

**COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA**

**IN RE:           LOUISIANA HEALTH SERVICE & INDEMNITY COMPANY D/B/A  
                  BLUE CROSS AND BLUE SHIELD OF LOUISIANA**

**PLAN OF REORGANIZATION REGARDING THE CONVERSION FROM A MUTUAL  
INSURANCE COMPANY TO A STOCK INSURANCE COMPANY**

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**PREHEARING MEMORANDUM**  
**OF ELEVANCE HEALTH, INC. AND ATH HOLDING COMPANY, LLC**

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In accordance with the Scheduling Order for Proposed Plan of Reorganization, Elevance Health, Inc. (“Elevance Health”) and ATH Holding Company, LLC (“ATH”) submit this Prehearing Memorandum in support of the Plan of Reorganization Regarding the Conversion from a Mutual Insurance Company to a Stock Insurance Company dated January 23, 2023, as amended (the “Plan of Reorganization”), filed with the Louisiana Department of Insurance (the “Department”) pursuant to La. Rev. Stat. 22:72 and 22:236 *et seq.* (the “Reorganization Statutes”), by Louisiana Health Service & Indemnity Company (d/b/a Blue Cross and Blue Shield of Louisiana), a Louisiana nonprofit mutual insurance company (“BCBSLA”), and the acquisition of BCBSLA and its subsidiaries by Elevance Health and ATH. For the reasons set forth below and those to be articulated at the February 14-15, 2024, Public Hearing, the Hearing Officer and appropriate Louisiana Department of Insurance staff should recommend approval of the Plan of Reorganization and, subsequent to the requisite member vote in favor of the transaction, the Commissioner of Insurance for the State of Louisiana (the “Commissioner”) should issue an order approving the Plan of Reorganization.

## **INTRODUCTION**

In connection with the Plan of Reorganization, Elevance Health has entered into an agreement to purchase BCBSLA. The proposed transaction can be summarized as follows: (i) BCBSLA would convert from a nonprofit mutual insurance company to a stock insurance company; (ii) pursuant to the Plan of Reorganization (a) approximately \$3.1 billion of transaction funds would be transferred to a newly-created nonprofit foundation, the Accelerate Louisiana Initiative, Inc. (“ALI”), whose mission is similar to BCBSLA’s nonprofit purpose of promoting the health and welfare of Louisiana’s residents, after which ALI will contribute or donate the funds to a newly formed special charitable trust, if the requisite special charitable trust legislation is approved by the Louisiana legislature (the “Trust”), and (b) BCBSLA’s eligible policyholders (the

“Eligible Members”) would receive approximately \$307 million in fixed consideration to be divided equally among the Eligible Members in exchange for the extinguishment of their voting rights; and (iii) BCBSLA’s newly issued shares of capital stock would be issued to ATH, an Indiana limited liability company and a wholly-owned subsidiary of Elevance Health, thereby accomplishing the acquisition.<sup>1</sup>

## **RELEVANT BACKGROUND**

The process for conversion and reorganization of a mutual insurer into a stock insurance company is governed by a comprehensive regulatory framework set forth in La. Rev. Stat. 22:72, 22:236 *et seq.*, and the other applicable provisions of the Louisiana Insurance Code. This regulatory framework is designed to ensure a complete, thorough, and robust review and investigation by the Department and the Commissioner, who is tasked with issuing a final order regarding any proposed reorganization. The Reorganization Statutes also require a mutual insurer to provide its plan of reorganization (or a summary thereof) to eligible voting members and provides such members the opportunity to vote to either approve or disapprove any reorganization at a special meeting of eligible voting members. La. Rev. Stat. 22:236.5.

On January 23, 2023, BCBSLA submitted to the Louisiana Commissioner of Insurance the Plan of Reorganization.<sup>2</sup> The Plan of Reorganization includes, among other things, the following

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<sup>1</sup> As set forth in the Plan of Reorganization, contemporaneously with the effectiveness of the reorganization, BCBSLA would issue to ATH one hundred percent (100%) of its newly issued shares of capital stock in accordance with the Plan of Reorganization and subject to the terms and conditions of the Agreement and Plan of Acquisition. The demutualization of BCBSLA and acquisition by ATH are to occur simultaneously and are intertwined; one cannot happen without the other under the Plan of Reorganization.

<sup>2</sup> The Plan of Reorganization filing by BCBSLA including Amendment No. 1 (submitted to the Department on July 18, 2023) and Amendment No. 2 (submitted to the Department on August 24, 2023) was withdrawn on September 25, 2023. Updated filings, including Amendment No. 3 to the Plan of Reorganization, were filed with the Department on December 14, 2023. Amendment No. 4 to the Plan of Reorganization was filed with the Department on January 12, 2024.

information required by the Reorganization Statutes: (i) a statement analyzing the benefits and risks attendant to the proposed reorganization, including the rationale for the reorganization (Plan pp. 2-4); (ii) a statement indicating how the reorganization will protect the immediate and long-term interests of policyholders and serve their best interests (Plan pp. 2-4); (iii) articles of incorporation and bylaws of reorganized BCBSLA (Plan Ex. A & B); (iv) information demonstrating that the corporate financial health of a reorganized BCBSLA will not be diminished upon reorganization (Plan pp. 2-3); and (v) plans for the sale of stock to ATH (Plan pp. 1-2, 5). La. Rev. Stat. 22:236.2(A).

Also, as required by the Reorganization Statutes, the Plan of Reorganization provides that all BCBSLA membership interests shall be extinguished upon the acquisition, and it provides for the distribution of consideration to all Eligible Members upon the extinguishment of their membership interests. Plan p. 6. La. Rev. Stat. 22:236.2(B)(1) and (2). The Plan of Reorganization includes the required opinion from a qualified investment banker (Chaffe & Associates, Inc. or “Chaffe”) which reflects that the consideration is fair to the eligible members from a financial point of view. (Plan Ex. D.) La. Rev. Stat. 22:236.3(A)(2).

Moreover, the Plan of Reorganization specifies the manner in which the aggregate consideration shall be determined and the method by which it shall be allocated to Eligible Members. (Plan pp. 7-8). La. Rev. Stat. 22:236.2(B)(3). The Plan of Reorganization includes the required opinion from a qualified actuary (Deloitte Consulting LLP, or “Deloitte”) which reflects that the methodology and underlying assumptions for allocation of consideration among eligible members are reasonable and appropriate and the allocation is fair and equitable. (Plan Ex. F.) La. Rev. Stat. 22:236.3(B)(2).

In accordance with the Reorganization Statutes, BCBSLA submitted to the Department for

review and approval the required summary of the Plan of Reorganization, notice of special meeting of the members related to the Plan of Reorganization to be held February 21, 2024, and information regarding the opportunity for such members to vote on the Plan of Reorganization. La. Rev. Stat. 22:236.5(C). This information was determined to be adequate by the Commissioner on January 12, 2024, and was provided to eligible voting members on January 18, 2024.

