requires no response from Milliman. To the extent, however, that an answer is deemed necessary, Milliman denies the allegations of the Prayer for Relief and denies that any relief is warranted.

NOW THEREFORE, Defendant Milliman, Inc. prays that its exception, defenses, and answers to Plaintiff's Fifth Amended Petition be deemed good and sufficient and that, after due proceedings herein, Plaintiff's Fifth Amended Petition and all prior petitions be dismissed, with prejudice, at Plaintiff's costs, and for such other, different additional, and equitable relief to which Milliman may be entitled.

[signatures on next page]

Dated: May 3, 2021
New Orleans, Louisiana

Respectfully submitted,

/s/ Harry Rosenberg

PHELPS DUNBAR LLP

HARRY ROSENBERG (Bar #11465)
Canal Place 365 Canal Street, Suite 2000
New Orleans, Louisiana 70130-6534
Telephone: (504) 556-1311
Facsimile: (504) 568-9130
Email: rosenbeh@phelps.com

H. ALSTON JOHNSON (Bar # 7293)
400 Convention Street, Suite 1100
Baton Rouge, LA 70802
Telephone: (225) 346-0285
Telecopier: (225) 381-9197
Email: johnsona@phelps.com

DENTONS US LLP

REID L. ASHINOFF (admitted *pro hac vice*)
JUSTIN N. KATTAN (admitted *pro hac vice*)
JUSTINE N. MARGOLIS (admitted *pro hac vice*)
CATHARINE LUO (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 768-6700
Fax: (212) 768-6800
E-mail: reid.ashinoff@dentons.com
justin.kattan@dentons.com
justine.margolis@dentons.com
catharine.luo@dentons.com

Counsel for Milliman, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Answer of Milliman, Inc. to the Fifth Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial filed on or about April 1, 2021 by Plaintiff James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. has been served upon all counsel of record via facsimile, e-mail and/or by placing same in the U.S. Mail, postage pre-paid and properly addressed.

New Orleans, Louisiana

This 3rd day of May, 2021:

/s/ Harry Rosenberg

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

JURY TRIAL DEMANDED

FILED: _____

DEPUTY CLERK

**AFFIRMATIVE DEFENSES AND ANSWER OF BUCK GLOBAL, LLC TO
FIFTH SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES
AND REQUEST FOR JURY TRIAL**

NOW INTO COURT, through undersigned counsel, comes Defendant, Buck Global, LLC, f/k/a Buck Consultants, LLC (hereinafter "Buck"), who asserts the following Affirmative Defenses and Answer to the Fifth Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial (hereinafter "Fifth Amended Petition") filed by Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his Capacity as Rehabilitator of Louisiana Health Cooperative, Inc. (the "Plaintiff") as follows:

AFFIRMATIVE DEFENSES

FIRST DEFENSE

All of Plaintiff's claims against Buck arise out of and are subject to the terms of a written Engagement Agreement (the "Engagement Agreement") between Buck and Louisiana Health Cooperative, Inc. ("LAHC"). Buck affirmatively pleads, as though set forth herein in full, all terms and conditions of the Engagement Agreement, which are fully binding upon Plaintiff as the successor to the contractual rights and obligations of LAHC.

SECOND DEFENSE

Plaintiff's Fifth Amended Petition fails to state a cause of action against Buck.

THIRD DEFENSE

Plaintiff's Fifth Amended Petition fails to state a right of action against Buck.



FOURTH DEFENSE

Plaintiff's claims against Buck are extinguished by the strict one-year limitations period (which has the legal effect of peremption) that is contractually agreed to and stipulated in the Engagement Agreement. Plaintiff is fully bound to those provisions as the successor to the contractual rights and obligations of LAHC. Solely in the alternative, if for any reason the contractual requirements of the Engagement Agreement are not enforced against Plaintiff, Plaintiff's claims are extinguished by prescription, peremption, statute of limitations and/or laches as a matter of law.

FIFTH DEFENSE

In the alternative, if the terms of the Engagement Agreement are for any reason not enforced against Plaintiff, Plaintiff's claims are barred due to failure of consideration. Plaintiff's claims are also barred for failure of consideration due to LAHC's failure to pay the fees owed to Buck for services rendered.

SIXTH DEFENSE

Plaintiff's damages, if any, were caused or contributed to by the negligence, gross negligence, wrongdoing, want of care and fault or comparative fault of Plaintiff, as Rehabilitator, and/or Billy Bostick, as the Receiver (the "Receiver"), and their employees, agents, attorneys, and contractors, and/or by the negligence, gross negligence, wrongdoing, want of care and fault or comparative fault LAHC and its officers, managers, directors, owners, employees, agents, third party administrators, consultants, and other contractors, and of other third parties for whom Buck is not responsible and over whom Buck had no control.¹

¹ By Order signed on January 12, 2021, the Court, over Buck's opposition, struck the portion of Buck's Fifth Defense that was predicated upon pre-receivership regulatory conduct of the Commissioner of Insurance acting in his regulatory capacity. So as to avoid non-compliance with the Court's Order, Buck has not asserted pre-receivership regulatory conduct of the Commissioner of Insurance in its instant Sixth Defense to Plaintiff's Fifth Amended Petition. However, Buck fully reserves all rights to discover, assert and present evidence of pre-receivership regulatory conduct to show that Buck was not negligent and did not cause Plaintiff's damages, and as it otherwise pertains to issues of liability and other issues upon which Plaintiff bears the burden of proof. Buck further reserves all rights to seek reversal on appeal of any adverse final judgment in this case based upon legal error in entry of the 1/12/21 Order, and to assert such facts and issues upon a retrial of the case in the event of reversal on appeal. Buck further contends that application of La. R.S. R.S. 22:2043.1 to prohibit Buck from asserting such issues in this case deprives it of fundamental rights to substantive and procedural due process and equal protection of law, in violation of the U.S. Constitution and applicable state Constitutions.

