

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

TEHUM CARE SERVICES, INC.<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-90086 (CML)

**OBJECTION TO MOTION PURSUANT TO 11 U.S.C. § 105(a) & 502  
AND BANKRUPTCY RULES 3007 & 9019(b) FOR ENTRY OF AN ORDER  
ESTABLISHING PROCEDURES FOR RESOLUTION OF A CERTAIN CLASS  
OF CLAIMS WITH RIGHTS UNDER CERTAIN ARIZONA INSURANCE  
POLICIES ISSUED BY LONE STAR ALLIANCE (DE 802).**

Antoinette Windhurst (“Windhurst”) hereby objects to the **Motion Pursuant to 11 U.S.C. §§ 105(a) & 502 And Bankruptcy Rules 3007 & 9019(b) for Entry of an Order Establishing Procedures for Resolution of a Certain Class of Claims with Rights Under Certain Arizona Insurance Policies Issued by Lone Star Alliance.** (DE 802, “Motion”).<sup>2</sup> This Court must deny the Motion because it violates numerous provisions of the Bankruptcy Code and would not be fair or in the best interests of the estate or creditors as a whole.

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

<sup>2</sup> Windhurst does not consent to the jurisdiction of this Bankruptcy Court to liquidate the wrongful death litigation pending in Arizona Superior Court. Windhurst also does not consent to this Court adjudicating claims pending by Windhurst against non-debtor third parties. As Windhurst details herein, Windhurst has a constitutional right to a jury trial, and the liquidation of wrongful death cases are explicitly not within the core jurisdiction of this bankruptcy court. 28 U.S.C. § 157(b)(2), (4), (5). Windhurst has received an order granting partial stay relief, DE 641, and is filing this objection solely to preserve its rights, and should not be deemed a consent to jurisdiction.



## **1. Brief Argument**

Tehum Care Services, Inc. (“Debtor”), Loan Star Alliance, Inc. (“LSA”), and the Official Committee of Unsecured Creditors (“Committee”) (collectively “the Parties”) seek to extract third-party releases for, among others, the State of Arizona, Coverys, and CHS TX, Inc./YesCare (collectively “CHS”), in exchange for what appears to be nothing for the estate in return. If approved, the Motion would effectuate a disguised plan for only certain creditors without compliance with the Bankruptcy Code or the scrutiny of the confirmation process. The Parties to the Motion attempt to push these unlawful and unconfirmable procedures through as a “compromise” without disclosing essential facts necessary for consideration. The only thing the Parties have done is make an agreement that effectively eviscerates Windhurst’s multi-million dollar claim solely for the benefit of non-debtor third parties.

## **2. Background of the Windhurst Claim**

In 2017, Antoinette Windhurst, a widowed woman, and the Estate of David Windhurst, her deceased husband filed a medical malpractice, vulnerable adult, and wrongful death action against the Arizona Department of Corrections, Charles Ryan, the State of Arizona, and Corizon Health.

David Windhurst was a bed-bound double amputee with diabetes mellitus and completely reliant on the State of Arizona and Corizon for his well-being. David had a history of kidney failure and had uncategorized, open pressure ulcers on his coccyx and lower back. Rather than clean and dress his wounds to prevent infection, Corizon and its providers allowed David to wallow in his own feces and urine. David became infected; and even as his symptoms became more severe, Corizon did nothing. Only when David went into septic shock and coded, did Corizon transfer him to the hospital where he predictably died.

Discovery has been completed in the matter. During the dispositive motion phase of the case, the Trial Court granted summary judgment in favor of the Defendants on Plaintiff's Medical Negligence and Negligence Per Se Claims. On appeal, the Arizona Court of Appeals reversed, holding the dismissal of claims improper. Corizon and the State of Arizona appealed to the Arizona Supreme Court, which granted review as a matter of importance in the State of Arizona. That appeal to the Arizona Supreme Court has been fully briefed and was argued and submitted in the summer of 2022. The matter remains under advisement with the Arizona Supreme Court. This Court granted limited Stay Relief to allow the Arizona Supreme Court to rule on the submitted appeal. (DE 641).

Defense counsel for Corizon concealed from every party in the Windhurst litigation (including co-defendant State of Arizona and the Court) Corizon's divisional merger. Instead, counsel participated on behalf of "Corizon Health" in a Court sponsored mediation in June 2022, and argued to the Arizona Supreme Court in July 2022, appearing on both occasions on behalf of Corizon Health.

The active concealment of the "divisional merger" from the Plaintiff and the Court in Arizona has prevented any inquiry in the Windhurst Matter as to whether CHS TX/Yescare is a proper defendant.

**3. The Motion Improperly Mandates a Liquidation Process for the Windhurst Claim.**

The Motion provides that any holder of an "individual, prepetition claim[] that may be covered by the LSA Arizona Policies" will have their claim determined through a mandatory procedure. (DE 802 p. 3). Notably, the procedure was determined without input or choice from Windhurst, and by a process that explicitly excluded each of the claimants from participating in the mediation. The mandated procedure does not allow any of the

covered claimants to opt in or opt out of the “Claims Resolution Procedures.” (the “CRP”) (Page 3-4).

The CRP **forces** a three-step process to liquidate the Windhurst claim:

- a. **Step 1—Elective Settlement**--Claimants may accept an immediate cash payment of \$5,000 by LSA. This step is optional, but Windhurst’s claim, even by Tehum’s own reckoning, is at least \$2 million. (Exhibit 3, Corizon v. Coverys Complaint ¶ 53 “Corizon already has received a \$2,000,000 settlement demand for the Windhurst claim and would like to settle that claim.”)
- b. **Step 2**—If the \$5,000 settlement payment is not acceptable, the CRP **forces** each claimant to engage in **mandatory mediation**. Notably, if resolved by mediation, the resolution will be a full and final satisfaction and release of claims against “the Debtor’s bankruptcy estate (or its successor in interest), LSA, and all insureds under the LSA Arizona Policies.” (DE 802 p. 4).
- c. **Step 3**—If a claimant does not reach a settlement during mandatory mediation, the CRP would limit Windhurst to:
  - i. **only** recover from available insurance proceeds to satisfy claims against the Debtor, LSA, and additional insureds under such policies;
  - ii. accept a pro rata share of the remaining policy limits (which Windhurst believes may currently be \$0), in exchange for “full and final satisfaction and release of claims against the estate (or its successor in interest), LSA, and all insureds under the LSA Arizona Policies”; and
  - iii. await payment until **all** covered claims are liquidated.

Section 28 U.S.C. § 157(b) provides that this Court lacks jurisdiction to liquidate Windhurst’s wrongful death claim. Yet, the Motion asks this Court to mandate a process to liquidate Windhurst’s claim that also forces releases, limits recoveries, and delays payment without regard to rights Windhurst otherwise has at law. Windhurst does not consent to this Court liquidating its claim. Windhurst does not consent to the proposed liquidation process included in the CRP. Windhurst does not consent to this Court setting a process for it to liquidate claims or collect judgments against non-Debtor third parties, which claims are beyond the jurisdiction of this Court. And Windhurst does not consent to the defendants

in its action and the defendants' insurance company mandating a process contrary to law that Windhurst must follow to liquidate her claims.

This Court lacks jurisdiction to liquidate the Windhurst Claim. Yet without so much as an explanation as to how this Court could order a process beyond its jurisdiction, or how Windhurst can be compelled by the "settlement" reached between a defendant and its insurance company, the Debtor nevertheless asks this Court to mandate a liquidation procedure on Windhurst. It would be error for this Court to approve the CRP, or to force Windhurst to comply with it.

#### **4. The Motion Must be Denied Under the *Jackson Brewing* Factors**

The Motion cannot be approved under *In re Jackson Brewing Co.*, 624 F.2d 599 (5th Cir. 1980), which requires: "To assure a proper compromise the bankruptcy judge, must be apprised of all the necessary facts for an intelligent, objective and educated evaluation." *Jackson Brewing*, 624 F.2d at 602. This Court must also weigh "the 'terms of the compromise with the likely rewards of litigation.'" *Jackson Brewing*, 624 F.2d at 602, quoting *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson* ("*TMT Trailer*"), 390 U.S. 414, 425 (1968). Ultimately, this Court's duty is to ensure that the proposed compromise is truly "fair and equitable" and "in the best interest of the estate." *Jackson Brewing*, 624 F.2d at 602, quoting *TMT Trailer*, 390 U.S. at 424.

In evaluating the proposed settlement, the Court must consider several factors to determine whether to approve a 9019:

- (1) The probability of success in the litigation, with due consideration for the uncertainty in fact and law,
  - (2) The complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
  - (3) All other factors bearing on the wisdom of the compromise.
- Jackson Brewing*, 624 F.2d at 602.

The Fifth Circuit in *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010) recognized two additional factors:

- 1) a court should consider the interests of creditors, “with proper deference to their reasonable views,” and
- 2) “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.*

The Debtor bears the burden of establishing that a given compromise meets the *Jackson Brewing* factors. See *In re Shankman*, No. 08-36327, 2010 Bankr. LEXIS 619, at \*8 (Bankr. S.D. Tex. Mar. 2, 2010).

**a. The LSA Arizona Policies May Have No Value**

Each of the LSA Arizona Policies have a \$6 million aggregate limit for all claims asserted in that year. (DE 59-10 p. 43). As of March 18, 2020, LSA indicated that for LSA Arizona Policy 4-100167, “the available limits remaining under the Policy for all outstanding or pending matters, including [the Windhurst] claim, is \$645,396.” (Exhibit 1, March 18, 2020 letter from LSA to Corizon re: Policy Limits). LSA made clear that “the amount that LSA will pay under the Policy will not surpass \$6,000,000 despite the number or claims or settlements that arise under the Policy. As stated above, the remaining \$645,396 is the amount of limits remaining for all open or potential claims and/or lawsuits for the 2017-2018 policy year.” (Exhibit 1, March 18, 2020 letter from LSA to Corizon re: Policy Limits).

This letter was sent three years ago. It is currently unknown if any of the \$645,396 is still remaining. Undersigned counsel has reason to believe that no funds remain under LSA Arizona Policy 4-100167.

But by its terms, the proposed settlement limits the payment obligation of LSA to the policy limits remaining under the LSA Arizona Policies. Without stating an amount,

the settlement suggests the Court and creditors should trust the Debtor and Insurance company that the payment is fair or beneficial. If the LSA Arizona Policies are depleted or have only de minimus value, LSA would be obligated to pay little or nothing to the creditors of this estate in exchange for a full and complete release.

**b. The Motion Does Not Apprise the Court or the Effected Parties of the Necessary Facts to Allow an Appropriate Application of the *Jackson Brewing* Factors.**

Critical facts for the *Jackson Brewing* analysis are not disclosed in the Motion.

Schedule 3.01(a)(AZ) of the Divisive Merger document identifies a self-insured retention for LSA policy 4-100167 of \$50,000 (the “SIR”). (DE 59-10 p. 43). The Motion suggests that there is some dispute between LSA and the Debtor with regard to payment of claims, but it is unclear what that dispute may be.

The Motion further asserts that “the Parties agree that the aggregate claims, as alleged, may in some cases exceed the available coverage under LSA Arizona Policies” but the Motion never quantifies “aggregate claims” being resolved, SIR amounts obligated to be paid, or net proceeds that may be available under the LSA Arizona Policies. (DE 802 p. 3). There is simply no factual background for the conclusion that some undisclosed facts, “warrant some form of agreed claims resolution process to maximize available coverage to all claimants.” (DE 802 p. 3). What is telling from the Motion is the acknowledgement that the limits of the LSA Arizona Policies are deficient to cover those tort claimants who have asserted claims. Yet the proposed settlement nevertheless attempts to improperly limit the ability of those claimants to recover from other defendants liable for their damages.

The allegations regarding the insufficiency of insurance are confusing themselves given 1) that there is an excess coverage policy held by Coverys in the amount of \$8,000,000 per claim; and 2) that there is active litigation between Corizon and Coverys

on this very issue. (Exhibit 2, Corizon v. Coverys Docket Report, Exhibit 3, Corizon v. Coverys Complaint, Exhibit 4, Corizon v. Coverys Stipulation for Partial Dismissal) Yet the Debtor does not explain why this policy is not addressed, or why Windhurst's claims should be released before looking to the Coverys Policy.

The lack of disclosure problem is only deepened because the LSA Arizona Policies appear to be assets of CHS TX, Inc., not of Tehum. In DE 59-10, the Lone Star Arizona policies were transferred to CHS TX, Inc. and were not left in Tehum to be part of the bankruptcy estate. (DE 59-10 p. 25, 43) Notably, in the "Allocation of Assets" Section, 3(a), the Divisive Merger document unequivocally provides that "all right, title, and interest in and to the property and assets of the Company described on Schedule 3.01(a) attached hereto (collectively the "[CHS TX] Assets") shall be allocated to and vested in [CHS TX]." (DE 59-10 p. 25). Schedule 3.01(a)(AZ) clearly demonstrates that the Debtor and CHS TX identified Lone Star Alliance Policy 4-100167 as an asset transferred to CHS TX, Inc. (DE 59-10 p. 43). Based on this fact, it is unclear how there would be a dispute between LSA and the Debtor over the SIR payments – it would appear that the SIR payments may be due and owing from CHS TX. Why the Debtor would expend estate assets to settle a claim between a non-debtor and an insurance company is never disclosed.

The Motion also fails to explain another key issue. As mentioned above, as of March 18, 2020, LSA represented that only \$645,396 was left of the original \$6,000,000 aggregate insurance limit for all claims arising in Arizona in 2017-2018. (Exhibit 1, March 18, 2020 letter from LSA to Corizon re: Policy Limits). The Motion does not disclose the total remaining limits of the LSA Arizona Policies available for creditors. Ultimately, LSA is agreeing to pay up to policy limits, but that amount may ultimately total to little or nothing. It is unclear then what benefit the estate or creditors would receive from this settlement.



At bottom, the Motion fails to disclose what the Estate stands to gain from its undisclosed “dispute” with Lone Star, what Lone Star is giving to the Estate to resolve the dispute, or how any of this will benefit Windhurst or the other creditors. Without all of that information being presented and considered, the Settlement cannot be approved.

**c. The Motion Attempts to Resolve Claims by and Between Parties That Were Not Involved or Represented in the Compromise.**

The effect of the Motion is to compromise Windhurst’s claim in a number of ways. Windhurst was not a party to negotiations and has not been provided a significant relevant information. In discussions with other similarly situated creditors, it appears that many of the unsecured creditors impacted by the Motion were similarly left in the dark.

Although the Official Committee of Unsecured Creditors was a participant in the mediation, it does not appear that the Committee’s participation served to adequately represent or protect the interests of all unsecured creditors. This proposed agreement seems aimed to cut a portion of the Committees’ constituency (AZ Tort Claimants) out of a recovery from the Estate in order to benefit the other unsecured creditors. Such a conflict of interests is quite concerning.

To be sure, the Committee may not have been adequately informed by the Debtor or LSA of essential background facts during the mediation process. But the inclusion of provisions that mandate a liquidation process and limit recovery by Windhurst from third parties is not just or appropriate. While the Committee joined the Motion, the Motion is not in the best interests of all unsecured creditors and is certainly not fair and equitable to mandate on parties who were not participants.

**d. The Motion Effectuates Impermissible Third-Party Releases and Violates the Bankruptcy Code.**

The Motion, by its terms, seeks to secure releases for the State of Arizona, Coverys, and likely CHS. The Fifth Circuit “hold[s] § 524(e) categorically bars third-party exculpations absent express authority in another provision of the Bankruptcy Code.” *Nexpoint Advisors, L.P. v. Highland Capital Mgmt., L.P. (In re Highland Capital Mgmt., L.P.)*, 48 F.4th 419, 436 (5th Cir. 2022). The Motion must be denied.

Furthermore, States cannot declare bankruptcy or be eligible for a discharge. See 11 U.S.C. § 109 (“[O]nly a person . . . or a municipality[] may be a debtor under this title.”); 11 U.S.C. § 101(41) (“The term ‘person’ includes individual, partnership, and corporation, but does not include governmental unit, except [in situations not applicable here].”). While allowing a broad third-party release of pre-petition conduct would have its own significant legal issues in this Circuit, extending such a third-party release to a sovereign state not eligible for relief under the Bankruptcy Code would be novel and would violate numerous constitutional provisions, including the Contracts Clause of the United States Constitution. USCS Const. Art. I, § 10, Cl 1.

Arizona owes its inmates a non-delegable duty of care. A.R.S § 31-201.01; *Parsons v. Ryan*, 754 F.3d 657, 662 (9th Cir. 2014) (Corizon private contractor to State of Arizona carrying out the duties of the State); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (Eighth Amendment includes the right to adequate medical and mental health care in prison). Thus, the claim asserted by Windhurst against Corizon is equally, if not more so, the core liability of the State of Arizona. Any resolution of Windhurst’s claim against the Estate that forces a release of “all additional insureds” would improperly discharge Windhurst’s claims against the State of Arizona. Windhurst was given no option to opt-in to this agreement, and upon information and belief, the State of Arizona, is not paying anything for its release.

Nothing in the Bankruptcy Code or the State or Federal Constitutions would permit this abrogation of a wrongful death claim against the State. Windhurst's claims against the State of Arizona arise, in part, on violation of the 8<sup>th</sup> Amendment. To discharge the State of Arizona for its liability related to such breach, is counter to the United States Constitution.

Even if the State of Arizona were carved out of the Motion, the Motion still appears to effectuate a third-party release. As noted above, LSA Policy 4-100167 was transferred to CHS in the divisive merger. It is unclear if CHS then became the Named Insured under the policy. The original named insured under LSA Policy 4-100167 was "Valitas Health Services, Inc." (Exhibit 5, LSA Policy 4-100167 Declarations Page and Endorsements, p. 1). The additional insureds were Corizon Health, Inc. and the State of Arizona (Exhibit 5, LSA Policy 4-100167 Declarations Page and Endorsements, pp. 4-5). The Motion attempts to effectuate a release for 1) "the Debtor's bankruptcy estate," 2) "all insureds," and 3) the "successor in interest" to the bankruptcy estate. In addition, Coverys will effectively be released from any further liability for its excess insurance policy, because the underlying claims will be wrongfully extinguished.

The releases detailed in the proposed Order would cover LSA, Coverys, the bankruptcy estate, CHS, Valitas Health Services, and the State of Arizona. None of these parties have introduced new value into this bankruptcy estate, and this limitation of liability is not optional. This settlement secures third party releases all in exchange for LSA paying what it is contractually obligated to pay, with no benefit to the estate or creditors.

**e. The Motion Amounts to a *Sub Rosa* Plan.**

The Motion effectuates discriminatory treatment of an arbitrary subset of unsecured creditors. The Motion would limit Windhurst's recovery to only a pro rata share of funds paid by LSA (up to policy limits) which are currently believed to be approaching \$0. Windhurst will be precluded from seeking recovery against the Coverys excess insurance

policy, against the other defendants to the litigation including the State of Arizona, or against this Estate.

