

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

RESPONSE TO AMENDED PETITION FOR INTERVENTION SUBMITTED BY HENRY W. KINNEY, INDIVIDUALLY AND AS COUNSEL FOR KINNEY, ELLINGHAUSEN & DESHAZO AND ROBERT E. BIRTEL

NOW COMES Louisiana Health Service & Indemnity Company D/B/A Blue Cross and Blue Shield of Louisiana ("BCBSLA"), who respectfully files this response to the submission of the Amended Petition for Intervention ("Amended Petition") filed by Mr. Kinney on behalf of himself individually, Kinney, Ellinghausen & DeShazo ("KE&D") and Mr. Robert E. Birtel.

Madam Hearing Officer, Henry W. Kinney, individually, and as counsel for KE&D (referred to in the original motion and petition as Kinney & Ellinghausen), originally filed a Motion for Leave to File a Petition for Intervention and Petition (the "Motion and Petition") pursuant to Section 1115 of Rule 1. The Motion and Petition failed to fully satisfy the requirements of Section 1115 of Rule 1 as set forth in our Response to that Motion and Petition. In an attempt to correct the deficiencies in his Motion and Petition, Mr. Kinney submitted an Amended Petition for Intervention. The submission of the Amended Petition for Intervention does not cure the deficiencies of the Motion and Petition filed by Mr. Kinney as set forth below.

Mr. Kinney's Motion and Petition was filed on behalf of Mr. Kinney, in proper person, and his law firm, KE&D to intervene. The Amended Petition adds a third intervenor, Mr. Robert E. Birtel. There is no motion filed with Madam Hearing Officer seeking leave to allow Mr. Birtel to file a petition for intervention. The Amended Petition submitted by Mr. Kinney, KE&D and Mr. Birtel should not be allowed to be filed as there is no motion for leave with regard to the Amended Petition for all three intervenors pending before Madam Hearing Officer on which to rule. Even if the Amended Petition was the subject of a pending motion for leave, the Amended Petition fails to satisfy the requirements of Section 1115 of Rule 1 in several respects:

First, Mr. Kinney submitted a purported Amended Petition however, the original Petition was never filed as Mr. Kinney's original Motion and Petition was never granted. There is no underlying filed Petition to amend.

Second, BCBSLA did not object to the cumulation of Mr. Kinney and KE&D in their original Motion and Petition because Mr. Kinney and his law firm, KE&D are affiliated. There is no reference to any affiliation with Mr. Kinney or KE&D with respect to Mr. Birtel. Section 1115(B) of Rule 1 states that petitions for leave "must set forth the name and address of the petitioner". Section 1115(B) contemplates that each petitioner must file his, her or its separate petition for leave so that each petitioner sets forth the elements that fulfill the requisite requirements of petitions for leave to intervene as set forth in Section 1115(B). The Amended Petition now refers to a third person with no affiliation with Mr. Kinney or KE&D. Mr. Birtel should be required to file a separate motion for leave and a separate petition for intervention.

Third, under Rule 1, if affirmative relief is sought, a clear and concise statement of the relief sought by the petitioner and the basis thereof must be included. The Amended Petition does not set forth affirmative relief that the petitioners seek and the basis thereof but rather simply opposes the Plan of Reorganization. The Amended Petition makes conclusory statements regarding the Plan of Reorganization without any particularized facts, without setting forth the relief sought by each purported petitioner, and without setting forth the basis for those objections other than a generalized opposition to the Plan of Reorganization. A generalized objection to the Plan of Reorganization is not sufficient for intervening in the matter pursuant to Section 1115 of Rule 1. The generalized objection of Mr. Kinney, KE&D and Mr. Birtel is exercised by voting as a policyholder on the Plan of Reorganization and by attending the public hearing and providing comments. Mr. Kinney, KE&D and Mr. Birtel, assuming they are all policyholders, have those rights and can exercise them.

Fourth, the Amended Petition must provide a statement as to the nature and quantity of evidence the petitioner will present if the petition for intervention is granted. The Amended Petition identifies Daniel Borne as a "director of the entity that will receive 95% of the consideration for this transaction". Mr. Borne is not a director of that entity.

In conclusion, due to the fact that the Amended Petition is not the subject of a pending motion for leave, the Amended Petition should not be allowed to be filed in the record of this matter. Additionally, the Amended Petition purports to amend a petition that is not of record or filed in this matter. Even if the Amended Petition were subject to a pending motion for leave to intervene, the deficiencies in the Amended Petition as set forth above cause it to fail to meet the requirements of Section 1115 of Rule 1 and should not be allowed to be filed.

BCBSLA respectfully requests that Mr. Kinney and KE&D be required to file a petition for intervention that complies with the requirements for Rule 1 and further that Mr. Birtel be required to file a motion for leave to file a petition for intervention and petition for intervention that complies with the requirements of Rule 1.

Respectfully submitted this 14th day of August, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2023, a copy of the above and foregoing has been sent via electronic mail to the following:

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