SEVENTH DEFENSE

Plaintiff's damages, if any, were caused by the misconduct and negligence of the Plaintiff, as Rehabilitator, the Receiver, and their employees and agents.²

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrines of estoppel, waiver, ratification, and acquiescence by virtue of the conduct, acts, and omissions of Plaintiff, as Rehabilitator, the Receiver, and their employees and agents.³

NINTH DEFENSE

Plaintiff and the Receiver have failed to mitigate the damages that were incurred, if any. Furthermore, the Plaintiff and the Receiver, and their employees, agents, and contractors, committed acts of negligence and misconduct in the rehabilitation and/or liquidation of LAHC, that may be discovered and presented at trial.⁴

² By Order signed on January 12, 2021, the Court, over Buck's opposition, struck the portion of Buck's Sixth Defense that was predicated upon pre-receivership regulatory conduct of the Commissioner of Insurance acting in his regulatory capacity. So as to avoid non-compliance with the Court's Order, Buck has not asserted pre-receivership regulatory conduct of the Commissioner of Insurance in its instant Seventh Defense to Plaintiff's Fifth Amended Petition. However, Buck fully reserves all rights to discover, assert and present evidence of pre-receivership regulatory conduct to show that Buck was not negligent and did not cause the losses complained of, and as it otherwise pertains to issues of liability and other issues upon which Plaintiff bears the burden of proof. Buck further reserves all rights to seek reversal on appeal of any adverse final judgment in this case based upon legal error in entry of the 1/12/21 Order, and to assert such facts and issues upon a retrial of the case in the event of reversal on appeal. Buck further contends that application of R.S. 22:2043.1 to prohibit Buck from asserting such issues in this case deprives it of fundamental rights to substantive and procedural due process and equal protection of law, in violation of the U.S. Constitution and applicable state Constitutions.

³ By Order signed on January 12, 2021, the Court, over Buck's opposition, struck the entirety of Buck's Seventh Defense, which previously read: "Plaintiff's claims are barred by the doctrines of estoppel, waiver, ratification, and acquiescence in that the Commissioner and his employees and agents reviewed the activities now complained of, and gave explicit or implicit approval of those activities. Buck relied to its detriment upon those actions of the Commissioner and his employees and agents." So as to avoid non-compliance with the Court's Order, Buck has not included the quoted sentences in its instant Eighth Defense to Plaintiff's Fifth Amended Petition. However, Buck fully reserves all rights to discover, assert and present evidence of pre-receivership actions of the Commissioner and his employees and agents, including their contemporaneous review and approval of Buck's actuarial work, to show that Buck was not negligent and did not cause the losses complained of, and on other issues upon which Plaintiff bears the burden of proof. Buck also reserves all rights to seek reversal on appeal of any adverse final judgment in this case based upon legal error in entry of the 1/12/21 Order, and to assert such facts and issues upon a retrial of the case in the event of reversal on appeal. Buck further contends that application of La. R.S. R.S. 22:2043.1 to prohibit Buck from asserting such issues in this case deprives it of fundamental rights to substantive and procedural due process and equal protection of law, in violation of the U.S. Constitution and applicable state Constitutions.

⁴ By Order signed on January 12, 2021, the Court, over Buck's opposition, struck the portion of Buck's Eighth Defense that was predicated upon pre-receivership regulatory conduct of the Commissioner of Insurance acting in his regulatory capacity. So as to avoid non-compliance with the Court's Order, Buck has not asserted pre-receivership regulatory conduct of the Commissioner of Insurance in its instant Ninth Defense to Plaintiff's Fifth Amended Petition. However, Buck fully reserves all rights to discover, assert and present evidence of pre-receivership regulatory conduct to show that Buck was not negligent and did not cause the losses complained of, and as otherwise pertains to liability and other issues upon which Plaintiff bears the burden of proof. Buck further reserves all rights to seek reversal on appeal of any adverse final judgment in this case based upon legal error in entry of the 1/12/21 Order, and to assert such facts and issues upon a retrial of the case in the event of reversal on appeal. Buck further contends that

TENTH DEFENSE

The negligence, wrongdoing and fault of LAHC and its officers, managers, directors, owners, employees, agents, third party administrators, consultants, and other contractors are imputed to Plaintiff and bar the claims presented.

ELEVENTH DEFENSE

Buck had no professional relationship with and owned no duties to the Plaintiff, the Louisiana Department of Insurance, the State of Louisiana, or to the members, subscribers, policyholders, providers or creditors of LAHC.

TWELFTH DEFENSE

Plaintiff's damages, if any, were not caused by Buck.

THIRTEENTH DEFENSE

LAHC did not rely on Buck in taking the actions complained of, and intended to take the actions complained of regardless of any advice or counseling from Buck.

FOURTEENTH DEFENSE

Buck at all times complied with all relevant actuarial standards of practice.

FIFTEENTH DEFENSE

Buck at all times complied with all applicable standards of care and practice.

SIXTEENTH DEFENSE

Plaintiff's claims and damages, if any, are contractually limited to \$500,000 pursuant to the Engagement Agreement, which is fully binding upon Plaintiff as the successor to the contractual rights and obligations of LAHC.

SEVENTEENTH DEFENSE

Under the Engagement Agreement, Plaintiff has waived and is barred from asserting any claims for lost profits, indirect damages, consequential damages, special damages, incidental damages, exemplary damages, and punitive damages. Plaintiff is fully bound to those contractual provisions as the successor to the contractual rights and obligations of LAHC.

EIGHTEENTH DEFENSE

Pursuant to the terms of the Engagement Agreement, Plaintiff's claims against Buck are subject to and governed exclusively by New York law.

application of La. R.S. R.S. 22:2043.1 to prohibit Buck from asserting such issues in this case deprives it of fundamental rights to substantive and procedural due process and equal protection of law, in violation of the U.S. Constitution and applicable state Constitutions.