As a general unsecured creditor, Windhurst has the right under 11 U.S.C. § 1129 to be paid pro rata with other similarly situated creditors from the assets of the Debtor's estate. Until all assets of the estate are collected (including resolution of claims against CHS TX/Yescare), it remains unclear how significant the Debtor estate will be.

Yet the Motion proposes that all Arizona claimants (including Windhurst) be removed as creditors against the Estate and limited in recovery to a pro rata share of available insurance proceeds to be paid by Lone Star. Arizona claimants are not being allowed to participate as general unsecured creditors in recovery from the Debtor's estate. Instead, without disclosure, a vote, an election, or meeting the requirements of 11 U.S.C. § 1129, Windhurst will be ignored in the Debtor's Plan, and omitted from payment or participation. Such an approach contravenes the Code, is in bad faith, fails the best interests test, and unfairly discriminates against Windhurst.

The Debtor is not empowered under 9019 to enter into any compromise which would constitute a *sub rosa* plan. *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. by & Through Mabey (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 354 (5th Cir. 1997). "Determining whether a given settlement would effect a sub rosa plan is a legal conclusion for this Court, and that determination is reviewed de novo on appeal. *Id.*

The proposed *sub rosa* plan is procedurally improper, violates due process, and could not be confirmed under 11 U.S.C. § 1129(b).

**f. The Motion Violates *Stern v. Marshall* and Must Be Denied.**

The CRP proposes to resolve numerous state law claims, including claims against non-debtor third parties in violation of *Stern v. Marshall*, 564 U.S. 462, 503 (2011). The Motion asks this Court to extinguish liability of the Debtor, its insurance companies, and

various other defendants for a state law wrongful death claim. This Court's jurisdiction is explicitly limited to exclude the liquidation of wrongful death cases. 28 U.S.C. § 157(b)(2), (4), (5). Although a party may consent to resolution of a wrongful death claim, the CRP is not opt-in, and Windhurst has not consented to this Court's jurisdiction. This Court must allow the state court liquidation process to proceed, and once liquidated, may oversee administration of the Estate regarding payment of such liability. This Court's jurisdiction, however, does not extend to limit the liability or collection from third parties.

**g. The Motion Was Filed in Bad Faith.**

For a tort claimant, insurance provides a source of recovery. But insurance is never a cap or limit on recovery unless the claimant agrees to so limit her claim.

Windhurst has a legal right to collect claims against all defendants found liable when her claim is eventually liquidated. For the Debtor, there is no dispute that the act of recovering on that judgment must proceed through the bankruptcy court. But there is no similar limitation as to other defendants if found responsible for Windhurst's damages. And while insurance may be a source of payment for Windhurst's damages, if the award exceeds the LSA policy, or even the Coverys policy, Windhurst will nevertheless be able to proceed against the State of Arizona to collect her damages.

The proposed settlement not only contravenes public policy, it violates law. It conceals relevant facts, attempts to exclude Windhurst as a creditor of this Estate, effects third party releases, and is inequitable and discriminatory to a subset of unsecured creditors. In exchange, the Debtor gets little or nothing. Even if the Parties believed the Motion was intended to increase the total recovery to creditors or the estate, they have badly failed in proposing a solution which can pass legal muster, and given the substantial risk of prejudice to Windhurst, their failure, however well-intentioned, amounts to bad faith.

## 5. Conclusion

Windhurst respectfully requests that this Court deny the Motion because it violates the Bankruptcy Code, various federal statutes, and the United States Constitution.

DATED: August 7, 2023

MESCH CLARK ROTHSCHILD

By: /s/Frederick J. Petersen  
Frederick J. Petersen  
Attorneys for Antionette Windhurst,  
individually and as Personal  
Representative of the Estate of  
David Windhurst, deceased

# Exhibit 1



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

March 18, 2020

Anthony J. Fernandez  
Quintairos, Prieto, Wood & Boyer, P.A.  
2390 East Camelback Rd., Suite 440  
Phoenix, AZ. 85016

LSA Claim No: COR815826-1  
Corizon Claim No: 2017 PL-08977  
Insured: Valitas Health Services, Inc.  
Claimant/Plaintiff: David Windhurst

Mr. Fernandez,

As you are aware, Lone Star Alliance, Inc., a Risk Retention Group ("LSA") insures Valitas Health Services, Inc. d/b/a Corizon Health (the "Insured") under policy number 4-100167 for the policy period of March 4, 2017 to March 4, 2018 (the "Policy"). The Policy provides claims-made coverage with a Retroactive Date of March 4, 2013. The Policy contains an "Each Claim Limit" of \$2,000,000 and an "All Claims Limit" (total policy aggregate) of \$6,000,000.

In satisfaction of applicable disclosure rules, you are hereby notified as counsel for the Insured that due to the settlement of unrelated claims the available limits remaining under the Policy for all outstanding or pending matters, including this claim, is \$645,396. While the Policy provides an "Each Claim Limit" of \$2,000,000, the "Each Claim Limit" is subject to the "All Claims Limit", or policy aggregate, of \$6,000,000. Therefore, the amount that LSA will pay under the Policy will not surpass \$6,000,000 despite the number or claims or settlements that arise under the Policy. As stated above, the remaining \$645,396 is the amount of limits remaining for all open or potential claims and/or lawsuits for the 2017-2018 policy year.

Should you have any questions, please feel free to give me a call at 1-(800)-580-8658 ext. 5835.

Sincerely,

A handwritten signature in black ink that reads "Marc Clint". The signature is written in a cursive, flowing style.

Marc Clint  
Senior Regional Manager  
Lone Star Alliance RRG

cc. Tom Smith, CPCU



**Senior Professional Liability Litigation Manager  
Corizon Health**

# Exhibit 2

**2184CV01127 Corizon Health, Inc. vs. Coverys Specialty Insurance Company**

- Case Type:  
Business Litigation
- Case Status:  
Open
- File Date  
05/13/2021
- DCM Track:  
B - Special Track (BLS)
- Initiating Action:  
Other Complex Commercial Actions
- Status Date:  
05/13/2021
- Case Judge:
- Next Event:  
10/11/2023

All Information Party Event Tickler Docket Disposition

**Party Information**

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
### Events





















Date	Session	Location	Type	Event Judge	Result
04/26/2022 11:00 AM	Business Litigation 2	BOS-10th FL, CR 1017 (SC)	BLS Rule 16 Litigation Control Conference	Salinger, Hon. Kenneth W	Rescheduled
05/04/2022 02:00 PM	Business Litigation 2	BOS-10th FL, CR 1017 (SC)	Rule 16 Conference	Salinger, Hon. Kenneth W	Held as Scheduled
10/11/2023 02:00 PM	Business Litigation 2	BOS-10th FL, CR 1017 (SC)	BLS Rule 16 Litigation Control Conference		













### Ticklers





Tickler	Start Date	Due Date	Days Due	Completed Date
Rule 12/19/20 Served By	05/13/2021	09/10/2021	120	12/24/2021
Rule 12/19/20 Filed By	05/13/2021	10/12/2021	152	12/24/2021
Rule 12/19/20 Heard By	05/13/2021	11/09/2021	180	12/24/2021
Rule 15 Filed By	05/13/2021	10/12/2021	152	12/24/2021
Rule 15 Heard By	05/13/2021	11/09/2021	180	12/24/2021
Judgment	05/13/2021	05/15/2023	732	12/24/2021

### Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/13/2021	Plaintiff Corizon Health, Inc.'s Motion to Appoint Special Process Server	3	 <a href="#">Image</a>
05/13/2021	Civil action cover sheet filed.	2	 <a href="#">Image</a>
05/13/2021	Complaint electronically filed.	1	 <a href="#">Image</a>
05/14/2021	Case assigned to: DCM Track F - Fast Track was added on 05/14/2021		<a href="#">Image</a>
06/10/2021	Service Returned for Defendant Jdm, Llc D/B/A Jdm & Associates: Service through person in charge / agent;	4	 <a href="#">Image</a>
06/10/2021	Service Returned for Defendant Coverys Specialty Insurance Company: Service through person in charge / agent;	5	 <a href="#">Image</a>
06/10/2021	Service Returned for Defendant Usi Southwest, Inc.: Service through person in charge / agent;	6	 <a href="#">Image</a>
06/21/2021	Attorney appearance On this date David A Grossbaum, Esq. added for Defendant Jdm, Llc D/B/A Jdm & Associates		
06/21/2021	Attorney appearance On this date Daniel Robert Conte, Esq. added for Defendant Jdm, Llc D/B/A Jdm & Associates		
06/22/2021	Attorney appearance electronically filed.		 <a href="#">Image</a>
06/22/2021	Attorney appearance On this date Christina Marshall, Esq. added for Defendant Coverys Specialty Insurance Company		<a href="#">Image</a>
06/22/2021	Attorney appearance electronically filed.		 <a href="#">Image</a>
06/22/2021	Party(s) file Stipulation to extend time to respond to complaint  Applies To: Coverys Specialty Insurance Company (Defendant)	7	 <a href="#">Image</a>  <a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/22/2021	Attorney appearance On this date Tamara Sue Wolfson, Esq. added for Defendant Coverys Specialty Insurance Company		
06/25/2021	Party(s) file Stipulation Extending time for defendant JDM, LLC D/B/A JDM & Associates, to respond to the complaint  Applies To: Corizon Health, Inc. (Plaintiff); Jdm, Llc D/B/A Jdm & Associates (Defendant)	8	 <a href="#">Image</a>
07/12/2021	Answer to original complaint  Applies To: Jdm, Llc D/B/A Jdm & Associates (Defendant)	9	 <a href="#">Image</a>
07/12/2021	Party(s) file Stipulation to extend time to respond to complaint (second)  Applies To: Corizon Health, Inc. (Plaintiff); Coverys Specialty Insurance Company (Defendant)	10	 <a href="#">Image</a>
07/15/2021	Answer to original complaint  Usi Southwest, Inc. Answer to Complaint	11	 <a href="#">Image</a>
07/19/2021	Answer to original complaint  Applies To: Coverys Specialty Insurance Company (Defendant)	12	 <a href="#">Image</a>
07/19/2021	Defendant Coverys Specialty Insurance Company's Submission of Corporate Disclosure Statement	13	 <a href="#">Image</a>
07/28/2021	Notice of 93A complaint sent to Attorney General		 <a href="#">Image</a>
07/29/2021	Attorney appearance electronically filed.		 <a href="#">Image</a>
07/29/2021	Attorney appearance electronically filed.		 <a href="#">Image</a>
07/29/2021	Attorney appearance On this date Patrick T Voke, Esq. added for Defendant Lone Star Alliance, Inc.		 <a href="#">Image</a>
07/29/2021	Attorney appearance On this date Shanna M Boughton, Esq. added for Defendant Lone Star Alliance, Inc.		
07/30/2021	Answer to original complaint  Received from Defendant Lone Star Alliance, Inc.: Answer with claim for trial by jury	14	 <a href="#">Image</a>
09/03/2021	Defendant Coverys Specialty Insurance Company, Jdm, Llc D/B/A Jdm & Associates, Lone Star Alliance, Inc.'s Assented to, Joint Motion to Transfer to the Business Litigation Session	15	 <a href="#">Image</a>
09/03/2021	Coverys Specialty Insurance Company, Jdm, Llc D/B/A Jdm & Associates, Lone Star Alliance, Inc.'s Memorandum in support of Assented-To Joint Motion to Transfer to the Business Litigation Session	16	 <a href="#">Image</a>
09/23/2021	Petitioner Usi Southwest, Inc.'s Motion to Allow Robert W. Lewis ESQ to Appear Pro Hac Vice	17	 <a href="#">Image</a>
09/23/2021	Petitioner Usi Southwest, Inc.'s Motion to Allow Christopher B. Weldom ESQ to Appear Pro Hac Vice	18	 <a href="#">Image</a>
10/04/2021	Endorsement on Motion to admit Robert W Lewis Pro Hac Vice (#17.0): DENIED without prejudice for reasons having nothing to do with Mr. Lewis. The motion does not comply with Superior Court Rule 9A nor does it have a complete certificate of service (dated 9/24/21) notice sent 10/1/21		 <a href="#">Image</a>
10/27/2021	Endorsement on Motion to Transfer to the Business Litigation Session (#15.0): ALLOWED Dated: 9/10/21		 <a href="#">Image</a>
10/27/2021	ORDER: Notice of Acceptance into Business Litigation Session assigned to "BLS2".  (dated 9/10/21) notice sent 10/27/21	19	 <a href="#">Image</a>
11/01/2021	Civil action cover sheet mailed re: BLS		
11/10/2021	Attorney appearance electronically filed.		 <a href="#">Image</a>
11/10/2021	Attorney appearance On this date Timothy John Robenhymer, Esq. added for Defendant Usi Southwest, Inc.		 <a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/27/2021	Timothy John Robenhymer, Esq.'s Assented to MOTION to admit counsel pro hac vice: Robert W. Lewis, Esq. for USI Southwest Inc	20	 <a href="#">Image</a>
12/27/2021	Timothy John Robenhymer, Esq.'s Assented to MOTION to admit counsel pro hac vice: Christopher B. Weldon, Esq. for USI Southwest Inc	21	 <a href="#">Image</a>
12/28/2021	Civil action cover sheet filed.  Returned re: BLS (filed 12/24/21)	22	 <a href="#">Image</a>
01/03/2022	Endorsement on Motion to admit counsel pro hac vice: Robert W. Lewis, Esq. for USI Southwest Inc (#20.0): ALLOWED		 <a href="#">Image</a>
01/03/2022	Endorsement on Motion to admit counsel pro hac vice: Christopher B. Weldon, Esq. for USI Southwest Inc (#21.0): ALLOWED		 <a href="#">Image</a>
01/04/2022	Plaintiff, Defendant Corizon Health, Inc., Coverys Specialty Insurance Company, Jdm, Llc D/B/A Jdm & Associates, Lone Star Alliance, Inc., Usi Southwest, Inc.'s Joint Motion for Entry of Protective Order	23	 <a href="#">Image</a>
01/13/2022	Endorsement on Motion for Entry of Protective Order (#23.0): ALLOWED See Protective Order (dated 1/10/22) notice sent by email		 <a href="#">Image</a>
01/13/2022	ORDER: Stipulation and Protective Order So Ordered (dated 1/10/22) notice sent by email  Judge: Salinger, Hon. Kenneth W	24	 <a href="#">Image</a>
03/30/2022	Plaintiff Corizon Health, Inc.'s Assented to Request for Rule 16 Conference	25	 <a href="#">Image</a>
04/04/2022	The following form was generated:  Notice to Appear - BLS Sent On: 04/04/2022 11:06:36  Judge Salinger MEETING ID: 161 863 2415 PASSCODE: 626650		
04/07/2022	Attorney appearance On this date Marisa K Roman, Esq. added for Defendant Lone Star Alliance, Inc.		
04/14/2022	Event Result:: BLS Rule 16 Litigation Control Conference scheduled on: 04/26/2022 11:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Kenneth W Salinger, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
04/14/2022	The following form was generated:  Notice to Appear Sent On: 04/14/2022 15:22:00		
05/04/2022	Conference Memorandum  Joint Proposed Discovery Schedule and Tracking Order	26	 <a href="#">Image</a>
05/04/2022	Event Result:: Rule 16 Conference scheduled on: 05/04/2022 02:00 PM Has been: Held as Scheduled Hon. Kenneth W Salinger, Presiding Staff: Beatriz E Van Meek, Assistant Clerk Magistrate		
05/05/2022	The following form was generated:  Notice to Appear - BLS Sent On: 05/05/2022 10:55:46		
05/12/2022	Endorsement on Stipulation of Proposed Scheduling Order (#26.0): ALLOWED (dated 5/4/22) notice sent 5/10/22		 <a href="#">Image</a>
11/01/2022	Party(s) file Stipulation of Dismissal (filed 10/31/22) as to plff vs defts with prejudice each party to bear its own costs and waiving all rights of appeal  Applies To: Corizon Health, Inc. (Plaintiff)	27	 <a href="#">Image</a>

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/13/2022	Plaintiff, Defendants Corizon Health, Inc., Coverys Specialty Insurance Company, Jdm, Llc D/B/A Jdm & Associates, Lone Star Alliance, Inc., Robert W Lewis (PHV atty for USI deft), Usi Southwest, Inc., Christopher B Weldon (PHV atty for USI deft)'s Joint Motion for a 90-Day Stay	28	 <a href="#">Image</a>
02/07/2023	Endorsement on Motion for A 90 Day Stay (#28.0): ALLOWED The case is stayed for 90 days until May 4, 2023. dated (2/3/23) notice sent by email (2/3/23)		 <a href="#">Image</a>
04/18/2023	Defendant Usi Southwest, Inc.'s Motion of Timothy J. Robenymmer (counsel) for excusal from attendance at the Massachusetts Superior Court.	29	 <a href="#">Image</a>
04/24/2023	Endorsement on Motion for excusal from attendance at the Massachusetts Superior Court. (#29.0): DENIED DENIED. The court cannot excuse counsel's appearance or participation in all Superior Court matters. However, the Rule 16 conference in this case is continued from October 11, 2023 to October 24, 2023.  (Dated 4/20/2023) Notice sent 4/24/2023		 <a href="#">Image</a>
<b>Case Disposition</b>			
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>	
Pending			

Name search is currently unavailable in Land Court. Case type and case number searches are available. For assistance, contact the Land Court Recorder's Office at 617-788-7470. We apologize for any inconvenience this may cause. ✖



# Exhibit 3

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

CORIZON HEALTH, INC.,

Plaintiff,

E-FILED 5/13/2021

v.

Civil Action No.

COVERYS SPECIALTY INSURANCE  
COMPANY, JDM, LLC, d/b/a JDM &  
ASSOCIATES, LONE STAR ALLIANCE,  
INC., and USI SOUTHWEST, INC.,

Defendants.

**COMPLAINT**

**INTRODUCTION**

Plaintiff Corizon Health, Inc. (“Corizon”) is a privately held company that provides correctional healthcare services at prisons, jails and other correctional facilities throughout the United States. During March 2016 to July 2019, Corizon was under contract with the Arizona Department of Correction (“ADC”) to provide healthcare services at certain prisons in the State. As part of its contract with ADC (and to protect itself), Corizon was required to maintain professional medical liability coverage with a minimum per claim limit of \$10,000,000. Working through (and relying upon) its insurance broker, Defendant USI Southwest, Inc. (“USI”), Corizon obtained a primary professional medical liability policy with a \$2,000,000 per claim limit from Defendant Lone Star Alliance, Inc. (“Lone Star”) and an excess insurance policy (with an \$8,000,000 per claim limit) from Coverys Specialty Insurance Company (“Coverys”). At the time

these policies were placed and, thereafter, in 2018, USI, on behalf of Corizon, negotiated certain agreements concerning the manner by which claims would be reported under the excess policies. USI negotiated these agreements with Lone Star and JDM & Associates (“JDM”), a wholesale broker and the listed producer on the Coverys policy. JDM had actual or apparent authority to negotiate on behalf of Coverys. Pursuant to these agreements, for the time period from March 2016 to August 2018, Corizon was instructed to report claims directly to Lone Star (and not to Coverys). Beginning in August 2018, Corizon was instructed to provide quarterly loss runs to JDM in addition to the claims reports it provided to Lone Star.

