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IN THE IOWA DISTRICT COURT FOR POLK COUNTY
STATE OF IOWA

DOUG OMMEN, ***in his capacity as Liquidator of CoOportunity Health,*** **and DAN WATKINS,** ***in his capacity as Special Deputy Liquidator of CoOportunity Health,*** **Plaintiffs,** **vs.** **MILLIMAN, INC., KIMBERLEY HIEMENZ, MICHAEL STURM, STEPHEN RINGLEE, DAVID LYONS, and CLIFFORD GOLD,** **Defendants.**	**CASE NO.:** **PETITION** **ACTION AT LAW** **WITH DEMAND FOR JURY TRIAL**

Plaintiffs bring this action to recover the millions of dollars in losses sustained by a failed insurance company called CoOportunity Health, Inc. ("CoOportunity"),[1] its creditors, policyholders, and the citizens of Iowa and Nebraska as a result of the professional negligence, breach of fiduciary duty, and reckless, willful, or intentional misconduct by the actuarial firm, Milliman, Inc., and the primary actuaries who worked with CoOportunity, Kimberley Hiemenz and Michael Sturm, and the negligence and breach of fiduciary duty by the founders of CoOportunity, Stephen Ringlee, David Lyons, and Clifford Gold. In addition, Plaintiffs assert preference and fraudulent transfer claim in relation to certain payments made to the founders.

[1] CoOportunity was formerly known as Midwest Members Health or MMH.

FACTS COMMON TO ALL COUNTS

Background on CoOportunity, its Financial Collapse, and the Parties

1. The federal Affordable Care Act ("ACA"), informally referred to as "Obamacare," established the Consumer Operated and Oriented Plan ("CO-OP") program. This program called for creation and federal funding of nonprofit health insurance companies ("CO-OPs") to offer health insurance to individuals and small groups.

2. CoOportunity was one of twenty-three so-called CO-OPs established throughout the United States under this ACA program.

3. CoOportunity was headquartered in West Des Moines, Iowa, but insured members in Iowa and Nebraska.

4. CoOportunity was organized under Iowa law and licensed in Iowa and Nebraska to operate as an insurer.

5. CoOportunity opened member enrollment in October 2013 and started covering health claims in January 2014.

6. Within its first year of insurance operations, CoOportunity experienced significant financial distress.

7. CoOportunity was the first CO-OP in the nation to collapse.

8. As an insurer licensed, headquartered, and operating in the state of Iowa, CoOportunity was subject to the Iowa Insurers Supervision, Rehabilitation and Liquidation Act, contained in chapter 507C of the Iowa Code ("Liquidation Act").

9. The express purpose of the Liquidation Act "is the protection of the interests of insureds, claimants, creditors, and the public…." Iowa Code § 507C.1.4.

10. The Liquidation Act grants the Iowa Insurance Commissioner three levels of oversight of insurers apart from usual regulatory powers: first, to take supervisory action against a troubled insurer, Iowa Code §§ 507C.9-11; second, for the Commissioner, with the court's permission, to attempt to rehabilitate an insurer, Iowa Code §§ 507C.12-16; and third, for the commissioner, with the court's permission, to liquidate an insurer if, for example, it is insolvent. Iowa Code §§507C.17-49.

11. The Iowa Insurance Division issued a Supervision Order over CoOportunity on December 16, 2014.

12. On December 23, 2014, the Iowa Insurance Commissioner instituted an action against the company in the District Court for Polk County, Iowa, in a matter now captioned *In re Liquidation of CoOportunity Health*, Case No.: EQCVE077579, assigned to the Honorable Arthur E. Gamble (the "Liquidation Court or Case").

13. On December 24, 2014, the Liquidation Court issued an Order of Rehabilitation, which was followed by a Final Order of Liquidation effective February 28, 2015.

14. Plaintiff Doug Ommen brings this action in his capacity as the Court-appointed Liquidator of CoOportunity.[2]

15. The Liquidation Court appointed plaintiff Dan Watkins to serve as the Special Deputy Rehabilitator and ultimately the Special Deputy Liquidator of CoOportunity. *Id.*

[2] Pursuant to §§ 507C.13.1 and 507C.18.1, the Liquidation Court appointed the Iowa Insurance Commissioner to serve as the Rehabilitator and ultimately the Liquidator of CoOportunity. Nick Gerhart, the former Iowa Insurance Commissioner, served as the Court-appointed Rehabilitator and Liquidator when the company went into rehabilitation and liquidation. Mr. Gerhart resigned at the end of 2016, and Mr. Ommen was substituted by the Court as Liquidator pursuant to an Order entered on February 6, 2017.

16. This action is brought by the Liquidator and Special Deputy Liquidator (collectively the "Liquidators") as a part of the Liquidation Case and pursuant to the Liquidators' authority granted by this Court in the Liquidation Case.

17. Proceedings of insurer insolvency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

18. Under the Final Order of Liquidation pertaining to CoOportunity, the Liquidators are directed to use their broad, statutory powers to marshal assets of CoOportunity to maximize the estate and pay creditor claims under the general supervision of the Liquidation Court.

19. Under the terms of the Liquidation Order, and pursuant to Iowa's Liquidation Act:

(i) The Liquidators are vested with all rights of action held by CoOportunity;

(ii) The Liquidators are authorized and charged with taking possession of and marshalling all assets of the company;

(iii) The Liquidators are vested with "all power and authority to the fullest extent allowed by law to conduct and carry out all direct, indirect and/or related aspects of the liquidation of CoOportunity" including "all rights, powers, and authority provided by the Liquidation Act as well as all other applicable state and federal law;"

(iv) The Liquidators are charged with liquidation of CoOportunity, including the authority to "take such other action as the nature of this cause and the interests of the policyholders, creditors or the public may require;"

(v) The Liquidators have authority "to sue…for CoOportunity, or for the benefit of CoOportunity's policyholders, creditors and shareholders in the courts and tribunals…of this state…in the Liquidator's name as Commissioner of Insurance of the State of Iowa, in his capacity as Liquidator, or the Special Deputy;"

(vi) The Liquidators "may affirm or disavow any contracts to which CoOportunity is a party."

20. The Liquidators have a public-protection role because, among other reasons, any judgments in favor of them accrue to the benefit of insureds, policyholders, creditors, and the citizens of Iowa and Nebraska.

21. The Liquidators assert the allegations and claims herein on behalf of the company, its creditors, and policyholders, including policyholder-level claimants as authorized under Iowa Code § 507C.21.1, to protect and maximize the assets of the estate of CoOportunity for the benefit of policyholders, creditors, and the general public.

22. Defendant Milliman, Inc. ("Milliman"), is a Seattle based corporation organized under Washington state law with offices throughout the United States. Milliman rendered professional services to CoOportunity (and many of the other CO-OPs) from inception through collapse.

23. Milliman played a significant role in critical aspects of the company's operation, including the provision of professional services in connection with securing initial federal funding, setting plan rates for its first year of operations, financial reporting to regulatory bodies, and securing additional federal funding.

24. Defendants Kimberley Hiemenz and Michael Sturm (along with Milliman, the "Milliman Defendants") are the primary actuaries employed by Milliman who worked with CoOportunity.

25. Defendants Stephen Ringlee, David Lyons, and Clifford Gold (collectively the "Founders") founded CoOportunity and served as directors and officers of CoOportunity.

26. Defendant Ringlee was the Chief Financial Officer of CoOportunity.

27. Defendant Lyons was the President and Chief Executive Office of CoOportunity.

28. Defendant Gold was the Chief Operating Officer of CoOportunity.

The Tainted Engagement Terms Between the Founders and Milliman

29. On July 28, 2011, the federal government issued a "Funding Opportunity Announcement" for the CO-OP program, inviting interested parties to apply to the Center for Consumer Information and Insurance Oversight ("CCIIO") of the Centers for Medicare & Medicaid Services ("CMS") for federal funding.

30. Under the ACA, CO-OPs were prohibited from affiliating with any existing insurer; thus, the CO-OPs could not affiliate with a carrier in order to access claims data to project claims costs and set premium rates.

31. As a result, the start-up CO-OPs, including CoOportunity, relied on outside professional consultants, including actuaries like the Milliman Defendants.

