NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CIVIL SECTION 22

. . . . . .

JAMES J. DONELON .

V. . NO. 651069

TERRY S. SHILLING, ET AL .

. . . . . .

FRIDAY, AUGUST 25, 2017

* * * * *

HEARING AND ORAL REASONS FOR JUDGMENT ON (1) DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION FILED ON BEHALF OF MILLIMAN, INC., (2) DECLINATORY EXCEPTION OF IMPROPER VENUE FILED ON BEHALF OF BUCK CONSULTANTS, LLC, (3) EXCEPTION OF PREMATURITY, OR IN THE ALTERNATIVE, MOTION TO STAY PROCEEDINGS FILED ON BEHALF OF BEAM PARTNERS, LLC, AND (4) PEREMPTORY EXCEPTION OF PRESCRIPTION FILED ON BEHALF OF GROUP RESOURCES, INC.

* * * * *

THE HONORABLE TIMOTHY KELLEY, JUDGE PRESIDING

APPEARANCES	FOR
J CULLENS,JR & JENNIFER MOROUX	PLAINTIFFS
JAMES BROWN	BUCK CONSLTNS
SKIP PHILIPS & RYAN FRENCH	CGI TECHNOLOGY & SOLUTIONS
W. MASON	GROUP RESOURCES
V. CLARK, JR. & GRANT GUILLOT	MILLIMAN ,INC.
RICHARD BAUDOUIN	TRAVELER'S CAS. SURITY CO.

REPORTED AND TRANSCRIBED BY KRISTINE M. FERACHI, CCR

#87173

Please return via email to: kshortridge@brgov.com
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NINETEENTH JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH

300 NORTH BOULEVARD
BATON ROUGE, LOUISIANA 70801
TELEPHONE (225) 389-4700
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REQUEST FOR TRANSCRIPT

I hereby request that the court reporter furnish a transcript of the hearing on the Motion for Summary Judgment filed on behalf of CGI Technologies and Solutions, Inc, held in suit number (case #) C651089, entitled (case name) *James J.v. Terry S. Shilling, et al.*, held on (date) August 25, 2017 in Division/Section 22 before Timothy E. Kelley.

YOUR SIGNATURE BELOW SIGNIFIES THAT YOU ARE OBLIGATED TO PAY FOR THE ESTIMATED COST OF THE TRANSCRIPTION SERVICES BEFORE THE TRANSCRIPT IS PREPARED.

I understand that the cost of such transcript will be $6.50 per page for a special request, $2.00 per page for a copy of a special request, $4.00 per page for an original appeal and $1.50 per page for a copy of an appeal. I further understand that should I decide I do not need said transcript, I will notify the Judicial Administrator's office immediately by phone and follow up either by email or by fax, (address and fax number listed above) if the transcript is not yet completed, I will be entitled to a refund for only the pages that have not been typed and I will be responsible for payment of all work completed up to the date of notification in writing at the rates set forth above. It is my further understanding that this request has no priority over regular appeal transcripts.

Baton Rouge, Louisiana, this 28th day of August, 2017.

V. Thomas Clark, Jr. NAME	450 Laurel St., Suite 1900 STREET
(225) 336-5200 TELEPHONE	Baton Rouge, LA 70801 CITY, STATE, ZIP
SIGNATURE OF PERSON REQUESTING TRANSCRIPT	mandy.jones@arlaw.com Please provide email address

YOU MUST PAY FOR THE TRANSCRIPT IN ADVANCE. THE COURT REPORTER WILL NOT TYPE THE TRANSCRIPT UNTIL WE RECEIVE THE ESTIMATED FUNDS.

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Mallelon

REQUEST FOR TRANSCRIPT

I hereby request that the court reporter furnish a transcript of the hearing on the Peremptory Exception of Prescription filed on behalf of Group Resources, Inc. held in suit number (case #) C551069, entitled (case name) *James J.v. Terry S. Shilling, et al.*, held on (date) August 25, 2017 in Division/Section 22 before Timothy E. Kelley.

