

EXHIBIT IX



Memorandum

ATTORNEY-CLIENT PRIVILEGED WORK PRODUCT

McGlinchey Stafford PLLC
601 Poydras Street, Suite 1200
New Orleans, Louisiana 70130

To: Korey Harvey
Vice President and Deputy General Counsel

From: Ronnie L. Johnson
Douglas W. Charnas
Rudy J. Aguilar

Date: July 27, 2022

Re: Conversion of Louisiana Health Service & Indemnity Company d/b/a Blue Cross Blue Shield of Louisiana ("BCBS LA") from a Mutual Insurer to a Stock Insurer

BCBS LA desires to convert from a mutual insurer to a stock insurer which stock would be owned by a holding company to provide improved access to capital so that it can better serve its community. The holding company will be a non-stock, nonprofit corporation formed under Louisiana law and will be an organization exempt from income tax under Section 501(c) of the Internal Revenue Code of 1986 as an organization described in IRC 501(c)(4) (the "Section 501(c)(4) Organization"). The Section 501(c)(4) Organization will have a self-perpetuating board of directors. It will have legitimate purposes for an organization described in Section 501(c)(4). The primary focus will be improving the lives of the individuals in the community that BCBS LA serves.

I. ISSUE

What are the rights of a policyholder of BCBS LA in the event of a conversion which extinguishes the member interests of the policyholder in BCBS LA?

II. BACKGROUND

BCBS LA is a mutual insurance company formed under the laws of the State of Louisiana. It traces its roots back to 1934. It is licensed and regulated as an insurer by the Louisiana Department of Insurance. In addition to providing health insurance to individuals and groups, it provides administrative services for entities that self-insure. Also included in its authority is the ability to offer life insurance policies.

Policyholders of BCBS LA have both policyholder interests contractual rights under insurance policies and interests as a Member of BCBS LA. A membership interest arises from the purchase of a policy and is inextricably tied to the insurance contract from the time of purchase. A membership interest entitles the Member to vote at annual and special meetings of the Members. A Member may give his or her proxy only to another Member. Unlike many mutual insurance companies, however, Members do not

have a right to receive dividends. The rights inherent in each membership interest are created by operation of Louisiana law and by the Articles solely as a result of the policyholder's acquisition of the underlying insurance policy issued by BCBS LA and cannot be transferred separately from the insurance policy. Further, if the insurance policy terminates, the membership interest ceases to exist, having no continuing rights.

The Articles provide the purposes of the mutual insurer as not only the business of insurance but also meeting community needs.

III. DISCUSSION

A. Articles

BCBS LA is a mutual insurer. In the case of BCBS LA, the Articles do not specifically state that the Members are owners of the mutual insurer. The Articles provide voting rights to Members and provide that BCBS LA will pay no dividends.¹ Also, the liquidation provision in the Articles does not specifically state that the Members participate in the proceeds from a liquidation.²

The Articles also provide that the purpose of BCBS LA includes, among others:

- To promote the welfare of the members of the Corporation and the general public by transacting and conducting the kinds of insurance business previously authorized by the Articles of Incorporation, and transacting and engaging in any other business which may be authorized by law.

Additionally, the Articles provide that BCBS LA shall be guided by the following nonbinding and nonexclusive principles and policies:

- To enhance BCBS LA's image as a good corporate citizen by responding to community needs,

¹ ARTICLE VII, Section 1 of the Articles of Incorporation provides in pertinent part:

"The Corporation is organized and shall function entirely as a nonprofit mutual insurer. It shall issue no shares of stock and pay no dividends... A person immediately and automatically shall (i) become a Voting Member of the Corporation at such time as such person becomes such a policyholder; and (ii) cease to be a Voting Member of the Corporation at such time as such person ceases to be such a policyholder."

² ARTICLE XI, provides:

"If for any reason it becomes necessary to liquidate the affairs of this Corporation, the Corporation shall be liquidated by the Commissioner of Insurance of the State of Louisiana in accordance with the provisions of the Louisiana Insurance Code, and in accordance with other applicable law, if any. Further, if the Board of Directors of this Corporation, by a majority vote, feels it is in the best interest of this Corporation to sell or transfer all or substantially all of the assets of this Corporation to another insurance company, the Board of Directors, subject to the approval and supervision of the Commissioner of Insurance for the State of Louisiana and upon obtaining approval of the Voting Members, may make such sale or transfer. The approval of the Voting Members may be obtained by a vote of not less than the holders of two-thirds (2/3) of the voting power of all persons present or represented by proxy who vote thereon (in person or by proxy) at a regular or special meeting of the Voting Members of the Corporation called for that purpose. Not less than thirty (30) days written notice shall be given of such meeting, and the specific purpose of the meeting shall be recited or shall be summarized in the notice, which summary shall at least advise the Voting Members that a meeting is being called for the Voting Membership to discuss and vote on a plan to sell or otherwise transfer all or substantially all of the assets of the Corporation and shall give the name of the potential buyer and/or transferee, and shall state that a more detailed summary of the proposed transaction may be obtained from the Corporation's Secretary."