On January 23, 2023, in connection with BCBSLA's filing of the Plan of Reorganization, Elevance Health and ATH filed with the Department documents and information required in connection with its proposed acquisition of control of BCBSLA.<sup>3</sup>

Since the date of these filings the Department has fully investigated and examined the proposed transaction. Pursuant to his statutory authority, the Commissioner retained attorneys, actuaries, and other experts to assist in the examination of the proposed transaction. La. Rev. Stat. 22:236.4(D). The Department and its consultants' investigation has been exceedingly thorough and has resulted in numerous requests for additional information from both BCBSLA and Elevance Health, each of which was responded to by the respective parties. In addition, on September 12, 2023, BCBSLA submitted supplemental expert reports to the Department, prepared by Chaffe and Deloitte.

The public hearing, scheduled for February 14 and 15, 2024, is required by the Reorganization Statutes in order for the Commissioner to receive evidence on whether the Plan of Reorganization properly protects the interests of policyholders, serves the best interests of

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<sup>3</sup> This submission related to the proposed acquisition of control of BCBSLA and its insurance and health maintenance organization subsidiaries: HMO Louisiana, Inc., a Louisiana health maintenance organization; Southern National Life Insurance Company, Inc., a Louisiana stock insurance company; Vantage Health Plan, Inc., a Louisiana health maintenance organization; and Community Care Health Plan of Louisiana, Inc., a Louisiana health maintenance organization (commonly known as "Healthy Blue"). The acquisition information filing by Elevance Health and ATH was withdrawn on September 25, 2023. Updated filings were resubmitted on December 14, 2023.

policyholders and members, and is fair and equitable to policyholders and members. La. Rev. Stat. 22:236.4(A).

The Commissioner shall issue a final order or decision approving the Plan of Reorganization if he is satisfied that: (i) the interests of BCBSLA policyholders as such and as members are properly protected; (ii) the Plan of Reorganization serves the best interests of policyholders and members; and (iii) the Plan of Reorganization is fair and equitable to policyholders and members. La. Rev. Stat. 22:236.4(B).

## **LAW AND ARGUMENT**

### **I. The Legal Standard for Approval of the Reorganization has been Satisfied**

Following the Plan of Reorganization and acquisition filings, the Department retained the following outside advisors to assist in its examination of the proposed transaction: (i) legal counsel, Butler Snow, LLP (“Butler Snow”); (ii) regulatory consultants, Rector & Associates, Inc. (“Rector”); and (iii) actuaries, Hause Actuarial Solutions, Inc. (“Hause Actuarial”). Each of Rector and Hause Actuarial issued reports to the Department outlining their respective reviews of the Plan of Reorganization. Elevance Health is not aware of any information obtained by the Department or its outside advisors that would indicate that the Plan of Reorganization fails to meet the requirements for approval set forth in Louisiana’s Reorganization Statutes.

### **II. The Rector Report**

On August 14, 2023, Rector provided to the Department a written report of its regulatory analysis of the Plan of Reorganization (the “Rector Report”), including its conclusions and recommendations with respect to the Plan of Reorganization. Rector’s findings, as well as actions taken by Elevance Health in response to certain of Rector’s recommendations, are summarized below.

### **A. The Rector Report Recognizes the Benefits of the Transaction**

The Rector Report recognizes that there are “many benefits” of the transaction and that “the benefits of the Transactions claimed by BCBSLA appear to us to be reasonable and to be the types of benefits we anticipate transactions such as those contemplated here would provide.” Rector Report p. 4-5. Further, the Rector Report states, “In addition to the anticipated benefits to BCBS’s members and other customers, the funding of the Foundation should also benefit residents of Louisiana more broadly-even those who are not members or other customers of BCBSLA-since the stated mission of the Foundation is ‘to improve the health and lives of the people of Louisiana’.” Rector Report p. 5.

### **B. The Rector Report Recognizes that the Transaction would Improve BCBSLA’s Access to Capital.**

The Rector Report recognizes that Elevance Health, through its more than \$100 billion market capitalization, would provide BCBSLA with greater financial resources and flexibility and would improve BCBSLA’s access to capital. The Rector Report provides that the transaction “would cause BCBSLA to become a member of a financially strong and viable group [Elevance Health] with access to capital.” Rector Report p. 13.

This access to capital would permit BCBSLA to expand existing business, develop new business opportunities and enhance its competitive position in the health benefits industry. BCBSLA members would gain the ability to utilize tools already available to Elevance Health and its affiliates that will enhance the availability of health care services and benefits to members, including 24-hour digital support through text and video visits with integrated healthcare providers, integrated pharmacy support, at-home diagnostics solutions, and care navigation.

Elevance Health has developed a portfolio of whole health solutions, and capabilities with over \$4 billion in investments in recent years. This provides solutions for a variety of member



needs, including condition-specific needs regarding diabetes, cancer, heart conditions, and others. Having condition-specific solutions that complement the care delivered by health care providers enables members to focus on what will improve their health and lives. These whole health capabilities have demonstrated success in improving Elevance Health members' health.

**C. The Rector Report Identifies Financial Impact of the Plan of Reorganization on BCBSLA, and Elevance Health has Responded.**

The Rector Report identifies that a reduction in BCBSLA's liquid assets and surplus may occur in connection with the transaction. This is due to BCBSLA's payment to ALI of approximately \$667 million. To that end, Rector recommended that the Department require certain conditions to any approval of the transaction, including (i) ensuring that Elevance Health issues a guarantee to protect the customers of BCBSLA and HMO Louisiana, (ii) requiring Elevance Health to document that it will ensure that BCBSLA and HMO Louisiana each maintain an ACL RBC Ratio of at least 375% and (iii) requiring BCBSLA to agree not to pay any dividends without prior approval of the Department until 2027. Rector Report p. 7. To that end, Elevance Health has agreed to (x) issue a parental guarantee whereby it guarantees the contractual and financial obligations of each of BCBSLA and HMO Louisiana (*See* ELV Ex. 6), (y) enter into a Capital Maintenance Agreement with BCBSLA and HMO Louisiana to ensure that each entity's risk-based capital ratio is maintained at or above 375% of ACL RBC (*See* ELV Ex. 5) and (z) issue a commitment whereby it will not cause BCBSLA to pay any dividends until 2027 without the prior approval of the Department (*See* ELV Ex. 10). Thus, BCBSLA and its customers will benefit from the additional financial strength and security of Elevance Health.

**III. The Hause Actuarial Report**

On August 15, 2023, Randall A. Stevenson ("Stevenson") of Hause Actuarial provided to the Department a written report of his actuarial analysis of the Plan of Reorganization entitled

“Actuarial Review of Proposed Sponsored Demutualization of Blue Cross/Blue Shield of Louisiana” (the “Hause Report”). As set forth below, the Hause Report is fundamentally flawed in several respects.