32. The CO-OP program opened a new avenue for Milliman to substantially increase its business by working with a large number of new insurance companies that would rely heavily on Milliman to secure federal funding approval, set rates, and provide other actuarial work for years to come.

33. On September 13, 2011, Milliman issued a written proposal to the National Alliance of State Health Cooperatives ("NASHCO") to provide consulting services to organizations interested in forming a CO-OP.

34. Milliman advertised that: "[o]ur *Health Cost Guidelines* [HCGs] are a comprehensive data set of medical, pharmacy and dental claim costs for commercial and senior segment insurance. In addition, the guidelines have rating models and other resources for projecting claims costs. For a new entity with no claims experience with which to create premiums, this tool provides the needed basis for rate development."

35. Milliman represented it had "invested time and money to build tools that drive sophisticated analysis of complex systems as they change in response to form" and that Milliman had "significant experience and expertise with developing feasibility studies that are submitted to regulators…."

36. Milliman represented it had "developed the Healthcare Reform Financing Model (HCRFM) to assess, quantify, and understand the potential impact of special health care reform proposals. The HCRFM projects the potential costs and movements of individuals and the interaction between competing medical cost payers and providers

within and between the various insurance markets that comprise system. This model can be used to study and project the potential covered population for a new CO-OP."

37. Once approved, the start-up CO-OPs' reliance on Milliman would continue as they faced the tasks of setting first-year rates, operating a new company, and keeping up with ongoing reporting requirements to the U.S. Department of Health and Human Services ("HHS") and state regulators.

38. The Milliman Defendants advertised and represented to the start-up CO-OPs that they had specialized actuarial expertise, data, and insight for purposes of establishing and operating the CO-OPs, including Milliman's propriety and confidential *Health Cost Guidelines*, which would be used to set CoOportunity's projected rates for purposes of the federal funding application and CoOportunity's first year operating as a CO-OP.

39. CoOportunity retained the Milliman Defendants to provide actuarial professional services for purposes of working on critical aspects of the company's plans, including initial and later federal funding applications, rate setting, and financial reporting to federal and state regulators.

40. Because Milliman keeps its *Health Cost Guidelines* confidential, there was no way for CoOportunity (or regulators) to review and confirm with detail and specificity Milliman's confidential "black box" data which it relied upon in determining and recommending plan rates to CoOportunity.

41. Once rates were set and approved, CoOportunity could not change rates until the next plan year. As a result, if the rates proposed by Milliman were too low, the company would be at risk.

42. Because it was a start-up insurance company with no access or ability to confirm Milliman's black-box *Health Cost Guidelines*, CoOportunity placed substantial faith, confidence, trust, and reliance on the advice and representations of the Milliman Defendants. This resulted in the Milliman Defendants owing CoOportunity fiduciary duties, including duties of candor, honesty, and good faith, and to avoid any conflict of interest or potential self-dealing.

43. On September 20, 2011, Milliman issued a proposal specific to CoOportunity and quoted a flat fee of $110,000 for the feasibility study and business plan support necessary for the federal funding application, equal to $62,500 for Iowa and $47,500 for Nebraska.

44. Milliman's proposal was consistent with the rates for the volume discount proposed by Milliman to NASHCO for twenty or more organizations. In response to the NASHCO proposal, the large majority of CO-OPs retained Milliman to provide professional services similar to those provided to CoOportunity.

45. On September 30, 2011, CoOportunity founder Stephen Ringlee signed a Consulting Services Agreement ("Agreement") that states it is effective August 25, 2011 for Milliman to provide "consulting services" including "general actuarial consulting services."

46. The Liquidators do not seek to enforce any provision of the Agreement between Milliman and CoOportunity, and the claims asserted herein are independent of the Agreement. To the extent the Agreement applies, the Liquidators disavow the Agreement in accordance with Iowa Code § 507C.21.1.k.

47. The Agreement was one-sided and heavily favored Milliman. Absent "intentional fraud or willful misconduct by Milliman," the Agreement purports to limit Milliman's liability for professional malpractice "under any theory of law" to three times the amount of professional fees paid to Milliman.

48. Milliman was responsible for *critical* aspects of CoOportunity's establishment and operations. In order for CoOportunity to secure federal loans in excess of $145 million, Milliman *certified* to the company and the federal government that the company's business plan was viable and the company would be able to repay the loans.

49. It was in the Milliman Defendants' self-interest to make the actuarial certifications to the federal government that CoOportunity was viable and could repay the federal loans because that ensured Milliman would collect its initial application fee ($110,000), as well as future fees for additional professional services for the CO-OPs, including CoOportunity, e.g., rate filings, feasibility analysis and federal pro formas.

50. Under the tainted engagement terms, Milliman had little incentive to ensure its "certification" that the taxpayer money could be repaid was reasonable and within the standard of care, for Milliman believed its exposure was "capped" at a tiny fraction of potential losses to taxpayers, the company, policyholders, creditors of the company, and others due to its negligence.

51. The Milliman Defendants were aware of the elements the CO-OPs needed to establish in their federal funding applications to receive federal funding approval, *e.g.*, the parameters of projected claims costs, premiums, and the assumptions underlying those elements.

52. The Milliman Defendants ensured that those elements were in CoOportunity's federal funding application, but once that funding was approved, Milliman and the Founders deviated from those elements drastically, *e.g.*, in their first-year plan rates and member enrollment plans.

53. Milliman also assisted in establishing rates for CoOportunity's first-year plans. Rate setting is *critical* for the financial viability of a health insurer like CoOportunity because once rates are approved they are generally fixed and cannot be changed for another year. Thus, if rates are too low, there is nothing that can be done for at least a year to mitigate against losses.

54. Even though losses from inadequate plan pricing can cause losses in the tens of millions, under the tainted engagement terms, Milliman had little incentive to ensure plan rates were reasonable and within the standard of care.

55. CoOportunity lost in excess of $163 million during its first year of insurance operations. Its rates were too low (and substantially lower than rates assumed in CoOportunity's federal funding application) and its enrollment blew past all projections, causing tens of million in losses.

56. The Agreement also purported to wholly shield Milliman from any liability for lost profits, consequential damages, or punitive damages.

57. The Agreement purports to require application of New York law to the "construction, interpretation, and enforcement of this Agreement…."

58. Besides the fact that Milliman may have had an office location in the State of New York, there is no apparent connection between the parties and the contemplated actuarial services to the State of New York.

59. Milliman offered the Founders a personal incentive to enter into such a one-sided agreement by essentially agreeing that if the company did not secure federal funding, Milliman would not collect tens of thousands of its fees against the Founders. In particular, the Agreement provided:

> **BILLING TERMS INITIAL 4 MONTHS.** Company acknowledges the obligation to pay Milliman for services rendered, whether arising from Company's request or otherwise necessary as a result of this engagement, at Milliman's fixed fee arrangement for the personnel utilized plus all out-of-pocket expenses incurred. *Milliman understands that the initial funding may not be immediately available but expects prompt payment once they become available. In the event that the health cooperative is dissolved and does not receive funds to become a going concern, Milliman will not pursue payment from individuals associated with the dissolved cooperative for the work done for feasibility studies and business plans.* (emphasis added).

60. If CoOportunity's application was approved, Milliman's fees would simply be paid through tax-payer funded federal payments to CoOportunity. If it was denied, the Founders faced no personal exposure.

61. By entering into the Agreement, the Founders put their personal financial interests ahead of the interests of CoOportunity, and potentially policyholders and creditors.

62. The terms of the Agreement between CoOportunity and Milliman created an improper incentive for Milliman to convince federal officials to approve and fund the

project. Approval and funding was the only way Milliman could recover its fee of $110,000 for the initial feasibility study and business plan, and also ensure future fees for the provision of additional actuarial services to CoOportunity and the other to-be-formed CO-OPs. The improper financial motivation compromised Milliman's objectivity and independence in certifying the feasibility study and business plan.

63. Milliman did not disclose it financial interest in CoOportunity (and the other CO-OPs) receiving federal funding approval or its potential conflict of interest to HHS, nor did Milliman disclose and describe the implications of its financial interest and potential conflict to CoOportunity.