YOUR SIGNATURE BELOW SIGNIFIES THAT YOU ARE OBLIGATED TO PAY FOR THE ESTIMATED COST OF THE TRANSCRIPTION SERVICES BEFORE THE TRANSCRIPT IS PREPARED.

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Baton Rouge, Louisiana, this 10th day of August, 2017.

V. Thomas Clark, Jr. NAME	450 Laurel St., Suite 1900 STREET
(225) 336-5200 TELEPHONE	Baton Rouge, LA 70801 CITY, STATE, ZIP
SIGNATURE OF PERSON REQUESTING TRANSCRIPT	mandy.jones@arlaw.com Please provide email address

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EAST BATON ROUGE PARISH

300 NORTH BOULEVARD
BATON ROUGE, LOUISIANA 70801
TELEPHONE (225) 389-4709
FAX (225) 389-4774

REQUEST FOR TRANSCRIPT

I hereby request that the court reporter furnish a transcript of the hearing on the Declinatory Exception of Improper Venue filed on behalf of Buck Consultants, LLC held in suit number (case #) C651069, entitled (case name) James J.v. Terry S. Shilling, et al., held on (date) August 25, 2017 in Division/Section 22 before Timothy E. Kelley.

YOUR SIGNATURE BELOW SIGNIFIES THAT YOU ARE OBLIGATED TO PAY FOR THE ESTIMATED COST OF THE TRANSCRIPTION SERVICES BEFORE THE TRANSCRIPT IS PREPARED.

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Baton Rouge, Louisiana, this 28th day of August, 2017.

V. Thomas Clark, Jr.	450 Laurel St., Suite 1900
NAME	STREET
(225) 336-5200	Baton Rouge, LA 70801
TELEPHONE	CITY, STATE, ZIP
SIGNATURE OF PERSON REQUESTING TRANSCRIPT	mandy.jones@arlaw.com
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TELEPHONE (225) 389-4700
FAX (225) 389-4774

Milliman

REQUEST FOR TRANSCRIPT

I hereby request that the court reporter furnish a transcript of the hearing on the **Declinatory Exception of Lack of Subject Matter Jurisdiction filed on behalf of Milliman, Inc.**, held in suit number (case #) **C651069**, entitled (case name) ***James J.v. Terry S. Shilling, et al.***, held on (date) **August 25, 2017** in Division/Section **22** before **Timothy E. Kelley.**

YOUR SIGNATURE BELOW SIGNIFIES THAT YOU ARE OBLIGATED TO PAY FOR THE ESTIMATED COST OF THE TRANSCRIPTION SERVICES BEFORE THE TRANSCRIPT IS PREPARED.

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Baton Rouge, Louisiana, this 28th day of August, 2017.

V. Thomas Clark, Jr. NAME	450 Laurel St., Suite 1900 STREET
(225) 336-5200 TELEPHONE	Baton Rouge, LA 70801 CITY, STATE, ZIP
VTCJr SIGNATURE OF PERSON REQUESTING TRANSCRIPT	mandy.jones@arlaw.com Please provide email address

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NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CIVIL SECTION 22

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JAMES J. DONELON .

V. . NO. 651069

TERRY S. SHILLING, ET AL .

. . . . . .

FRIDAY, AUGUST 25, 2017

* * * * *

HEARING AND ORAL REASONS FOR JUDGMENT ON (1) DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION FILED ON BEHALF OF MILLIMAN, INC., (2) DECLINATORY EXCEPTION OF IMPROPER VENUE FILED ON BEHALF OF BUCK CONSULTANTS, LLC, (3) EXCEPTION OF PREMATURITY, OR IN THE ALTERNATIVE, MOTION TO STAY PROCEEDINGS FILED ON BEHALF OF BEAM PARTNERS, LLC, AND (4) PEREMPTORY EXCEPTION OF PRESCRIPTION FILED ON BEHALF OF GROUP RESOURCES, INC.