NINETEENTH DEFENSE

Plaintiff lacks standing, right or interest to assert claims for losses or damages allegedly suffered by the creditors, providers, policyholders, members, or subscribers of LAHC, or by any other person or entity other than LAHC, including but not limited to claims for the supposed “deepening insolvency” of LAHC.

TWENTIETH DEFENSE

On April 1, 2021, at the same time that Plaintiff filed his Fifth Amended Petition, he filed a motion for partial summary judgment, asserting the provisions of La. R.S. 22:2043.1 as grounds to dismiss and/or strike Buck’s affirmative defenses that raise the contributing and comparative fault of the officers, managers, directors, owners, employees, and agents of LAHC. Plaintiff has waived the provisions of La. R.S. 22:2043.1 by filing the instant suit originally naming officers, managers, directors, owners, employees, and agents of LAHC as defendants, placing their fault directly at issue and judicially admitting that they caused the losses that Plaintiff seeks to recover from Buck. Therefore, the provisions of La. R.S. 22:2043.1 should not be applied to Buck in this case.

TWENTY-FIRST DEFENSE

Alternatively, if La. R.S. 22:2043.1, either as written and/or as applied, should be deemed to prohibit Buck from asserting and presenting to the trier of fact and apportioning the contributing and comparative fault of the officers, managers, directors, owners, employees, and agents of LAHC, when Plaintiff has already placed their fault at issue and judicially admitted that they caused the losses complained of, and the evidence proves those facts, such application would expose Buck to liability for losses that it did not cause. La. R.S. 22:2043.1, as written and/or as applied to Buck in that manner, deprives it of fundamental rights of substantive and procedural due process and equal protection of the law, in violation of the U.S. Constitution and applicable state Constitutions.

TWENTY-SECOND DEFENSE

Plaintiff’s recent settlements with officers, managers, directors, owners, employees, and agents of LAHC, and their insurers, has deprived Buck of the ability to seek contribution and/or indemnification from them due to application of “settlement bar” principles dictated by law. In these circumstances, if La. R.S. 22:2043.1, as written and/or as applied, is deemed to prevent Buck from asserting and presenting to the trier of fact, and apportioning the comparative and

contributing fault of those responsible parties, notwithstanding Plaintiff's previous judicial admissions and overwhelming evidence that they caused the losses complained of, Buck would be exposed to liability for losses that it did not cause – with no corresponding right to seek recovery from the persons and entities that actually caused the losses. Therefore, La. R.S. 22:2043.1, as written and/or as applied to Buck in this manner, deprives it of its fundamental rights to substantive and procedural due process and equal protection of law, in violation of the U.S. Constitution and applicable state Constitutions.

TWENTY-THIRD DEFENSE

Application of La. R.S. 22:2043.1 in a manner to prevent Buck from discovering, asserting and presenting evidence that it was not negligent and did not cause the losses complained of, including but not limited to Lewis and Ellis Inc.'s contemporaneous review and evaluation of Buck's actuarial rate projections, likewise deprives Buck of fundamental rights to substantive and procedural due process and equal protection of the law, in violation of the U.S. Constitution and applicable state Constitutions. Similarly, application of La. R.S. 22:2043.1 to prevent Buck from discovering, asserting and/or presenting other evidence rebutting or disproving the elements of Plaintiff's claims against Buck and/or going to other issues on which Plaintiff bears the burden of proof, likewise deprives Buck of fundamental rights of substantive and procedural due process and equal protection of the law, in violation of the U.S. Constitution and applicable state Constitutions.

TWENTY-FOURTH DEFENSE

In the Engagement Agreement, LAHC expressly agreed that Buck did not undertake any fiduciary duties or obligations to LAHC and acted solely as an arm's length independent contractor and not as an agent or fiduciary. The Engagement Agreement thereby waives, disclaims, bars and renders legally invalid any claim for breach of fiduciary duty or agency duty against Buck.

AND NOW, with full reservation of the foregoing affirmative defenses, in response to the individually numbered paragraphs of the Fifth Amended Petition, Buck avers as follows, denying all allegations not hereinafter specifically admitted:

1.

The allegations of Paragraph 1 of Plaintiff's Fifth Amended Petition require no answer from Buck.

2.

Paragraph 2 of Plaintiff's Fifth Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 2 for lack of sufficient information to justify a belief therein.

3.

Buck denies the allegations of Paragraph 3 insofar as they pertain to Buck, and denies the allegations for lack of sufficient information to justify a belief therein insofar as they pertain to the other defendants.

4.

Paragraph 4 of Plaintiff's Fifth Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, an answer is deemed necessary, Buck denies the allegations insofar as they may pertain to Plaintiff's claims against Buck.

5.

Buck denies the allegations of Paragraph 5 for lack of sufficient information to justify a belief therein.

6.

Buck denies the allegations of Paragraph 6 for lack of sufficient information to justify a belief therein.

7.

Buck denies the allegations of Paragraph 7 for lack of sufficient information to justify a belief therein.

8.

Paragraph 8 of Plaintiff's Fifth Amended Petition asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 8 as stated.

9.

The allegations of Paragraph 9 of Plaintiff's Fifth Amended Petition require no answer from Buck.

10.

Buck denies the allegations of Paragraph 10 for lack of sufficient information to justify a belief therein.

11.

Buck denies the allegations of Paragraph 11(a) for lack of sufficient information to justify a belief therein. Buck denies the allegations of Paragraph 11(b), except to admit that Buck is an LLC having its principal place of business in New York, that provided actuarial services to LAHC at particular times under the name Buck Consultants, LLC.

12.

Buck denies the allegations of Paragraph 12 for lack of sufficient information to justify a belief therein.

13.

Buck denies the allegations of Paragraph 13 as stated for lack of sufficient information to justify a belief therein.

14.

Buck denies the allegations of Paragraph 14 for lack of sufficient information to justify a belief therein.

15.

Buck denies the allegations of Paragraphs 15.

16.