As set forth below, Corizon scrupulously complied with the agreements regarding claims reporting for the excess policies. Beginning in January 2020, however, Coverys issued a series of letters to Corizon disclaiming any excess coverage obligation for claims that had not been reported *directly* to Coverys during the policy year in which the claim was first asserted against Corizon. The coverage position Coverys articulated in its declination letters ignored (and was in conflict with) the agreements that had been reached regarding claims reporting. Coverys disclaimed coverage in bad faith and in breach of these agreements once it realized the extent of the claims arising out of the ADC program and the likely impact of such claims upon the excess policies. In this action, Corizon seeks, among other things, a declaratory judgment that Coverys is estopped from denying coverage on grounds of late notice. Corizon also seeks multiple damages for Coverys’s knowing and willful violation of M.G.L. c. 93A, §11 and c. 176D.

Defendants JDM and Lone Star also are liable to Corizon on account of the promises and representations they made to Corizon with respect to the claims reporting process. Corizon’s longstanding broker, USI, is liable to Corizon for failing to adequately manage the claims reporting

process and protect Corizon's interests as it was required to do under its brokerage service agreements.

### **PARTIES**

1. Corizon Health, Inc. ("Corizon") is a privately held Tennessee corporation, with a principal place of business at 103 Powell Court, Brentwood, Tennessee. Corizon's parent company is Valitas Health Services, Inc. ("Valitas").

2. Coverys Specialty Insurance Company ("Coverys") is, on information and belief, a New Jersey insurance corporation, with a principal place of business at One Financial Center, Boston, Massachusetts.

3. JDM, LLC d/b/a JDM & Associates ("JDM") is, upon information and belief a Florida limited liability company, with a principal place of business at 1550 Village Square Boulevard, Tallahassee, Florida. Upon information and belief, John McCann is the owner and chief executive officer of JDM. JDM is a wholesale insurance broker. It is licensed to do business in Massachusetts.

4. Lone Star Alliance, Inc., which operates under the trade names "Loan Star Alliance A Risk Retention Group" and "Loan Star Alliance RRG" ("Lone Star"), is an insurance carrier which, upon information and belief, is domiciled in Washington, D.C., with a principal place of business at 901 S. Mopac Expy., Plaza V, Suite 500, Austin, Texas.

5. USI Southwest, Inc. ("USI") is a New Mexico corporation, with a principal place of business at 9811 Katy Freeway, Suite 500, Houston, Texas.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter pursuant to M.G.L. c. 212, § 4.

7. The Court has personal jurisdiction over Coverys because its principal place of business is in Suffolk County and it issued certain Policies to Corizon from Suffolk County pursuant to M.G.L c. 223A, § 3(a).

8. The Court has personal jurisdiction over JDM, Lone Star, and USI because those defendants conducted business directly or indirectly in Massachusetts and Corizon's causes of action arise out of business conducted with Defendant Coverys in the Commonwealth pursuant to M.G.L c. 223A, § 3(a) and (c).

9. Venue is appropriate in Suffolk County pursuant to M.G.L. c. 223, § 1, because Coverys's principal place of business is in Suffolk County.

#### FACTS

10. Corizon is the leading private provider of correctional healthcare services in the United States. It has provided quality healthcare services to States and municipalities across the United States for more than forty years. Corizon offers comprehensive solutions for medical care, behavioral care, pharmaceutical and re-entry services in State prisons, municipal jails, and other facilities.

11. Corizon maintains medical professional liability insurance to defend and indemnify itself and its health care workers against inmate claims for negligence and/or malpractice. Indeed, Corizon's contracts with state and local authorities require that it maintain certain levels of professional liability insurance coverage.

12. USI is a national retail insurance brokerage and consulting firm that, among other things, provides customized insurance solutions for healthcare providers. For many years, Corizon has worked with and relied upon Joanne Taylor, an account executive at USI, to advise it on professional liability insurance matters and to procure appropriate insurance policies for its various

prison system contracts. Ms. Taylor holds herself out as an expert on professional liability insurance matters.

13. Prior to January 1, 2016, Ms. Taylor was an Executive Vice President of Healthcare Liability Solutions, LLC (“HLS”). Corizon had entered into brokerage agreements with HLS and worked with Ms. Taylor while she was employed with HLS. Corizon’s agreement with HLS required that USI provide standard brokerage services to Corizon’s satisfaction.

14. In or about January 2016, USI acquired HLS and Ms. Taylor became an employee of USI. Pursuant to its written brokerage services agreement with Corizon, USI agreed to provide Risk Management Services, including the following specific services:

1. Negotiate coverage terms, premiums and the placement of coverage with insurers, for Client’s Professional Liability insurance program.
2. Review insurance policies for conformity with the insurers’ proposals and obtain necessary revisions.
9. Furnish continuing advice, technical assistance and counsel to Client, as requested by Client.

15. Under Section B of the USI brokerage agreement, entitled “Claims, Loss Control & Engineering,” USI agreed to:

4. Monitor the claim services provided by Client’s insurers, including assistance with claims submission interpretation of insurance policies.
7. Monitor problematic claims regularly.

16. HLS had provided these same brokerage services to Corizon under its brokerage agreement prior to its acquisition by USI.

17. In March 2013 Corizon was awarded a contract by the Arizona Department of Correction (“ADC”) to provide certain healthcare services at State owned and operated correctional facilities. A condition of the ADC contract required that Corizon maintain professional liability insurance with per claim limits of at least \$10 million.

18. Ms. Taylor at USI advised Corizon in placing its professional liability policy for the ADC contract. Ultimately, USI procured, on Corizon’s behalf, a professional liability policy for the ADC contract through American Insurance Group (AIG). The AIG policy included a \$10 million per claim limit.

19. In or about late 2015, AIG informed Corizon that it would not renew the professional liability policy for the ADC program. At that time, the AIG policy was due to expire in March 4, 2016. Accordingly, Corizon sought advice from USI to procure replacement coverage.

20. USI negotiated with and obtained insurance quotes from Lone Star for Corizon’s ADC program. Lone Star, however, was unwilling to insure the full \$10 million per claim limit sought by Corizon. Instead, Lone Star offered to provide insurance with a per claim limit of \$2 million. In order to meet Corizon’s claim limit requirements for the ADC program, Lone Star worked with JDM, a wholesale insurance broker and a producer for Coverys, to obtain an excess professional liability coverage for Corizon.

21. JDM obtained a quote from Coverys to provide excess coverage (over and above the Lone Star layer of coverage) for the ADC program. Upon information and belief, JDM has an agency (or other) relationship with Coverys and receives commissions for placing insurance with Coverys.

22. In February 2016, Lone Star presented a coverage proposal to USI for the March 4, 2016-March 4, 2017 policy year. The coverage proposal covered both the primary and excess

layers. The proposal indicates that Lone Star's limits of liability are \$2,000,000 for each claim with a \$6,000,000 policy aggregate. Per the proposal, Coverys agreed to provide \$8,000,000 excess coverage over the \$2,000,000 primary layer with an \$8,000,000 policy aggregate. Upon information and belief, Lone Star worked with Coverys and JDM to create the proposal.

23. Corizon executed the coverage proposal on March 9, 2016. USI forwarded the executed document to Lone Star on the same day. The Lone Star primary and Coverys excess policies were issued later in 2016 retroactive to March 4. Each such primary and excess policy named Valitas as the insured and Corizon as an additional named insured. Each excess policy listed JDM as the "producer."

**The Initial Agreed Claims Reporting Process  
for the Primary and Excess Layers**

24. The Lone Star and Coverys policies were to be issued on a "claims made and reported" basis, meaning that coverage was provided for claims (i) first made against Corizon during the policy period, and (ii) reported to a carrier in writing during that same policy period. As USI knew, under the prior AIG insurance policy, Corizon only had to report claims to one carrier as there was no excess layer. Accordingly, on behalf of Corizon, USI sought guidance as to how claims reporting would work with separate primary and excess carriers. Corizon, for its part, relied upon USI to negotiate the claims reporting process and to advise it accordingly.

25. In an email chain dated February 26, 2016, Joanne Taylor at USI asked Debbie Giese, a Vice President at Lone Star, how Lone Star would work with Corizon on claims and to describe Coverys's position on claims management. With respect to Coverys, Giese stated: "As an excess carrier, Coverys respects [Lone Star's] ability to handle the claims process so they will support our decision as to how to handle it overall." On the basis of this communication, USI



understood that any claims reporting process agreed upon with Lone Star would be sufficient for purposes of reporting to Coverys.

26. On March 3 and March 4, 2016, Greg Harmon, Assistant Vice President for Claims Operations at Lone Star and Steve Brown, Corizon's Director of Professional Liability Claims corresponded in an effort to reach agreement on the claims handling procedures. On March 4, Harmon sent an email to Brown summarizing the agreement that had been reached as to claims handling and reporting for the ADC program. The March 4, 2016 email contains the following agreed bullet points:

- Corizon will provide [Lone Star] with separate monthly Loss Runs on the . . . "Arizona" programs.
- Corizon will provide [Lone Star] with FNOL's [first notice of loss] on all new losses including pro se claims. . . .

27. On March 4, 2016, Ms. Giese forwarded this claims handling and reporting email to John McCann, a principal and owner of JDM who, as wholesale broker, was acting as an intermediary and agent for Coverys. Giese also forwarded the email to Joanne Taylor. As of March 4, 2016, USI believed that reporting claims to Lone Star in accordance with the procedures set forth in the March 4 email would be sufficient for purposes of excess reporting to Coverys. Accordingly, USI did not advise Corizon that it should separately report claims to Coverys. John McCann (who was also copied on the email) did not object to the claims reporting process or advise that any separate reporting to Coverys was required. Instead, he impliedly agreed to this reporting process.

#### **The Lone Star and Coverys Policies**

28. The Lone Star primary and Coverys excess policies were issued for the same policy periods starting on March 4, 2016 with the last policy terminating on July 1, 2019.

29. The coverage agreement of the Lone Star policy provides, in relevant part:

**A. PROFESSIONAL LIABILITY COVERAGE**

The Corporation will pay on behalf of any Insured under this Policy all sums within the applicable limits of liability which such Insured shall become legally obligated to pay with respect to a claim that: (a) is first reported in writing and received by the Corporation during the Policy Period of this Policy and (b) is for compensatory damages because of injury arising out of professional services rendered on or after the applicable retroactive date of this Policy and within the policy territory . . . (Italics omitted)

30. Each Coverys policy contains an insuring agreement which provides for “follow-form” excess coverage to the extent that the “Controlling Underlying Insurance also applies or would apply but for the exhaustion of its limits...”. The term “Controlling Underlying Insurance” is defined to be the Lone Star primary policy for the same policy period.

31. The first Coverys excess policy, No. 5-10038 (the “2016 Coverys Policy”), was in effect from March 4, 2016 to March 4, 2017. The second Coverys excess policy, No. 5-10229 (the “2017 Coverys Policy”), was in effect from March 4, 2017 to March 4, 2018. The third Coverys excess policy, No. 5-10262 (the “2018 Coverys Policy”), was in effect from March 4, 2018 to March 4, 2019. The fourth Coverys excess policy, No. 005TN000025399 (the “2019 Coverys Policy”), was in effect from March 4, 2019 to March 4, 2020, but was canceled effective July 1, 2019 due to the termination of the ADC program. Each such Coverys policy lists JDM as the “producer.”

32. Each Coverys excess policy has a per claim policy limit of \$8,000,000 and an \$8,000,000 aggregate limit in excess of the Lone Star primary limits of \$2 million per claim and \$6,000,000 policy aggregate.

33. Corizon purchased an endorsement providing an extended reporting period for the last (i.e. 2019) Coverys policy. This endorsement provides, in relevant part, as follows:

The period during which CLAIMS or SUITS otherwise covered by the Coverage Part indicated below may be first made against such INSURED

and reported to US in writing is extended to [July 1 2021].... This EXTENDED REPORTING PERIOD applies only to CLAIMS that are first made after the Termination Date [of July 1 2019] ... and because of an INCIDENT in the performance of PROFESSIONAL SERVICES on or after the RETROACTIVE DATE [March 4 2013] and before the Termination Date [July 1, 2019].

**Corizon follows the initial agreed procedure for reporting claims and loss runs.**

34. In accordance with the claims reporting agreement reached in March, 2016, Corizon began sending Lone Star monthly loss runs reflecting claims and expenses for the ADC program on April 1, 2016. Corizon also provided FNOL's on all new claims directly to Lone Star on a timely basis. It continued this agreed practice of notifying Lone Star of such claims (but not Coverys or JDM directly) through July 2018.

35. For example, on December 25, 2016, David Windhurst, an inmate at ADC, died. On June 22, 2017, Corizon received a demand letter on behalf of the Windhurst estate alleging damages in excess of \$3,000,000. In accordance with the agreed procedure, Corizon notified Lone Star of this claim on or about June 27, 2017. It did not send a notice directly to Coverys.

36. In February 2018, Corizon received a notice of a significant claim brought by an Arizona inmate named Celeste. Corizon reported the Celeste claim to Lone Star in or about March 2018. Coverys never disclaimed coverage with respect to the Celeste claim.

37. In early February 2018, Corizon received notice of another lawsuit brought by ADC inmate Chateen Latfolla seeking \$10,000,000 in damages. Corizon timely notified Lone Star of the claim following the agreed procedure. Given the potential for excess exposure on the Latfolla claim, Tom Smith, a Professional Liability Manager at Corizon also wrote separately to Marc Clint, Senior Regional Manager at Lone Star, to ensure that Coverys was made aware of the potential impact on the excess layer. Joanne Taylor was copied on the email string. Ms. Taylor forwarded the February 6, 2018 email exchange to John McCann to ensure that JDM also was

aware of the size of this claim. Coverys never disclaimed coverage with respect to the Latfolla claim.

**The July 2018 Discovery of a Discrepancy in Claims Reporting and the New Agreement on Claims Reporting to Coverys**

38. In the summer of 2018, USI received a loss run report from JDM for the Coverys policies that listed only two claims against Corizon (Celeste and Latfolla). Although Corizon had followed the agreed procedure for claims reporting for the primary and excess layers, Windhurst (and other claims) were not included on this loss run report. This caused USI to seek clarification on the claims reporting process on behalf of Corizon.

39. On July 5, 2018, Katie Smith at USI emailed John McCann at JDM and Marc Clint at Lone Star seeking clarification on the excess claims reporting process. The subject line of Ms. Smith's email is **"VALITAS – AZ Excess Claims Reporting."** Ms. Smith attached the loss run listing only two claims reported to Coverys. She wrote: **"To ensure that we are all on the same page we want to understand the process for reporting claims under Coverys excess policy..."**. Marc Clint responded on the same day:

It has been my experience that generally the insured (Corizon) would report the matter to their agent, who in turn would report it to the excess carrier and provide them with the contact information of the underlying carrier's representative....

Generally you would want to put the excess carrier on notice when there is a concerning loss with a potential for the damage exposure exceeding the underlying layer of coverage. Most excess carriers want to be notified early on so they can be copied on attorney correspondence so they can independently evaluate their reserve status . . . . I know that Lone Star Alliance provides you with a loss run but we don't send one to any excess carriers . . . .

40. This was the first time that Lone Star had advised that (i) it was *not* routinely forwarding FNOL's and loss runs for ADC program to Coverys, or (ii) Coverys would expect separate claims reporting from USI.

41. Katie Smith forwarded Clint's July 5 email to John McCann at JDM requesting confirmation on exactly what Coverys required by way of claims reporting. In particular, Ms. Smith requested that McCann "ask Coverys if they want to receive a monthly or quarterly bordereaux loss run for all underlying claims or if they only want to be notified if a claim will potentially hit their layer." Ms. Smith's email to McCann included the same subject line as her July 5 email, i.e., "**AZ Excess Claims Reporting.**"

42. On August 1, 2018, McCann forwarded the "Excess Claims Reporting" email chain to Edward Lyons, a Vice President in Underwriting at Coverys. Lyons responded on August 2, 2018 by email to McCann: "**Quarterly is fine.**" On that same day, John McCann emailed Katie Smith that "**Coverys would prefer to receive quarterly reporting of underlying claims.**" In a follow-up email to Katie Smith, McCann, on August 6, stated that the quarterly loss runs should be sent to Bridget Blanton at JDM (**not** to Coverys directly). Coverys knew that JDM was communicating and negotiating on its behalf with Corizon. JDM had actual and/or apparent authority from Coverys to instruct Corizon on how to report claims under the excess policies.

43. As a result of this email exchange, all parties agreed and understood that, going forward, the excess claims reporting requirements of the Coverys ADC policies would be satisfied by Corizon providing JDM with quarterly loss runs. Corizon also would continue to provide loss runs and FNOL's to Lone Star.

44. On August 7, 2018, Corizon sent Ms. Blanton at JDM the current loss run report for the time period ending June 30, 2018 showing all ADC claims as of that date. Thereafter, in

accordance with the new agreed procedure, Corizon provided quarterly loss runs to JDM beginning with a report dated September 30, 2018. USI was copied on each such report. Corizon and USI understood that JDM would timely forward such reports to Coverys.

**Corizon Is Sued by Aaron Salter's Estate and Advises  
JDM of the Excess Exposure in the Windhurst Claim**

45. On November 14, 2018, Tom Smith communicated with Marc Clint at Lone Star regarding the Windhurst claim. In his email, Smith asked that Lone Star continue to notify Coverys of claims against Corizon. Clint agreed to do so. On or about November 15, 2018, Clint sent an email to John McCann at JDM about the Windhurst exposure.

46. On May 2, 2019, Corizon was served with a major lawsuit on behalf of the estate of Aaron Salter, a former ADC inmate who had died in August 2017 at the age of 31. Corizon had forwarded an FNOL to Lone Star on May 6, 2019. The Salter claim also was listed on the loss run forwarded to JDM as of June 30, 2019. On September 11, 2019, Salter's counsel made a \$10,000,000 policy demand.

**Coverys, in Bad faith, Declines Coverage and Corizon learns that Neither Lone Star nor  
JDM had timely forwarded Claims Information to Coverys**

47. On January 29, 2020, Coverys issued a letter to Corizon disclaiming any obligation to provide excess insurance coverage with respect to the Windhurst claim. Coverys issued a similar declination letter for the Salter claim on April 15, 2020. Thereafter, Coverys issued a series of additional declination letters for any claim that Corizon had not separately reported to it during the policy year in which the claim was first made against Corizon.