* * * * *

THE HONORABLE TIMOTHY KELLEY, JUDGE PRESIDING

APPEARANCES	FOR
J CULLENS,JR & JENNIFER MOROUX	PLAINTIFFS
JAMES BROWN & MIRAIS HOLDEN	BUCK CONSLTNS
SKIP PHILIPS & RYAN FRENCH	CGI TECHNOLOGY & SOLUTIONS
W. MASON	GROUP RESOURCES
V. CLARK, JR. & GRANT GUILLOT	MILLIMAN ,INC.
RICHARD BAUDOUIN	TRAVELER'S CAS. SURITY CO.

REPORTED AND TRANSCRIBED BY KRISTINE M. FERACHI, CCR

#87173

E X H I B I T S

A R G U M E N T O N E X C E P T I O N S

FRIDAY, AUGUST 25, 2017

* * * * *

THE COURT: 651069, DONELON VERSUS SHILLING, ET AL. TODAY WE HAVE A DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION FILED BY MILLIMAN, A DECLINATORY EXCEPTION OF IMPROPER VENUE FILED BY BUCK, AND A PEREMPTORY EXCEPTION OF PRESCRIPTION FILED BY G.R.I. THE EXCEPTION OF PREMATURITY, OR ALTERNATIVELY, MOTION TO STAY PROCEEDINGS FILED BY BEAM IS RENDERED MOOT BY MY NOTIFICATION BY THE PARTIES THAT THAT MATTER HAS BEEN SETTLED OUT; IS THAT CORRECT?

MR. CLARK: THAT IS CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT. LET'S TAKE UP THE DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION BY MILLIMAN.

AND ALSO, I AM GOING TO ASK FOR APPEARANCES BY COUNSEL. I HAVE ASKED COUNSEL FOR BUCK CONSULTANTS AND G.R.I. ALSO TO MAKE APPEARANCES NOW SO WE DO NOT HAVE TO DO IT LATER. IT IS JUST THAT THERE IS SO MANY DARK SUITS IN HERE, WE ARE GOING TO TAKE THEM UP ONE-BY-ONE SO Y'ALL DO NOT SIT ON TOP OF EACH OTHER. GO AHEAD, SIR.

MR. CULLENS: YOUR HONOR, GOOD MORNING. JAY CULLENS ALONG WITH JENNIFER MOROUX ON BEHALF OF THE PLAINTIFF, THE RECEIVER FOR L.A.H.C.

MR. CLARK: TOM CLARK AND GRANT GUILLOT WITH ADAMS AND REESE ON BEHALF OF MILLIMAN.

MR. MASON: BRETT MASON AND MIKE MCKAY ON

BEHALF OF GROUP RESOURCES, INC.

MR. BROWN: JAMES BROWN AND MIRAIS HOLDEN ON BEHALF OF BUCK CONSULTANTS.

MR. PHILIPS: MORNING, YOUR HONOR. SKIP PHILIPS AND RYAN FRENCH ON BEHALF OF C.G.I.

THE COURT: THANK YOU. ANYBODY WE MISSED?

LET'S TAKE UP THE DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION BY MILLIMAN. JUMP IN, SIR.

MR. CLARK: GOOD MORNING, YOUR HONOR.

THE COURT: THE OTHER THING THAT WE HAVE TODAY IS A MOTION FOR SUMMARY JUDGMENT FILED BY C.G.I. TECHNOLOGIES SOLUTIONS, INC. WE WILL DO THAT LAST. YES, SIR.