**A. The Hause Report’s “Merely Logical Conclusions” are Improper and Wrong.**

Despite its title “Actuarial Review”, the Hause Report includes information that Stevenson characterizes as “merely logical conclusions based on available information.” Hause Report p. 3; *see* R. Stevenson Dep., attached as **Appendix III** (“Stevenson Dep.”), pp. 24-26. As this statement suggests, the Hause Report includes numerous statements outside the scope of an actuary’s expertise in contravention of the actuarial Code of Professional Conduct. The Hause Report’s conclusions are based on fundamental misunderstandings of the law and the facts. The Hause Report concludes that the proposed transaction “does not conform with general practices in a sponsored demutualization”, and that the proposed total consideration payable to BCBSLA’s Eligible Members is inadequate because “it does not allocate the net proceeds of the sale of the company to the owners of the reorganized for-profit stock company.” Hause Report p. 4. The Hause Report’s erroneous conclusions are contrary to Louisiana law, fail to account for the unique nature of this transaction (a concurrent for-profit conversion, demutualization and sale), and are otherwise belied by common practice regarding conversions of nonprofit health insurers.

First, the Hause Report misconstrues Louisiana’s demutualization law in concluding that all of the transaction consideration should go to the Eligible Members, and it ignores nonprofit conversion doctrines and similar precedent transactions by failing to account for the other key stakeholder in the transaction – the Louisiana general public. Given BCBSLA’s origin as a tax-exempt social welfare organization and its continued adherence to its nonprofit mission despite subsequent changes to the Internal Revenue Code (“IRC”), the citizens of Louisiana are entitled

to consideration, as they have substantially contributed to and were the intended beneficiaries of much of the commercial value that BCBSLA has built since its establishment in 1976. Despite this, the Hause Report, in effect, suggests that BCBSLA's small group of (typically short-term) policyholder members are entitled to receive a windfall to the severe detriment of Louisiana citizens as a whole.

Second, the Hause Report equates this transaction to a standard for-profit life insurer demutualization in which most or all of the transaction consideration is provided to the typically long-term members of a mutual life insurer. Hause Report pp. 21, 31-35; Stevenson Dep. (Appx. III), p. 31-34. But those situations are not analogous. The better interpretation of Louisiana law as related to this unique health insurance transaction is to apply both nonprofit conversion and demutualization principles of law. This approach accomplishes distribution "in a fair and equitable manner" to all BCBSLA stakeholders (both the Eligible Members and Louisiana citizens as a whole) as Louisiana law requires, while still adhering to Eligible Member rights under the organizational documents and BCBSLA's nonprofit origin/mission.

Although the Hause Report is materially flawed and incorrect in multiple respects including its ultimate conclusion, the actual scope of disagreement is limited. The Hause Report determines that: (i) the total transaction purchase price negotiated with Elevance Health is reasonable, and that no additional consideration is necessary; and (ii) the amount of the fixed component of consideration to the Eligible Members is reasonable and appropriate under Louisiana demutualization law. Hause Report pp. 17, 22; Stevenson Dep. (Appx. III), p. 85. Indeed, the Hause Report notes that if BCBSLA's experts' "premises are correct, the conclusion would be valid in [Hause Actuarial's] opinion." Hause Report p. 20. The only disputed issue is the amount, if any, of the remaining transaction funds that should be paid to the Eligible Members

as a variable component of consideration.

**B. The Hause Report's Application of Louisiana Law is Flawed and Improperly Recommends Payment of Variable Consideration to Members.**

The Hause Report does not take issue with the proposed fixed amount of consideration being provided to Eligible Members; rather, the Hause Report incorrectly concludes that the net proceeds of the sale of the company (after deducting the fixed consideration) should be paid entirely to the Eligible Members as variable consideration. *See* Hause Report pp. 4, 11. This conclusion contradicts Louisiana law, is not fair and equitable, would result in a windfall distribution to Eligible Members that would be inconsistent with BCBSLA's organizational documents that provide no dividends to Eligible Members, and is inconsistent with BCBSLA's stated mission of promoting the welfare of the residents of Louisiana.

1. Division Between Fixed and Variable Considerations is Not Actuarial Matter.

At the outset, it is important to note that Stevenson is not qualified to render any opinion regarding the total amount of consideration available for division between fixed and variable amounts, as that is not an actuarial matter. Regarding the aggregate amount of consideration to be paid to Eligible Members as a group, La. Rev. Stat. 22:236.3(A)(2) clearly states that “[t]he reorganizing mutual shall obtain an opinion ... from a qualified investment banker that the provision of [aggregate] consideration upon the extinguishment of the membership interests pursuant to the plan of reorganization is fair to the eligible members, as a group, from a financial point of view.” *Id.* (emphasis added). In contrast, an actuary is only qualified to opine on whether the “methodology and underlying assumptions for allocation of consideration among eligible members are reasonable and appropriate and the resulting allocation is fair and equitable.” La. Rev. Stat. 22:236.3(B)(2) (emphasis added). Actuarial Standards of Practice (“ASOP”) No. 37 likewise confirms that aggregate consideration is not a matter within an actuary's expertise or

scope of review. *See* ASOP No. 37 (“1.2 Scope—This standard of practice applies to actuaries who are determining, reviewing, advising on, or opining on the allocation of policyholder consideration during the demutualization of a U.S.-domiciled mutual company.”) (emphasis added).

Here, BCBSLA obtained a Fairness Opinion from Chaffe, dated January 12, 2023 (the “Chaffe Fairness Opinion”). Chaffe are investment bankers, and as such, were qualified to provide their opinion that the proposed methodology and resulting aggregate consideration “is fair to the existing Eligible Members, as a group, from a financial point of view.” Plan Ex. D, Chaffe Fairness Opinion p. 6. In contrast, Stevenson is not an investment banker or otherwise qualified under Louisiana law to render an opinion regarding the fairness of aggregate consideration to be paid to Eligible Members under the Plan of Reorganization. *See* La. Rev. Stat. 22:236.3(A)(2). Further, the Hause Report’s commentary on the aggregate consideration violates Precept 2 of the American Academy of Actuaries Code of Professional Conduct (“Precept 2”), as Stevenson is opining on subject matters well outside of an actuary’s qualifications and expertise.<sup>4</sup> Therefore, all of Stevenson’s opinions regarding the amount of aggregate consideration allegedly owed to Eligible Members must be completely disregarded as unqualified because they are outside the scope of Stevenson’s expertise. Absent the Hause Report’s unqualified conclusions, the only qualified expert opinion on record establishes that the proposed amount of aggregate consideration of \$307 million “is fair to the existing Eligible Members, as a group, from a financial point of view.” Chaffe Fairness Opinion p. 6.