48. In its declination letters, Coverys refused to accept the quarterly loss runs sent to JDM as adequate notice under the policies notwithstanding its prior agreement that such reporting would be "fine." In its letters, Coverys also noted that it had not received loss runs from JDM until January 20, 2020. Corizon was unaware that JDM had not been forwarding loss runs to

Coverys. It first learned that JDM had not been doing so when it received the Windhurst declination letter.

49. The coverage positions articulated by Coverys in its declination letters ignore and contradict the agreements it reached with respect to claims reporting. Specifically, and as described above, in March 2016 Coverys (through JDM) agreed that Corizon could satisfy its reporting obligations by providing FNOL's and loss runs to Lone Star. Thereafter, in July 2018 Coverys agreed that, going forward, quarterly loss run reports delivered to JDM would satisfy the reporting requirements of the excess policies. JDM, on behalf of Coverys, instructed Corizon to send all loss reports to JDM and not to Coverys.

50. Upon information and belief, JDM has informed Coverys that its coverage position is in error and in conflict with the claims reporting agreements that were reached.

51. Upon information and belief, Coverys devised its coverage position in bad faith once it realized that the mounting losses faced by Corizon from the ADC program would implicate the excess policies.

52. Coverys's bad faith coverage position has left Corizon exposed to significant potential losses over and above the limits of the Lone Star policies. Coverys's declination of coverage also has impaired Corizon's ability to resolve open claims in advance of trial. Corizon is responsible for defense costs upon exhaustion of the Lone Star policies. Thus, once the Lone Star per claim limit is exhausted, Corizon must both defend the claim and cover any damages assessed against it after trial.

53. There are approximately 13 open claims with respect to the 2017 policy term alone, including the Windhurst claim. Lone Star has less than \$645,000 remaining of the \$6,000,000 aggregate policy limit available to resolve the Windhurst case and 12 other remaining open claims.

Corizon already has received a \$2,000,000 settlement demand for the Windhurst claim and would like to settle that claim. There also are numerous open claims with respect to the 2019 policy year, including the Salter claim in which the plaintiff has demanded \$10,000,000. Salter's counsel has indicated that he will not settle the claim for an amount within the Lone Star primary policy.

**COUNT I: BREACH OF CONTRACT AGAINST COVERYS**

54. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

55. The policies issued by Coverys are valid contracts between Coverys and Corizon. Corizon fulfilled its obligations under the excess policies.

56. Corizon reported claims as soon as practicable and complied with the claims reporting agreements it reached with Coverys.

57. Coverys's refusal and failure to cover Corizon for claims arising out of the ADC program, including those claims listed in declination letters issued to Corizon, constitutes a breach of the (i) express terms of the excess policies, and (ii) agreements reached on claims reporting procedures.

58. As a result of Coverys's breach of its agreements Corizon has suffered and will continue to suffer damages.

**COUNT II: PROMISSORY ESTOPPEL/EQUITABLE ESTOPPEL AGAINST COVERYS**

59. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

60. Coverys, by its conduct and the conduct of persons with actual or apparent authority to act on its behalf, induced Corizon to report claims directly to Lone Star and JDM rather than to



Coverys. Coverys's conduct amounted to a representation that such reporting would satisfy the insuring agreements and reporting provisions of the excess policies.

61. Corizon reasonably relied upon the representations made to it regarding claims reporting.

62. Coverys is equitably estopped from now disclaiming coverage on grounds of alleged late reporting.

### **COUNT III: DECLARATORY JUDGMENT AGAINST COVERYS**

63. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

64. There is a real and justiciable controversy between the parties concerning coverage under the Coverys excess policies for the claims asserted against Corizon including those claims referenced in the Coverys disclaimer letters issued to Corizon.

65. This Court should declare that, upon exhaustion of the primary layer (i) all such claims are covered under the terms of the Coverys policies, and (ii) Coverys is estopped from denying coverage on grounds of late notice.

### **COUNT IV: UNFAIR AND DECEPTIVE INSURANCE PRACTICES AGAINST COVERYS**

66. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

67. Coverys disclaimed coverage in bad faith.

68. Coverys refused to participate in settlement conferences or to make reasonable contributions toward settlement on claims covered by the excess policies.

69. Coverys has compelled Corizon to institute litigation to obtain coverage under the excess policies with knowledge that it had no good faith basis to disclaim coverage.

70. Coverys has acted with demonstrable indifference towards the interest of Corizon.

71. Coverys's conduct, including its denial of coverage, constitutes an unfair and deceptive insurance practice in violation of applicable statutes including M.G.L. c. 176D, Section 3(9) and M.G.L. c. 93A. Coverys's unfair and deceptive conduct was knowing and willful.

72. Corizon has suffered damage due to the bad faith and unfair and deceptive practices of Coverys.

#### **COUNT V: BREACH OF CONTRACT AGAINST JDM**

73. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

74. As set forth above, JDM entered into agreements with Corizon concerning claims reporting under the Coverys policies. In particular, in August 2018 JDM agreed to accept quarterly loss run reports on behalf of Coverys. JDM expressly and/or impliedly agreed to forward such loss reports to Coverys.

75. JDM breached its agreements with Corizon. Corizon has suffered damages as a result of JDM's breach.

#### **COUNT VI: NEGLIGENT MISREPRESENTATION AGAINST JDM**

76. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

77. In March 2016, JDM participated in email exchanges by which the first agreement on claims reporting was reached, impliedly representing that the agreement was satisfactory to Coverys. In August 2018, JDM represented to Corizon that delivering quarterly loss reports to it would be sufficient for claims reporting purposes under the excess policies.

78. At all relevant times, Corizon reasonably believed that JDM had authority to act on behalf of Coverys. To the extent that JDM lacked such authority, then its representations to Corizon were made negligently.

79. Corizon reasonably relied on the representations made by JDM and has suffered damage on account of those representations.

**COUNT VII: PROMISSORY ESTOPPEL AGAINST JDM**

80. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

81. JDM made promises to Corizon including the promise to deliver to Coverys the loss runs received from Corizon. Corizon reasonably relied on such promises.

82. Corizon has suffered damage on account of its reliance upon JDM's promises.

**COUNT VIII: NEGLIGENT MISREPRESENTATION AGAINST LONE STAR**

83. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

84. In February and March 2016 Lone Star represented to Corizon that Coverys would support Lone Star's decision on how to handle claims reporting including with respect to the excess policies. Lone Star then agreed upon a claims reporting procedure by which Corizon was to report claims and deliver loss runs to Lone Star only (and not to Coverys).

85. Corizon reasonably relied upon Lone Star's representations.

86. To the extent that Lone Star lacked authority from Coverys to make these representations, then Lone Star acted negligently.

87. Corizon has suffered harm as a result of Lone Star's negligent misrepresentations.

**COUNT IX: PROMISSORY ESTOPPEL AGAINST LONE STAR**

88. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

89. Lone Star expressly or impliedly promised that Corizon could satisfy the reporting requirements of the excess policies by delivering FNOL's and loss reports for the ADC program to Lone Star. Lone Star expressly or impliedly agreed to forward such claims reports and loss runs to Coverys

90. Corizon reasonably and detrimentally relied upon Lone Star's promises.

91. Corizon has suffered damage as a result of its reliance upon Lone Star's promises.

**COUNT X: BREACH OF CONTRACT AGAINST USI**

92. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

93. The brokerage services agreements between Corizon and USI (including its predecessor HLS) are valid contracts. Corizon fulfilled its obligations under these agreements.

94. USI breached the brokerage service agreements including the implied covenant of good faith with respect to those agreements by, among other things, failing to appropriately manage the claims reporting process for Corizon.

95. Corizon has suffered damages as a result of USI's breach.

**COUNT XI: NEGLIGENT MISREPRESENTATION AGAINST USI**

96. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

97. Corizon relied upon USI to procure appropriate insurance coverage for the ADC program and properly advise it with respect to the terms and conditions of the policies, especially with respect to claims reporting.

98. USI expressly and/or impliedly represented that it would negotiate the excess claims reporting process on behalf of Corizon.

99. USI expressly and/or impliedly represented that Corizon could satisfy the reporting requirements of the excess policies (i) for the period prior to August 2018 by delivering FNOL's and loss reports to Lone Star, and (ii) after August 2018 by delivering quarterly loss reports to JDM. To the extent that these representations were false, then USI made its representations negligently.

100. Corizon reasonably relied upon USI's representations and has suffered damage on account of such reliance.

**COUNT XII: BREACH OF FIDUCIARY DUTY AGAINST USI**

101. Corizon incorporates by reference here its allegations in each and every other paragraph of this Complaint.

102. As its longstanding broker, USI owed a fiduciary duty to Corizon to protect Corizon's interests.

103. USI breached its fiduciary duties to Corizon by, among other things, failing to (i) manage the claims reporting process, and (ii) properly advise Corizon with respect to claims reporting process under the Coverys policies.

**WHEREFORE**, Corizon respectfully requests that this Court:

- i. Enter judgment against the Defendants named in each Count of this Complaint.
- ii. Award Corizon all compensatory damages to which it is entitled, plus pre-judgment interest, costs and attorneys' fees.
- iii. Award Corizon double or treble damages and/or punitive damages under Count IV.
- iv. Enter a declaratory judgment against Coverys under Count III that, upon exhaustion of the Lone Star primary insurance, (a) all ADC claims against Corizon are covered under the terms of the Coverys excess policies, and (b) Coverys is estopped from denying coverage on grounds of late notice.

- v. Grant such other and further relief as is reasonable and just.

**JURY DEMAND**

Corizon demands a jury on all claims so triable.

Respectfully submitted,

CORIZON HEALTH, INC.  
By its attorneys,

/s/ Nicholas J. Nsgos

Nicholas J. Nsgos (BBO# 553177)  
Matthew H. Doyle (BBO# 707953)  
Benjamin M. Greene (BBO#696850)  
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Dated: May 13, 2021

# Exhibit 4

Date Filed 10/31/2022 12:48 PM  
Superior Court - Suffolk  
Docket Number 2184CV01127

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, SS:

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 2184CV01127-BLS2

CORIZON HEALTH, INC.,

Plaintiff,

v.

COVERYS SPECIALTY INSURANCE  
COMPANY, JDM, LLC, d/b/a JDM &  
ASSOCIATES, LONE STAR ALLIANCE, INC.,  
and USI SOUTHWEST, INC.,

Defendants.

**STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE**

Pursuant to Mass. R. Civ. P. 41(a)(1), the Parties hereby stipulate and agree to a partial dismissal with prejudice, with each Party to bear their own costs and waiving all rights of appeal as to the agreed dismissed claims detailed herein.

In this action Plaintiff Corizon Health, Inc. ("Corizon"), a correctional healthcare service provider, alleges that the actions or omissions of the Defendants caused it to be wrongly denied excess liability insurance coverage for claims brought by inmates of the Arizona Department of Corrections or their estates on the basis that the claims were not timely reported to Defendant Coverys Specialty Insurance Company ("Coverys").

The Parties have reached a confidential settlement and release agreement for all claims in the litigation except with respect to claims concerning coverage or lack thereof for the Windhurst

entered on docket pursuant to Mass R Civ P 58(a) as amended  
and notice sent to parties pursuant to Mass R Civ P 77(d)Insert text here



Date Filed 10/31/2022 12:48 PM  
Superior Court - Suffolk  
Docket Number 2184CV01127

Claim<sup>1</sup>, the Washburn Claim<sup>2</sup>, and the Rosales Claim<sup>3</sup> (collectively, the “Remaining Disputed Claims”). All claims other than the Remaining Disputed Claims are hereby dismissed with prejudice.

This Stipulation of Partial Dismissal does not affect the Parties’ pursuit of any claims or defenses as to the Remaining Disputed Claims.

WHEREFORE, the Parties hereby stipulate and agree to this partial dismissal with prejudice, with each Party to bear their own costs and waiving all rights of appeal as to the agreed dismissed claims detailed herein.

Dated: October 31, 2022

Plaintiff, CORIZON HEALTH, INC.

Defendant, COVERYS SPECIALTY  
INSURANCE CO.

By: Its Attorneys

By: Its Attorneys

*/s/ Nicholas J. Nesgos*

*/s/ Tamara S. Wolfson*

Nicholas J. Nesgos, BBO #553177  
Benjamin M. Greene, BBO #696850  
ARENT FOX LLP  
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Tamara S. Wolfson, BBO #544347  
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[cmarshall@andersonkreiger.com](mailto:cmarshall@andersonkreiger.com)

<sup>1</sup> The Windhurst Claim lawsuit is captioned *Antoinette Windhurst, a single/widowed woman on behalf of herself and as Personal Representative of the Estate of her deceased husband David Windhurst, v. Arizona Department of Corrections, et al.*, No. C20175978, Arizona Superior Court, Pima County.

<sup>2</sup> The Washburn Claim lawsuit is captioned *Jennifer Power, individually and on behalf of the statutory beneficiaries of Monnie Washburn, v. State of Arizona, et al.*, C.A. No. CV2018-008861, Arizona Superior Court, Maricopa County.

<sup>3</sup> The Rosales Claim lawsuit is captioned *Michael Rosales v. Corizon, Inc., et al.*, C.A. No. CV2017-04386, Arizona Superior Court, Maricopa County.

Date Filed 10/31/2022 12:48 PM  
Superior Court - Suffolk  
Docket Number 2184CV01127

Defendant, JDM LLC, d/b/a JDM &  
ASSOCIATES

By: Its Attorneys

/s/ Daniel R. Conte

David A. Grossbaum, BBO #546020  
Daniel R. Conte, BBO #686908  
HINSHAW & CULBERTSON LLP  
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[dgrossbaum@hinshawlaw.com](mailto:dgrossbaum@hinshawlaw.com)  
[dconte@hinshawlaw.com](mailto:dconte@hinshawlaw.com)

Defendant, LONE STAR ALLIANCE, INC.

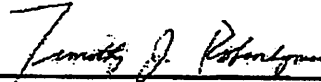
By: Its Attorney,

/s/ Patrick T. Voke

Patrick T. Voke, BBO #553033  
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One Boston Place, Suite 2910  
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[pvoke@mcglinchey.com](mailto:pvoke@mcglinchey.com)

Defendant, USI SOUTHWEST, INC.

By: Its Attorneys,



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Christopher B. Weldon (Admitted *pro hac*)  
Robert W. Lewis (Admitted *pro hac*)  
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914-948-7000  
[cweldon@kwcllp.com](mailto:cweldon@kwcllp.com)  
[rlewis@kwcllp.com](mailto:rlewis@kwcllp.com)

### CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2022, I caused a true and accurate copy of the above Stipulation to be served by email on counsel of record for each other party.

/s/ Daniel R. Conte  
Daniel R. Conte

# Exhibit 5



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

**POLICY NUMBER 4-100167**

Renewal  New Policy

**DECLARATIONS PAGE**  
**Professional Liability Insurance Policy**  
**Claims-Made**

NAMED INSURED: (including mailing address)

**Valitas Health Services, Inc.**  
**103 Powell Court**  
**Brentwood, TN 37027**

**NAMED INSURED IS A(N): Group**

**NOTICE: THIS POLICY IS ISSUED BY YOUR  
RISK RETENTION GROUP**

Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

POLICY PERIOD:

Effective Date:  
Expiration Date:

**03/04/2017**  
**03/04/2018**

Beginning and ending at 12:01 a.m.

*Retroactive Date:*

**03/04/2013**

SPECIALTY:

**See Schedule of Insureds**

TOTAL PREMIUM:



LIMITS OF LIABILITY:

Each *Claim* Limit:  
All *Claims* Limit:  
Total Policy Aggregate:

**\$2,000,000**  
**\$6,000,000**  
**\$6,000,000**

SELF-INSURED  
RETENTION:

Each *Claim* Limit:

**\$50,000**

MEDEFENSE:

Aggregate for all *insureds* per *policy period*: **\$250,000**

This Declarations Page, along with the coverage forms and *endorsements* attached, completes the above numbered policy and is part of and subject to all terms, conditions and exclusions of the above numbered policy and any *endorsements* issued by the Corporation to the *Named Insured*.

Issue Date: **02/28/2017**

Counter Signed By:

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

ph 844 595 8866  
www.lonestara.com

P.O. Box 160140  
Austin, Texas 78716-0140

LSA\_DEC  
ver 0414

**LONESTARALLIANCE00001**



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 03/04/2017  
*Named Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Schedule of Forms and Endorsements**

- Medical Professional Liability Insurance Policy Claims-Made 0716
- Declarations Page
- Schedule of Forms and Endorsements
- Schedule of Insureds
- Additional Insured Endorsement - Corizon Health, Inc.
- Additional Insured Endorsement - State of Arizona
- Consent to Settle Endorsement
- Arizona Contracts Endorsement
- Defense of Insured Endorsement
- Exclusion Revision Endorsement
- Self-Insured Retention Endorsement
- Premium Adjustment Endorsement
- Notice of Cancellation Endorsement
- Cyber Liability Coverage Form
- Employment Practices Liability Insurance Coverage

Nothing in this endorsement shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in this policy, any other endorsement or any Declarations Page, except as expressly stated in this endorsement.

If this policy is initially issued with this endorsement forming a part thereof at that time and having the same effective date as such policy, or if this endorsement is issued together with any renewal or amendatory Declarations Page for this policy and having the same effective date as such Declarations Page, then no countersignature on this endorsement is necessary. Otherwise this endorsement shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This endorsement takes effect as of the beginning day and hour for the policy period of this policy stated in the applicable initial, renewal or amendatory Declarations Page, unless a different endorsement effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by: \_\_\_\_\_

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

LSA\_50  
ver 0414



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

Policy Term: 03/04/2017 to 03/04/2018  
 Endorsement Effective Date: 03/04/2017  
 Named Insured: Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Schedule of Insureds**

**SEPARATE LIMITS**

<i>Insured</i>	<i>Specialty</i>	<i>Limits of Liability Each Claim/All Claims</i>	<i>Retroactive Date</i>	<i>Expiration Date</i>	<i>Insured Premium</i>
Valitas Health Services, Inc.	Entity	\$2,000,000/\$6,000,000	03/04/2013	03/04/2018	

**SHARED LIMITS**

A Shared Limit means the listed *insureds* share the applicable "each claim" limit of liability if the *claim* arises out of the same *insured incident*.

<i>Insured</i>	<i>Specialty</i>	<i>Limits of Liability Each Claim/All Claims</i>	<i>Retroactive Date</i>	<i>Expiration Date</i>	<i>Insured Premium</i>
Employed or contracted providers of the First Named Insured while providing services to the Arizona Department of Corrections	Various	Shared w/Entity	03/04/2013	03/04/2018	

Nothing in this endorsement shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in this policy, any other endorsement or any Declarations Page, except as expressly stated in this endorsement.