MR. CULLENS: AND IF I MAY, YOUR HONOR, THIS IS JUST KIND OF A MATTER OF HOUSEKEEPING. ATTORNEY RICHARD BAUDOUIN REPRESENTS TRAVELER'S, JUST TO GIVE YOUR HONOR A REPORT, WE HAVE REACHED A SETTLEMENT BACK IN MAY WITH TRAVELER'S AND THE D&O INSURERS. I AM HAPPY TO REPORT THAT WE HAVE REACHED A FINAL WRITTEN AGREEMENT, EVERYBODY IS ON BOARD, AND BY MUTUAL AGREEMENT THIS MORNING, ALL PARTIES HAVE AGREED TO EXECUTE THE FINAL AGREEMENT NO LATER THAN SEPTEMBER 5, AT WHICH POINT WE WILL PRESENT IT TO THE RECEIVERSHIP COURT FOR THE NECESSARY APPROVAL.

THE COURT: COUNSEL, IF YOU WILL MAKE AN APPEARANCE AND CONFIRM THAT FOR ME, PLEASE.

MR. BAUDOUIN: YES. RICHARD BAUDOUIN ON BEHALF OF TRAVELER'S CASUALTY INSURANCE COMPANY OF AMERICA, AND WE ARE IN AGREEMENT WITH THAT

BEHALF OF GROUP RESOURCES, INC.

MR. BROWN: JAMES BROWN AND MARRAY HOLDEN ON BEHALF OF BUCK CONSULTANTS.

MR. PHILIPS: MORNING, YOUR HONOR. SKIP PHILIPS AND RYAN FRENCH ON BEHALF OF C.G.I.

THE COURT: THANK YOU. ANYBODY WE MISSED?

LET'S TAKE UP THE DECLINATORY EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION BY MILLIMAN. JUMP IN, SIR.

MR. CLARK: GOOD MORNING, YOUR HONOR.

THE COURT: THE OTHER THING THAT WE HAVE TODAY IS A MOTION FOR SUMMARY JUDGMENT FILED BY C.G.I. TECHNOLOGIES SOLUTIONS, INC. WE WILL DO THAT LAST. YES, SIR.

MR. CULLENS: AND IF I MAY, YOUR HONOR, THIS IS JUST KIND OF A MATTER OF HOUSEKEEPING. ATTORNEY RICHARD BAUDOUIN REPRESENTS TRAVELER'S, JUST TO GIVE YOUR HONOR A REPORT, WE HAVE REACHED A SETTLEMENT BACK IN MAY WITH TRAVELER'S AND THE D&O INSURERS. I AM HAPPY TO REPORT THAT WE HAVE REACHED A FINAL WRITTEN AGREEMENT, EVERYBODY IS ON BOARD, AND BY MUTUAL AGREEMENT THIS MORNING, ALL PARTIES HAVE AGREED TO EXECUTE THE FINAL AGREEMENT NO LATER THAN SEPTEMBER 5, AT WHICH POINT WE WILL PRESENT IT TO THE RECEIVERSHIP COURT FOR THE NECESSARY APPROVAL.

THE COURT: COUNSEL, IF YOU WILL MAKE AN APPEARANCE AND CONFIRM THAT FOR ME, PLEASE.

MR. BAUDOUIN: YES. RICHARD BAUDOUIN ON BEHALF OF TRAVELER'S CASUALTY INSURANCE COMPANY OF AMERICA, AND WE ARE IN AGREEMENT WITH THAT

TIMELINE.

THE COURT: THANK YOU. VERY GOOD. ALL RIGHT. SUBJECT MATTER JURISDICTION, WHAT DO YOU THINK? I KNOW WHAT YOU THINK; I READ WHAT YOU SAID, BUT GO AHEAD.

MR. CLARK: WELL, YOUR HONOR, WE THINK IT IS PRETTY CLEAR. THIS MATTER ARISES OUT OF ACA AND THE CREATION OF THE CO-OPS THERETO.