Milliman's Professional Services Were Integral to CoOportunity Securing Initial Federal Funding in the Total Amount of $112,612,000

64. HHS required applicants seeking federal CO-OP funding to provide a feasibility study, supported by actuarial analysis, which examined the likelihood of success for the CO-OP envisioned and the applicant's ability to repay the loan.

65. Under HHS's express instructions, the actuarial professional responsible for preparing the feasibility study was required to certify its accuracy and objectivity.

66. On October 14, 2011, Milliman issued a "Feasibility Study and Business Plan Support" for CoOportunity's federal funding application in which:

(i) Milliman assumed premium revenues of approximately $480 per member per month ("PMPM").

(ii) Milliman assumed gross claims expenses of approximately $418 (projected average monthly enrollment of 11,142) PMPM with very slight decreases if "low" or "high" enrollment occurred.

(iii) Milliman projected that by 2033 (19 years into operation) enrollment would reach 89,776.

(iv) Milliman stated it tested alternate enrollment forecasts and four alternate claims forecasts and in "all scenario tests, we find CO-OP is still able to maintain surplus levels above minimum statutory requirements and federal loans will be paid back on time."

(v) Defendant Hiemenz signed an Actuarial Certification that: (1) "I have examined the actuarial assumptions and actuarial methods used in preparing the feasibility study and pro forma projections" and "to the best of my knowledge and belief, the projections are accurate and complete"; (2) "I believe MMH's CO-OP is economically viable…"; and (3) "my projections indicate MMH should be able to meet its loan repayment obligations under moderately adverse conditions."

(vi) Milliman touted its "independence, objectivity, and dispassionate analytics." Milliman claimed it provided clients "objective unbiased advice and superior work product based on the best tools and data available."

(vii) Milliman did not disclose its contingency fee arrangement to HHS, or any potential conflict of interest that might have impaired its objectivity.

(viii) Milliman fully understood that its Feasibility Analysis and other "elements" of the application prepared by it would be incorporated into CoOportunity's application to HHS. In fact, Milliman expected CoOportunity to

cut and paste and integrate sections of its report directly into CoOportunity's application.

67. CoOportunity used Milliman's Feasibility Study and Business Plan in its application to HHS in which CoOportunity sought a $15.7 million start-up loan and a $100 million solvency loan from the federal government.

68. Federal officials reviewed CoOportunity's application and supporting materials, and conducted interviews of CoOportunity representatives.

69. In early 2012, the federal government awarded CoOportunity a start-up loan for $14,700,000 and a solvency loan for $97,912,000, approximately 97% of the amount CoOportunity requested.

70. The projections in Milliman's Feasibility Study and Business Plan Support are a stark contrast to CoOportunity's first-year plan prices, which it also certified, and CoOportunity's actual experience in 2014.

71. On February 17, 2012, CMS and CoOportunity executed a Loan Agreement for a start-up loan of $14.7 million and a solvency loan of $97.9 million ("Loan Agreement").

72. Shortly after, CoOportunity contacted Milliman and stated: "As we are now funded, please be kind enough to send us an invoice for our amounts owed to Milliman." CoOportunity thereafter paid Milliman $110,000 for the initial actuarial services performed by Milliman to support the funding application.

Milliman Certified CoOportunity's 2014 Commercial Individual and Group Rates for Iowa and Nebraska

73. As contemplated by Milliman, CoOportunity retained Milliman to perform additional actuarial services, including the development of individual and group plan pricing for Nebraska and Iowa for 2014, the first policy year.

74. Milliman prepared the individual and group rate filings for CoOportunity for the 2014 policy year and certified the rate filings.

75. CoOportunity's 2014 rates were substantially lower than the rates assumed in CoOportunity's application for federal funding with which Milliman had assisted.

76. The rates were lower because Milliman assumed significantly lower claims costs than in the federal funding application.

77. Milliman reduced the anticipated claims costs for the 2014 rates primarily by assuming CoOportunity would enjoy the same provider discount rates as well-established large insurers in the market; CoOportunity would enjoy a "tighter" degree of medical management to reduce claims costs; and other unspecified proprietary assumptions and grounds.

78. Milliman's assumptions and projection of drastically lower claims costs for purposes of the rate filings were unreasonable, unsupported, unjustified, and well below the standard of care:

(i) **Provider Network Discount Assumptions.** CoOportunity entered into a contract with Midlands Choice for its provider network. As a start-up, CoOportunity had little leverage to secure discounts at the level secured by large, well-established competitors.

(ii) CoOportunity's actual experience demonstrates that contrary to Milliman's assumptions, it did not enjoy provider discounts at a level similar to other large, well-established carriers.

(iii) It was unreasonable and unsupportable for Milliman to have assumed CoOportunity could secure provider discounts similar to those secured by large, well-established carriers.

(iv) **Medical Management Assumptions.** The Founders engaged HealthPartners early on to run the insurance side of operations. That agreement provided steep fees for HealthPartners with wide discretion in determining the degree of medical management of claims, contributing to high claims costs.

(v) HealthPartners' system for medical management worked for HealthPartners' own system because HealthPartners employed physicians and that relationship created a built-in system for effective medical management.

(vi) That system did not translate to effective medical management for CoOportunity, which essentially rented out a provider network through Midlands Choice.

(vii) CoOportunity's claims costs spiraled out of control, due in part to a lack of effective medical management.

(viii) It was unreasonable and unsupportable for the Founders and Milliman to have assumed the degree of medical management assumed in developing CoOportunity's 2014 rates.

79. Particularly in certain parts of Nebraska, CoOportunity's plans were the least expensive offered in the market.

80. CoOportunity's actual claims costs during 2014 were much higher than projected in CoOportunity's rate filings, resulting in losses in excess of $160,000,000 by the end of 2014.

Milliman Certified to HHS and Others CoOportunity's August 2013 Pro Forma

81. As a condition to receiving federal funding, CoOportunity was required to provide HHS with certain financial reports and data related to its operations to support HHS's monitoring efforts over the CO-OP program, which had to be certified by a professional actuary. As contemplated by Milliman, CoOportunity retained Milliman to provide the insurer with actuarial assistance in the preparation and filing of such financial reports and data.

82. On August 15, 2013, Milliman issued a "Semiannual Pro Forma Reports" to "account for the rates developed in the most recent rate filing as well as additional financing and operating information…."

83. Milliman projected claims costs of $274.10 PMPM during 2014 and premium revenue of $316.84 PMPM during 2014 in the Pro Forma. Milliman assumed average monthly members of 18,674 during 2014.

Milliman Certified to HHS and Others CoOportunity's April 2014 Pro Forma

84. CoOportunity began enrolling members upon commencement of "open enrollment" on October 1, 2013.

85. By the end of December 2013, CoOportunity had enrolled approximately 35,000 members, nearly double the amount ever projected. Enrollment continued to mount exponentially during 2014, reaching roughly 114,000 members by the end of 2014. The number of enrollees actually enrolled in one year of CoOportunity's operations eclipsed the number of enrollees (89,776) that Milliman had previously assumed by 2033, after 19 years of operation.

86. On March 24, 2014, HHS issued a letter requiring all CO-OPs with enrollment in excess of 20% of the enrollment projection to provide an updated business plan with pro forma financial forecasts by April 30, 2014.

87. CoOportunity retained Milliman to prepare the Pro Forma. Milliman issued the Pro Forma as "required by CMS for funded CO-OPs as defined by the Patient Protection and Affordable Care Act…. In addition, we understand CoOportunity may include this letter and corresponding exhibits in the material provided to HHS and the Iowa and Nebraska Departments of Insurance."

88. On April 30, 2014, Milliman issued a Pro Forma in which Milliman certified:

> We believe CoOportunity will maintain economic viability by maintaining 500% of the NAIC's Authorized Control Level in surplus while paying back all federal start-up and solvency loans within required timeframes. However, based on CoOportunity's 2014 membership and projected growth, we project the need for additional solvency loan draws compared to our prior projections.

89. While Milliman projected a need for "additional solvency loan draws" during 2014, Milliman did not indicate that CoOportunity would need any additional solvency loan funding beyond the amount approved in February 2012.

90. Milliman projected claims costs in the Pro Forma. Milliman stated it had made adjustments to the projected costs based on "first quarter 2014 actual experience," but the adjustment did not accurately or reasonably account for the first quarter claims experience, resulting in a material understatement of projected claims costs.