If this policy is initially issued with this endorsement forming a part thereof at that time and having the same effective date as such policy, or if this endorsement is issued together with any renewal or amendatory Declarations Page for this policy and having the same effective date as such Declarations Page, then no countersignature on this endorsement is necessary. Otherwise this endorsement shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This endorsement takes effect as of the beginning day and hour for the policy period of this policy stated in the applicable initial, renewal or amendatory Declarations Page, unless a different endorsement effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by:

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA 44  
ver 0414

LONESTARALLIANCE00003



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 03/04/2017  
*Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Additional Insured**

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy* that the parties listed below are included as Additional *insureds*.

In no event shall the Corporation be liable under *this policy* for more than the limits of liability stated in the applicable Declarations Page or any *endorsement of this policy*.

<u>Additional insured(s)</u>	<u>Retroactive Date(s)</u>	<u>Termination Date(s)</u>
<b>Corizon Health, Inc.</b>	<b>03/04/2016</b>	

Additional *insureds* and the *Named Insured* or other insured listed above will share the "each *claim*" and "all *claims*" limits of liability for all *claims* arising out of the same *insured incident*. There shall be no additional limits of liability available to Additional *insureds*.

Coverage for additional *insureds* is limited to *claims* arising out of professional services performed by an individual or entity shown on the Declarations Page, Schedule of Insureds or applicable *endorsement*.


In no event shall the Corporation be liable under this policy for more than the limits of liability stated in the Declarations Page, Schedule of Insureds or applicable *endorsement of this policy*.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This *endorsement* takes effect as of the beginning day and hour for the *policy period of this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by:   
Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA\_52A  
ver 0414



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 03/04/2017  
*Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Additional Insured**

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy* that the parties listed below are included as Additional *insureds*.

In no event shall the Corporation be liable under *this policy* for more than the limits of liability stated in the applicable Declarations Page or any *endorsement* of *this policy*.

<u>Additional insured(s)</u>	<u>Retroactive Date(s)</u>	<u>Termination Date(s)</u>
<b>The State of Arizona, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees.</b>	<b>03/04/2016</b>	

Additional *insureds* and the *Named Insured* or other insured listed above will share the "each *claim*" and "all *claims*" limits of liability for all *claims* arising out of the same *insured incident*. There shall be no additional limits of liability available to Additional *insureds*.

Coverage for additional *insureds* is limited to *claims* arising out of professional services performed by an individual or entity shown on the Declarations Page, Schedule of Insureds or applicable *endorsement*.

In no event shall the Corporation be liable under this policy for more than the limits of liability stated in the Declarations Page, Schedule of Insureds or applicable *endorsement* of *this policy*.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This *endorsement* takes effect as of the beginning day and hour for the *policy period* of *this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by: \_\_\_\_\_

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA\_52A  
ver 0414





**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This *endorsement* forms a part of **POLICY NUMBER 4-100167**  
*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 03/04/2017  
*Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Consent to Settle**

In consideration of the premium charged for **this policy** and this **endorsement**, it is hereby understood and agreed, subject to all terms, conditions and exclusions of **this policy**:

Section I.C. of **this policy** is deleted and the following is substituted in lieu thereof:

1. The Corporation shall not settle any **claim** or lawsuit without first obtaining the consent of the Senior Director of Professional Liability Claims of the **Named Insured**. Such consent may be limited by the Senior Director. Upon receipt of such consent, the Corporation may settle any **claim** or lawsuit as it deems appropriate subject to the Senior Director's limitation. If a **claim** or lawsuit involves multiple **insureds**, the Corporation may apportion settlement as it deems appropriate.
2. The Corporation is not required to obtain the consent of the Senior Director for settlement after a verdict and/or judgment is rendered against an **insured**.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This *endorsement* takes effect as of the beginning day and hour for the *policy period* of *this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: 02/28/2017

JD

Countersigned by:

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

CLAIMS-MADE

LSA\_GEN  
ver 0414



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 03/04/2017  
*Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Defense of Insured**

In consideration of the premium charged for **this policy** and this **endorsement**, it is hereby understood and agreed, subject to all terms, conditions and exclusions of **this policy**:

Section V.I. of **this policy** is deleted and the following is substituted in lieu thereof:

I. "**insured**" means the **Named Insured**, an individual or entity shown in the Schedule of Insureds, an individual or entity added by applicable **endorsement** and any individual, including **physicians**, employed or under contract with the **Named Insured**.

When the **insured** is an individual physician and the sole proprietary member of a professional association or professional limited liability company, then the association or company shall be included within the coverage afforded the **insured** as though such association or company were one and the same as the **insured**; however, only one "each **claim**" limit of liability and one "all **claims**" limit of liability shall be applicable to cover both the individual **insured** and the association or company, and there shall not be two policy limits or separate policy limits for the individual **insured** and the association or company.

When the **insured** is an entity, then any associate, officer, director or **proprietary member** of such **insured** while acting within the scope of duties for such **insured** shall be included within the coverage afforded the **insured**, but only with respect to liability for professional services performed by others in the practice of medicine. However, only one "each **claim**" limit of liability and one "all **claims**" limit of liability for the entity shall be applicable, and there shall not be separate policy limits regardless of the number of such **insureds** under **this policy**.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This *endorsement* takes effect as of the beginning day and hour for the *policy period* of *this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by:

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA\_GEN  
ver 0414



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 03/04/2017  
*Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Exclusion Revision**

In consideration of the premium charged for **this policy** and this **endorsement**, it is hereby understood and agreed, subject to all terms, conditions and exclusions of **this policy**:

Section II.C of **this policy** is deleted and the following is substituted in lieu thereof:

C. Liability of the **insured** arising out of:

1. Any criminal conduct, conspiracy, criminal or civil fraud, whether or not done in connection with professional services, and regardless of whether such conduct is alleged to constitute negligence.
2. Any sexual act, including without limitation sexual intimacy (even if consensual), sexual contact, sexual advances, requests for sexual favors, sexual molestation, sexual assault, sexual abuse, sexual harassment, sexual exploitation or other verbal or physical conduct of a sexual nature. However, this exclusion does not apply to:
  - a. Any specific individual **insured** who allegedly committed such sexual misconduct, unless it is judicially determined that the specific individual **insured** committed the sexual misconduct. If it is judicially determined that the specific individual **insured** committed the sexual misconduct we will not pay any damages.
  - b. Any other **insured**, unless that **insured**:
    - i. knew or should have known about the sexual misconduct allegedly committed by the specific individual **insured**, but failed to prevent or stop it; or
    - ii. knew or should have known that the specific individual **insured** who allegedly committed the sexual misconduct had a prior history of such sexual misconduct.

We will defend claims alleging such acts until final adjudication.

As used in this exclusion, specific individual **insured** includes **employees** and authorized volunteer workers while performing duties related to the conduct of the **Named Insured's** business.

3. Any intentional or malicious **injury**, or any intentional act, reasonably expected to result in **injury**, or any act or **injury** while the **insured** or any **physician** or person for whom the **insured** is legally responsible is (a) acting under the influence of alcohol or illicit drugs; or (b) impaired as a result of excessive use of therapeutic drugs.
4. Any **claims** or lawsuits based upon the violation of any state or federal statutory or regulatory law, including antitrust statutes and Consumer Protection or Deceptive Trade Practices Acts. This exclusion, however, does not apply to **claims** or lawsuits based on civil rights violations, provided such allegations are a result of providing or failure to provide professional services.
5. Any use, administration or prescription of any drug, biological product, medical device, implant or pharmaceutical which has not received final approval by the United States Food and Drug Administration (FDA) for treatment of human beings unless used in an FDA approved study; or which such **insured** is not licensed to use, administer or prescribe.

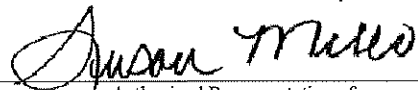
Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This *endorsement* takes effect as of the beginning day and hour for the *policy period* of *this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by: \_\_\_\_\_



Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA\_GEN  
ver 0414



LONE STAR ALLIANCE  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

Policy Term: 03/04/2017 to 03/04/2018  
Endorsement Effective Date: 03/04/2017  
Insured: Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Self-Insured Retention**

In consideration of the premium charged for **this policy** and this **endorsement**, it is hereby understood and agreed, subject to all terms, conditions and exclusions of **this policy**:

- A. The **Named Insured** shall be solely responsible for the Each **Claim** Retention Limit (Indemnity and Defense) shown in the Declarations.
- B. With respect to **this policy**, Lone Star Alliance (LSA) has no obligation to pay damages until the Each **Claim** Retention Limit is exhausted by the payment of judgments or settlements and then only up to the applicable Limit of Liability.

LSA shall have the right, at its expense, but not the obligation, to associate with the **Named Insured** in the defense, negotiation, and settlement of any **claim**. The **Named Insured** shall provide LSA full cooperation and such information as LSA may reasonably require.

- C. The **Named Insured** shall handle all **claims** within the applicable Retention Limit. LSA does not have the duty to investigate or defend any such **claim**, but LSA may, at its discretion and expense, participate in the investigation and defense. No **insured** shall settle any **claim** which obligates LSA to pay any amount under **this policy** without LSA's prior written consent.
- D. If the **Named Insured** is unable to pay any part of the Each **Claim** Retention Limit due to bankruptcy, insolvency, or other financial difficulty, **this policy** will not be required to "drop down" to make payments of policy limits and/or **defense costs**.

All other terms and conditions of the policy remain unchanged.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This *endorsement* takes effect as of the beginning day and hour for the *policy period* of *this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by:

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA\_GEN  
ver 0414



**LONE STAR ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

Policy Term: 03/04/2017 to 03/04/2018  
Endorsement Effective Date: 03/04/2017  
Insured: Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Premium Adjustment**

In consideration of the premium charged for **this policy** and this **endorsement**, it is hereby understood and agreed, subject to all terms, conditions and exclusions of **this policy**:

**I. PROVISIONAL PREMIUM**

- A. The **Named Insured** shall pay the company a provisional deposit premium of [REDACTED] at the inception of this policy period.
- B. Within 30 days after expiration or termination of **this policy**, any additional premium shown to be due the company shall be remitted by the **Named Insured**. Any return premium shown to be due the **Named Insured** shall be remitted by the company as soon as possible after review and verification of the **Named Insured's Losses Incurred**.

**II. PREMIUM ADJUSTMENT**

- A. The provisional deposit premium paid by the **Named Insured** hereunder shall be adjusted in accordance with the provisions set forth herein. The adjusted premium shall be equal to [REDACTED] of the **Named Insured's Losses Incurred** for the term of this policy; however, the adjusted premium shall not be less than [REDACTED] (the "Minimum Premium"), nor shall it exceed [REDACTED] (the "Maximum Premium").
- B. The company shall calculate and report the adjusted premium within 30 days following the expiration or termination of **this policy**, and within 30 days following the end of each 6-month period thereafter until all claims and losses subject to **this policy** have been fully settled. If the adjusted premium exceeds the premiums previously paid (inclusive of unearned portion thereof as of the effective date of calculation), the **Named Insured** shall remit the difference, not exceeding the "Maximum Premium" indicated above, to the company within 30 days. If the adjusted premium is less than premiums previously paid (inclusive of the unearned portion thereof as of the effective date of the calculation), the company shall remit the difference, not less than the "Minimum Premium" amount indicated above, to the **Named Insured** with 30 days after review and verification of the **Named Insured's Losses Incurred**.
- C. "**Losses Incurred**" means indemnity and loss adjustment expense paid by the company as of the effective date of calculation and indemnity and loss adjustment expense reserves as of the same date, it being understood and agreed that all indemnity and related loss adjustment expense paid under this policy shall be charged to **this policy** provided the related claim or loss is covered or alleged to be covered under the policy under consideration.

Nothing in this endorsement shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in this policy, any other endorsement or any Declarations Page, except as expressly stated in this endorsement.

If this policy is initially issued with this endorsement forming a part thereof at that time and having the same effective date as such policy, or if this endorsement is issued together with any renewal or amendatory Declarations Page for this policy and having the same effective date as such Declarations Page, then no countersignature on this endorsement is necessary. Otherwise this endorsement shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This endorsement takes effect as of the beginning day and hour for the policy period of this policy stated in the applicable initial, renewal or amendatory Declarations Page, unless a different endorsement effective date is inserted above.

Issue Date: 02/28/2017

Countersigned by:

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA\_GEN  
ver 0414

LONESTARALLIANCE00011



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This *endorsement* forms a part of **POLICY NUMBER 4-100167**

*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 03/04/2017  
*Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**Notice of Cancellation**

In consideration of the premium charged for **this policy** and this **endorsement**, it is hereby understood and agreed, subject to all terms, conditions and exclusions of **this policy**:

In the event of cancellation or non-renewal by the Lone Star Alliance, Inc. (LSA) of any **insured** under **this policy** issued to Valitas Health Services, Inc., LSA will mail notification of such action to the Arizona Department of Corrections no less than thirty (30) days prior to the effective date of the cancellation. Notice shall be mailed to (address):

Arizona Department of Corrections  
1601 West Jefferson  
Phoenix, AZ 85007

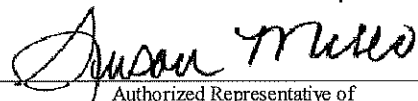
Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

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Issue Date: 02/28/2017

Countersigned by: \_\_\_\_\_



Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD

CLAIMS-MADE

LSA\_GEN  
ver 0414



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

Policy Term: 03/04/2017 to 03/04/2018  
 Endorsement Effective Date: 03/04/2017  
 Named Insured: Valitas Health Services, Inc.

**CERTIFICATE OF INSURANCE**

Issued to

**POLICYHOLDERS OF LONE STAR ALLIANCE INC., A RISK RETENTION GROUP**

**CYBER LIABILITY COVERAGE FORM**  
(CLAIMS-MADE BASIS)

**NOTICE TO POLICYHOLDER:**

Except as otherwise noted herein, Cyber Liability is Claims-Made and Reported Coverage issued by Lone Star Alliance Inc., A Risk Retention Group. The limits of insurance provided under the Cyber Liability endorsement are in addition to, and will not erode the limits of liability provided under your professional liability policy. Defense costs are paid within the Cyber Liability limits of insurance.

**CYBER LIABILITY LIMITS OF INSURANCE AND DEDUCTIBLE:**

The Cyber Liability limits of insurance and deductible are as follows:

1.	<b>Multimedia Liability Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
2.	<b>Security and Privacy Liability Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
3.	<b>Privacy Regulatory Defense &amp; Penalties Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
4.	<b>Privacy Breach Response Costs, Patient Notification Expenses And Patient Support &amp; Credit Monitoring Expenses Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
5.	<b>Network Asset Protection Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
6.	<b>Cyber Extortion Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
7.	<b>Cyber Terrorism Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
8.	<b>BrandGuard Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
9.	<b>PCI DSS Assessment Coverage:</b>	<b>\$ 100,000 each Claim each Insured</b>
10.	<b>Insured Physician Annual Aggregate Limit:</b>	<b>\$ 100,000</b>
11.	<b>Insured Entity Annual Aggregate Limit:</b>	<b>\$ 500,000</b>
12.	<b>Deductible</b>	<b>\$ 0 each Claim</b>

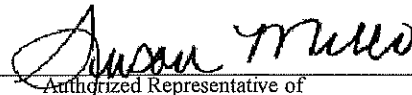
**INITIAL CYBER LIABILITY ENDORSEMENT EFFECTIVE DATE:**

03/04/2016

This Certificate does not vary, extend or in any way affect the coverage provided in the Cyber Liability endorsement, which can be obtained by requesting a copy from Lone Star Alliance Inc., A Risk Retention Group at 1-844-595-8866. Various provisions in the Cyber Liability endorsement restrict coverage. Read the entire Cyber Liability endorsement carefully to determine rights and duties of the Insureds and what is and is not covered.

Issue Date: 02/28/2017

Countersigned by:



Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

JD



**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**  
 Policy Term: 03/04/2017 to 03/04/2018  
 Endorsement Effective Date: 03/04/2017  
 Named Insured: Valitas Health Services, Inc.

**SUBSCRIBER CERTIFICATE**

Issued to

**POLICYHOLDERS OF LONE STAR ALLIANCE INC., A RISK RETENTION GROUP**

**EMPLOYMENT PRACTICES LIABILITY INSURANCE**

Word and phrases in bold have special meaning as described in SECTION III of the EPLI endorsement.

**NOTICE TO POLICYHOLDER:**

Coverage hereunder shall expire sixty (60) days after the expiration date of the **Policy** to which this certificate is attached or sixty (60) days after its earlier cancellation date or non-renewal date. This coverage may not be extended by a *Reporting Endorsement* ("tail" coverage).

As a condition precedent to payment of any benefit hereunder, the **Claim** must be received by an **Insured** while the **Policy** is in effect and the **Subscriber** must notify the Corporation within sixty (60) days from the date the **Claim** is received by an **Insured**.

**ITEM 1. SUBSCRIBER:**

**Valitas Health Services, Inc.**

**ITEM 2. POLICY PERIOD:**

From: **03/04/2017**  
 To: **03/04/2018**  
 Beginning and ending at 12:01 a.m.

**ITEM 3. LIMIT OF LIABILITY per physician (inclusive of Defense Costs):**

- (a) \$50,000 Maximum **Limit of Liability** for each **Claim**
- (b) \$50,000 Third-Party Discrimination **Limit of Liability**
- (c) \$50,000 Punitive, exemplary and multiple damages **Limit of Liability**
- (d) \$50,000 Maximum aggregate **Limit of Liability** for all **Claims**
- (e) \$0 Defense-Only **Limit of Liability**

**ITEM 4. SUBSCRIBER SELF-INSURED RETENTION:**

\$5,000 Each and every **Claim**

**ITEM 5. SUBSCRIBER EPLI RETROACTIVE DATE:**

**03/04/2016**

This certificate does not vary, extend or in any way affect the coverage provided in the EPLI endorsement, which can be obtained by requesting a copy from Lone Star Alliance Inc., A Risk Retention Group at 1-844-595-8866.

Issue Date: **02/28/2017**

Countersigned by:

Authorized Representative of  
 Lone Star Alliance Inc., A Risk Retention Group

**JD**

Unique Market Reference No.: **B0391AC1402484**

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**LONE STAR  
ALLIANCE**  
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-100167**

*Policy Term:* 03/04/2017 to 03/04/2018  
*Endorsement Effective Date:* 09/13/2017  
*Insured:* Valitas Health Services, Inc.

**POLICY ENDORSEMENT**  
**General Change**

In consideration of the premium charged for this policy and this endorsement, it is hereby understood and agreed, subject to all terms conditions and exclusions of this policy:

Section VI.D.3. of this policy is deleted and the following is substituted in lieu thereof:

The insured shall: (1) Cooperate with the Corporation in the investigation, settlement, or defense of the claim or suit; and (2) Assist the Corporation, upon our request, in the enforcement of any right against any persons or organizations which may be liable to the insured because of injury or damage to which this insurance may also apply.