Buck denies the allegations of Paragraph 16.

17.

Buck denies the allegations of Paragraph 17 for lack of sufficient information to justify a belief therein.

18.

Buck denies the allegations of Paragraph 18 for lack of sufficient information to justify a belief therein.

19.

Buck denies the allegations of Paragraph 19.

20.

Buck denies the allegations of Paragraph 20.

21.

For answer to Paragraph 21, Buck repeats and realleges each and every defense, averment and denial set forth in the foregoing paragraphs as if fully set forth herein.

22.

Buck denies the allegations of Paragraph 22 for lack of sufficient information to justify a belief therein.

23.

Buck denies the allegations of Paragraph 23 for lack of sufficient information to justify a belief therein.

24.

Buck denies the allegations of Paragraph 24 for lack of sufficient information to justify a belief therein.

25.

Buck denies the allegations of Paragraph 25 for lack of sufficient information to justify a belief therein.

26.

Buck denies the allegations of Paragraph 26 for lack of sufficient information to justify a belief therein.

27.

Buck denies the allegations of Paragraph 27 for lack of sufficient information to justify a belief therein.

28.

Buck denies the allegations of Paragraph 28 for lack of sufficient information to justify a belief therein.

29.

For answer to Paragraph 29, Buck repeats and realleges each and every defense, averment and denial set forth in the foregoing paragraphs as if fully set forth herein.

30.

Buck denies the allegations of Paragraph 30 for lack of sufficient information to justify a belief therein.

31.

Buck denies the allegations of Paragraph 31 for lack of sufficient information to justify a belief therein.

32.

Buck denies the allegations of Paragraph 32 for lack of sufficient information to justify a belief therein.

33.

Buck denies the allegations of Paragraph 33 for lack of sufficient information to justify a belief therein.

34.

Buck denies the allegations of Paragraph 34 for lack of sufficient information to justify a belief therein.

35.

Buck denies the allegations of Paragraph 35 for lack of sufficient information to justify a belief therein.

36.

Buck denies the allegations of Paragraph 36 for lack of sufficient information to justify a belief therein.

37.

Buck denies the allegations of Paragraph 37 for lack of sufficient information to justify a belief therein.

38.

For answer to Paragraph 38, Buck repeats and realleges each and every defense, averment and denial set forth in the foregoing paragraphs as if fully set forth herein.

39.

Buck denies the allegations of Paragraph 39 for lack of sufficient information to justify a belief therein.

40.

Buck denies the allegations of Paragraph 40 for lack of sufficient information to justify a belief therein.

41.

Buck denies the allegations of Paragraph 41 for lack of sufficient information to justify a belief therein.

42.

Buck denies the allegations of Paragraph 42 for lack of sufficient information to justify a belief therein.

43.

Buck denies the allegations of Paragraph 43.

44.

Buck denies the allegations of Paragraph 44.

45.

Buck denies the allegations of Paragraph 45 for lack of sufficient information to justify a belief therein.

46.

Buck denies the allegations of Paragraph 46 for lack of sufficient information to justify a belief therein.

47.

Buck denies the allegations of Paragraph 47 for lack of sufficient information to justify a belief therein.

48.

Buck denies the allegations of Paragraph 48 for lack of sufficient information to justify a belief therein.

49.

Buck denies the allegations of Paragraph 49.

50.

Buck denies the allegations of Paragraph 50.

51.

Buck denies the allegations of Paragraph 51 for lack of sufficient information to justify a belief therein.

52.

Buck denies the allegations of Paragraph 52 for lack of sufficient information to justify a belief therein.

53.

Buck denies the allegations of Paragraph 53 for lack of sufficient information to justify a belief therein.

54.

Buck denies the allegations of Paragraph 54 for lack of sufficient information to justify a belief therein.

55.

Buck denies the allegations of Paragraph 55 for lack of sufficient information to justify a belief therein.

56.

Buck denies the allegations of Paragraph 56 for lack of sufficient information to justify a belief therein.

57.

Buck denies the allegations of Paragraph 57 for lack of sufficient information to justify a belief therein.

58.

Buck denies the allegations of Paragraph 58 for lack of sufficient information to justify a belief therein.

59.

Buck denies the allegations of Paragraph 59 for lack of sufficient information to justify a belief therein.

60.

Buck denies the allegations of Paragraph 60.

61.

Buck denies the allegations of Paragraph 61 for lack of sufficient information to justify a belief therein.

62.

Buck denies the allegations of Paragraph 62 for lack of sufficient information to justify a belief therein.

63.

Buck denies the allegations of Paragraph 63 for lack of sufficient information to justify a belief therein.

64.

Buck denies the allegations of Paragraph 64.

65.

Buck denies the allegations of Paragraph 65 for lack of sufficient information to justify a belief therein.

66.

Buck denies the allegations of Paragraph 66 for lack of sufficient information to justify a belief therein.

67.

Buck denies the allegations of Paragraph 67 for lack of sufficient information to justify a belief therein.

68.

Buck denies the allegations of Paragraph 68 for lack of sufficient information to justify a belief therein.

69.

Buck denies the allegations of Paragraph 69.

70.

Buck denies the allegations of Paragraph 70 for lack of sufficient information to justify a belief therein.

71.

Buck denies the allegations of Paragraph 71 for lack of sufficient information to justify a belief therein.

72.

Buck denies the allegations of Paragraph 72 for lack of sufficient information to justify a belief therein.

73.

Buck denies the allegations of Paragraph 73 for lack of sufficient information to justify a belief therein.

74.

Buck denies the allegations of Paragraph 74 for lack of sufficient information to justify a belief therein.

75.

Buck denies the allegations of Paragraph 75, except to admit that Buck possessed the expertise needed to provide the actuarial services that it provided to LAHC.

76.

Buck denies the allegations of Paragraph 76, except to admit that the writings referenced in Paragraph 76 are the best and only evidence of their terms. Buck denies the allegations of Paragraph 76 to the extent they are incomplete, out of context, and inconsistent with the terms of the referenced writings.