91. In addition, Milliman assumed without any explanation a 6% decrease in claims costs from 2014 to 2015.

92. By the date of this Pro Forma (April 30, 2014), CoOportunity had exhausted the entirety of its start-up loan ($14.7 million) and drawn down $70.8 million of the $97.9 million in approved solvency loan funds.

With Milliman's Assistance and Actuarial Certification of Feasibility, CoOportunity Sought in May 2014 an Additional $32.7 Million in Federal Funds, Which HHS Approved in September 2014

93. On April 30, 2014, HHS/CMS issued guidance that additional loan funds were available to the CO-OPs.

94. In early May, CoOportunity requested an additional $32.7 million in solvency loan funds from CMS, which CoOportunity reported was necessary due to the unanticipated high member enrollment and corresponding claims costs, as well as "delays" in the 3Rs[1] program repayments.

95. On June 30, 2014, CoOportunity requested Milliman to provide actuarial services in connection with an additional Feasibility Study in support of its request for additional loan funds and stated:

[1] The term "3Rs" refers to three programs under the ACA, reinsurance, risk adjustment, and reinsurance, under which carriers made or received payments.

> The feasibility study should show that we can indeed repay this $32.7m, are utterly deserving … and should get a check on September 1st. It should be simple to assemble since the market size itself has not changed; the only delta from the Pro Forma is the incremental loan.

96. Just two days later, CoOportunity sent Milliman its incurred claims and IBNR [incurred but not reported] through May of 2014, which "*shows a cumulative 117% loss ratio for all lines of business through May, a number we feel will moderate but which is still breathtaking*."

97. Despite the "breathtaking" losses on "all lines of business through May," on July 17, 2014, Milliman issued the Feasibility Study to support CoOportunity's application for additional solvency funding, which certified:

(i) "We believe CoOportunity will be able to repay their loans in the required time frame. … These projections are based on best estimate assumptions."

(ii) "We believe CoOportunity will be economically viable based on our baseline scenario."

(iii) CoOportunity provided enrollment projections, i.e., "Based on enrollment projections provided by CoOportunity, CoOportunity predicts it will grow from its current membership level of approximately 66,000 average members in 2014 to approximately 139,000 members by 2018."

(iv) Milliman assumed CoOportunity's draw down on the solvency loan would be increased by $10,635,000 more than the $97,912,100 solvency loan originally awarded. Milliman concluded that in this assumption, CoOportunity would maintain financial viability.

98. Milliman included two forecast scenarios with the July 17, 2014 Feasibility Study: (1) the first assumed the additional solvency loan, with identical projected premium and claims costs ($340 PMPM) as used in the April 30, 2014 Pro Forma; (2) the second scenario was the same, except it applied a projection of 10% higher claims costs ($374 PMPM) than the first.

99. But in reality, by the end of May, year to date claims costs for both Iowa and Nebraska were substantially higher than *any* projection in the Pro Forma submitted to regulators.

100. Milliman negligently, recklessly, willfully, or intentionally disregarded CoOportunity's actual claims experience and losses in the July Feasibility Study and failed to perform adequate stress testing, thereby substantially understating projected claims costs and materially misrepresenting the financial condition of the company.

101. CoOportunity's request remained outstanding until September 2014, when CMS approved the loan for an additional $32.7 million.

Milliman's August and September 2014 Pro Formas

102. During the months that CoOportunity's request for additional funding was pending, its financial condition continued to worsen. During this period, Milliman continued to provide professional actuarial services to CoOportunity.

103. On August 14, 2014, at 4:46 pm Milliman issued a draft Pro Forma to CoOportunity that it knew was due to be filed the next day to HHS. In that draft, Milliman explained CoOportunity had "previously submitted pro forma financial projections to [HHS] as required under the Consumer Operated and Oriented Plans (CO-OP) program."

Milliman "revised our prior projections to reflect claim cost, premium, and administrative expense projections consistent with CoOportunity's…rate filings. Further we revised the 2014 premium and claims based on revised assumptions provided by CoOportunity in light of its emerging 2014 experience."

104. Milliman acknowledged "we understand CoOportunity may include this letter and corresponding exhibits in the material provided to HHS and the Iowa and Nebraska Departments of Insurance."

105. Milliman stated in the August 2014 draft Pro Forma: "We believe CoOportunity will maintain economic viability by maintaining 500% of the NAIC's Authorized Control Level in surplus while paying back all federal start-up and solvency loans within required timeframes." In addition:

(i) Milliman assumed that in 2015, CoOportunity would enjoy a decline in claims costs by approximately 20% in individual and small group markets.

(ii) Milliman assumed CoOportunity would enjoy a 30% managed care credit even though CoOportunity had been using a credit of only 13.5%.

(iii) Milliman projected CoOportunity would have $141.8 million in cash at the end of 2014. This was more than CoOportunity projected, even assuming its first request for an additional $32.7 million was approved and its second request for additional funding (estimated at that time to be $42.5 million) was approved. Milliman's projection also did not appear to account for the fact that

CoOportunity would need to use that cash to pay claims through the remainder of 2014.

(iv) Milliman projected a net loss in 2014 of just $20.8 million and a net income in 2015 of $2.8 million.

(v) Milliman understated the negative cash flow of $17.4 million from operations, which CoOportunity's controller expected to be more in the range of $40-50 million.

106. CoOportunity's controller pushed back on several aspects of the Pro Forma, including: Milliman's projected claims costs; assumed managed care credit; projected cash flows; projected losses and income for 2014 and 2015; and cash flows.

107. It appears the company received an extension on the Pro Forma deadline of August 15, 2014 in order to work through these issues.

108. In response to CoOportunity's controller's push-back, Milliman reran the projections and, on the evening of Friday, September 5, 2014, Milliman contacted CoOportunity because "the results in our pro forma projection are drastically different than prior projections and we wanted to discuss prior to releasing this report."

109. Milliman's draft September 5, 2014 Pro Forma stated:

(i) Milliman assumed and stated that CoOportunity will need "rate increases in 2016 and beyond…. Note, the composite rate increase necessary in 2016 is approximately 67%. **Our projections…may not come true if this rate increase is not obtained. Further, CoOportunity's membership projections**

may not come true if its rates become uncompetitive after a substantial rate increase." (emphasis in original)

(ii) Just a few paragraphs down, Milliman acknowledged the "current projected rate increase needed in 2016…is unlikely. Even if a rate increase of this magnitude is approved, membership may decline significantly…."

(iii) Milliman assumed that CoOportunity "will receive the requested additional solvency loans which have not been approved yet."

(iv) Milliman projected "a loss of more than $100 million and $200 million in 2014 and 2015, respectively."

(v) "We project CoOportunity will *not* be able to maintain 500% of the NAIC's Authorized Control Level in surplus while paying back all federal start-up and solvency loans within the required timeframes. Further, based on CoOportunity's 2014 membership and emerging experience, we project the need for substantial additional solvency loan draws compared to CoOportunity's initial solvency loan award and subsequent requests. We also project a substantial rate increase is needed in 2016 to cover CoOportunity's project claim cost and administrative expenses." (emphasis added).

110. On September 8, 2015, Milliman issued a final Pro Forma "for Submission to CMS."

(i) Milliman added a disclaimer: "As you know, we are in the process of evaluating CoOportunity's August experience and projected risk adjustment receivables. We intend to incorporate this new analysis into our next pro forma.

Thus, we expect our projections could change materially after incorporating another month of actual experience and a risk adjustment receivable."

(ii) Milliman changed the assumption regarding 3R payments. In the draft of September 5, Milliman "assumed the Federal '3R' payments will be made in the projected amounts for 2014. We did not project a risk corridor receivable beyond 2014 due to the political uncertainty surrounding the program." In the final version, Milliman "assumed the Federal '3R' payments will be made in the projected amounts and all '3R' receivables will be admitted assets."

(iii) Milliman also lowered the projected annual losses for 2014 and 2015. In the September 5 draft, Milliman assumed losses in excess of $100 million for 2014 and losses in excess of $200 million for 2015. The final version projected a loss of $99 million in 2014 and $168 million in 2015.