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<sup>4</sup> *See* Actuarial Code of Professional Conduct, Precept 2 (“An Actuary shall perform Actuarial Services only when the Actuary is qualified to do so on the basis of basic and continuing education and experience, and only when the Actuary satisfies applicable qualification standards.”).

2. Variable Consideration is not Available Under BCBSLA Organizational Documents or Insurance Policies.

Eligible Members are not entitled to the full market value of BCBSLA (as variable consideration or otherwise) under either BCBSLA's articles of incorporation or its insurance policies. The Hause Report challenges the fundamental fact that the Eligible Members' interest in BCBSLA is limited to voting rights but fails to provide any support for such purported additional rights.

Again, it is important to note that the Hause Report's legal interpretations and resulting opinions on the legal structure of BCBSLA and legal mechanics of the transaction violate Precept 2 (as Stevenson is not qualified and does not have the expertise to render legal opinions, *see* Stevenson Dep. (Appx. III), p. 15), and thus should be completely disregarded. When providing actuarial services and opinions, actuaries are required to operate within the legal structures set forth in applicable law and contracts. Instead, the Hause Report attempts to disregard these foundational legal parameters as "assumptions" which can be substituted with Hause Actuarial's own unqualified legal interpretations.

The Hause Report cites IRS Tax Topic 430 for the proposition that "[t]he insurance policy sets the terms of the policyholder's ownership." Hause Report p. 18. However, the Hause Report fails to identify a single BCBSLA-issued insurance policy that provides a policyholder with an ownership right to surplus or liquidation proceeds. *See* Stevenson Dep. (Appx. III), pp. 51-52. Further, Louisiana demutualization law provides that a member's "membership interest" includes all rights "arising under the mutual insurer's articles of incorporation and bylaws, by law, or otherwise, which includes ... the right, if any, to vote and the right, *if any*, with regard to the surplus of the mutual insurer not apportioned or declared by the board of directors for policyholder dividends. La. Rev. Stat. 22:236(9) (emphasis added). These documents, as analyzed below, do

not afford the Eligible Members any rights to BCBSLA’s surplus or liquidation proceeds. *See* Stevenson Dep. (Appx. III), p. 76. Rather, the Eligible Members’ membership rights consist solely of voting rights, for which the Eligible Members are being paid the fixed component of consideration for the extinguishment of such voting rights.

BCBSLA’s currently effective Amended and Restated Articles of Incorporation (the “Articles”) clearly state that Members are not entitled to any dividends and that their membership interest in BCBSLA is limited to voting rights. *Id.*<sup>5</sup> The Hause Report actually concedes that the Eligible Members are not entitled to any dividends and that the Articles do not expressly provide any additional membership rights. *See* Hause Report p. 8. However, the Hause Report erroneously concludes that – despite the prohibition on dividends and the silence in the key organizational documents as to any additional membership rights in BCBSLA – the Eligible Members should be treated as owners of BCBSLA, with full rights to its entire surplus as well as the net proceeds of a sale. *See* Hause Report pp. 11-12. Instead of relying on Louisiana law or the key organizational documents that the Report concedes must govern the analysis, the Report instead “base[s] [its] assumption about the ownership of BCBSLA being the eligible policyholders on ... definitions of a mutual (insurance) company” found in online resources such as Investopedia, Black’s Law Dictionary, Insuranceopedia, and even Wikipedia. *See* Stevenson Dep. (Appx. III), p. 81.<sup>6</sup> These

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<sup>5</sup> *See* Articles at Article VII, Voting Membership (emphasis added) (“The Corporation is organized and shall function entirely as a nonprofit mutual insurer. It shall issue no shares of stock and pay no dividends. ... [E]ach policyholder of an in-force insurance contract issued by the Corporation is hereby defined to be a Voting Member of the Corporation with all rights and obligations of such membership. ... A Voting Member, as of the record date as established hereafter, of an in-force individual or group insurance policy or contract issued by the Corporation shall be entitled to one vote at any special or annual meeting of the Corporation duly called.”).

<sup>6</sup> In his deposition, Stevenson testified as follows: “Q. Do you consider Wikipedia to be a persuasive authority or a binding authority? A. No. | Q. Do you know who writes for Wikipedia? A. Anybody who wants to.” *Id.*, p. 81.

online resources are not binding authority, are improper sources in light of the contrary language of the organizational documents and Louisiana law and should not be used to disregard persuasive industry authority which recognizes the limited rights of policyholders to the assets of a mutual insurance company.<sup>7</sup>

The Hause Report's substantial reliance on the BCBSLA Articles' silence regarding the disposition of excess surplus is likewise wrong and contravenes Louisiana law. "When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." La. Civ. Code art. 2046. "Although a contract is worded in general terms, it must be interpreted to cover only those things it appears the parties intended to include." La. Civ. Code art. 2051. "Silence does not create an ambiguity that must be strictly construed against the insurer ...." *Sims v. Mulhearn Funeral Home, Inc.*, 2007-0054 (La. 05/22/07); 956 So.2d 583, 593. The Report misconstrues or overlooks these legal principles and elevates "claimed" rights that are not expressly contained within the written language of the contract. Louisiana law provides that these rights simply do not exist and have no effect.<sup>8</sup> In

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<sup>7</sup> See, e.g., National Association of Insurance Commissioners White Papers – Mutual Insurance Holding Company Reorganizations, 1998 WL 34374781, at \*13 (Dec. 7, 1998) (emphasis added) ("In the ... case [of a] dissolution of a mutual insurer, it may be no more legitimate to contend that current policyholders have a right to all of the assets of an insurer, than it would be to say they have none. In recognition of this broader concept of ownership, Wisconsin and Minnesota for example, have enacted statutes that recognize **beyond a certain limit, assets of a mutual insurer are a public interest, and not the property interest of current policyholders**, and other states have provided look-back provisions in their demutualization statutes. In addition, the demutualization laws in Nebraska acknowledge that, in certain circumstances when fair to policyholders, less than the entire value of an insurer may be distributed to its policyholders in the event of a demutualization.").

<sup>8</sup> See *Petroleo Brasileiro, S.A. Petrobras v. Sea Drilling Corp.*, Civ. No. 86-4127, 1987 U.S. Dist. Lexis 11687, 1987 WL 28132 (E.D. La. Dec. 16, 1987) ("That the contract is silent as to a 'claimed' right simply means the right does not exist; silence is not grounds to supplement the terms of a written contract with implied rights. ... [C]ourts have consistently and repeatedly held that 'silence' on a claimed right means that the right does not exist and that written contracts cannot be supplemented by implied theories to create rights not explicitly contained in the contracts."), citing La. Civ. Code arts. 2046, 2051, and *PGC Pipeline v. Louisiana Intrastate Gas*, 791 F.2d 338, 339-40 (5th Cir. 1986); *Chevron USA, Inc. v. Belco Petroleum Corp.*, 755 F.2d 151, 1153-54 (5th Cir. 1985); *Louisiana Power & Light Co. v. United Gas Pipe*



accordance with well settled Louisiana precedent, the silence in the Articles and By-Laws as to whether Eligible Members have a right to BCBSLA’s surplus in the event of a liquidation **simply means that the right does not exist**. Such a reading is consistent with the overall intent of the Articles and By-Laws, which, as noted above, reflect that BCBSLA “shall issue no shares of stock and pay no dividends.”