- To provide a means for people within the operating area of the BCBS LA to obtain health care services;
- To educate members and the public regarding health care needs and availability of health care services.
- To discourage and guard against governmental policies or programs proposed by other providers of types of insurance, or other such actions that would be deemed not to be in the best interest of the public.
- To participate with moral and financial support in organizations and activities designed to serve the communities as a whole wherein the BCBS LA operates.
- To conduct business in accordance with the laws of the state or states wherein the BCBS LA is conducting business and in the best interests of the BCBS LA's members and of the general public.

B. Louisiana Law

Louisiana law does not specifically state that mutual insurers are owned by their policyholders. The absence of statutory guidance on who owns the equity of mutual insurers raises the question of the nature and amount of compensation the policyholders of BCBS LA are entitled to receive as a result of the extinguishment of their member interests due to the contemplated conversion.

Louisiana statutes addressed below give policyholders certain rights in connection with reorganizations and conversions.

LSA R.S. 22:236 (9)(a) provides in pertinent part:

(9) "Membership interest" means: (a) with respect to a mutual insurer, all rights and interests of a policyholder as a member arising under the mutual insurer's articles of incorporation and bylaws, by law or otherwise, which rights include but are not limited to 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..." (emphasis added)

LSA R.S. 22:236.2(B) provides in subparts (2) and (3) that the plan of reorganization shall:

(2) Require the distribution of consideration, in a fair and equitable manner, to all eligible members upon extinguishment of the membership interests.

(3) Specify the manner in which the aggregate value of the consideration shall be determined and the method by which the consideration shall be allocated among eligible members.

Further, LSA R.S. 22:236.3(A) and (A)(1) provide in pertinent part:

(A) In effecting a conversion of a reorganizing mutual, each eligible member shall be entitled to consideration in an amount equal to his or its equitable share of the value of the reorganizing mutual as provided for in the plan of reorganization as follows:

(1) The consideration to be distributed to eligible members may consist of cash, stock of the reorganized company or its parent corporation, or if appropriate for tax or other reasons, additional life insurance and annuity benefits, any combination of these forms of consideration, or other forms of consideration acceptable to the commissioner...

LSA R.S. 22:236.3(A)(2) requires:

(2) The reorganizing mutual shall obtain an opinion addressed to the board of directors of the reorganizing mutual from a qualified investment banker that the provision of 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.

LSA R.S. 22:236.3(B)(2) further provides the method of allocating consideration among eligible members shall be fair and equitable, as follows:

(2) The reorganizing mutual shall obtain an opinion addressed to the board of directors of the reorganizing mutual from an actuary who is a member of the American Academy of Actuaries that the methodology and underlying assumptions for allocation of consideration among eligible members are reasonable and appropriate and the resulting allocation is fair and equitable.

The approval of the plan of reorganization by the Commissioner of Insurance for the State of Louisiana is required pursuant to LSA R.S. 22:236.4(A) and (B) which provide in pertinent part:

A. The commissioner shall hold a public hearing upon notice as set forth in this Section to hear evidence upon whether the plan of reorganization: (1) properly protects the interests of the policyholders as such and as members, (2) serves the best interests of policyholders and members, and (3) is fair and equitable to policyholders and members....:

B. ... the commissioner shall issue a final order or decision approving the plan if satisfied that each of the following conditions are met:

(a) The interests of the policyholders as such and as members are properly protected.

(b) The plan of reorganization serves the best interests of policyholders and members.

(c) The plan of reorganization is fair and equitable to policyholders and members.

The plan of reorganization must be approved by the members of BCBS LA by 2/3rds vote pursuant to LSA R.S. 22:236.5(A) which provides:

The plan of reorganization shall be approved at a meeting convened for that purpose by a vote of not less than two-thirds of the qualified voters of the reorganizing mutual entitled to vote on matters and present or represented by special ballot or special proxy.

C. NAIC White Paper

The National Association of Insurance Commissioners ("NAIC")³ issued a white paper dated December 7, 1998 analyzing mutual insurance holding company reorganizations in the context of states' regulatory framework. In the White Paper, the NAIC commented on the ownership rights of policyholders in mutual insurers:

It is commonly recognized that policyholders own a mutual insurer. However, ownership has many meanings. In its most common sense, ownership implies a right of dominion and control over a property interest, including the accompanying right to sell the property. It may be appealing to define the ownership of a mutual insurer in a manner that confers such a right to their policyholders; however, doing so may ignore the essence of the mutual insurer, and the reasons for which it was established.

A mutual insurer is established for the mutual benefit of its policyholders, and exists not only for current members, but for future members as well. The concept of mutuality is central to identification of the ownership interests in the mutual insurer. For this reason, a common goal of a mutual insurer is the establishment of a surplus level that will provide for the future needs of the organization. This surplus is not created solely in the interest of current policyholders, and may have been developed over generations.

In the most extreme case, 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.

³ NAIC is a regulatory support organization that is governed by chief insurance regulators from all 50 states, as well as the District of Columbia and several U.S. territories. Its primary mission is to help establish a framework that enables insurance regulators to facilitate the best insurance practices.