CoOportunity Sought an Additional $55 Million in Solvency Loan Funding; the State of Iowa Put the Company Under a Supervision Order the Same Day HHS Declined the Request, Followed by a Rehabilitation Order and a Liquidation Order

111. On August 22, 2014, HHS/CMS issued guidance that additional loan funding was available to CO-OPs.

112. On September 22, 2014, CoOportunity requested from HHS an additional $55 million in Solvency Loan funding. This was in addition to CoOportunity's prior request of May 5, 2014, for an additional $32.7 million in solvency funding, bringing CoOportunity's total requests during 2014 for additional solvency funding to $87,700,000.

113. During September 2014, Milliman prepared draft and final feasibility studies supporting CoOportunity's request for additional solvency funding. The final report indicates:

(i) "Based on CoOportunity's 2014 membership and emerging experience, we project the need for $185.9 million in total solvency loan draws compared to CoOportunity's initial solvency loan award of $97.9 million (i.e. an additional $88 million solvency loan). We also project a substantial rate increase is needed to cover CoOportunity's projected claim cost and administrative expenses. To mitigate the large rate increase (roughly 40%) needed in 2016, we split the projected needed increase across 2016 and 2017."

(ii) Milliman continued to assume the federal 3R payments "[d]espite the political uncertainty surrounding these programs will be made in the projected amounts" for 2014, but noted that if the "risk corridor program is not available in 2015 or 2016, we project CoOportunity's total solvency loan to be $300.8 million."

(iii) Milliman's assumption that full risk corridor payments would be made for the 2014 policy year was unreasonable given the political uncertainty and anticipation there would be a shortfall in risk corridor collections.

114. In response to a request by CMS, Milliman submitted on November 4, 2014, a revised Pro Forma to assume a 300% RBC rather than 500% RBC. Under this scenario, Milliman concluded that CoOportunity would need total solvency funding of $147.8 million rather than the $185.9 million projected in the September 22 Feasibility Study, or $17.2 million more than the $130.6 million already awarded to CoOportunity.

115. On December 16, 2014, HHS notified CoOportunity that it was declining the request for additional Solvency Loan funding.

116. That same day, the Iowa Insurance Division put CoOportunity under Supervision Order. Shortly after, the Commissioner commenced an action against the company in Polk County, Iowa District Court, in which the Court initially entered a Rehabilitation Order (December 23, 2014), followed by an Order of Liquidation effective February 28, 2015.

During its Brief Stint, CoOportunity's Enrollment Surged Beyond All Projections as the Founders Portrayed to the Public the Company was Financially Sound

117. To secure federal funding, CoOportunity and Milliman assumed "base" enrollment during 2014 at 11,142 and projected economic viability even if it assumed "high" enrollment of 17,392.

118. After CoOportunity's rates for 2014 were approved, and it became clear CoOportunity was going to be the lowest cost option in many regions, CoOportunity and Milliman updated that projection in August 2013 to 18,674.

119. CoOportunity's member enrollment quickly grew beyond that updated projection. After offering plans on the Exchange for only three months (from October 1, 2013-December 31, 2013) and before a single claim was filed or paid, 35,075 members had enrolled, nearly double the highest projected enrollment for the entire year.

120. By the end of 2014, CoOportunity's enrollment was approximately 114,431, roughly ten times more than initially projected for purposes of CoOportunity's

federal loans, and six times more than the revised projection submitted to CMS in August 2013.

121. In terms of member enrollment, CoOportunity became the second largest CO-OP in the nation.

122. Despite far exceeding all enrollment projections and scenarios, CoOportunity continued to market policies and offered insurance brokers generous commissions.

123. CoOportunity also offered group credit for deductibles paid by insureds with other carriers as an incentive to switch plans.

124. By the end of 2014, CoOportunity paid over $13 million in agent/broker commissions, and suspended payment of another $1.8 million due for December commissions.

125. By at least July 2014, the Founders had concerns about the financial viability of the company and liquidity.

126. Yet, that same month (July 2014), CoOportunity published a "financial solvency white paper" on its website, touting the company was "financially solid & secure" and it was "strong & viable for the long haul."

Even When it Became Clear the Company Was Going Down, the Founders Received Bonuses

127. Defendant Lyons resigned from the company effective August 31, 2014, but continued to serve on the board of directors. Defendant Lyons received approximately $546,074 in compensation from CoOportunity, $111,624 in 2012, $232,350 in 2013, and $202,100 in 2014.

128. Defendant Ringlee was paid approximately $672,267 in compensation, $119,775 in 2012, $226,881 in 2013, $279,788 in 2014, and $45,823 in 2015.

129. Defendant Gold was paid approximately $650,696 from CoOportunity, $125,403 in 2012, $256,262 in 2013, $239,948 in 2014, and $29,083 in 2015.

130. During the Board of Directors' meeting on September 12, 2014, Defendant Ringlee proposed and the Board approved payment of $60,000 to Lyons as an "employment severance payment." During that same meeting, the Board authorized the Founders to seek additional money from HHS/CMS to support the company, and noted concerns about the "long-term viability of CoOportunity…."

131. During the next Board meeting on October 24, 2014, Defendant Ringlee introduced the first item for discussion, "the topic of executive compensation," which included a review of information from Merit Resources, which CoOportunity consulted with "following the September 12, 2014 Board of Directors meeting…."

132. Ringlee reported that Merit had concluded that "the executive positions at CoOportunity Health are compensated at well under the 50th percentile for similarly sized insurance companies." Merit "formulated a compensation proposal" that "includes both salary increases and quarterly incentive payments if he and Gold remain employed…though mid-2015."

133. The Board voted in favor of salary increases and bonus payments (amended and re-characterized as "incentive" payments) in draft employment agreements for Gold and Ringlee.

134. During this same meeting, Ringlee reported loss ratios for the year were at 111.6 percent, and confirmed that CoOportunity had requested an additional $55 million from CMS, which was still pending.

135. Thus, the Board and the Founders knew, recklessly disregarded, or negligently disregarded the financial condition of the company when they approved and accepted compensation increases and bonus/incentive payments per the Board actions in September and October of 2014. In light of the failing of the company, the compensation was inappropriate and excessive.

JURISDICTION AND VENUE

136. The causes of action alleged herein arose in substantial part in Polk County, Iowa, and resulted in damages to an insurance company headquartered in Polk County, Iowa. In addition, one or more defendants reside in Polk County, Iowa and therefore venue is proper in this court.

137. In addition, under Iowa Code § 507C.4, all actions authorized under the Liquidation Act, including this action, "shall be brought in the district court in Polk county."

138. The court has jurisdiction over defendants and this matter pursuant to Iowa law, including under Iowa Code § 507C.4, which confers the Liquidation Court with jurisdiction over persons served in an action brought by the receiver of a domestic insurer domiciled in Iowa for an action resulting from a relationship with the insurer, if the person is or has been an officer, manager, trustee, organizer, promotor, or other person in a comparable position.

139. In addition, the court has personal jurisdiction over defendants in this matter pursuant to Iowa law, including Iowa Rule of Civil Procedure 1.306, because defendants have the necessary minimum contacts with Iowa for the Court to exercise personal jurisdiction.

COUNT I – PROFESSIONAL MALPRACTICE AGAINST MILLIMAN DEFENDANTS

140. Plaintiffs incorporate all prior allegations of this Petition.

141. An actuary-client relationship existed between CoOportunity and the Milliman Defendants.

142. The Milliman Defendants owed a duty of care to provide professional actuarial services as described herein, in accordance with the following potentially applicable standards, among others:

(i) The Milliman Defendants should not have knowingly performed actuarial services where an actual or potential conflict of interest existed.

(ii) At a minimum, the Milliman Defendants should have disclosed in their actuarial report the financial arrangement with the client, particularly their agreement that Milliman would not pursue payment from individuals associated with the dissolved health CO-OP for the work done for feasibility studies and business plans.

(iii) The Milliman Defendants should have taken reasonable steps to ensure that their actuarial communications were not misleading and to ensure the communications were clear and appropriate to the circumstances and the intended audience, and satisfied the applicable standards of practice.

(iv) The Milliman Defendants should have considered how marketing, underwriting, and business practices of CoOportunity (e.g., contractual arrangements with providers and claims administrators) influenced the types of risks accepted, the cost of the members enrolled, and the impact of rapid growth on an organization.