3. Eligible Members are Not Entitled to the Full Market Value of BCBSLA.

Eligible Members are not entitled to the full market value of BCBSLA (as variable consideration or otherwise) under the Reorganization Statutes, the American Academy of Actuaries Practice Note (the “Practice Note”) or ASOP 37 upon which the Report heavily relies. *See Report p. 3.*

Under the Reorganization Statutes, a mutual insurer may reorganize into a stock insurance company. La. Rev. Stat. 22:236.1. It is undisputed that the Commissioner has the sole and exclusive jurisdiction to consider and to approve any demutualization and will do so if it is in the best interests of all stakeholders. La. Rev. Stat. 22:72(B). The House Report, however, incorrectly interprets several demutualization requirements found in La. Rev. Stat. 22:236, *et seq.*, and improperly applies actuarial guidelines, including ASOP 37 and the Practice Note.

The Plan of Reorganization must distribute “consideration, in a fair and equitable manner, to all eligible members upon extinguishment of the[ir] membership interests.” La. Rev. Stat. 22:236.2 (emphasis added). As previously discussed, the Eligible Members’ “membership

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*Line Co.*, 642 F. Supp. 781, 789-95 (E.D. La.1986); *see also Grant v. Leach*, 20 La. Ann. 329, 331 (1868) (“All contracts are to be construed to accomplish the intention of the parties, and in determining their provisions a liberal and fair construction will be given to the words, either singly or in connection with the subject-matter. It is not the duty of a court by legal subtlety to overthrow a contract, but rather to uphold it and give it effect. ... [A]ll rights ... must be clearly defined, and not raised by inference or presumption; and if a charter is silent about a power, it does not exist.”).

interest” derives from BCBSLA’s organizational documents (Articles and By-Laws), Louisiana law and insurance policies and is limited to voting rights (*i.e.*, not ownership/surplus rights). The method of allocating consideration among eligible members shall be deemed fair and equitable if “[t]he method shall provide for each eligible member to receive ... a fixed component of consideration **or** a variable component of consideration, **or** both ...” La. Rev. Stat. 22:236.3(B) (emphasis added). Louisiana demutualization law does not require that any one component of consideration be included as part of the Plan for Reorganization and does not require a variable component of consideration to be paid to Eligible Members. Importantly, Eligible Members are not statutorily entitled to *both* a fixed component of consideration and a variable component of consideration. The House Report concedes that the fixed component of consideration is fair and equitable, but incorrectly concludes that the Plan of Reorganization is unfair based simply on the absence of a variable component of consideration (which is not required) and a misreading of supporting actuarial guidance.

The House Report relies heavily on the Practice Note and ASOP No. 37, but these materials do not support its conclusion that the Eligible Members are entitled to variable consideration. ASOP No. 37 instructs that for the fixed component of consideration, relevant factors include BCBSLA’s voting policy (where the voting rights of the members are terminated by the reorganization), and allocation can be based on each eligible policyholder. ASOP No. 37 § 3.2.1. The House Report does not challenge the Plan of Reorganization’s fixed component of consideration or calculations, and it is clear that the Eligible Members are adequately compensated via the fixed component of consideration for their voting rights (which is their only membership interests).

ASOP No. 37<sup>9</sup> also provides guidance that the variable component of consideration, if any, should be allocated based on members' actuarial contributions, including (among other things) historical information regarding dividend calculations, the present value of historical or anticipated future surplus contributions, or current dividend allocation methodology. *Id.*, at 3.2.3, 3.2.5. Indeed, the Report concedes that “eligibility for the variable component may be related to eligibility for dividends or for a distribution upon liquidation in some plans ....” Hause Report p. 13, *citing* ASOP No. 37 § 3.1.1 (emphasis added). Similarly, as the Hause Report acknowledges, the relevant Practice Note states that “[i]n theory, ... the variable portion compensates for the loss of rights to a distribution of excess assets in the event of liquidation.” Hause Report p. 22 (emphasis added). And, as reflected in Appendix 1 to ASOP No. 37, in calculating variable consideration, “the most significant right that participating policyholders have is the right to receive dividends as declared by the board of directors.... [which] is not canceled as the result of a demutualization.” As previously analyzed in detail, the Eligible Members are clearly not entitled to any dividends, and they do not have any ownership rights to distributions upon liquidation. As such, the Eligible Members are not entitled to an optional variable component of consideration that may be afforded (but is clearly not required) under Louisiana demutualization law.

In particular, the Hause Report's analysis of actuarial principles is flawed in two material respects:

1. The Hause Report's conclusion that Eligible Members are entitled to a variable

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<sup>9</sup> ASOP No. 37 is focused on mutual life insurance companies. While it may serve as potential guidance to an actuary reviewing a demutualization of a health insurance company, it is not exhaustive and is subject to the basic principles of actuarial interpretation discussed *infra – i.e.*, it must be adjusted to recognize the substantial differences between a mutual life insurance company conversion and the conversion of a [nonprofit] [mutual] health insurance company like BCBSLA. The Report fails to account for the limited applicability of ASOP No. 37.

component of consideration hinges entirely on the fundamental premise that “[t]he variable portion is ... allocated to any policy which is participating.” Hause Report p. 14 (emphasis added). That actuarial premise is correct and is likewise supported by the January 12, 2023 Deloitte Opinion to the Plan of Reorganization. *See* Plan Ex. F, Deloitte Opinion at p. 3 (emphasis added) (“Furthermore, BCBSLA has determined that since all of its policies are non-participating, paying no dividends and providing no rights to surplus, shares of stock or liquidation proceeds, there is no variable component to the allocation of consideration among eligible members.”). However, the Hause Report incorrectly and without any actuarial (or other) justification states that a policy is “participating” if members are eligible for dividends or have voting rights; *i.e.*, a policy is participating even if members only have voting rights. Hause Report p. 14; Stevenson Dep. (Appx. III), p. 52.