77.

Buck denies the allegations of Paragraph 77, except to admit that the writing referenced in Paragraph 77 is the best and only evidence of its content. Buck denies the allegations of Paragraph 77 to the extent they are incomplete, out of context, and inconsistent with the content of the referenced writing. Buck denies all other allegations of Paragraph 77, and further avers that all work performed by Buck for LAHC was compliant with the relevant actuarial standards of practice and care.

78.

Buck denies the allegations of Paragraph 78 in their entirety.

79.

Paragraph 79 asserts only legal conclusions to which no response is required. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of Paragraph 79, except to admit that Buck complied fully with the relevant standards of actuarial practice and all legal obligations.

80.

Buck denies the allegations of Paragraph 80, except to admit that LAHC's claims experience was not statistically credible.

81.

Buck denies the allegations of Paragraph 81 as stated.

82.

Buck denies the allegations of Paragraph 82 as stated.

83.

Buck denies the allegations of Paragraph 83.

84.

Buck admits that Paragraph 84 has selectively quoted from ASOP No. 25 but avers that such quotes are incomplete, mischaracterized, and taken out of context.

85.

Buck denies the allegations of Paragraph 85.

86.

Buck denies the allegations of Paragraph 86.

87.

Buck denies the allegations of Paragraph 87.

88.

Buck denies the allegations of Paragraph 88.

89.

Buck denies the allegations of Paragraph 89 for lack of sufficient information to justify a belief therein.

90.

Buck denies the allegations of Paragraph 90.

91.

Buck denies the allegations of Paragraph 91.

92.

Buck denies the allegations of Paragraph 92.

93.

Buck denies the allegations of Paragraph 93.

94.

Buck denies the allegations of Paragraph 94.

95.

Buck admits that Paragraph 95 has selectively quoted from ASOP No. 23 but avers that such quotes are incomplete, mischaracterized, and taken out of context. Buck denies all other allegations of Paragraph 95.

96.

Buck denies the allegations of Paragraph 96.

97.

Buck denies the allegations of Paragraph 97 in their entirety.

98.

Buck denies the allegations of Paragraph 98 in their entirety.

99.

Buck denies the allegations of Paragraph 99 in their entirety.

100.

For answer to Paragraph 100, Buck repeats and realleges each and every defense, averment and denial set forth in the foregoing paragraphs as if fully set forth herein.

101.

Buck denies the allegations of Paragraph 101 for lack of sufficient information to justify a belief therein.

102.

Buck denies the allegations of Paragraph 102 for lack of sufficient information to justify a belief therein.

103.

Buck denies the allegations of Paragraph 103 for lack of sufficient information to justify a belief therein.

104.

Buck denies the allegations of Paragraph 104 for lack of sufficient information to justify a belief therein.

105.

Buck denies the allegations of Paragraph 105 for lack of sufficient information to justify a belief therein.

106.

Buck denies the allegations of Paragraph 106 for lack of sufficient information to justify a belief therein.

107.

Buck denies the allegations of Paragraph 107, except to admit that Buck possessed the expertise to provide the actuarial services that it provided to LAHC.

108.

Buck denies the allegations of Paragraph 108.

109.

Buck denies the allegations of Paragraph 109 for lack of sufficient information to justify a belief therein.

110.

Buck denies the allegations of Paragraph 110 in their entirety.

111.

Paragraph 111 asserts legal conclusions to which no response is required. To the extent, if any, an answer is deemed necessary, Buck denies the allegations of Paragraph 111, except to admit that Buck's professional services rendered to LAHC complied with all applicable actuarial standards of practice.

112.

Buck denies the allegations of Paragraph 112 in their entirety.

113.

For answer to Paragraph 113, Buck repeats and realleges each and every defense, averment and denial set forth in the foregoing paragraphs as if fully set forth herein.

114.

Buck denies the allegations of Paragraph 114 for lack of sufficient information to justify a belief therein.

115.

Buck denies the allegations of Paragraph 115 for lack of sufficient information to justify a belief therein.

116.

Buck denies the allegations of Paragraph 116 for lack of sufficient information to justify a belief therein.

117.

Buck denies the allegations of Paragraph 117 for lack of sufficient information to justify a belief therein.

118.

Buck denies the allegations of Paragraph 118 for lack of sufficient information to justify a belief therein.

119.

For answer to Paragraph 119, Buck repeats and realleges each and every defense, averment and denial set forth in the foregoing paragraphs as if fully set forth herein.

120.

Buck denies the allegations of Paragraph 120 for lack of sufficient information to justify a belief therein.

121.

Buck denies the allegations of Paragraph 121 for lack of sufficient information to justify a belief therein.

122.

Buck denies the allegations of Paragraph 122 for lack of sufficient information to justify a belief therein.

123.

Buck denies the allegations of Paragraph 123 for lack of sufficient information to justify a belief therein.

124.

Buck denies the allegations of Paragraph 124 for lack of sufficient information to justify a belief therein.

125.

Buck denies the allegations of Paragraph 125 for lack of sufficient information to justify a belief therein.

126.

Buck denies the allegations of Paragraph 126 for lack of sufficient information to justify a belief therein.

127.

Buck denies the allegations of Paragraph 127 for lack of sufficient information to justify a belief therein.

128.

For answer to Paragraph 128, Buck repeats and realleges each and every defense, averment and denial set forth in the foregoing paragraphs as if fully set forth herein.

129.

Paragraph 129 states legal conclusions to which no answer is required. To the extent, if any, an answer is deemed necessary, Buck denies the allegations of Paragraph 129.

130.

Buck denies the allegations of Paragraph 130.

131.

Buck denies the allegations of Paragraph 131.

132.

Buck denies the allegations of Paragraph 132.

133.

Buck denies the allegations of Paragraph 133 for lack of sufficient information to justify a belief therein.

134.