(v) The Milliman Defendants should have considered relevant regulatory changes as they pertained to the estimation of incurred claims. In particular, the assumed underlying morbidity level of anticipated enrollees under the ACA is a critical assumption to projecting incurred claims.

(vi) The Milliman Defendants should have considered and included an appropriate provision for adverse deviation in their estimation of incurred claims.

(vii) The Milliman Defendants should have prepared a sufficient number of scenarios to reasonably represent the underlying variability of the cash flows and pro formas.

(viii) The Milliman Defendants should have made adjustments to reflect any known or expected changes that are likely to have a material effect on expected future results, including changes in risk selection, risk characteristics, business operations, provider contracts, federal and state regulations, medical practice, cost containment procedures, and economic conditions.

(ix) The Milliman Defendants should have based their financial projections and pro formas on reasonable assumptions that take into account internal or external future actions that are likely to have a material effect on capital

or surplus. The assumptions should be reasonable in the aggregate and for each assumption, individually, based upon relevant information reasonably available to the actuary.

(x) The Milliman Defendants should have selected risk characteristics that are related to expected outcomes. The Milliman Defendants should have considered adverse selection, credibility, and practicality when selecting risk characteristics.

(xi) The Milliman Defendants should have communicated with regulators the circumstances that had, or may have had, a significant effect on the preparation of elements in the financial projections or pro formas. Such circumstances may include: (1) changes in the operating environment; (2) trends in experience; and (3) changes in product mix.

(xii) The Milliman Defendants should have reflected their knowledge of material subsequent events that were likely to affect the actuary's analysis up to the date the opinion is signed and should have disclosed such events in the opinion. Any reliance on representations of company management regarding subsequent events should be disclosed in the opinion.

(xiii) The Milliman Defendants should have used data that was appropriate and that would allow them to perform the desired analysis. To the extent that the Milliman Defendants knew and understood that there were material limitations to the data it used and relied upon, they should have disclosed those limitations.

(xiv) The Milliman Defendants should not have relied on information supplied by another once it became apparent during the time of the assignment that the information contains material errors or is otherwise unreliable.

(xv) The Milliman Defendants should have performed sufficient analysis to be reasonably satisfied premium rates are actuarially sound, which includes using professional judgement and care in selecting and using relevant experience for pricing the products. The Milliman Defendants should have considered demographics, coverages, frequency, severity, or other determinable risk characteristics that the actuary expected to be similar to the subject experience.

(xvi) The Milliman Defendants should have identified the scope of the analysis on which their opinions were based including the date of the data that underlies the analysis, the date of the analysis, to the extent it differs from the date of the opinion, and any other items that in the Milliman Defendant's professional judgment were needed to sufficiently describe the scope of the analysis.

(xvii) If the Milliman Defendants knew and understood that the data they utilized likely contained material defects, they should have determined the nature and extent of any verification that may have been performed, and should have either arranged for a more extensive review prior to completing the assignment, or if the data were so inadequate that they could not be used to satisfy the purpose of the analysis, then the Milliman Defendants should have obtained different data, or declined to complete the assignment.

(xviii) The Milliman Defendants should have considered the changes or deterioration in experience from that initially projected as it updated financial projections and pro formas. The Milliman Defendants should have communicated the likelihood of the changes that resulted in estimates that are materially different from that projected in prior periods.

(xix) The Milliman Defendants should have considered whether there were significant risks and uncertainties that could result in future paid amounts being materially greater than those provided for in the liabilities or future amounts received being materially less than those provided for.

(xx) The Milliman Defendants should have issued timely communications regarding the emerging financial results and the variation in emerging results from that assumed in initial projections.

143. The Milliman Defendants were negligent, reckless, or engaged in willful and intentional misconduct in one or more of the following ways, among others:

(i) Proposing and undertaking an engagement with the CO-OP applicants, including CoOportunity, in which the Milliman Defendants had a conflict of interest or potential conflict because Milliman was financially motivated to create a favorable financial projection for CoOportunity and the other CO-OP applicants as that was the only way for (1) Milliman to be paid for its initial consulting efforts; and (2) Milliman to secure additional lucrative engagements performing future actuarial work for CoOportunity and other of the to be formed CO-OP applicants.

(ii) Representing to regulators and others that the actuarial certification used to support CoOportunity's federal funding application was from an independent third party and failing to adequately disclose the sources of all direct or indirect material compensation that Milliman would receive in relation to CoOportunity's federal funding application.

(iii) Failing to disclose to regulators and others Milliman's financial stake in CoOportunity and the other CO-OPs securing approval of the federal funding applications.

(iv) Setting CoOportunity's 2014 plan rates too low and at a level far below the rates assumed in CoOportunity's federal funding application. With the exception of plan design /mix differences there was no reason for such large differences in rates other than major changes in underlying actuarial assumptions.

i. In particular, the Milliman Defendant's assumption that CoOportunity would enjoy the same level of provider discount rates during its first year as large, well-established carriers was unreasonable and below the standard of care. New plans with limited market share projections would not expect best-in-class provider discounts. There was no rational incentive for a provider to accept a best-in-class discount to their charges for a new plan, particularly one with very little anticipated impact to the market.

ii. In addition, the Milliman Defendants' assumption that CoOportunity's claims would be tightly managed was unreasonable and

below the standard of care. With limited projected enrollment geographically dispersed it was unreasonable to assume that a medical management program would achieve the same level of effectiveness as in a controlled and concentrated environment.

iii. The Milliman Defendants' other cost-saving assumptions in their rate work were unreasonable and below the standard of care. Primary cost savings result from lower than average risk, provider discounts, and more effective than average medical management. Limited cost savings emerge from other assumptions. It was unreasonable to assume material cost savings from other sources.

(v) Failing to take immediate action once it learned that CoOportunity's rates were the most competitive in their various regions.

(vi) Failing to update CoOportunity's financial forecasts once initial enrollment was known in the fourth quarter 2013.

(vii) Certifying in the April 2014 Pro Forma that the company was viable and could repay its federal loans without need for any further federal funding, and failing to account for actual claims experience through the first quarter of 2014.

(viii) Certifying in the July 2014 Feasibility Study and Business Plan Support utilized by CoOportunity to support its application for an additional $32.7 million in federal solvency loan funding that the company would be viable and could repay its loans assuming grant of that amount of money. Milliman should have understood that the claims experience of CoOportunity at the time of

preparation of the July 2014 document was much different than originally forecasted. Yet, Milliman failed to reflect that in the update of this document.

(ix) In the July 2014 Feasibility Study, failing to update the 2015 claims cost projections based on emerging experience and projecting that CoOportunity would experience claims costs savings in 2015. Inadequate data would have been available at that time to substantiate any large changes in claims and administrative assumptions. The assumptions needed to first be adjusted upward to reflect the actual experience of the plan. Any future assumptions needed to reflect the significantly different than projected initial enrollment results and the impact of this change on the risk of the enrolled population.

(x) Failing to accurately state and describe the financial condition of the company in the August 2014 draft Pro Forma, resulting in delay in CoOportunity submitting the report to HHS and others until September 2014. Substantial changes to the August 2014 proposed Pro Forma were required after CoOportunity initiated a conversation with Milliman about how the projection did not seem reasonable in light of emerging claims experience. Milliman demonstrated its lack of awareness of the problem by providing a projection—and preparing to certify it the next day—which even a non-actuary could not reconcile with reality.

(xi) Failing to accurately state and describe the dire financial condition of the company in the September 2014 Pro Forma submitted to HHS and others.

(xii) Failing to take into account known facts and CoOportunity's actual claims and operating experience in the Pro Forma and Feasibility Studies relating

to CoOportunity throughout 2014. Multiple versions of Pro Formas developed by Milliman were inaccurate, unreasonable and /or potentially misleading in that Milliman indicated potential repayments on the loans seemed certain, when, in fact, they were not.

(xiii) Failing to accurately state and describe the financial condition of the company in the Feasibility Study issued in September 2014 in support of CoOportunity's request for an additional $55 million in solvency funding from HHS. The Pro Formas developed by Milliman failed to show the financial urgency of the situation even when updated for their assessment of higher than expected claims.