The concept of ownership in a mutual organization differs greatly from that of a stock corporation. In a stock structure, stockholders have specific property interests, which generally include the right to sell a share of the ownership in the organization. In a mutual insurer, policyholders, or members, do not have the ability individually to sell ownership. Most states have laws that provide some guidance regarding the extent of member ownership in a mutual insurer. In determining the extent of ownership, including any membership interest in assets of the mutual organization, regulators should rely on existing definitions in state statutes.

IV. ANALYSIS

Louisiana law provides that the plan of reorganization must require the distribution of consideration in a fair and equitable manner to all eligible members upon extinguishment of the membership interests (LSA R.S. 22:236.2(B)(2)). Each eligible member shall be entitled to consideration in an amount equal to his or its equitable share of the value of the reorganizing mutual as provided for in the plan of reorganization (LSA R.S. 22:236.3(A)). LSA R.S. 22:236(9)(a) contemplates that a membership interest of a member does not necessarily include the right to surplus of the mutual insurer by stating: "...the right, *if any*, with regard to surplus of the mutual insurer..." (emphasis added). A qualified investment banker must opine that the provision of consideration upon extinguishment of the membership interests to the eligible members is fair as a group from a financial point of view. (LSA R.S. 22:236.3(A)(2)). The Commissioner of Insurance shall approve the plan of reorganization if he believes the interests of the policyholders, as such, and as members, is properly protected, serves the best interests of policyholders and members and is fair and equitable to policyholders and members (LSA R.S. 22:236.4(A)). The members, being the policyholders, must approve the reorganization plan by a 2/3rds vote (LSA R.S. 22:236.5(A)).

A reasonable argument can be made that only the policyholders, as the members and therefore ultimate beneficial owners of BCBS LA⁴, are entitled to the ownership of the holding company arising out of the proposed plan of reorganization. Since the proposed plan of reorganization provides that after the reorganization BCBS LA will be wholly owned by the 501(c)(4) Organization, and the 501(c)(4) Organization will be a nonprofit, nonstock corporation for the benefit of the communities served by BCBS LA and not the policyholders of BCBS LA, the plan of reorganization may not be approved by the policyholders or the commissioner.

On the other hand, based on the purposes of BCBS LA under its Articles and pursuant to Louisiana law, a reasonable argument can be made that a plan of reorganization can be approved as follows: (i) BCBS LA can be converted to a stock insurer, (ii) the stock of BCBS LA can be issued to the 501(c)(4) Organization thereby satisfying the stated business purposes in the Articles of providing for the welfare

⁴ [U]nless all the policyholders at a given moment in equity own the corporate property, then we have the extraordinary spectacle of a corporation, without members, without stockholders, a legal fiction, an abstract idea, owning absolutely all corporate property, in trust for no one, with responsibility to no one except creditors and then only to pay debts. This conception of a legal fiction as an absolute owner is not sound. Living persons must be the ultimate owners of all corporate property. In a mutual company they can be none other than the policyholders. *Young v. Equitable Life Assur. Soc'y of the United States*, 99 N.Y.S. 446, 454 (N.Y. Sup. Ct.), aff'd., 101 N.Y.S. 1150 (3rd Dep't. 1906). See also: In *Kimberly-Clark Corp. v. Factory Mut. Ins. Co.*, 566 F.3d 541 (5th Cir. 2009)

of communities that BCBS LA serves and (iii) members can receive consideration other than stock for the extinguishment of their membership interests that is fair under such a plan of reorganization as opined upon by qualified investment banker. That plan would have to be approved by the Commissioner of Insurance and by at least a 2/3rds vote of the members of BCBS LA. Members who vote against such a plan of reorganization could institute litigation demanding that the plan be annulled or seeking greater consideration and objecting to the issuance of the stock of BCBS LA to the 501(c)(4) Organization. LSA R.S. 22:236.4(E)(1) and (E)(2) provide:

(1) An aggrieved party may appeal the commissioner's final order to the Nineteenth Judicial District Court within thirty days of the order. The aggrieved party may also apply for a stay of the commissioner's order.

(2) ...The district court reviewing an order of the commissioner shall not modify or set aside the order unless the court finds: (a) error to the prejudice of appellant's substantial rights arising from the commissioner's application of the law so grossly as necessarily to imply bad faith; (b) the Commissioner's order or decision was procured by fraud; (c) the commissioner acted outside the statutory authority of the Department of Insurance or (d) the commissioner's action was arbitrary and capricious.

V. USE OF THIS MEMORANDUM

- A. Use. The matters expressed in this Memorandum are solely for the addressee's use in connection with addressee's consideration of the proposed conversion of BCBS LA. Without our prior written consent, this Memorandum may not be used or relied upon by the addressee for any other purpose whatsoever or relied on by any other person. Further, this Memorandum speaks only as of the date hereof. We have no responsibility or obligation to update this Memorandum, to consider its applicability or correctness to other than its addressee, or to take into account changes in law, facts or any other developments of which we may later become aware.
- B. Expression of Professional Judgment. The matters contained in this Memorandum are expressions of professional judgment regarding the legal matters addressed and not guarantees that a court will reach any particular result.