Putting aside that the Hause Report’s legal interpretation of the term “participating” violates Code of Conduct Precept 2, that false premise is directly contradicted by Louisiana law and demutualization precedent. *See, e.g.*, La. Rev. Stat. 22:931(A)(5) (“Participating policy. If the policy is a participating policy, a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy.”) (emphasis added); La. Rev. Stat. 22:874(A) (“[E]very insurer issuing participating policies, shall pay dividends, unused premium refunds or savings distributed on account of any such policy, only to the real party in interest entitled thereto ...”) (emphasis added); LA Directive No. 129 (LA INS BUL) (Commissioner J. Donelon), 2020 WL 4505948, at \*1 (August 4, 2020) (“A ‘participating policy’ is an insurance policy which provides for participation in the profits of the operations of a[n] ... insurer by the payment of dividends to policyholders.”) (emphasis added).<sup>10</sup> Since the BCBSLA policies are clearly not

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<sup>10</sup> *See also Kirkham v. Am. Liberty Life Ins. Co.*, 30,830 (La. App. 2 Cir. 8/19/98); 717 So.2d 1226, 1227 (“The contract is also a participating plan which entitles the Owner of the contract to receive

participating (*i.e.*, no rights to dividends or surplus), pursuant to the Hause Report’s own rationale, the Eligible Members are not entitled to a variable component of consideration.

2. The Hause Report ignores fundamental actuarial principles of interpretation set forth in ASOP No. 1. For example, ASOPs are only “intended to provide [general] guidance for dealing with commonly encountered situations. Actuaries in professional practice may also have to handle new or non-routine situations not anticipated by the ASOPs.” ASOP No. 1, 3.1.3. Indeed, ASOPs are “principles-based and do not attempt to dictate every step and decision ... or dictate a single approach nor mandate a particular outcome. Rather, ASOPs provide the actuary with an analytical framework for exercising professional judgment, and identify factors that the actuary should typically consider when rendering a particular type of actuarial service.” *Id.* at 3.1.4. ASOP No. 1 acknowledges that there will be “situations where applicable law (statutes, regulations and other legally binding authority) may require an actuary to deviate from the guidance of an ASOP” and that in the event of conflict, “the requirements of law shall govern.” *Id.* at 3.1.5 (emphasis added). ASOP No. 1 also makes clear that “practice notes published by the Academy ... do not establish standards of practice and are not binding upon actuaries.”

The Hause Report does exactly what ASOP No. 1 says not to do – it disregards the unique nature of this transaction, attempts to rigidly apply for-profit life insurer demutualization rules to

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dividends, if any, beginning at the end of the second contract year and each year thereafter as long as the insured lives and as apportioned by the Board of Directors.”); *Grainger v. State Sec. Life Ins. Co.*, 547 F.2d 303, 304 fn.2 (5th Cir. 1977), *quoting* 1 J. Appleman & J. Appleman, *Insurance Law and Practice*, s. 9 (1965) (“A participating policy is one in which dividends are paid to policyholders based upon company earnings, so that net cost is determined by deducting the amount of such dividends from the gross premiums.”); ASOP No. 33 (“participating business” and “dividend paying” used synonymously); John Hancock Mutual Life Insurance Company demutualization (relied on by the Report as per below) (distinguishing in the Plan of Reorganization between a “participating policy” and a “voting policy”); Phoenix Home Life Mutual Insurance Company (criteria for a “participating policy” does not include voting rights).

an entirely different factual and legal situation, and relies almost entirely on an Actuarial Practice Note that is not binding and does not purport to be exhaustive (Hause Report p. 13). The Hause Report, as discussed *supra*, also places general actuarial guidance over governing Louisiana demutualization law in clear contravention of ASOP No. 1, 3.1.5.

### **C. The Hause Report Improperly Relies on For-Profit Life Insurer Demutualizations.**

The Hause Report relies heavily on several examples of for-profit life insurer demutualizations in support of its interpretation of the law and distribution of transaction proceeds. *See* Hause Report pp. 13, 25, 31. As analyzed in Appendix “1” hereto, these life insurer demutualizations are not binding, not persuasive precedent, and otherwise fail to account for the stark differences between life insurance and health insurance coverage.<sup>11</sup> The Hause Report and Stevenson both conceded that they rely on for-profit life insurance demutualizations which are materially different. *See* Hause Report p. 21 (“[T]hese companies are life insurers which typically had written many small policies, which had been in force for decades.”); Stevenson Dep. (Appx. III), p. 30-34. The Hause Report’s Illustrative Example (*see* Report p. 14) should likewise be ignored as irrelevant because it involves life insurance policies, not health insurance policies. It is telling that the Hause Report’s list of allegedly comparable transactions omits: (i) any precedent in which only a fixed share of consideration was allocated to members; (ii) any nonprofit health insurer transactions; and (iii) life insurer demutualizations where payments or transfers to

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<sup>11</sup> Issues include: (a) health values limited to one year (vs. contribution calculated [as per Report p.14] as present value of past profits “from the policy” plus the present value of future profits from the policy); (b) there is no multi-year value build up (vs. life policies for many decades which consistently contribute to surplus accumulation); (c) fails to account for the “80/20 Rule” (*i.e.*, health insurers must spend at least 80% (85% for large group) of premium on health care costs and quality improvement activities, while the other 20% (15% for large group) can go to administrative, overhead and marketing costs); and (d) it is extremely difficult to calculate the actual contribution of a health insurance policy.

charitable foundations were made. As set forth below, comparable nonprofit health conversion transactions are appropriate examples and (like the Plan of Reorganization) do not provide a variable component of consideration to policyholders.

The Hause Report states that “several similar demutualizations funded foundations,” yet the Hause Report fails to cite these transactions and does not reference such as precedent in its analysis. Hause Report p. 4; Stevenson Dep. (Appx. III), pp. 28-30, 35-38. If the Hause Report analyzed such comparable transactions, it would be apparent that the Plan of Reorganization appropriately follows well established nonprofit conversion practices and otherwise presents the most equitable methodology for distributing the proceeds from the transaction. As analyzed in Appendix “2”, these comparable nonprofit health insurer conversion transactions (which involved other Blue Cross Blue Shield entities) are appropriate examples and, like the Plan of Reorganization, provide transaction consideration to tax-exempt organizations to benefit the public. Neither Louisiana law nor other historical transactions support the Hause Report’s erroneous conclusion that funds derived from a nonprofit health insurer’s for-profit conversion should be distributed completely to its policyholders.

Finally, the Hause Report makes several other passing arguments, including:

1. The Hause Report acknowledges the nonprofit nature of the company but then incorrectly assumes that “BCBSLA converts to a for-profit company and demutualizes concurrently ... [and] is then sold after the reorganization, when the prohibitions against issuing stock and paying dividends has been removed.” Hause Report pp. 10-11. That is not correct. All of the steps – the for-profit conversion, the demutualization and the sale – will happen concurrently (*i.e.*, there is no reorganization unless the sale to Elevance Health is also consummated at the same time). Therefore, Eligible Members never receive stock in the for-profit stock corporation and the

prohibition against paying dividends is not removed in any interim transaction step. *See, e.g.,* Chaffe Response at p. 4 (“According to the Plan of Reorganization and the Elevance Acquisition Agreement, Eligible Members never receive stock or become shareholders in the converted, for-profit stock company.”).

