

**BEFORE THE 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

CAUSE NO. _____

**MOTION TO DISMISS PLAN OF REORGANIZATION OF
LOUISIANA HEALTH SERVICE AND INDEMNITY COMPANY D/B/A
BLUE CROSS AND BLUE SHIELD OF LOUISIANA**

NOW INTO COURT, appearing herein pro se, comes Intervenor, Henry W. Kinney (“Kinney”), who with respect avers as follows:

I.

Mover requests that the Commissioner of Insurance for the State of Louisiana, (“Commissioner”), dismiss in its entirety the Amended Plan of Reorganization (“Plan”) of Louisiana Health Service & Indemnity Company D/B/A Blue Cross and Blue Shield of Louisiana, (“BCBSLA”) for the following reasons:

II.

BCBSLA filed the Plan on or about December 14, 2023, with either the Louisiana Department of Insurance (“LDI”) or the Commissioner, it is unclear where the plan is directed, seeking to demutualize. It should be noted that BCBSLA is a mutual insurance company formed to provide health insurance to its members.

III.

The Board of BCBSLA (“Board”) is elected by its members annually. The Board “proposed” the plan. It was solely their product.

IV.

BCBSLA operates pursuant to restated Articles of Incorporation dated February 18, 2003, and amended on February 21, 2007, February 16, 2016, and February 19, 2019. The Articles, in Article II provide as follows:

Ethical Responsibility

To conduct through the Board of Directors, Corporate Officers and employees, the operations of the Corporation on the **highest ethical plane** in all its phases of operation, including its relationship with members, providers, and governments of the communities wherein the Corporation operates, while operating in accordance with the laws of the area in which the Corporation operates.

V.

The creation and operation of an entity known as The Accelerate Louisiana Initiative, Inc. (“Accelerate”), exists as follows:

1. Accelerate was solely created and formed by the Board of BCBSLA as a separate entity and initially incorporated in Delaware.
2. Accelerate was formed with no beneficiaries or any other persons on entities such that its board had no fiduciary obligations to any persons or entities.
3. Accelerate was formed with total self-perpetuation of its board. The initially formed board had total control over its affairs and had no term limits on service.

4. The Accelerate Board is able to modify or amend its articles of incorporation, at will, with no restrictions. In other words, the board could change any provision of the articles of incorporation on a whim.
5. The Accelerate Board members were free to determine their compensation for service as a board member. In fact, the initial board has stated, both in the plan, and in a Legislative hearing, that it plans to engage professionals to determine their salaries, “in accordance with the salaries of the ten largest foundations in the United States.” In other words, the board members of Accelerate intend on being highly compensated for their services as board members. They are already engaged in planning for their salaries before any objects or purposes have been decided.
6. The recipients of any contributions made by Accelerate are not restricted by the articles of Accelerate.
7. Accelerate has no restrictions on its operations other than it is created as a “social welfare organization” that may do anything that is legal under the Delaware General Corporation Law. This means there are no practical restrictions on what this entity can and cannot do.
8. Accelerate was formed as what is known as a 501 (c) (4). As per the internal revenue code, a 501(c)3 is a nonprofit organization for religious, charitable, scientific, and educational purposes. Donations to 501(c)3 are tax-deductible. Whereas on the other hand, 501(c)4 is a social welfare group, and donations to 501(c)4 are not tax-deductible.
9. 501(c) 4 entities can participate in political activities and unlimited lobbying where those activities are not allowed for a 501(c)3 entity. In other words, Accelerate has no restrictions on political activity.

VI.

The Board of Accelerate was named by the Board of BCBSLA and included only members of the Board of BCBSLA. The Board of Accelerate was handpicked by the Board of BCBSLA. BCBSLA named four of its members to the Board of Accelerate.

VII.

The Plan that the Board of BCBSLA submitted provides that all the assets of BCBSLA will be sold to a for-profit corporate entity known as Elevance Health, Inc. (“Elevance”). It is proposed that Elevance will pay \$2.5 billion for these assets. It is further proposed, by the Board of BCBSLA (including the four handpicked Accelerate board members), that it gratuitously hands over to Accelerate the \$2.5 billion together with its excess surplus, which is supposed to benefit only the members of BCBSLA. It is estimated that the excess surplus will be more than \$800 million. The total amount of consideration that BCBSLA proposes to receive from Elevance plus the excess surplus that BCBSLA owns will be \$3.3 billion. The board of BCBSLA does not plan to give its members this money. It plans to give its members only the sum of \$307,755,241, or \$3,000 per policy. See Article I of the Plan and particularly Sections 1.2 and Section 11.5

VIII.

The Board of BCBSLA intends to give Accelerate (which is governed and operated by its handpicked four co-board members) 91% of the consideration for the sale to Elevance and the excess surplus. This organization will have no restrictions on the compensation that the board may receive and will have no restrictions on parceling out of its funds. It will not have any restrictions.

IX.

The members of the Board of Directors of BCBSLA have breached their fiduciary duties to the members of BCBSLA and to its policy holders. The actions of creating an entity with overlapping board membership and giving that entity more than \$3.3 billion to do with it whatever its board chooses is a gross violation of the fiduciary duty provided by Article II of the Articles of Incorporation of BCBSLA and a breach of fiduciary duties that directors of non-profit mutual corporations owe to their membership. Incorporating Accelerate will provide its board members with stipends, to be determined later, in an unlimited amount and for an unlimited duration. Further, creating Accelerate to hand out donations will provide the Board of Accelerate with untold influence in dispensing this largesse. Unfortunately, the largesse that they will be dispensing is owned by the members of BCBSLA and not Accelerate. Any product of these breaches is illegal per se and should not be considered by the Commissioner of Insurance or the Louisiana Department of Insurance.