OUR CLIENT ENTERED INTO AN AGREEMENT WITH THE CO-OP BACK IN 2011, AND IT TERMINATED IN 2014, AND COUNSEL FOR THE REHABILITATOR HAS AGREED THAT OUR CONSULTING SERVICES AGREEMENT ATTACHED TO OUR PLEADINGS IS IN PROPER FORM, SO THIS PROPER FORM IS PROBABLY PART OF OUR PRIMARY ARGUMENT TODAY.

JAY, DO YOU STILL STIPULATE THAT THIS IS THE AUTHENTIC AGREEMENT?

MR. CULLENS: YES. WE DO NOT HAVE ANY ISSUES.

THE COURT: ALL RIGHT. I WILL ALLOW YOU TO PLACE IT INTO EVIDENCE THEN.

MR. CLARK: DO YOU HAVE A COPY, YOUR HONOR? MAY I APPROACH AND PROVIDE YOU ONE?

THE COURT: YOU MAY. I AM AWARE OF THE ARBITRATION CLAUSE, BUT, YES.

MR. CULLENS: THE RECEIVER IS NOT CHALLENGING THE LANGUAGE USED IN THE AGREEMENT.

THE COURT: CORRECT. FOR PURPOSES OF THIS HEARING, BECAUSE A RECORD HAS TO BE MADE, EXHIBIT-A WILL BE INTRODUCED INTO EVIDENCE.

MR. CLARK: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT, SIR.

MR. CLARK: OKAY. ALL RIGHT, YOUR HONOR.

WELL, THAT IS WHAT BRINGS US HERE TODAY. WE RECOGNIZE THERE IS A DISPUTE WITH THE CO-OP, AND OUR CONTRACT DOES PROVIDE FOR AN EXCLUSIVE ARBITRATION OF ANY DISPUTES ARISING UNDER THAT AGREEMENT.

IN MAKING OUR ARGUMENT THAT SUBJECT MATTER JURISDICTION IS APPROPRIATE, WE ATTEMPTED TO RESOLVE THIS AND REQUEST THAT WE DEFER THIS TO ARBITRATION, AND WE WERE MET SIMPLY WITH COMPLETE REJECTION FOR OUR PROPOSAL; THUS, WE ARE IN A POSITION OF BELIEVING THAT THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION IN LIEU OF A MOTION TO COMPEL ARBITRATION ON THIS DAY FOR A COUPLE OF REASONS I WILL ADDRESS RIGHT OFF THE BAT, AND THEY ARE THAT THIS LITIGATION INVOLVES A VARIETY OF PARTIES. INITIALLY WHEN FILED IT INCLUDED ALL THE D&O'S, NUMEROUS OTHER INDIVIDUALS, AND WE RECOGNIZE THAT THE RECEIVERSHIP PROCEEDINGS OF THE STATE ARE COMPREHENSIVE IN NATURE, AND THE INTENT OF WHERE WE ARE RIGHT NOW, WHICH IS REHABILITATION, MILITATES IN FAVOR OF SOME RESOLUTION OF THOSE DISPUTES, AND BELIEVE THAT REMOVING OURSELVES FROM THE PROCEEDING TO ALLOW AN ARBITRATION THAT WE THINK IS CLEARLY ALLOWED FOR IN THE FOUR CORNERS OF THE AGREEMENT WAS A BETTER COURSE. THUS, WE FILED FOR AN EXCEPTION OF SUBJECT MATTER JURISDICTION TO REMOVE MILLIMAN, AND WE CAN PROCEED PURSUANT TO THAT, THE ARBITRATION OF THOSE DISPUTES.

SO, WE BELIEVE THE FOUR CORNERS ARE PRETTY

DARN CLEAR, AND THAT THERE REALLY IS NOT MUCH IN DISPUTE. WHAT WE HAVE BEEN PRESENTED WITH INSTEAD IS A CONTENTION THAT THE COMPREHENSIVE NATURE OF THE INSURANCE CODE AND THE RECEIVERSHIP PROCESS INHIBITS ARBITRATION; HOWEVER, WE BELIEVE WE NEED TO LOOK AT THE POSTURE OF THE CASE AS IT IS CURRENTLY BEFORE THE COURT, AND THE RIGHTS OF THE REHABILITATOR, NOT THE LIQUIDATOR.