2. The Hause Report makes several incorrect statements regarding the allocation of consideration and other demutualization mechanics:

- “The variable portion is usually determined for each eligible policy as the present value of past profits from the policy plus the present value of future profits from the policy.” Hause Report p. 14. This statement, even for life insurance company demutualizations, is plainly wrong. Determining the present value of past and future profits does not define the variable component, but instead is simply a relative mechanism to allocate the total amount of consideration among members through the variable component, if any. *See* ASOP No. 37, 3.2.2.
- “[T]he total variable component ... is the actual contributions of the existing in-force policies.” Hause Report p. 22. This is not correct. If there is a variable component, the amount is allocated based on the relationship of the policy’s actuarial contributions to total actuarial contributions. Again, this is a relative mechanism, to allocate the total variable component, if any, but not a method to define the variable component.
- “For BCBSLA, a non-profit mutual insurer, to be sold, it must first be reorganized as a for-profit stock company; therefore, I have assumed BCBSLA converts to a for-profit company and demutualizes concurrently. I assume it is then sold after the reorganization, when the prohibitions against issuing stock and paying



dividends have been removed. This sequence is consistent with how sponsored demutualizations are described in tax and actuarial literature.” Hause Report pp. 10-11. We are unaware of, and Hause Actuarial does not present, any demutualizations that have occurred in which a “nonprofit mutual insurer” converts from nonprofit (with explicitly no participating policies) and demutualizes (issuing stock and changing insurance contracts/policies to provide for dividends), followed by a distinct step of being sold (and if there were any, they would be rare). As such, it is highly doubtful that this type of sequence is covered in any tax or actuarial literature for demutualizations (and Hause cites none).

The Hause Report makes several speculative and unsubstantiated assertions in support of its conclusions. For example, the Hause Report suggests that the reorganization will favor stockholder profits instead of providing “reduced premiums for members,” which is allegedly the “purpose of a mutual insurer’s surplus.” Hause Report p. 4. The purpose of a mutual insurer’s surplus is not to support the reduction of premiums – it is a “backstop of capital to ensure that unforeseen contingencies do not render a Blue Plan unable to meet its obligations to its policyholders. Surplus also funds the growth needs of the Blue Plans.” See Pennsylvania Insurance Department Determination – Approval of Reserves and Surplus, Docket No. MS05-02-006 (Feb. 9, 2005). Nonetheless, these types of statements are speculative, misleading and must be completely disregarded.

To summarize, it is undisputed that the total transaction consideration is reasonable and that the approximately \$307 million in fixed consideration that Eligible Members will receive in connection with the transaction (in exchange for the extinguishment of their voting rights) is adequate. There is no legal basis for Hause’s opinion that the remaining consideration – *i.e.*, the

net proceeds of the sale of BCBSLA after deducting the fixed consideration – be paid to the Eligible Members as a variable component of consideration, as allocating such proceeds as variable consideration is not fair and equitable (and, in fact, would result in a windfall) and is otherwise not justified under the Reorganization Statutes or BCBSLA’s organizational documents. The question then is how to distribute the remaining approximately \$3.1 billion of transaction funds. As discussed *infra*, although the answer is not expressly set forth in Louisiana law, the best and most equitable interpretation is to account for the for-profit conversion aspect of the transaction, BCBSLA’s nonprofit mission and the interests of the Louisiana general public.

**D. The Hause Report Fails to Properly Account for BCBSLA’s Conversion from Nonprofit to For-Profit Company.**

The Hause Report basically recommends that the remaining approximately \$3.1 billion of transaction funds – stemming from the concurrent for-profit conversion, demutualization and sale of BCBSLA – should be paid directly to the Eligible Members instead of ALI/the Trust. This legally unsupported and unjust outcome ignores BCBSLA’s tax-exempt origin and nonprofit mission to benefit the citizens of Louisiana, is inconsistent with analogous and well-settled equitable doctrines in Louisiana, completely departs from established practices in similar precedent transactions and materially harms Louisiana residents.

The Hause Report does not dispute that BCBSLA is a nonprofit organization seeking to convert to a for-profit organization. *See, e.g.*, Hause Report p. 3 (opinion relies on conclusion that the transaction is a “conversion of the company from a nonprofit organization to a for-profit organization”); p. 10 (“For BCBSLA, a nonprofit insurer, ... I have assumed BCBSLA converts to a for-profit company and demutualizes concurrently.”); p. 25 (same); Stevenson Dep. (Appx. III), p. 37. Despite losing its tax-exempt status due to IRC changes in 1986, the Hause Report concedes that “management has continued to operate BCBSLA as though it were still under IRC

501(4), except for tax purposes, by not paying dividends to the policyholders, promoting healthcare in Louisiana, and contributing to the Blue Cross Foundation, a 501(c)(3) tax exempt entity which advocates for and promotes healthcare in Louisiana.” Hause Report p. 8; *see also* Hause Report p. 24 (“[T]he management of BCBSLA has continued to otherwise operate the Corporation as a social welfare organization.”).

The Hause Report concludes that “[i]f BCBSLA were a tax-exempt organization, it would be required to distribute its surplus to another tax-exempt organization with similar objectives, or to the federal government or to a state or local government for a public purpose.” Hause Report p. 8 (emphasis added). As the Hause Report acknowledges, this is exactly what the Plan of Reorganization seeks to do. *See* Hause Report p. 9 (“The agreement further proposes transferring [\$3.1 billion in transaction funds] ... into a newly created nonprofit foundation, The Accelerate Louisiana Initiative, Inc. (the foundation) ... with a similar mission to BCBSLA.”). Further, Stevenson admitted in his deposition that at least some portion of the proceeds typically are used to fund a foundation in similar circumstances. Stevenson Dep. (Appx. III), p. 29.

The doctrine of approximation or *cy pres* – the doctrine referenced (but not named) by the Hause Report as controlling if BCBSLA “were a tax-exempt organization” (*see* Hause Report at 8) – is a broad common law equitable doctrine adopted in most states that can be applied analogously in numerous contexts (nonprofit and other).<sup>12</sup> Here, the Commissioner should apply

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<sup>12</sup> *Cy pres* is from the French “*cy pres comme possible*,” meaning “as near as possible.” *Adams v. CSX Railroads*, 84 So.3d 1289, 1290 n. 1 (La. 2012). “The meaning of the doctrine of *cy pres* is that when a definite function or duty is to be performed, and it cannot be done in exact conformity with the scheme of the person ... who ... provided for it, it must be performed with as close approximation to that scheme as reasonably practicable; and so, of course, it must be enforced, and the reason or basis for the doctrine is to permit the main purpose of the donor of a charitable trust to be carried out as nearly as possible where it cannot be done to the letter. In re Succession of Mizell, 468 So.2d 1371, 1376-1377 (La. App. 1st Cir. 1985), quoting 14 C.J.S., Charities, § 52, pp. 512-513 (emphasis added).

such doctrine.