The insured shall not, except at the insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

Nothing in this endorsement shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in this policy, any other endorsement or any Declarations Page, except as expressly stated in this endorsement.

If this policy is initially issued with this endorsement forming a part thereof at that time and having the same effective date as such policy, or if this endorsement is issued together with any renewal or amendatory Declarations Page for this policy and having the same effective date as such Declarations Page, then no countersignature on this endorsement is necessary. Otherwise this endorsement shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This endorsement takes effect as of the beginning day and hour for the policy period of this policy stated in the applicable initial, renewal or amendatory Declarations Page, unless a different endorsement effective date is inserted above.

Issue Date: 09/15/2017

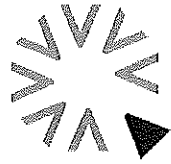
Countersigned by:

Authorized Representative of  
Lone Star Alliance Inc., A Risk Retention Group

LSA\_GEN  
ver 0414

JD

CLAIMS-MADE



LONE STAR  
ALLIANCE<sub>RRG</sub>

## MEDICAL PROFESSIONAL LIABILITY INSURANCE POLICY CLAIMS-MADE

This contract of professional liability insurance (*this policy*) is issued by the Lone Star Alliance, RRG (Corporation) to the *Named Insured* designated on the Declarations Page. In consideration of payment of the policy premium, in reliance upon the representations and warranties in Section VI.M. REPRESENTATIONS/WARRANTIES; SOLE AGREEMENT of *this policy*, and subject to all terms, conditions, exclusions and the limits of liability applicable to *this policy*, the Corporation agrees with the *Named Insured* as follows:

### I. COVERAGE AGREEMENTS

#### A. PROFESSIONAL LIABILITY COVERAGE

The Corporation will pay on behalf of any *insured* under *this policy* all sums within the applicable limits of liability which such *insured* shall become legally obligated to pay with respect to a *claim* that: (a) is first reported in writing and received by the Corporation during the *policy period* of *this policy*; and (b) is for compensatory *damages* because of *injury* arising out of professional services rendered on or after the applicable *retroactive date* of *this policy* and within the *policy territory* by:

1. Any *insured* in the conduct of a medical practice.
2. Any *insured* or any *physician* for whom an *insured* is legally responsible regarding such *physician* as a member of a formal accreditation or standards review committee or board of a hospital, medical school or professional related society or organization while acting within the scope of such *insured's* or such *physician's* duties.
3. Any *insured* or any *physician* for whom an *insured* is legally responsible regarding such *physician* as a *medical director*.
4. Any other *physician* or person for whom any *insured* is legally responsible except as excluded under Section II. EXCLUSIONS.

No *physician*, including *locum tenens*, or other person for whom any *insured* is legally responsible shall be covered individually as an *insured* or have any protection under *this policy* except as may be provided under Section V.I. "*insured*" unless added by *endorsement*.

#### B. DEFENSE AND APPEAL

The Corporation shall have the right and duty to defend any *claim* or lawsuit brought within the United States of America, seeking compensatory *damages* against the *insured* which are payable under the terms of *this policy*, even if any of the allegations of such *claim* or lawsuit are groundless, false or fraudulent. The right and duty to defend includes the right to select defense counsel. The Corporation is not required to appeal a judgment in any lawsuit, but the right and duty to defend shall include the right of the Corporation to appeal any judgment when, in the Corporation's discretion, such appeal is determined to be reasonable and appropriate. No *insured* shall take any action to force an appeal, to prevent an appeal or to preclude standing to an appeal by the Corporation. The *insured* hereby authorizes the Corporation to pursue any such appeal in the name of such *insured*. The Corporation shall not be obligated to defend, appeal or to continue any defense or appeal of any *claim* or lawsuit after either the "each *claim*" limit or the "all *claims*" limit of

the Corporation's liability has been exhausted by payment of one or more judgments, awards, settlements or any combination thereof and/or by deposit of the applicable limit of liability or remainder thereof in a court of competent jurisdiction. If such "each *claim*" or "all *claims*" limit of liability has been so exhausted prior to final conclusion of any such *claim* or lawsuit by settlement, judgment or otherwise, the Corporation shall have the right to withdraw from further defense or appeal thereof and terminate all expenses related thereto by tendering control of such defense to such *insured*.

C. SETTLEMENT

1. The Corporation shall not settle any *claim* or lawsuit without first obtaining the consent of the *insured* named in the *claim* or lawsuit. Such consent may be limited by the *insured*. Upon receipt of such consent, the Corporation may settle any *claim* or lawsuit as it deems appropriate subject to the *insured's* limitation. If a *claim* or lawsuit involves multiple *insureds*, the Corporation may apportion settlement as it deems appropriate. If the *insured* is an entity, the Corporation shall obtain the consent of an authorized representative.

2. The Corporation is not required to obtain the consent of the *insured* for settlement (a) after death or adjudication of legal incompetency of the insured *physician*, (b) a verdict and/or judgment is rendered against such *insured*.

II. EXCLUSIONS

*This policy* does not provide coverage for the following liabilities. The Corporation, however, shall defend allegations of excluded liabilities provided the *claim* is otherwise covered under *this policy*.

A. Liability of the *insured* for:

1. Any *claim* or lawsuit known by the *insured* which has not been reported to the Corporation prior to the *inception date* of *this policy*; or
2. Any *claim* or lawsuit reported to another insurance carrier prior to the *inception date* of *this policy*; or
3. Any *claim* or lawsuit arising out of any incident reported to another insurance carrier prior to the *inception date* of *this policy*; or
4. Any *claim* or lawsuit arising out of any incident that took place during a period when the *insured* was not insured under a professional liability insurance policy; or
5. Any incident known by the *insured* that may lead to a *claim* or lawsuit which has not been reported to the Corporation prior to the *inception date* of *this policy*.

B. Liability of the *insured* arising out of the conduct of any *physician* or person as proprietor, partner, shareholder, member of a board of directors, superintendent, executive officer, administrator, department chairman, *medical director*, public health officer or, in any committee service, administrative or proprietary role (except as is specifically covered in Section I. COVERAGE AGREEMENTS A.2-3.) of any business enterprise, whether or not related to *patient* care or treatment, including, but not limited to, any hospital, sanitarium, infirmary, clinic with bed and board facilities, health maintenance organization, managed care organization, nursing home, abortion clinic, blood bank, drug abuse center, surgery center, ambulatory care center, physical therapy center, weight control center or commercial laboratory.

C. Liability of the *insured* arising out of:

1. Any criminal conduct, conspiracy, criminal or civil fraud, or any sexual conduct, whether or not done in connection with professional services, regardless of whether such conduct is alleged to constitute negligence.
2. Any intentional or malicious *injury*, or any intentional act reasonably expected to result in *injury*, or any act or *injury* while the *insured* or any *physician* or person for whom the *insured* is legally responsible is (a)

acting under the influence of alcohol or illicit drugs; or (b) impaired as a result of excessive use of therapeutic drugs.

3. Any *claims* or lawsuits based upon the violation of any state or federal statutory or regulatory law, including antitrust statutes and Consumer Protection or Deceptive Trade Practices Acts.
  4. Any punitive or exemplary *damages*, treble, additional, or multiple *damages*, or any other form of fines or penalties which may be assessed against the *insured* over and above compensatory *damages*.
  5. Any use, administration or prescription of any drug, biological product, medical device, implant or pharmaceutical which has not received final approval by the United States Food and Drug Administration (FDA) for treatment of human beings unless used in an FDA approved study; or which such *insured* is not licensed to use, administer or prescribe.
- D. Liability of the *insured*: (1) arising out of any premises where such *insured* practices medicine; or (2) covered under a directors and officers, errors and omissions, employers' practices liability, workers' compensation, automobile, fire or general liability insurance policy, or insurable under such a policy.
- E. Liability of the *insured*:
1. Based in whole or in part on misrepresentation or breach of promise, contract, warranty, implied warranty, or fiduciary duty.
  2. Assumed by the *insured* under any contract or agreement, including without limitation, any kind of indemnity or hold harmless agreement, unless such *insured* would have had that liability in the absence of such contract or agreement.
  3. Arising out of the inventing, manufacturing, selling, promoting or distributing of any product or publication by or on behalf of the *insured*.
- F. Liability of the *insured* arising out of professional services: (1) which occur when any applicable license of the person rendering such services has been suspended, revoked or surrendered; or (2) which constitute a violation of any restriction imposed upon any such license.
- G. Liability of the *insured* for professional services rendered by any of the following *physicians* or persons unless such *physicians* or persons have liability insurance in force at the time of the *injury* for their own professional services with limits of liability—excluding defense costs—of at least:
- \$100,000 "each *claim*"  
\$300,000 "all *claims*"
1. Any *physician*:
    - a. Who is employed or supervised by or subject to the right of control by the *insured*; or
    - b. Who assumes responsibility for such *insured's patients*, including any *locum tenens*.
  2. Any certified registered nurse anesthetist or nurse anesthetist.
  3. Any midwife or certified nurse midwife.
- H. Liability of the *insured* as a partner, stockholder, associate or other *proprietary member*, or as an officer, director, representative or agent of any partnership or other group practice, other than as defined under the definition of *insured*.
- I. Liability of the *insured* for any services related to utilization review.
- J. Liability of the *insured*:
1. For any *injury* or *damage* which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

2. For any loss, cost or expense arising out of any:
  - a. Request, demand or order that such *insured* or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - b. *Claim* or lawsuit by or on behalf of a governmental authority for *damages* because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants mean any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

- K. Liability of the *insured* arising out of professional services rendered at a public or non-profit private entity receiving Federal funds pursuant to 42 U.S.C. § 254B (or similar statute) and for which Federal law provides that the Federal Tort Claims Act is the exclusive remedy for *damages* resulting from the performance of medical, surgical or related functions.

### III. SUPPLEMENTARY PAYMENTS

The Corporation will pay, in addition to the applicable limit of liability in any covered *claim* or lawsuit defended by the Corporation:

- A. Expenses incurred by the Corporation.
- B. Expenses incurred by the Corporation, including attorney's fees, for any *employee* of the *insured* also named as a defendant in the lawsuit against the *insured*, unless the *employee* has coverage for the lawsuit under any other policy of insurance. The terms and conditions of Section I.B. DEFENSE AND APPEAL and Section VI.D. *INSURED'S DUTIES UPON THE RECEIPT OF A LAWSUIT, NOTICE OF CLAIM, OR WRITTEN DEMAND FROM A PATIENT* shall apply to any *employee* who accepts a defense offered by the Corporation.
- C. Costs taxed against the *insured* in such lawsuit.
- D. Interest: (1) on that part of the judgment for *damages* covered under *this policy* which does not exceed the applicable limit of the Corporation's liability as stated on the Declarations Page or *endorsement*; and (2) which accrues after entry of the judgment and before the Corporation has paid, offered to pay, tendered or deposited in court that part of the judgment for *damages* covered under *this policy* which does not exceed the Corporation's liability.
- E. Premiums on appeal bonds required in any appeal which the Corporation determines to take. The Corporation may pay premiums on bonds to release attachments or supersede judgments. The Corporation, however, shall have no obligation to apply for, provide the financial security for, or furnish any such bond to supersede judgments or release attachments. Further, where a judgment exceeds the *insured's* applicable limit of liability or includes non-covered *damages*, the Corporation shall pay only the portion of any such premium that would be charged if the judgment were for the covered *damages* within such limit.
- F. Reasonable expenses incurred by the *insured* at the Corporation's request in assisting the Corporation in defense of any *claim* or lawsuit, including with respect to such *insured* who is a *physician* and upon his or her written request, loss of earnings at an agreed amount of \$1,000 for each day of attendance at trial but not to exceed \$10,000 for any one trial.

### IV. LIMITS OF LIABILITY

- A. The "each *claim*" and "all *claims*" limits of liability stated on the Declarations Page or *endorsement* is the maximum amount the Corporation will pay for "each *claim*" or "all *claims*" arising under *this policy*.

- B. The Corporation's liability under *this policy* shall not exceed the limits of liability stated on the Declarations Page or *endorsement*, and such stated limits shall be applied as follows:
1. The "each *claim*" limit of liability is the maximum liability the Corporation can owe for a *claim first made* during the *policy period* of *this policy* and covered by *this policy* as an *insured incident*. A single "each *claim*" limit of liability shall be applicable to an *insured incident* regardless of the number of *claims* made or lawsuits filed, regardless of the number of policies or *policy periods* involved with any *insured incident*, and regardless of the amount of prejudgment interest included in any judgment. If an *insured incident* involves *injuries* to more than one *patient* such as in obstetrical services to the mother and fetus(es)/child or children, a single "each *claim*" limit of liability shall be applicable for all *injuries, claims* and resulting lawsuits. Likewise, a single "each *claim*" limit of liability shall be applicable to all *claims* by both the *patient* and by the family members or the heirs or estate of such *patient*, including derivative *claims, claims* for loss of consortium, *claims* of beneficiaries under wrongful death and/or survival statutes and *claims* for mental anguish and related *injuries* associated with bystander perception or reaction to the *injuries* sustained by the *patient*.
  2. The applicable "all *claims*" limit of liability is the maximum liability the Corporation can owe for the aggregate of all *insured incidents* for which *claims* are *first made* during the *policy period* of *this policy*.
  3. Policy limits of liability will not be stacked, added or combined in any manner to increase liability under *this policy* even though multiple claimants, multiple *claims* or *injuries*, multiple lawsuits, or multiple policies or *policy periods* may be involved within an *insured incident*.
- C. When a *claim* is *first made* during a *policy period* as to the *insured*, and thereafter, during the same or a subsequent *policy period*, one or more additional *claims* or lawsuits are reported arising out of, directly or indirectly, the same *insured incident*, all such subsequent *claims* or lawsuits shall be considered to have been *first made* against such *insured* at the same time and during the same *policy period* as such *claim* was initially reported, and a single "each *claim*" limit of liability shall be applicable.
- D. Notwithstanding any other provision of *this policy* and/or Declarations Page to the contrary, if any, *Reporting Endorsement* or any other *endorsement* changing the limits of liability is applicable to *this policy*, the limits of liability stated therein, and no other limits of liability, shall apply to the extent set forth therein.
- E. If *this policy* and any other policy providing coverage to the same *insured* by the Corporation or any of its subsidiaries apply to the same *claim*, the maximum limit of liability under all policies shall not exceed the highest applicable limit of liability under any one policy.

## V. DEFINITIONS

As used in *this policy* and whether in singular, plural or possessive form:

- A. "claim" or "claims" means (a) the receipt by the *insured* of a summons or citation in a lawsuit, (b) the receipt by the *insured* of a written notice of *claim* sent pursuant to applicable law or (c) the receipt by the *insured* of a written demand from a *patient* or representative of such *patient*, provided the lawsuit, notice of *claim* or written demand from a *patient* seeks compensatory *damages* because of *injury* resulting from an *insured incident* occurring on or after the applicable *retroactive date* shown on the Declarations Page or *endorsement*. A *claim* directed to any *insured* under *this policy* does not constitute a *claim* against any other *physician* or entity even if the other *physician* or entity is insured by the Corporation or any of its subsidiaries under the same or different policies. A request for medical records or copies thereof is not a *claim*.
- B. "damage" means all compensatory *damages*, including prejudgment interest, which are payable because of *injury* or *injuries* to which *this policy* applies.

- C. “employee” means a person who is not a *physician* and who, at the time of the *insured incident*, was working for the *insured* under an express or implied contract of hire under which the *insured* had the right to control the details of work performance.
- D. “endorsement” means any *endorsement* that applies to *this policy* during all or part of the applicable *policy period*.
- E. “extended reporting period” means the time after the termination of coverage for an *insured* when *claims* may be reported that arise out of an *insured incident* occurring prior to the termination of coverage and subsequent to the applicable *retroactive date*.
- F. “first made” means a *claim* first reported in writing and received by the Corporation during the *policy period* of *this policy*.
- G. “inception date” means the date continuous and uninterrupted coverage with the Corporation commenced.
- H. “injury” means, as applicable, bodily *injury*, sickness or disease, death, libel, slander, defamation of character or invasion of rights of privacy.
- I. “insured” means the *Named Insured*, an individual or entity shown in the Schedule of Insureds, or an individual or entity added by applicable endorsement.

When the *insured* is an individual *physician* and the sole *proprietary member* of a professional association or professional limited liability company, then the association or company shall be included within the coverage afforded the *insured* as though such association or company were one and the same as the *insured*; however, only one “each *claim*” limit of liability and one “all *claims*” limit of liability shall be applicable to cover both the individual *insured* and the association or company, and there shall not be two policy limits or separate policy limits for the individual *insured* and the association or company.

When the *insured* is an entity, then any associate, officer, director or *proprietary member* of such *insured* while acting within the scope of duties for such *insured* shall be included within the coverage afforded the *insured*, but only with respect to liability for professional services performed by others in the practice of medicine. However, only one “each *claim*” limit of liability and one “all *claims*” limit of liability for the entity shall be applicable, and there shall not be separate policy limits regardless of the number of such *insureds* under *this policy*.

- J. “insured incident” means any and all *injuries* and compensatory *damages* arising out of: (1) the *same, connected or related patient services* rendered by the *insured* or by anyone for whom such *insured* is legally responsible except as excluded under Section II. EXCLUSIONS provided that some part of the *patient services*, including laser hair removal services, causing *injury* must have been rendered on or after the applicable *retroactive date*; in the event some part of such *patient services* is rendered before the *retroactive date*, the liability under *this policy* shall be limited to the *damages* and *injuries* caused solely by the *patient services* rendered on or after the *retroactive date*, and shall not exceed the “each *claim*” limit of liability provided by *this policy*; (2) the *same or connected services* of an insured *physician* or any *physician* for whom an *insured* is legally responsible as a member of a formal accreditation or standards review committee or board of a hospital, medical school, or professional related society or organization acting within the scope of such *physician's* duties, provided that some part of such services must have been rendered on or after the applicable *retroactive date*; in the event some part of such services is rendered before the *retroactive date*, the liability under *this policy* shall be limited to the *damages* and *injuries* caused solely by the services rendered on or after the *retroactive date*, and shall not exceed the applicable “each *claim*” limit of liability provided by *this policy*; (3) the *same or connected services* of an insured *physician* or any *physician* for whom an *insured* is legally responsible as a medical director, provided that some part of such services must have been rendered on or after the applicable *retroactive date*; in the event

some part of the patient services, committee services or medical director services is rendered before the retroactive date, the liability under this policy shall be limited to the damages and injuries caused solely by the services rendered on or after the retroactive date, and shall not exceed the applicable "each claim" limit of liability provided by this policy.