Buck denies all allegations of Paragraph 134 insofar as they pertain to Buck or to any alleged act or omission of Buck, and denies them for lack of sufficient information to justify a belief therein insofar as they pertain to other present and/or former defendants.

135.

Buck denies all allegations of Paragraph 135 insofar as they pertain Buck or to any alleged act or omission of Buck, and denies them for lack of sufficient information to justify a belief therein insofar as they pertain to other present and/or former defendants.

136.

Buck denies all allegations of Paragraph 136 insofar as they pertain Buck or to any alleged act or omission of Buck, and denies them for lack of sufficient information to justify a belief therein insofar as they pertain to other present and/or former defendants.

137.

Buck denies all allegations of Paragraph 137 insofar as they pertain Buck or to any alleged act or omission of Buck, and denies them for lack of sufficient information to justify a belief therein insofar as they pertain to other present and/or former defendants.

138.

Paragraph 138 states legal conclusions to which no answer is required. To the extent, if any, an answer is deemed necessary, Buck denies the allegations of Paragraph 138.

139.

Paragraph 139 states legal conclusions to which no answer is required. To the extent, if any, an answer is deemed necessary, Buck denies the allegations of Paragraph 139.

140.

Paragraph 140 requires no response from Buck.

The Prayer for Relief in Plaintiff's Fifth Amended Petition requires no response from Buck. To the extent, however, that an answer is deemed necessary, Buck denies the allegations of the Prayer for Relief.

JURY DEMAND

Buck is entitled to and demands trial by jury on all issues triable by jury.

NOW THEREFORE, Defendant, Buck Global, LLC, prays that these Affirmative Defenses and this Answer to Plaintiff's Fifth Amended Petition be deemed good and sufficient and that, after due proceedings herein, Plaintiff's Fifth Amended Petition be dismissed, with prejudice, at Plaintiff's cost and expense, and for such other, different, additional, and equitable relief, including summary and declaratory relief, to which Buck may be entitled.

Respectfully submitted,

/s/ James A. Brown

James A. Brown (La. Bar #14101)

Sheri L. Corales (La. Bar #37643)

LISKOW & LEWIS

One Shell Square

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, f/k/a Buck Consultants, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 2021, a copy of the above and foregoing pleading has been served upon all counsel of record by facsimile or by electronic mail.

/s/JamesA.Brown

SHERIFF PLEASE SERVE:

The Honorable Jeff Landry
Attorney General for the State of Louisiana
Livingston Building
1885 N. Third Street
Baton Rouge, LA 70802

CLERK OF COURT

FILE COPY

CASE ID: _____

CONSULTING SERVICES AGREEMENT DATE: _____

ATTORNEY: _____

PAGES: _____

This Agreement is entered into between Milliman, Inc. (Milliman) and Louisiana Health Cooperative, Inc. (Company) as of August 4, 2011. Company has engaged Milliman to perform consulting services as described in the letter dated August 4, 2011 and attached hereto. The parties agree that these terms and conditions will apply to all current and subsequent engagements of Milliman by Company unless specifically disclaimed in writing by both parties prior to the beginning of the engagement. In consideration for Milliman agreeing to perform these services, Company agrees as follows.

1. **BILLING TERMS.** Company acknowledges the obligation to pay Milliman for services rendered, whether arising from Company's request or otherwise necessary as a result of this engagement, at Milliman's standard hourly billing rates for the personnel utilized plus all out-of-pocket expenses incurred. Milliman will bill Company periodically for services rendered and expenses incurred. All invoices are payable upon receipt. Milliman reserves the right to stop all work if any bill goes unpaid for 60 days. In the event of such termination, Milliman shall be entitled to collect the outstanding balance, as well as charges for all services and expenses incurred up to the date of termination.
2. **TOOL DEVELOPMENT.** Milliman shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Milliman or developed during the course of the provision of the Services provided such generic documents or templates do not contain any Company Confidential Information or proprietary data. Rights and ownership by Milliman of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of Company's proprietary data or Company Confidential Information. To the extent that Milliman may include in the materials any pre-existing Milliman proprietary information or other protected Milliman materials, Milliman agrees that Company shall be deemed to have a fully paid up license to make copies of the Milliman owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the Company without the written permission of Milliman.
3. **LIMITATION OF LIABILITY.** Milliman will perform all services in accordance with applicable professional standards. The parties agree that Milliman, its officers, directors, agents and employees, shall not be liable to Company, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three times the professional fees paid to Milliman with respect to the work in question or \$3,000,000, whichever is less. In no event shall Milliman be liable for lost profits of Company or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Milliman.
4. **DISPUTES.** In the event of any dispute arising out of or relating to the engagement of Milliman by Company, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may

EBR3954855

EXHIBIT


3


disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors.

5. **CHOICE OF LAW.** The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of New York without regard to its conflict of laws provisions. In the event any provision of this agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect.
6. **NO THIRD PARTY DISTRIBUTION.** Milliman's work is prepared solely for the internal business use of Company. Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit any third party recipient of its work product, even if Milliman consents to the release of its work product to such third party.
7. **CONFIDENTIALITY.** Any information received from Company will be considered "Confidential Information." However, information received from Company will not be considered Confidential Information if (a) the information is or comes to be generally available to the public during the course of Milliman's work, (b) the information was independently developed by Milliman without resort to information from the Company, or (c) Milliman appropriately receives the information from another source who is not under an obligation of confidentiality to Company. Milliman agrees that Confidential Information shall not be disclosed to any third party.

MILLIMAN, INC.

LOUISIANA HEALTH COOPERATIVE, INC.