The cy pres doctrine allows the Commissioner to “administer [funds] in a manner consistent with the [initial] general purpose [of the funds] ... when circumstances have changed ... render[ing] compliance with the [original] conditions impractical [or] impossible ....” *Ada C. Pollock-Blundon Ass’n, Inc. v. Evans’ Heirs*, 273 So. 2d 552, 554 (La. Ct. App. 1973); *see also Klier v. Elf Atochem N. Am., Inc.*, 658 F.3d 468, 473-74 (5th Cir. 2011) (“Under cy pres, if the testator had a general charitable intent, the court will look for an alternate recipient that will best serve the gift’s original purpose.”) (emphasis added); *In re Pool Prod. Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at \*8 (E.D. La. July 27, 2015) (same).

Louisiana’s statutory cy pres doctrine only applies to trusts and conditional bequests; by its express terms, this codified version of the doctrine does not apply to the demutualization of a nonprofit insurer.<sup>13</sup> However, the common law approximation doctrine is well established in Louisiana, serves a similar purpose to the cy pres doctrine, and has broad application beyond trusts and conditional bequests.

The common law approximation and cy pres doctrines have long existed in Louisiana outside of the statutory context. *See Ada C. Pollock-Blundon Ass’n, Inc.*, 273 So.2d at 554 (“Prior to 1954, the cy pres doctrine had appeared in our jurisprudence in various guises. *See State v.*

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<sup>13</sup> In 1954, Louisiana codified the cy pres doctrine by Act 592 of 1954 as La. Rev. Stat. 9:2331 et seq. *Succession of Griffin*, 17-637 (La. App. 5 Cir. 5/30/18), 249 So.3d 1048,1057, writ denied, 253 So.3d 1303 (La. 2018). The statute is “applicable to any trust, devise, conditional bequest or donation inter vivos now in being or hereafter created.” La. Rev. Stat. 9:2337. As evidenced by this language, Louisiana’s statutory cy pres doctrine is limited only to those cases involving “a will containing a trust or conditional bequest or conditional bequest for charitable, educational or eleemosynary purposes.” La. Rev. Stat. 9:2331; *Succession of Griffin*, 249 So.3d at 1057. The statute is procedural and remedial in nature and was intended by the Louisiana legislature to provide a vehicle for correcting certain types of situations involving charitable trusts. *See, e.g., Ada C. Pollock-Blundon Ass’n, Inc.*, 273 So.2d at 554 (“We are of the opinion that R.S. 9:2331 et seq. are procedural and remedial in nature, and were intended by the legislature to provide a vehicle for correcting the type of situation which is presented by this case.”).

*Executors of McDonogh*, 8 La. Ann. 171 (1953); *Succ. of Vance*, 39 La. Ann. 371, 2 So. 54 (1887); *de Pontalba v. New Orleans*, 3 La. Ann. 660 (1848).”); *see also Griffin*, 17-637 (La. App. 5 Cir. 05/30/18); 249 So. 3d 1048, 1058 (“Cy pres is an equitable doctrine that has existed in our jurisprudential law for more than a hundred years.”). In fact, “[t]he Cy Pres statute merely established a procedure to follow in applying the ... approximation doctrine [in the trust/conditional bequest context] which existed in our jurisprudential law at least a century before the statute was enacted.” *Succession of Mizell*, 468 So.2d 1370, 1371 (La. Ct. App. 1985).

The Louisiana Supreme Court has previously stated that its “research leads ... to the conclusion that the doctrine of cy pres as applied in the United States is the doctrine of approximation. The doctrine of approximation is a Civil Law doctrine which has been long recognized in Louisiana.” *In re Succession of Milne*, 89 So.2d 281, 287 (1956) (emphasis added).

In reaching this conclusion, the *Milne* Court cited to 10 Am. Jur., Charities (sec. 123, p. 676):

“The doctrine of cy pres as applied in the United States is the doctrine of approximation. It is not peculiar to the administration of charities, but is equally applicable to all devises and contracts wherein the future is provided for; and it is an essential element of equity jurisdiction.”

*In re Succession of Milne*, 89 So.2d at 287 n. 3 (emphasis added).

Thus, the *Milne* Court concluded if the contributor’s, “primary intent ... cannot be carried out in the manner designated by him, it may be carried out in some other manner, under the doctrine of equitable approximation or under the cy pres doctrine, but his primary intent can never be disregarded.” *Id.*, 89 So.2d at 288 (emphasis added). Louisiana appellate courts have agreed that the approximation doctrine has long existed in Louisiana prior to, and thus has not been abrogated by, La. R.S. 9:2331. *See, e.g., Bonner v. Board of Trustees of John M. Bonner Memorial Home*, 181 So.2d 255, 258 (La. Ct. App. 1965) (“The statute is not ex post facto because it merely

establishes a procedure to follow in pursuit of the existing cy pres or approximation doctrine already existing in Louisiana as clearly stated in *In re Milne's Succession ....*”).

Here, the equitable common law doctrine of approximation clearly supports, and provides the Department the authority for, distributing the remaining transaction funds (once the aggregate fixed component of consideration to Eligible Members is deducted) to ALI as part of the review and approval process inherent in the Reorganization Statutes.

### **E. Summary**

As analyzed in detail above, based on erroneous interpretations of the law (by a non-lawyer), a disregard of fundamental actuarial principles of interpretation, a misunderstanding of critical transaction facts, and a misapplication of non-analogous precedent transactions, the Hause Report recommends that the Department treat this transaction as a standard for-profit life insurer demutualization and provide the remaining \$3.1 billion in transaction funds to a group of members rather than the nonprofit ALI for the benefit of the Louisiana general public. That recommendation contradicts Louisiana law, is not fair and equitable, would result in a windfall distribution to Eligible Members that would be inconsistent with BCBSLA’s organizational documents and insurance, and ignores BCBSLA’s stated mission of promoting the welfare of the residents of Louisiana. That outcome also would fail to account for the unique nature of this transaction (a concurrent for-profit conversion, demutualization and sale) and is belied by common practice regarding conversions of nonprofit health insurers. The better interpretation of Louisiana law as related to this unique health insurance transaction is to apply both nonprofit conversion and demutualization principles of law. This reasoned approach compels payment to ALI as it accomplishes distribution “in a fair and equitable manner” to all BCBSLA stakeholders (both the Eligible Members and Louisiana citizens as a whole) as required by Louisiana law, while still adhering to Eligible Member rights under the organizational documents and BCBSLA’s nonprofit

origin/mission.

## CONCLUSION

As set forth above, the Plan of Reorganization complies in all respects with the Reorganization Statutes, properly protects the interests of BCBSLA policyholders as such and as members, serves the best interests of BCBSLA policyholders and members, and is fair and equitable to BCBSLA policyholders and members. Accordingly, the Plan of Reorganization meets all requirements for approval by the Commissioner.

Respectfully submitted this 9<sup>th</sup> day of February 2024.

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**CERTIFICATE OF SERVICE**

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