(xiv) Intentionally, willfully, recklessly, or negligently disregarding actual claims experience and failing to account for actual claims experience in the July 2014 Feasibility Study and Business Plan Support, Pro Formas, and other reports intended for CoOportunity and regulators.

(xv) Failing to timely advise CoOportunity, HHS, and other regulators of the true and accurate financial condition of the company and anticipated projections based on the actual experience in 2014. This should have been the top priority of Milliman when the higher than expected membership enrollment started to emerge in late 2013. The importance of this should have been escalated when adverse claims experience emerged. The issue was more than additional funding could fix.

(xvi) Failing to timely warn CoOportunity, HHS, and other regulators of the financial risks associated with CoOportunity's extreme and wholly unanticipated growth in membership and underpriced plan rates experienced during its first year.

(xvii) Failing to conduct adequate stress testing in Milliman's various projections and analysis, particularly in light of the emerging data that showed enrollment and claims costs far beyond any projection.

144. The Milliman Defendants' conduct as alleged with respect to each of the above items proximately caused damage to CoOportunity, policyholders, and creditors, including greater financial losses than would have been the case had it acted in accordance with the standard of care.

WHEREFORE, Plaintiffs request entry of judgment against the Milliman Defendants and for an award of damages caused by the Milliman Defendants' negligence, recklessness, willful, or intentional misconduct, consequential damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT II – BREACH OF FIDUCIARY DUTY AGAINST MILLIMAN DEFENDANTS

145. Plaintiffs incorporate all prior allegations of this Petition.

146. The Milliman Defendants owed fiduciary duties to CoOportunity.

147. In August 2013, Nebraska released rate comparison data for health plans in that state, including CoOportunity. That data revealed that in many regions, CoOportunity was the lowest cost option for individuals and small groups or among the lowest. In Iowa, CoOportunity's plans were not the lowest price option, but the plans were competitively

priced with very generous benefits. These factors increased the risk of high enrollment and put the company at even greater risk.

148. Those risks bore out as CoOportunity opened enrollment in October 2013 and started covering claims in January 2014. CoOportunity's enrollment surged far beyond all projections, and its early months of claims experience showed alarming claims costs trends.

149. Despite this, Milliman's financial reports and feasibility assessments presented to CoOportunity and regulators an optimistic picture even up to the point of Milliman's draft pro forma sent on August 14, 2014.

150. Milliman had its own incentive to continue to paint the rosy picture for CoOportunity. If it had timely notified the company and its regulators of the true financial state of the company, it would have faced criticisms of its actuarial services, including rate setting and enrollment assumptions.

151. There were also much wider ramifications for Milliman than just CoOportunity. Milliman had courted the other start-up CO-OPs and touted the strength of its *Health Cost Guidelines*. Milliman secured engagements with the large majority of the start-up CO-OPs and played an instrumental role in those CO-OPs securing millions in federal funds and first-year rate approval.

152. If Milliman had revealed the true financial condition of CoOportunity, it would have cast doubt on Milliman's work for the other companies, many of which were also at varying stages of financial distress.

153. CoOportunity was the first CO-OP to fail, but many others have followed. Today, only five of the 23 CO-OPs remain, and they are under varying degrees of financial distress and regulatory oversight. The remaining 18 were put under some form of regulatory action (e.g., supervision or liquidation) and ultimately closed.

154. The Milliman Defendants breached their fiduciary duties by, among other things:

(i) Failing to disclose Milliman's conflict or potential conflict of interest caused by Milliman's financial stake in CoOportunity securing federal funding approval.

(ii) Putting their own interest ahead of CoOportunity's in order to protect Milliman's reputation throughout the healthcare industry, as well as its lucrative financial relationships with the other CO-OPs.

(iii) Failing to be honest, forthright, and candid with CoOportunity, HHS, and regulators that Milliman had substantially underpriced some of CoOportunity's health plans.

(iv) Failing to be honest, forthright, and candid with CoOportunity, HHS, and regulators about the risks associated with the underpriced plans.

(v) Once the company started covering claims, and the risks associated with the underpriced plans began to come to fruition, resulting in alarming financial losses and trends, Milliman failed to be honest, forthright, and candid with CoOportunity, HHS, and state regulators about the true and accurate financial condition of the company.

(vi) Failing to timely advise CoOportunity, HHS, and other regulators, through accurate projections and actuarial certifications, of the financial ramifications associated with CoOportunity's extreme and wholly unanticipated growth in membership and underpriced plan rates experienced during its first year.

155. The Milliman Defendants' breaches of fiduciary duty proximately caused damage to CoOportunity, policyholders, and creditors, causing tens of millions in damages.

WHEREFORE, Plaintiffs request entry of judgment against the Milliman Defendants and for an award of damages caused by the Milliman Defendants' breaches, consequential damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT III – NEGLIGENT MISREPRESENTATION CLAIMS AGAINST MILLIMAN DEFENDANTS

156. Plaintiffs incorporate all prior allegations of this Petition.

157. The Milliman Defendants were in the business of supplying information about CoOportunity, including its financial viability, condition and ability to repay loans, to the company, state and federal regulators, and ultimately the public.

158. The Milliman Defendants intended to supply information to CoOportunity's executives and state and federal regulators regarding the financial viability and condition of the company and its ability to repay federal loans to guide decisions relating to federal loans to the company, rate setting, and the financial viability and health of the company.

159. The Milliman Defendants made false representations regarding their ability, data, and resources that they claimed would allow them to assist CoOportunity in setting adequate plan rates.

160. The Milliman Defendants made false representations regarding the financial viability and condition of CoOportunity and its ability to repay federal funds to the company, regulators, and others, including, but not limited to the following:

(i) Representing to creditors, policyholders, state and federal regulators and others that CoOportunity was financially viable and that it could reasonably be expected to be able to repay millions in taxpayer-funded federal loans to CoOportunity;

(ii) Failing to accurately report and disclose to creditors, policyholders, state and federal regulators and others the true, accurate, and complete financial condition of the company in the Pro Formas, Feasibility Studies, and other similar documents;

(iii) Representing to creditors, policyholders, state and federal regulators and others that if CoOportunity received the additional federal Solvency Loan funding CoOportunity sought during 2014 ($32.7 million in May of 2014 and $55 million in September 2014), the company would be financially viable and able to repay tens of millions in taxpayer-funded federal loans to CoOportunity.

161. The Milliman Defendants knew or reasonably should have known that the information they supplied regarding CoOportunity was false.

162. CoOportunity, policyholders, state and federal regulators and creditors reasonably relied upon the Milliman Defendants' representations and actuarial certifications in making business and regulatory decisions about the company, proximately causing damage to CoOportunity, policyholders, creditors, and others.

WHEREFORE, Plaintiffs request entry of judgment against the Milliman Defendants and for an award of damages caused by the Milliman Defendants' negligent misrepresentations, consequential damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT V – INTENTIONAL, WILLFUL OR RECKLESS MISREPRESENTATION CLAIM AGAINST MILLIMAN DEFENDANTS

163. Plaintiffs incorporate all prior allegations of this Petition.

164. The Milliman Defendants intentionally, willfully, or recklessly made a number of material misrepresentations regarding the financial health and condition of the company, including, but not limited to:

(i) Representing to creditors, policyholders, state and federal regulators and others that CoOportunity was financially viable and that it could reasonably be expected to be able to repay millions in taxpayer-funded federal loans to CoOportunity;

(ii) Failing to disclose to creditors, policyholders, state and federal regulators and others the true, accurate, and complete financial condition of the company in the Pro Formas, Feasibility Studies, and other similar documents;

(iii) Representing to creditors, policyholders, state and federal regulators and others that if CoOportunity received the additional federal Solvency Loan

funding CoOportunity sought during 2014 ($32.7 million in May of 2014 and $55 million in September 2014), the company would be financially viable and able to repay tens of millions in taxpayer-funded federal loans to CoOportunity.

165. In making these representations, the Milliman Defendants intended for CoOportunity and state and federal regulators to rely upon the representations in making business and regulatory decisions about the company.

166. CoOportunity, policyholders, state and federal regulators and creditors relied upon the Milliman Defendants' representations and actuarial certifications regarding CoOportunity.

167. CoOportunity, policyholders, and creditors sustained damage as a result of the Milliman Defendants' misrepresentations.