- K. "locum tenens" means a *physician* who is temporarily serving as a relief or substitute *physician* for the *insured* at a time when the *insured* is not performing professional services and for whom an application has been submitted and coverage has been approved by the Corporation.
- L. "medical director" means a *physician* who serves in an administrative capacity as head of an organized medical staff and whose duties include (1) training and supervision of medical staff (both *physician* and non-*physician*); (2) drafting and implementation of appropriate policies and procedures; and/or (3) assuring the facility's compliance with federal, state and local laws. *Medical director* services do not include employment related practices.
- M. "Named Insured" means the individual *physician* or entity so designated on the Declarations Page.
- N. "patient" means an individual under the care or treatment of the *insured* or an individual being examined for the purpose of rendering an independent medical examination (IME), but only for a *claim* or lawsuit brought by or on behalf of such individual.
- O. "physician" means a person licensed to practice medicine by a state medical licensing authority.
- P. "policy period" means the *policy period* shown on the Declarations Page or *endorsement*.
- Q. "policy territory" means the United States of America, its territories and possessions.
- R. "proprietary member" means an owner, shareholder, or partner of an insured entity.
- S. "Reporting Endorsement" means an *endorsement* applicable to *this policy* obtained in accordance with Section VII.L. REPORTING ENDORSEMENT.
- T. "retroactive date" means the date identified as such on the Declarations Page or *endorsement*. No coverage is provided for *insured incidents* occurring prior to this date. Each *insured* has an applicable *retroactive date*, which shall be separately applied for all purposes.
- U. "same, connected or related patient services" means all professional services rendered to a *patient* for the same, connected, or related medical conditions (including all complications arising therefrom), although the professional services may be rendered over an extended period of time and may include multiple services, and includes, but is not limited to: (1) all obstetrical services rendered during pregnancy, labor, delivery and resuscitation of an infant or infants; and (2) organ transplantation procedures and professional services rendered to the donor and recipient *patients*.
- V. "this policy" means this contract of professional liability insurance together with the Declarations Page and *endorsements*.

## VI. ADDITIONAL TERMS AND CONDITIONS

### A. NONASSESSABLE

*This policy* is not assessable.

### B. NONASSIGNABLE

The *insured's* interest under *this policy* is not assignable.

If an insured *physician* shall die or be adjudged incompetent, this insurance shall thereupon terminate automatically as to such *insured*, but shall cover the legal representative of such *insured's* estate as an *insured* with respect to a *claim* previously reported to the Corporation and covered by *this policy*.



If an insured entity is acquired by or merged with another entity or ceases doing business under the name listed on the Declarations Page of *this policy*, this insurance shall terminate automatically on the same date as such event occurs unless *this policy* is amended by *endorsement*.

Pro rata return premium will be computed from the date of termination of *this policy*.

C. PREMIUM

All premiums for *this policy* shall be computed in accordance with the Corporation's rules, rating plans, premiums and minimum premiums applicable to the insurance afforded at the inception of *this policy*, except as noted in Section VI.L. *REPORTING ENDORSEMENT* of *this policy*. Upon written request by the Corporation at any time, the *insured* shall furnish such information as may be reasonably necessary for premium computation or appropriate correction thereof.

D. *INSURED'S DUTIES UPON THE RECEIPT OF A LAWSUIT, NOTICE OF CLAIM, OR WRITTEN DEMAND FROM A PATIENT*

1. Upon the receipt by the *insured* of a written demand from a *patient* or representative of such *patient* seeking compensatory *damages* because of *injury* arising out of an *insured incident*, written notice shall be given by or for such *insured* to the Corporation's Claim Department immediately. Such notice shall contain particulars sufficient to identify the event and each *insured* involved and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the name and address of each person injured and of available witnesses.

2. If a lawsuit is served upon or is received by the *insured* or by anyone on such *insured's* behalf, such *insured* shall: (1) immediately notify the Corporation's Claim Department by telephone of the service or receipt of such lawsuit papers; and (2) within ten (10) days of such service or receipt deliver all such lawsuit papers (petition, complaint, summons, citation, expert report, discovery, notice or other legal process) to the Corporation's Claim Department and obtain a delivery receipt from the Corporation. "Delivery" of lawsuit papers means sending by certified mail with return receipt requested, personal delivery, messenger or electronic transmission. Proof of delivery of the lawsuit papers, however, may only be established by obtaining a written receipt of such delivery from the Corporation. If a written notice of *claim* sent pursuant to applicable law is received by the *insured*, as distinguished from service of lawsuit papers, such *insured* shall immediately notify the Corporation's Claim Department by telephone and deliver to the Corporation's Claim Department every such communication or notice of *claim*, pursuant to the delivery requirements stated above.

3. All *insureds* covered under *this policy* shall cooperate with the Corporation and assigned defense counsel in the conduct of lawsuits, appeals and other proceedings and in enforcing any right of contribution or indemnity against any person or organization who may be liable. An individual *insured* or *proprietary members* of an insured entity shall attend trials and, if requested, shall attend hearings and assist in securing and giving evidence and obtaining the attendance of witnesses. With respect to the insurance afforded under *this policy*, no *insured* shall voluntarily make payment, assume any obligation or incur any expense except at the *insured's* own cost.

4. The failure of any *insured* covered under *this policy* to comply with any applicable provision of *this policy* shall eliminate any coverage including the duty to defend or indemnify such *insured* under *this policy*. For example, a default judgment resulting from the failure to notify the Corporation of a *claim* or lawsuit or from the failure to give either telephone notice or to deliver lawsuit papers to the Corporation's Claim Department, eliminate any coverage under *this policy*. It is not necessary for the Corporation to show that it has been prejudiced by any failure of the *insured* or any other person to comply with any provisions of *this policy* in order for coverage to be eliminated under *this policy*.

E. OTHER INSURANCE

Except as provided by Section IV.E. LIMITS OF LIABILITY of *this policy* and to the extent that any *claim* against the *insured* is covered by any other policy of insurance, this insurance will be secondary to and in excess of any other insurance covering such *insured* or any other indemnity protection afforded such *insured* by the hospital, medical school or professional society or association through its self-insurance program, self-insured retention, or its insurance.

F. SUBROGATION

In the event of any payment under *this policy*, the Corporation shall be subrogated to all rights of recovery with respect thereto of the *insured* against any person, insurer or organization of any kind, and such *insured* shall execute and deliver instruments and papers and do whatever else is necessary or appropriate to secure such rights. No *insured* shall do anything after loss to prejudice any such right.

G. ACTION AGAINST THE CORPORATION

1. No action by any *insured* shall lie against the Corporation unless, as a condition precedent thereto, there shall have been full compliance with all the terms of *this policy*, nor until the amount of such *insured's* obligation to pay shall have been finally determined by a judgment that has become final in the trial court and final after all appeals. No right or cause of action by any *insured* against the Corporation shall be assigned to a claimant or judgment creditor, or to anyone else, without the prior written consent of the Corporation.

2. Subject to the terms, conditions, and exclusions of *this policy* and the applicable limit of liability afforded hereunder, the Corporation shall pay on behalf of any *insured* any judgment covered by *this policy* that has become final in the trial court and final regarding all appeals, but the claimant or judgment creditor shall have no direct right of action or recovery against the Corporation regarding such judgment. No person or organization or legal representative thereof shall have any right under *this policy* to join the Corporation as a party to any action against any *insured* to determine such *insured's* liability, nor shall the Corporation be impleaded by any *insured* or such *insured's* assignee or legal representative.

H. CHANGES

The terms of *this policy* shall not be waived or changed except by *endorsement* issued to form a part of *this policy*. Notice to or knowledge possessed by any employee, agent or representative of the Corporation is ineffective to change or modify any part of *this policy* or in any manner preclude the Corporation from asserting any of its rights hereunder.

I. CANCELLATION

1. *This policy* may be cancelled by either the *Named Insured* or the Corporation. The *Named Insured* may cancel *this policy* at any time. To do so, the *Named Insured* must: (a) return *this policy* to the Corporation or any of the Corporation's authorized representatives; or (b) provide written notice to the Corporation stating when cancellation is to be effective. The Corporation must receive written notice or return of *this policy* before the cancellation date. Such cancellation shall be effective 12:01 a.m. on the date specified.

2. The Corporation may cancel coverage under *this policy* with respect to any or all *insureds* by giving written notice to the *insured* of at least:

(a) ten (10) days, if cancellation is due to one or more of the following reasons:

- (1) non-payment of premium on or before the invoice due date;
- (2) an *insured physician* is no longer licensed to practice medicine;
- (3) an *insured's* practice no longer satisfies the *policy territory* requirement;

(b) ninety (90) days if cancellation is for any other reason provided that *this policy* has been in effect for less than ninety (90) days.

3. If *this policy* has been in effect for more than ninety (90) days, the Corporation will not cancel *this policy* or coverage on any *insured* other than for the three reasons listed immediately above under item 2.(a).

4. The Corporation will not cancel or refuse to renew *this policy* based solely on the fact that an *insured* is an elected official.

5. The Corporation will mail or deliver notice to the *Named Insured* at the last mailing address known to the Corporation. If notice is mailed, proof of mailing is sufficient proof of notice. Notice of cancellation will state the effective date of, and reason for, cancellation. *This policy* will end at 12:01 a.m. on that date.

J. NONRENEWAL OF *THIS POLICY*

1. If the Corporation elects not to renew *this policy* or coverage for any *insured* under this policy, the Corporation will mail or deliver notice to the *insured* at the last mailing address known to the Corporation. If notice is mailed, proof of mailing is sufficient proof of notice.

2. Such notice will be mailed or delivered at least ninety (90) days before the end of the *policy period* stated in *this policy*.

K. PRIOR ACTS

Prior acts extends coverage to new *claims* or lawsuits arising out of professional services rendered while the *insured* was covered under a previous claims-made policy with another insurance carrier, provided the *claim* against the Corporation is *first made* on or after the effective date of *this policy* and the *insured incident* occurred between the *retroactive date* and the *inception date* of *this policy*.

L. *REPORTING ENDORSEMENT*

In the event of termination of coverage either by nonrenewal or cancellation, the *insured* shall have the right upon payment of additional premium (to be computed in accordance with the Corporation's rules and rating plans applicable on the effective date of the *endorsement*) to have issued a *Reporting Endorsement* at limits of liability not in excess of the lowest limits in effect during the *policy period*. The *Reporting Endorsement* provides an *extended reporting period* in which *claims* may be reported and covered by *this policy* after termination of such coverage. Such right hereunder must be exercised by the *insured* by written notice actually received by the Corporation not later than sixty (60) days after such termination. The right to purchase such *Reporting Endorsement* may not be available to any *insured* when termination by the Corporation is for nonpayment of premium.

If the termination of insurance is due to the total retirement of an *insured* from the practice of his or her profession as a *physician* any time after reaching age fifty (50) and having been continuously insured by the Corporation on a claims-made policy for the previous five (5) years, the premium required to provide *extended reporting period* coverage will be waived.

If termination of insurance occurs while an *insured* is unable to practice his or her profession as a *physician* due to total disability as determined by the Corporation, the premium for the *Reporting Endorsement* will be waived, provided that within sixty (60) days following the date of termination, the Corporation receives a written report from the *insured's* attending *physician* specifying the nature of the disability. The Corporation will have sole discretion and responsibility for determining whether a reported disability is total and qualifies for the premium waiver. The Corporation shall have the right to have the *insured* examined by a *physician* of its selection.

In the event of the *insured's* death, the premium required to provide *extended reporting period* coverage to the *insured's* estate will be waived.

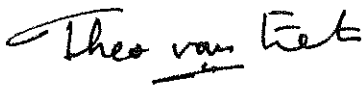
M. REPRESENTATIONS/WARRANTIES; SOLE AGREEMENT

By acceptance of *this policy* the *insured* agrees, represents, and warrants under *this policy*: (1) that all

statements and answers on the Declarations Page of *this policy*, all information contained in applications or renewal applications, and all statements made to the Corporation, its agents or representatives, whether oral or in writing, in order to secure insurance from the Corporation are both representations and warranties of such *insured*; (2) that any false or incorrect statements or answers, omissions, material misrepresentations or concealment of information therein will be presumed to have been intended to deceive the Corporation and will constitute a breach of warranty causing insurance under *this policy* to be void or voidable, as applicable, at the election of the Corporation without any right to purchase a *Reporting Endorsement*; (3) that *this policy* is issued in reliance upon the truth of such representations and warranties; and (4) that *this policy*, together with the Declarations Page and all *endorsements*, embody all agreements existing between such *insured* and the Corporation or any of its agents or representatives relating to insurance under *this policy*.

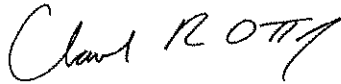
**IN WITNESS WHEREOF**, the Corporation has caused *this policy* to be signed by the President and Secretary of its Board of Directors in office as of the revision date of *this policy*, but it shall not be valid and binding on the Corporation unless countersigned on the Declarations Page of *this policy* by an authorized representative of the Corporation.

**ATTEST:**



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Theodorus J. M. Van Eeten  
Secretary of Board of Directors  
Lone Star Alliance, RRG



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Charles R. Ott, Jr.  
President of Board of Directors  
Lone Star Alliance, RRG

## POLICY ENDORSEMENT

### Limited Premises Liability Coverage - For Your *Patients* Only

#### Limits of Liability under this *endorsement* are:

\$200,000 each *premises occurrence*

\$200,000 *premises aggregate*

**This coverage is only available if the *premises occurrence* is reported during the *policy period* of a policy issued by the Corporation. This coverage may not be extended by a *Reporting Endorsement* (“tail” coverage).**

In consideration of the premium charged, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy* not expressly amended or modified herein:

1. Under this *endorsement* the following, and only the following, coverages are added to Section I. COVERAGE AGREEMENTS:
  - AA. PROFESSIONAL PREMISES LIABILITY COVERAGE  
The Corporation will pay on behalf of the *insured* under this *endorsement* all sums which such *insured* shall become legally obligated to pay as compensatory *damages* because of *premises injury or damage* as defined herein to any *patient* which: (1) occurs during the *policy period* and within the *policy territory*; (2) is caused by a *premises occurrence* as defined herein; and (3) arises out of the ownership, maintenance or use of the *insured premises* as defined herein for the practice of medicine, including operations necessary or incidental thereto.
2. For purposes of this *endorsement*, Section VI. ADDITIONAL TERMS AND CONDITIONS, D. 1 and 2 are deleted and the following is substituted:
  1. Upon the receipt by the *insured* of a written demand from a *patient* or representative of such *patient* seeking compensatory *damages* because of *premises injury or damage* to which this *endorsement* applies, written notice shall be given by or for such *insured* to the Corporation’s Claim Department immediately. Such notice shall contain particulars sufficient to identify such event and such *insured* involved, and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the name and address of each person injured and of available witnesses.
  2. If a lawsuit is served upon or is received by the *insured* or by anyone on such *insured’s* behalf seeking compensatory *damages* because of *premises injury or damage* to which this *endorsement* applies, such *insured* shall: (1) immediately notify the Corporation’s Claim Department by telephone of the service or receipt of such lawsuit papers; and (2) within ten (10) days of such service or receipt deliver all such lawsuit papers (petition, complaint, summons, citation, notice or other legal process) to the Corporation’s Claim Department and obtain a delivery receipt from the Corporation. “Delivery” of lawsuit papers means sending by certified mail with return receipt requested, personal delivery, messenger or electronic transmission. Proof of delivery of the lawsuit papers, however, may only be established by obtaining a written receipt of such delivery from the Corporation.
3. For purposes of this *endorsement*, Section I. COVERAGE AGREEMENTS, C. 1 and 2 are deleted and the following is substituted:

The Corporation may settle any alleged liability to which this *endorsement* applies as it deems appropriate. If a demand or lawsuit involves multiple *insureds*, the Corporation may apportion settlement as it deems appropriate.
4. For purposes of this *endorsement*, the following exclusions are added to Section II. EXCLUSIONS:
  - AA. No insurance under this *endorsement*, either indemnity or defense, applies to any liability with respect to:

- (1) Any liability assumed by the *insured* under any contract or agreement other than an *incidental contract* as defined herein.
  - (2) Any *injury* or compensatory *damage* arising out of the ownership, maintenance, operation, use, loading or unloading of:
    - (a) Any *automobile* or aircraft owned or operated by or rented or loaned to the *insured*; or
    - (b) Any other *automobile* or aircraft operated by any person in the course of his or her employment by the *insured*; but this exclusion does not apply to the parking of an *automobile* on the *insured premises*, if such *automobile* is not owned by or rented or loaned to such *insured*.
  - (3) Any *injury* or compensatory *damage* arising out of and in the course of the transportation of *mobile equipment* by an *automobile* owned or operated by or rented or loaned to the *insured*.
  - (4) Any *injury* or compensatory *damage* due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing.
  - (5) Any obligation for which the *insured*, or any carrier as insurer of such *insured*, may be held liable under any workers' compensation, unemployment compensation, disability benefits, or anti-discrimination law, or under any similar law.
  - (6) Any *injury* to any *employee* of the *insured* arising out of and in the course of his or her employment by such *insured* or to any obligation of such *insured* to indemnify another because of compensatory *damages* arising out of such *injury*; but this exclusion does not apply to liability assumed by the *insured* under an *incidental contract* as defined herein.
  - (7) Any *property damage* to:
    - (a) Property owned or occupied by or rented to the *insured*;
    - (b) Property used by the *insured*; or
    - (c) Property in the care, custody or control of the *insured* or as to which such *insured* is for any purpose exercising physical control; but part (c) of this exclusion does not apply with respect to *property damage* (other than to *elevators*) arising out of the use of any *elevator* at the *insured premises*.
  - (8) Any compensatory *damage* to the *insured's products* arising out of such *products* or any part of such *products*.
  - (9) Any *injury* or compensatory *damage* arising out of: (a) the *insured's products*; or (b) reliance upon any representation or warranty made with respect thereto if the *injury* or compensatory *damage* occurs after physical possession of any such *product* has been relinquished to others and occurs away from the *insured premises*.
  - (10) Any *injury* or compensatory *damage* arising out of structural alterations which involve changing the size of or moving buildings or other structures, new construction or demolition operations performed by or on behalf of the *insured*.
  - (11) Any premises owned, maintained or used by any *physician's* association, partnership or other practice group not included in the definition of "*insured*" in Section V. DEFINITIONS, of *this policy*, or any activity or conduct on any such premises.
  - (12) Any compensatory *damage* to any premises alienated by the *insured* arising out of such premises or any part thereof.
  - (13) Any *injury* or compensatory *damage* covered under a general liability insurance policy or insurable under such a policy, unless coverage is otherwise provided by this *endorsement*.
  - (14) Any *injury*, compensatory *damage*, *claim* or lawsuit arising out of professional services rendered by the *insured* or any other *physician* or person for whom the *insured* is legally responsible.
5. For purposes of this *endorsement*, Section II. EXCLUSIONS, D. is deleted and the following is substituted:  
To any liability of the *insured* covered under a workers' compensation, *automobile*, or fire insurance policy, or insurable under such a policy.
6. For purposes of this *endorsement*, the following is added to Section III. SUPPLEMENTARY PAYMENTS, of *this policy*:  
AA. The Corporation will also pay, in addition to the applicable limits of liability under this *endorsement* and the Supplementary Payments provided for in Section III of *this policy*, reasonable medical expenses not to exceed \$5,000 incurred by the *insured* for *first aid* to a *patient* at the time of any *premises occurrence* resulting in *premises injury*.