By: 
Name: Courtney R. White
Title: Consulting Actuary
Date: August 4, 2011

By: 
Name: Terry S Shilling
Title: Chief Executive Officer
Date: August 15, 2011

buckconsultants

March 31, 2014

Pat Powers
Chief Financial Officer
Louisiana Health Cooperative
3445 N. Causeway Blvd., Suite 800
Metairie LA 70002

Dear Pat:

This letter agreement ("Agreement") confirms the terms under which Louisiana Health Cooperative, Inc. ("Client") has engaged Buck Consultants, LLC ("Buck Consultants") to perform certain actuarial and consulting services as more particularly described in Section 1 below and Exhibit A hereto (the "Services"). The agreed terms and conditions under which Buck Consultants and Client are undertaking this engagement are as follows:

1. Services. In consideration for, and subject to, the mutual undertakings set forth herein, Buck Consultants agrees to provide the Services described in Exhibit A hereto.
2. Client Materials, Information, Data and Cooperation. To enable Buck Consultants to perform the Services, Client will promptly provide Buck Consultants with such direction, materials, information, data and access to its representatives as Buck Consultants reasonably requests. Buck Consultants is not responsible for verifying the accuracy or completeness of information supplied to it by Client representatives. If Buck Consultants receives inaccurate, incomplete or improperly formatted information, Buck Consultants shall have no liability for relying on the same, and any additional time and expense required to correct the information will be billed to and paid by Client as additional Services. The Services Buck Consultants has agreed to provide are solely those tasks specified in Exhibit A. Buck Consultants shall not be responsible for administration of Client's business or internal affairs in any fashion. Performance of the Services does not imply additional or ancillary functions or obligations on the part of Buck Consultants. The Services provided by Buck Consultants are advisory, and in the nature of consulting services; Buck Consultants is not providing legal, trust or accounting services and is not taking on any fiduciary duties or obligations to Client. All of the Services provided by Buck Consultants will be rendered in its capacity as an arm's length independent contractor and not as an agent.
3. Fees. For and during the term of this Agreement, Client will pay Buck Consultants the Fees specified in Exhibit B hereto ("Schedule of Fees"). All such Fees shall be paid in accordance with the payment terms set forth in Exhibit B. In the event that, during the term of this Agreement, Buck Consultants performs services in addition to those described in Exhibit A at the request of Client, then Client shall pay Buck Consultants for such additional services at Buck Consultants' then-current time and material rates, or such other amounts as the parties may agree in writing. All such additional services shall be considered "Services" hereunder. Also, in the event that Buck Consultants,

11 Stanwix Street Suite 700 Pittsburgh, PA 15221



during or after the term of this Agreement, is requested to respond to a third party's request for information or documents relating to work provided hereunder and including without limitation pursuant to a subpoena or to a request to coordinate with Client's successor actuary or consultant, then Client shall pay Buck Consultants for its Services with respect to responding to such request at Buck Consultants' then current time and material rates, together with any reasonable out of pocket expenses incurred by Buck Consultants (including but not limited to counsel fees if responding to a subpoena) or such other amounts as the parties may agree in writing.

4. Term and Termination. The initial term of this Agreement will be twelve (12) months beginning April 1, 2014 and ending March 31, 2015. This Agreement will automatically be extended for additional terms of twelve (12) months each unless Client or Buck Consultants gives written notice to the other at least ninety (90) days before the expiration of the initial or any subsequent term. In the event of a material breach of this Agreement which remains uncured for 30 days following written notice of the breach describing such breach in reasonable detail, the non-breaching party will have the right to terminate this Agreement upon ten (10) days prior written notice.
5. Confidentiality. Both Buck Consultants and Client recognize that in the course of this Agreement information will be exchanged consisting of confidential trade secret or business information ("Confidential Information"). Each party shall treat the other party's Confidential Information as it would treat its own confidential trade secret or business information, and with at least reasonable care as is appropriate to avoid unauthorized use or disclosure. Buck Consultants may provide Confidential Information to any of its agents and affiliates that need to know such information for the performance of the Services. In addition, Buck Consultants reserves the right to use non-confidential Client information for press releases and marketing materials. The obligations set forth in this Section 5 shall not apply to information that (i) is or becomes generally known to the public, other than as a result of a disclosure of a party's Confidential Information by the other party, (ii) is rightfully in the possession of the other party prior to disclosure, free of any obligation of confidentiality, (iii) is received by a party in good faith and without restriction from a third party not under a confidentiality obligation to the other party and having the right to make such disclosure, or (iv) is independently developed without reference to the other party's Confidential Information.
6. Buck Consultants' Proprietary Rights. The work product Buck Consultants delivers to Client in connection with this engagement is intended for Client's internal use as specifically contemplated when Buck Consultants was engaged to prepare it, and Client will retain ownership of the work product, and any information, specific to Client's employees or business, and as such, Client shall have the exclusive right to use, reproduce and adapt it for internal purposes within its organization as Client deems appropriate, provided that Buck Consultants shall have no responsibility or liability for use of its work product in any manner other than as contemplated when Buck Consultants was engaged to prepare it.

All materials, information, processes, software and products used by Buck Consultants to perform the Services under this Agreement (including without limitation specifications, database structures, report formats, templates, software, techniques, know-how, methods, algorithms, procedures and documentation), all additions, improvements and modifications made thereto in the course of Buck Consultants performing Services, and Buck Consultants' work papers and records are Buck Consultants' proprietary information (hereinafter, "Proprietary Information"). Proprietary Information belongs

exclusively to Buck Consultants, its affiliates or third-party licensors, and the Client shall not have any proprietary or other right or interest in or to the Proprietary Information. To the extent Proprietary Information is incorporated into work product Buck Consultants delivers to Client hereunder, Client shall have a fully paid, non-exclusive, non-transferable and non-sublicensable right to use such Proprietary Information in conjunction with such work product.