WHEREFORE, Plaintiffs request entry of judgment against the Milliman Defendants and for an award of damages caused by the Milliman Defendants' misrepresentations, consequential damages, punitive or exemplary damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT V – BREACH OF FIDUCIARY DUTY AGAINST FOUNDERS

168. Plaintiffs incorporate all prior allegations of this Petition.

169. Under the express terms of the ACA's implementing regulations, the directors of CoOportunity had a legal duty to "meet ethical, conflict-of-interest and disclosure standards including that each director act in the sole interest of the CO-OP…." 45 CFR § 156.515(Dec. 13, 2011).

170. CoOportunity was required to adopt standards to "ensure that each director acts in the sole interest of the CO-OP, its members, and its local geographic community as appropriate, avoids self-dealing, and acts prudently and consistently with the terms of the CO-OP's governance documents and applicable State and Federal Law." *Id.*

171. As founders, officers, and directors of CoOportunity, the Founders owed fiduciary duties to act in the best interests of the insurer, policyholders, and creditors.

172. The Founders failed to fulfill their fiduciary duties, by, among other things:

(i) Entering into the Agreement with Milliman, and in doing so, putting their own personal financial interests ahead of the interests of the company, policyholders, and creditors;

(ii) Proposing and accepting excessive bonuses and incentive payments, despite the dire financial condition of CoOportunity and its collapse;

(iii) Over aggressively selling CoOportunity plans, particularly after it was apparent the rates were too low and those rates could not keep pace with the out of control claims costs;

(iv) Misrepresenting to state and federal regulators, creditors, and policyholders that the company was financially sound to perpetuate the company for their own personal interest and gain.

173. The Founders' breaches as aforesaid proximately caused damage to CoOportunity, policyholders, and creditors.

WHEREFORE, Plaintiffs request entry of judgment against the Founders and for an award of damages caused by the Founders' breaches of fiduciary duty, consequential

damages, punitive or exemplary damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT VI – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY AGAINST MILLIMAN DEFENDANTS

174. Plaintiffs incorporate all prior allegations of this Petition.

175. The Founders breached their fiduciary duties as alleged herein.

176. The Milliman Defendants knew of, or recklessly disregarded, breaches of fiduciary duty by the Founders.

177. The Milliman Defendants gave substantial assistance or encouragement to the Founders in the Founders' breaches by:

(i) Proposing and entering into an Agreement which allowed the Founders to put their interests ahead of CoOportunity, its policyholders, and creditors.

(ii) Certifying plan rates for 2014, which allowed the Founders and company to over aggressively sell plans beyond all projections.

(iii) Certifying the April 2014 Pro Forma that the company was viable and could repay its federal loans on time, which allowed the Founders to continue aggressive sales and breach of other duties as alleged herein.

(iv) Certifying the July 2014 Feasibility Study, which allowed the Founders to secure an additional $32.7 million in federal solvency funds while continuing to sell plans.

WHEREFORE, Plaintiffs request entry of judgment against the Milliman Defendants and for an award of damages caused by the Milliman Defendants' aiding and

abetting of the Founders' breach of fiduciary duty, consequential damages, punitive or exemplary damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT VII – CONSPIRACY AGAINST ALL DEFENDANTS

178. Plaintiffs incorporate all prior allegations of this Petition.

179. The Founders committed the wrong of failing to conform to the standard of care owed by directors and officers as alleged herein.

180. Milliman participated in a conspiracy with the Founders to commit the wrong of failing to conform to the standard of care by ignoring the true nature of CoOportunity's financial position in that Milliman agreed with the Founders to certify:

(i) Plan rates for 2014, which allowed the Founders and company to aggressively sell plans beyond all projections.

(ii) The April 2014 Pro Forma that the company was viable and could repay its federal loans on time, which allowed the Founders to continue aggressive sales and breach of other duties as alleged herein.

(iii) The July 2014 Feasibility Study according to the Founders' request, which allowed the Founders to secure an additional $32.7 million in federal solvency funds it was unable to pay back while continuing to sell plans.

181. The agreement between the Founders and Milliman to prepare and submit documentation disregarding the true nature of CoOportunity's financial situation proximately caused damage to CoOportunity, its policyholders, and creditors.

WHEREFORE, Plaintiffs request entry of judgment against the Defendants and for an award of damages caused by Defendants' civil conspiracy, consequential damages, punitive or exemplary damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT VIII – NEGLIGENCE AGAINST FOUNDERS

182. Plaintiffs incorporate all prior allegations of this Petition.

183. As founders, officers, and directors of CoOportunity, the Founders owed a duty to conform to the standard of conduct for directors and officers of an insurer and to act in the best interests of the insurer, policyholders, and creditors.

184. The Founders failed to conform to that standard of conduct, by, among other things:

(i) Putting their own personal financial interest in avoiding liability to Milliman ahead of the interests of the company, policyholders, and creditors;

(ii) Failing to supervise outside actuarial professionals and other outside providers;

(iii) Proposing and accepting excessive bonuses and incentive payments, despite CoOportunity's collapse;

(iv) Failing to control other expenses that significantly outpaced all projections;

(v) Allowing and even encouraging the overaggressive sale of CoOportunity plans, particularly after it was apparent the rates were too low and could not possibly keep pace with the out of control claims costs;

(vi) Failing to ensure adequate and reasonable medical management;

(vii) Misrepresenting to regulators, creditors, and policyholders that the company was financially sound.

185. The Founders' negligent conduct proximately caused damage to CoOportunity, policyholders, and creditors.

WHEREFORE, Plaintiffs request entry of judgment against the Founders and for an award of damages caused by the Founders' negligence, consequential damages, attorney fees, costs, and all other relief to which Plaintiffs, the policyholders, and creditors are entitled.

COUNT IX – PREFERENCE CLAIM AGAINST FOUNDERS

186. Plaintiffs incorporate all prior allegations of the Petition.

187. During October and November 2014, the Founders received bonus or severance payments, including, but not limited to, bonus payments to Defendant Gold and Defendant Ringlee of $5,000 each during November 2014, and a severance payment of $60,000 to Defendant Lyons in October 2014.

188. These payments were for an antecedent debt made by CoOportunity within one year before the filing of a successful petition for liquidation of the company.

189. At the time of these payments, CoOportunity was insolvent; and/or the payments were made within four months before the filing of a petition for liquidation; and/or the Founders had reasonable cause to believe CoOportunity was insolvent or was about to become insolvent.

190. Pursuant to Iowa Code § 507C.28, the payments are voidable preferences that Plaintiffs may recover against the recipients and the Defendant Founders who knowingly participated in giving the preference.

WHEREFORE, Plaintiffs request judgment against the Founders for the amount of the voidable preferences, pre and post judgment interest, costs, attorney fees, and all other sums to which Plaintiffs are entitled as a result of the preference payments.

COUNT X – IN THE ALTERNATIVE, A PRE-PETITION FRAUDULENT TRANSFER CLAIM AGAINST THE FOUNDERS

191. Plaintiffs incorporate all prior allegations of the Petition.

192. To the extent the Court determines the payments to the Founders in October 2014 and November 2014 as alleged in Count X (Preference Claim Against Founders) do not constitute voidable preferences recoverable under Iowa Code § 507C.28, Plaintiffs alternatively assert the payments are fraudulent transfers under Iowa Code § 507C.26 because they were made pursuant to an obligation incurred by CoOportunity within one year prior to the filing of a successful petition for rehabilitation and liquidation and because they were made and incurred without fair consideration,

WHEREFORE, pursuant to Iowa Code § 507C.26, Plaintiffs request judgment against the Founders for the full value of the fraudulent transfers, pre and post judgment interest, costs, attorney fees, and all other relief to which Plaintiffs are entitled.

REQUEST FOR RELIEF AND JURY TRIAL DEMAND

Plaintiffs hereby demand jury trial on all issues triable by jury, and for judgment against Defendants on each count, with an award of damages sustained, consequential

damages, pre and post judgment interest, attorney fees, punitive and/or exemplary damages, and other relief deemed just, appropriate and equitable.

Respectfully submitted,

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[3] Mr. Schmidt, Mr. Sobelman, and Ms. Byrd are concurrently filing motions to appear *pro hac vice* for purposes of this action.