7. For purposes of this *endorsement*, the following is added to Section IV. LIMITS OF LIABILITY, of this *policy*:
- AA. The Corporation's liability under this *endorsement* shall not exceed the limits of liability stated in the applicable Declarations Page or *endorsement*, and such stated limits shall be applied as follows:
- (1) The "each *premise occurrence*" limit of liability is the maximum liability the Corporation can owe for a *claim* arising out of a *premises occurrence*. A single "each *premise occurrence*" limit of liability shall be applicable to a *premises occurrence* regardless of the number of *claims* made or lawsuits filed, and regardless of the number of policies or *policy periods* involved with any *premises occurrence*. If a *premises occurrence* involves *premises injury or damage* to more than one *patient*, a single "each *insured*" limit of liability shall be applicable for all such *claims* and resulting lawsuits. Likewise, a single "each *premise occurrence*" limit of liability shall be applicable to all *claims* by both the *patient* and by the family members or the heirs or estate of such *patient*, including derivative *claims*, *claims* for loss of consortium, *claims* of beneficiaries under wrongful death and/or survival statutes and *claims* for mental anguish and related *injuries* associated with bystander perception or reaction to the *injuries* sustained by the *patient*. Policy coverage limits of liability, therefore, will not be stacked, added or combined in any manner to increase liability under this *policy* and this *endorsement* even though multiple claimants, multiple *claims* or *injuries*, multiple lawsuits, or multiple policies or *policy periods* may be involved with any *premises occurrence*.
- (2) The "premises aggregate" limit of liability is the maximum liability the Corporation can owe for all *claims* or lawsuits arising out of all *premises occurrences* happening during the *policy period* of this *policy*.
- BB. When a *claim* or lawsuit is reported for a *premises occurrence* happening during multiple *policy periods* and/or policies issued by the Corporation which apply to such *claim* or lawsuit, the limits of liability shall not exceed the limits of liability applicable during the earliest *policy period* of all such policies.
8. For purposes of this *endorsement*, the following is added to Section V. DEFINITIONS, of this *policy*:
- AA. "automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include *mobile equipment*;
- BB. "elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, escalator, stairway, runway, power equipment and machinery; but does not include an *automobile* servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;
- CC. "first aid" means expenses incurred by the *insured* for professional services rendered to a *patient* arising out of a *premises occurrence* and performed in an emergency situation without expectation of remuneration from the *patient*;
- DD. "incidental contract" means any written: (1) lease of premises; (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad; (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality; (4) *elevator* maintenance agreement;
- EE. "insured premises" means, unless otherwise expressly described by supplemental *endorsement* hereto: (1) any professional office premises owned or leased and used by the *insured* in the practice of his or her profession as a *physician*; (2) such professional office premises alienated by the *insured* (other than premises constructed for sale by the *insured*), if possession has not been relinquished to others; and (3) "insured premises" includes the ways immediately adjoining such premises;
- FF. "mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled: (1) not subject to motor vehicle registration; (2) maintained for use exclusively on premises owned by or rented to the *insured*, including ways immediately adjoining; but *mobile equipment* shall not be deemed to mean apparatus used in connection with the medical profession;
- GG. "premises injury or damage" means:
- (1) Bodily *injury*, sickness or disease, or death;
- (2) Wrongful entry or eviction, or other invasion of the right of private occupancy;

(3) Property damage, meaning (a) physical *injury* to or destruction of tangible property which occurs during the *policy period*, including the loss of use thereof at any time resulting therefrom, or (b) the loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by a *premises occurrence* during the *policy period*;

HH. "*premises occurrence*" means an accident, including continuous or repeated exposure to conditions, which results in *premises injury or damage* neither expected nor intended from the standpoint of the *insured*;

II. "*products*" means goods or *products* manufactured, sold, handled or distributed by the *insured* or by others trading under the name of the *insured*, including any container thereof (other than a vehicle), but "*products*" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold.

9. For purposes of this *endorsement*, the following are added to Section VI. ADDITIONAL TERMS AND CONDITIONS, of this *policy*:

AA. ASSIGNMENT - Assignment of interest under this *endorsement* shall not bind the Corporation unless and until its consent is endorsed hereon. If, however, the *insured* shall die or be dissolved, as applicable, such insurance as is afforded by this *endorsement* shall apply: (1) to the *insured's* legal representative, but only while acting within the scope of such representative's duties as such; and (2) with respect to property of the *insured*, to the person having proper temporary custody thereof, but only until the appointment and qualification of the legal representative.

BB. INSPECTION AND AUDIT OPTION

(1) The Corporation shall be permitted but not obligated to inspect the *insured premises* at any time. Neither the Corporation's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking of any kind whatsoever on behalf of or for the benefit of the *insured* or anyone else, including without limitation any undertaking to determine or warrant that such premises are safe or healthful, or are in compliance with any law, rule or regulation.

(2) The Corporation may examine and audit the *insured's* books and records at any time during the *policy period* and any extension thereof and within three years after the final termination of this *policy* insofar as they may relate to any subject matter of this insurance.

10. For purposes of this *endorsement* and relative only to the claims-made policy form, Section VI. L. *REPORTING ENDORSEMENT* is deleted and the following is substituted:

Coverage under this *endorsement* may not be extended by a *Reporting Endorsement* ("tail" coverage).

11. For purposes of this *endorsement* Section IV.LIMITS OF LIABILITY, E. is deleted and the following is substituted:

If this *endorsement* and any other policy providing coverage to the same *insured* by the Corporation or any of its subsidiaries apply to the same *premises injury or damage* to which this *endorsement* applies, the maximum limit of liability under all policies and this *endorsement* shall not exceed the highest applicable limit of liability under any one policy or *endorsement*.

12. For purposes of this *endorsement* Section VI. ADDITIONAL TERMS AND CONDITIONS E. is deleted and the following is substituted:

Except as provided by Section IV.LIMITS OF LIABILITY, E. as modified by this *endorsement* and to the extent that any demand or lawsuit against the *insured* to which this *endorsement* applies is covered by any other policy of insurance, this insurance will be secondary to and in excess of any other insurance covering such *insured* or any other indemnity protection afforded such *insured* by the hospital, medical school or professional society or association through its self-insurance program, self-insured retention, or its insurance.



## POLICY ENDORSEMENT

### MEDEFENSE

#### NOTICE TO POLICYHOLDER

Coverage hereunder shall expire sixty (60) days after the expiration date of the policy to which this endorsement is attached or sixty (60) days after its earlier cancellation date or non-renewal date. This coverage may not be extended by a *Reporting Endorsement* ("tail" coverage).

As a condition precedent to payment of any benefit hereunder, the *insured event* must be *instituted* while the policy is in effect and the *insured* must notify the Corporation within sixty (60) days from the date the *insured event* is *instituted*.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any applicable *Declarations Page*, except as expressly stated in this *endorsement*.

#### I. COVERAGE AGREEMENT

In consideration of the premium charged, it is understood and agreed, subject to all terms, conditions, definitions, exclusions, and other provisions of this *endorsement*, the Corporation will reimburse or pay on behalf of the *insured* for any reasonable *legal or tax expense* and any *finest and/or penalties* incurred by such *insured* arising out of an *insured event* *instituted* against the *insured* during the *policy period*. The *maximum legal expense, tax expense and finest and/or penalties* payable hereunder is as shown below in item III. A deductible, applicable, shall apply as shown below in item III.

#### II. PAYMENT METHOD

The Corporation will reimburse the *insured* for covered *legal expense, tax expense and finest and/or penalties* subject to coinsurance and deductible unless the *insured* selects an *attorney* from a panel provided by the Corporation. In that event the Corporation will pay up to the *maximum legal or tax expense* directly to the *attorney or tax practitioner* and the deductible will be waived. *Fines and/or penalties* are only eligible for reimbursement.

#### III. MAXIMUMS; DEDUCTIBLE

<i>Maximum Legal Expense and Fines and/or Penalties</i>	\$50,000 per <i>insured event</i> up to a maximum of \$100,000 per <i>policy period</i>
<i>Maximum Tax Expense</i>	\$5,000 per <i>insured event</i> per <i>policy period</i> to be included within the <i>maximum legal expense and finest and/or penalties</i>
Deductible	\$1,000 per <i>insured event</i> , but the Deductible will be waived if the <i>Named Insured</i> selects an <i>attorney</i> from a panel provided by the Corporation

#### IV. CONDITIONS

- 1) Appeals shall be considered to be part of the original *disciplinary proceeding* and all related *disciplinary proceedings or tax audits* and all consolidated proceedings and all proceedings arising out of the same event shall be considered as one *disciplinary proceeding or tax audit*.
- 2) As a condition precedent to payment of any benefit hereunder, the *insured* shall notify the Corporation within sixty (60) days from the date of a *disciplinary proceeding or tax audit* being *instituted*.

- 3) Coverage hereunder for any *legal expense, fines and/or penalties or tax expense* incurred during the *policy period* is subject to the condition that on the initial effective date of the *endorsement*, the *insured* has not previously received written notice that a *disciplinary proceeding or tax audit* has been *instituted*.
- 4) To be eligible for payment, the reasonable *legal or tax expenses* must be itemized on an hourly basis showing the service performed, the time incurred, and the hourly rate charged.
- 5) *Fines and/or penalties* are covered only if (a) assessed in a final adjudication by an administrative tribunal or court or (b) the *fines and/or penalties* are set forth in an agreed judgment or settlement agreement for which the Corporation has given prior written consent.

### III. DEFINITIONS

*attorney(s)* means an individual or group duly licensed to practice law at the time and place the legal services are rendered.

*disciplinary proceeding(s)* means and is limited to the following:

- (1) any professional review action against the *insured* by a professional review body of a hospital, health maintenance organization, preferred provider organization, or managed care organization, which action is taken for the purpose of adversely affecting previously conferred clinical privileges or membership;
- (2) proceedings instituted by a state medical licensing authority against the *insured* for unprofessional conduct;
- (3) proceedings instituted against the *insured* by a professional review organization pursuant to part 1004 and 1005 of Title 42, Chapter V, Code of Federal Regulations for the purpose of imposing sanctions;
- (4) proceedings instituted against the *insured* by a state department of insurance, state workers' compensation commission, state department of health and human services, the United States Department of Health and Human Services, including the Centers for Medicare and Medicaid Services, or a qui tam plaintiff alleging the *insured* has performed medical services in violation of guidelines for appropriate utilization of services;
- (5) except as excluded by paragraph VI(3) of this endorsement, proceedings by a state or federal governmental agency, including private contractors authorized to review the *insured's* billings to Medicare/Medicaid, against the *insured* involving allegations of non-compliance with Medicare and/or Medicaid regulations or procedures;
- (6) proceedings against the *insured* alleging violations of the Emergency Medical Treatment and Active Labor Act (EMTALA);
- (7) proceedings against the *insured* alleging violations of the Health Insurance Portability Accountability Act (HIPAA);
- (8) proceedings against the *insured* alleging violations of sections 1877 and 1903(s) of the Social Security Act (Stark Law)

*fines and/or penalties* means civil fines and civil administrative penalties assessed against the *insured* in a *disciplinary proceeding*.

*instituted*, when referring to the commencement of any *disciplinary proceeding*, means the time written notice of a *disciplinary proceeding* is served upon the *insured*. *Instituted* also means written notice of an investigation that could result in a *disciplinary proceeding*. *Instituted*, when referring to a *tax audit*, means the time formal written notice of the *tax audit* is served upon the *insured*.

*insured event* means a *disciplinary proceeding* or federal *tax audit* instituted against the *insured*.

*legal expense(s)* means an *attorney's* fees for legal services rendered. No judgments or expenses other than for *legal expenses* by the *insured's attorney(s)* shall be covered.

*maximum tax expense* means the total dollar amount of covered *tax expense* that will be paid for a *policy period* in respect of all federal tax examinations *instituted* during such *policy period*.

*maximum legal expense and fines and/or penalties* means the total dollar amount of covered *legal expense* and *fines and/or penalties*, including *tax expense* that will be paid for a *policy period* in respect of all *disciplinary proceedings* and *tax audits* *instituted* during the *policy period*.

*tax audit(s)* for purposes herein is defined as an examination *instituted* by the Internal Revenue Service during the *policy period* of any federal income tax return of the *insured*.

*tax expenses* means a *tax practitioner's* fees for services rendered in connection with a *tax audit*. Taxes or penalties assessed after a tax audit are not covered.

*tax practitioner* means an individual accountant or *attorney* or enrolled agent or group thereof duly qualified to represent taxpayers before the Internal Revenue Service.

#### IV. EXCLUSIONS

No benefits shall be payable hereunder for *legal expenses, fines and/or penalties* or *tax expenses*:

- 1) incurred in disputes with respect to this insurance including questions as to whether *legal expenses, fines and/or penalties* or *tax expenses* are payable under this *endorsement*;
- 2) if the *legal expenses, fines and/or penalties* or *tax expenses* arise out of any matter that the *insured* has conspired with another to *institute* or have *instituted*;
- 3) arising out of any criminal prosecution. Criminal prosecution means any government action for enforcement of criminal laws;
- 4) arising out of any *disciplinary proceeding* or *tax audit* for which the *insured* has received written notice that a *disciplinary proceeding* or *tax audit* has been *instituted* prior to the initial effective date of this *endorsement*;
- 5) arising out of any matter other than an *insured event*;
- 6) arising out of any application for initial placement on any medical staff or participation in a health maintenance organization, preferred provider organization or similar health care entity, including application for status as a designated provider of benefits for any state or federal health benefit program;
- 7) arising out of disputes over timely completion of medical records.

#### V. LEGAL AND TAX EXPENSES

The Corporation will reimburse or pay on behalf of the *insured* only *legal expense* or *tax expense* incurred in respect of legal or tax services actually rendered and expenses actually incurred.

#### VI. RECOVERY AND SUBROGATION

The Corporation shall be entitled to recover from the *insured* any and all benefits paid by the Corporation under this insurance which the *insured* has otherwise received from any other party with respect to the covered action. If the Corporation becomes liable for any payment under this insurance with respect to *legal expenses, fines and/or penalties* or *tax expenses*, the Corporation shall be subrogated, to the extent of such payment, to all the rights and remedies of the *insured* against any party with respect to such *legal expenses, fines and/or penalties* or *tax expenses* and shall be entitled at its own expense to sue in the name of such insured. The *insured* shall give the Corporation all such assistance in their power as the Corporation may require to secure its rights and remedies and at the Corporation's request, shall execute all documents necessary to enable the Corporation to effectively bring suit in the name of the *insured*.

#### VII. FREE CHOICE OF ATTORNEYS

The *Insured* shall have complete freedom of choice with respect to the selection of the licensed *attorney* or *tax practitioner* who provides legal or tax services with respect to which *legal expenses* or *tax expenses* are payable under this agreement. There shall be no infringement upon the professional judgment of any *attorney* or *tax practitioner* furnishing legal or audit services payable under this agreement. No *attorney* or *tax practitioner* providing legal or tax services with respect to *legal expenses* or *tax expenses* payable under this agreement shall be required to act in derogation of the *attorney's* or *tax practitioner's* professional responsibilities.

## POLICY ENDORSEMENT

### Autopsy Services

In consideration of the premium charged for *this policy*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy*:

Notwithstanding any provision of *this policy*, a lawsuit, notice letter or written demand served upon or received by any *insured* arising out of the performance or failure to perform autopsy services or any other professional service rendered postmortem will be considered as alleging an *injury* arising out of professional services rendered to a *patient* for a medical condition.

## POLICY ENDORSEMENT

### Nuclear Energy Liability Exclusion Broad Form Applicable to All Coverages

In consideration of the premium charged for all policies to which this *endorsement* applies, it is hereby understood and agreed, subject to all terms, conditions and exclusions of such policies:

1. This *endorsement* applies to and forms a part of all policies and *endorsements* issued by the Corporation to the *insured* at any time, including the policy to which this *endorsement* is attached and any applicable *endorsement* (all referred to in this *endorsement* as *this policy*).
2. This *policy* does not apply:
  - a. Under any liability coverage, to any *injury*, *bodily injury*, *personal injury* or *property damage*;
    - (1) With respect to which the *insured* under *this policy* is also an *insured* under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an *insured* under any such policy but for its termination upon exhaustion of its limits of liability; or,
    - (2) Arising out of the *hazardous properties* of *nuclear material* and with respect to which: (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or (b) the *insured* is, or had *this policy* not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - b. Under any supplementary payments provision relating to first aid, to expenses incurred with respect to *bodily injury* arising out of the *hazardous properties* of *nuclear material* and arising out of the operation of a *nuclear facility* by any person or organization.
  - c. Under any liability coverage, to *bodily injury* or *property damage* arising out of the *hazardous properties* of *nuclear material*, if;
    - (1) The *nuclear material*: (a) is at any *nuclear facility* owned by, or operated by or on behalf of the *insured*; or (b) has been discharged or dispersed therefrom;
    - (2) The *nuclear material* is contained in *spent fuel* or *waste* at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the *insured*; or,
    - (3) The *bodily injury* or *property damage* arises out of the furnishing by the *insured* of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any *nuclear facility*; but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *property damage* to such *nuclear facility* and any property thereat.
3. As used in this *endorsement*:
  - a. “*hazardous properties*” include radioactive, toxic or explosive properties.
  - b. “*nuclear facility*” means:
    - (1) Any *nuclear reactor*;
    - (2) Any equipment or device designed or used for: (a) separating the isotopes of uranium or plutonium; (b) processing or utilizing *spent fuel*; or (c) handling, processing or packaging *waste*;
    - (3) Any equipment or device used for the processing, fabricating or alloying of *special nuclear material* if at any time the total amount of such material in the custody of the *insured* at the premises where such

equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235; or,

(4) Any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of *waste*, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

- c. "*nuclear material*" means *source material*, *special nuclear material* or *by-product material*.
- d. "*nuclear reactor*" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- e. "*property damage*" includes all forms of radioactive contamination of property.
- f. "*source material*", "*special nuclear material*", and "*by-product material*" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- g. "*spent fuel*" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*.
- h. "*waste*" means any *waste material*: (1) containing *by-product material*; and (2) resulting from the operation by any person or organization of any *nuclear facility*.