X.

The present membership of the BCBSLA board consists of twelve members. One member is the chief executive. Four other members have been named to take over and run Accelerate. The Plan provides that after the “sale” to Elevance the chief executive will become an employee of Elevance, leaving the seven remaining board members. However, those seven board members are the recipients of positions on a so-called advisory group with no purpose or obligation. They have been promised, as part of the Plan and in return for voting for the plan, that Elevance will create an “advisory board” that will meet four times a year. In return for “serving on the advisory board”, each of the seven will receive no less than \$1 million dollars. The salaries received by the seven will range from about \$105,000 per year to \$165,000 per year for being advisors to the company

that purchased BCBSLA from its members. In other words, by voting for the plan the seven voted themselves over \$1 million dollars. This is a breach of their fiduciary duty both as provided by the Articles and the law of Louisiana. See Article XI, Section 11.5 Director and Officer Compensation and the Report of Hause and Associates and the Report of Rector. These reports are in the records of the Louisiana Department of Insurance.

XI.

As noted previously, the members of the board of Accelerate will be paid in accordance with salaries determined by comparison with the compensation received by the board of the ten largest foundations in the United States. It will be a very lucrative position and will be virtually a position for life since the board members are self-perpetuating. However, the Board of BCBSLA has now stated that accelerate will provide the Governor of the State of Louisiana and the Commissioner of Insurance with appointments to the Accelerate board.

XII.

Louisiana public officials are governed by a laudatory Code of Governmental Ethics. The Declaration of the Policy of the Code provides:

A. Whereas the people of the state of Louisiana have in Article X, Section 21 of the Louisiana Constitution mandated that the legislature enact a code of ethics for officials and employees of this state and its political subdivisions, the legislature does hereby enact a Code of Governmental Ethics.

B. It is essential to the proper operation of democratic government that elected officials and public employees be independent and impartial; that governmental decisions and policy be made in the proper channel of the governmental structure; that public office and employment not be used for private gain other than the remuneration provided by law; and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired when a conflict exists between the private interests of an elected official or a public employee and his duties as such. The public

interest, therefore, requires that the law protect against such conflicts of interest and that it establish appropriate ethical standards with respect to the conduct of elected officials and public employees without creating unnecessary barriers to public service. It is the purpose of this Chapter to implement these policies and objectives.

La. Stat. Ann. § 42:1101.

XIII.

The approval of the Plan is solely conditioned on its approval by the Commissioner of Insurance for the State of Louisiana. No board or other entity is charged with this approval. Moreover, the decision of the Commissioner is not subject to a normal appeal process. The appeal process is so burdensome and sets bond conditions and makes the appellant responsible for the attorney fees of BCBSLA in the event of being unsuccessful in the appeal, so that the result of the process is that the decision of the Commissioner may not even be subject to appeal. By offering the Commissioner of Insurance a seat on the board of Accelerate, BCBSLA is offering something of economic value to the Commissioner which is a violation of the Code of Governmental Ethics for the State of Louisiana. Intervenor is not making any allegations involving the conduct of the Commissioner and limits its allegations to the conduct of BCBSLA .

XIV.

BCBSLA has offered to the Governor of Louisiana a seat on the board of Accelerate. As stated earlier, accelerate will receive \$3.3 billion dollars. The board of this entity will have no restrictions on its operations. None. The board plans to be compensated in the same manner as the boards of the largest ten foundations in the United States and will have unfettered discretion to annually distribute funds more than \$165,000,000. The board seat on Accelerate will be personally lucrative and will give enormous power to the member who receives this board seat. It is a violation of the Governmental Code of Ethics to offer the Governor a seat on this board since it constitutes

giving something of economic value to a public official or elected official. Intervenor is not making any allegations involving the conduct of the Governor and limits its allegations to the conduct of BCBSLA.

XV.

Intervenor objects to the extraordinary limits that have been placed on him in this proceeding. This Plan was only filed on December 14, 2023, and despite repeated entreaties to intervene, and only after the filing of a Federal Court lawsuit, was Kinney allowed to intervene on January 26th, 2024. (He was allowed to participate in discovery pending that order from January 12, 2024.) However, the trial of the approval of this multi-billion dollar “plan” is limited to the two days after the Mardi Gras holiday. Discovery has been unreasonably restricted. The conduct of this trial has resulted in depriving the intervenor of procedural due process. The limits on intervenor’s participation have resulted in the entire proceeds being tilted in favor of BCBSLA to the detriment of intervenor. The conduct of this process has deprived intervenor of procedural due process.

XVI.

The demutualization statutes of the State of Louisiana require that all decisions of the process must be decided by the Commissioner and do not allow or provide for the conduct of hearings by a subordinate or hearing officer. The Administrative Code does allow for hearing officers, but the Administrative Code does not supersede the Law of Louisiana.

XVII.

Intervenor, Henry W. Kinney, requests that the Commissioner schedule this Motion to Dismiss for hearing as soon as possible so that the merits of this motion may be decided well in advance of the hearing.

RESPECTFULLY SUBMITTED:

KINNEY, ELLINGHAUSEN & DESHAZO:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of January 2024, a copy of the above and foregoing has been sent via electronic mail to all counsel of record in the proceedings.

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