7. Remedies. Client shall not assert or seek, and Buck Consultants shall not be liable to Client for, any damages or other monetary claim or claims on any legal or equitable theory of liability or recovery exceeding, in the aggregate, \$500,000. Client hereby waives and agrees not to assert any claims for lost profits, indirect damages, consequential damages, special damages, incidental damages, exemplary damages, and punitive damages, regardless of whether such claims arise pursuant to this Agreement or pursuant to another legal or equitable claim or relationship between the parties. The provisions of this Section 7 shall apply regardless of whether any such claim or claims arise by statute, contract, indemnity, this Agreement, or otherwise arising in law or equity in any jurisdiction. The statute of limitations with respect to the assertion of any claims against Buck Consultants shall expire one year following the earliest date when the alleged error or omission or other event giving rise to the alleged claim first occurred, and, if not timely asserted by Client by initiation of a claim in a court of competent jurisdiction, shall be forever barred. No act of Buck Consultants other than the execution of an express waiver of the provisions of this Section 7 shall be effective to toll or extend the aforesaid one year limitation period or otherwise increase Buck Consultants liability with respect to any claims asserted against Buck.
8. Non-Solicitation Personnel. During the term of this Agreement and for one year following the effective date of its termination, Client agrees that, without the prior written consent of Buck Consultants, it shall not knowingly solicit for employment, any employee or former employee of Buck Consultants who was engaged in the performance of the Services during the twelve (12) month period immediately preceding such solicitation. The preceding sentence shall not prohibit Client from considering for employment any such employee or former employee of Buck Consultants who (i) seeks employment with Client in response to a general advertisement by Client (so long as the advertisement is not directed toward employees of Buck Consultants) or (ii) is identified in the course of employment searches by an independent third party retained by Client (so long as the search is not directed toward employees of Buck Consultants).
9. Miscellaneous. This Agreement is the product of mutual negotiation and drafting among sophisticated business people. Each party has been represented by competent counsel of such party's own choosing. Accordingly, no party shall be deemed to be the draftsman of this Agreement. This Agreement constitutes the full, complete and final expression of the parties' understanding with respect to the subject matter hereof and supersedes all prior oral or written understandings between the parties. Neither party has relied on any promises, representations or warranties except as expressly set forth in this Agreement. The parties hereto intend that no third party shall have any rights or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise. The parties hereto expressly agree that this Agreement will be construed and enforced in accordance with the internal laws of the State of New York, without regard to New York choice of law provisions. The parties hereby consent to the exclusive jurisdiction and venue of the federal and state courts situated in and for the State of New York, County of New York with respect to any dispute arising between the parties, regardless of whether such dispute arises pursuant

to this Agreement or otherwise. The parties consent to the waiver of trial by jury in any dispute arising between the parties. This Agreement may be amended only by a writing signed manually in pen and ink by the parties hereto, it being understood that an exchange of emails not bearing pen and ink signatures (or a replica of a manual signature) shall not be sufficient to modify or amend this Agreement. If any provision of this Agreement is declared invalid or unenforceable, by judicial determination or otherwise, such provision shall not invalidate or render unenforceable the entire Agreement but rather the provision in question shall be construed only so narrowly as is required in order to be enforceable; or if such more narrow construction of the provision in question is not possible, then the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision and the rights and obligations of the parties shall be construed and enforced accordingly. In each instance, such construction or "blue-penciling" of the Agreement shall be effected in such a manner as to give effect to the intent of the parties as expressed within the four corners of this Agreement. This Agreement may be executed in any number of counterparts. Each executed counterpart shall be conclusively deemed to be an original. All executed counterparts taken together shall constitute one and the same agreement. A transmission by facsimile or other electronic means of communication of this Agreement bearing a pen and ink signature on behalf of a party hereto shall be legal and binding on such party. Sections 2, 3, 5, 6, 7, 8 and 9, and Client's obligation to pay all amounts due to Buck Consultants under this Agreement, shall survive the termination or expiration of this Agreement.

If the foregoing accurately reflects your understanding and agreement, please acknowledge by signing below and returning a duplicate of this Agreement to the undersigned at the address above.

Sincerely,



Thomas S. Tomczyk
Buck Consultants, LLC

The Agreement set forth herein is
hereby agreed to and accepted this 4
day of April, 2014.



Pat Powers
Louisiana Health Cooperative, Inc.

Exhibit A

Scope of Services

During the term and subject to the conditions set forth in the accompanying Agreement, Buck Consultants will provide the following Services to the Louisiana Health Cooperative, Inc.

- Review current plan designs and calculate the Average Benefit Value for each plan
- Review previous documents filed with CMS for the 2014 rates
- Review current demographics and adjust rates to reflect population enrolled
- Develop cost models to prepare 2015 rates for Public Exchange
- Adjust rates to reflect network discounts
- Prepare rates by Region
- Prepare smoke and non-smoker rates
- Present target rates for review and revision
- Adjust plan designs to meet market objections
- Review and price new plan designs
- Review proposed administrative budget and commissions and incorporate into 2015 rates
- Review rate filing requirements
- Prepare and submit rate filings and assist Louisiana Health Cooperative, Inc with state rate filing
- Review competitive products and rates
- Prepare rates for commercial group quotes as requested (Off exchange quotes)
- Prepare Incurred But Not Reported (IBNR estimates)
- Assist with Commercial rate filing
- Meet with The Louisiana Health Cooperative, Inc. as needed

Exhibit B

Schedule of Fees

For the services outlined in Exhibit A, Buck Consultants will charge the following not-to-exceed fee. Buck will bill the Client actual time charges as they are incurred but not to exceed the annual fee below.

April 1, 2014 – March 31, 2015

\$260,000

Client shall pay all invoiced amounts within thirty (30) days of the receipt of Buck's invoice. Any amount not paid by Client when due shall bear interest at the rate of one and one half percent (1.5%) per month.

Buck Consultants will invoice Client periodically, generally on a monthly basis, for all fees and expenses due and payable by Client. Client shall pay all invoiced amounts within thirty (30) days of the receipt by Client of Buck Consultants' invoice. Any amount not paid by Client when due shall bear interest at the rate of one and one half percent (1.5%) per month or the highest permissible rate under applicable law, whichever is less, until paid in full.