THIS MATTER WAS BROUGHT UNDER AN ORDER OF LIQUIDATION -- EXCUSE ME -- AN ORDER OF REHABILITATION PURSUANT TO 22:2001, ET SEQ.

THE COURT: CORRECT. LET ME GO AHEAD AND CORRECT THE RECORD WITH REGARD TO EXHIBIT-A. EXHIBIT-A WILL BE ACCEPTED IN GLOBO. IT CONTAINS THE ENGAGEMENT LETTER AND THE CONSULTING AGREEMENT; AM I CORRECT?

MR. CLARK: THAT IS CORRECT, YOUR HONOR, AND WITHIN THE TEXTS OF THE CONSULTING SERVICES AGREEMENT, IT REFERENCES A PROPOSAL FOR ACTUARIAL SERVICES AND IS MADE A COMPONENT PART THEREOF IN THE INITIAL PARAGRAPH.

THE COURT: YES. I WAS JUST TRYING TO MAKE SURE THE RECORD WAS CLEAR ON WHAT THE EVIDENCE IN THE RECORD FOR THIS HEARING IS.

MR. CLARK: ACTUALLY, I BELIEVE WE PREMARKED THESE AS A AND B. THIS REALLY SHOULD BE ONE IN GLOBO, EXHIBIT A.

THE COURT: YOU DO HAVE A "B" ON THAT ONE. I WILL ACCEPT IT AS YOU HAVE MARKED IT AS -- THE CONSULTING SERVICES AGREEMENT WILL BE ADMITTED INTO EVIDENCE AS EXHIBIT-A, AND THE

PROPOSAL FOR ACTUARIAL SERVICES DATED AUGUST 4, 2011 ON ITS FRONT-PAGE FACE, OBVIOUSLY EXECUTED AT DIFFERENT TIMES, AS EXHIBIT-B.

ADMIT IT INTO EVIDENCE. GO AHEAD, SIR.

(EXHIBITS INTRODUCED INTO EVIDENCE AS MILLIMAN EXHIBIT A AND B)

MR. CLARK: THANK YOU, YOUR HONOR.

WE COME TO THE COURT IN RESPONSE TO A CLAIM BROUGHT BY THE REHABILITATOR, AND THE PURPOSE OF REHABILITATION PURSUANT TO THE STATUTES IS TO ESSENTIALLY ELIMINATE THE PURPOSES THAT GIVE RISE TO THE REHABILITATION, AND TO ESSENTIALLY PUT THE COMPANY BACK ON ITS FEET. THEREFORE, THIS IS ANALOGOUS TO THE CONTINUED OPERATIONS OF THE COMPANY, AND NOT SIMPLY AN IDENTIFICATION OF ASSETS, LIABILITIES AND THE DISSOLUTION AND LIQUIDATION OF THE ENTITY THAT MIGHT OCCUR UNDER A LIQUIDATION PROCEEDING, OR 22:257, WHICH DEALS WITH THE SUSPENSION OR REVOCATION OF A LICENSE.

IN THIS PARTICULAR CASE, COUNSEL FOR THE REHABILITATOR HAS ASSERTED THAT 22:257 INHIBITS OUR RIGHTS BECAUSE OF SOME LANGUAGE THAT IS INCLUDED IN THAT; HOWEVER, THAT ENTIRE PROVISION DOES NOT APPLY HERE BECAUSE THEY HAVE NOT SOUGHT SUSPENSION OR REVOCATION OF THE LICENSE, AND IN FACT, AS OF THIS MORNING, THE D.O.I. SITE STILL SHOWS THAT THIS ENTITY IS LICENSED. SO, WE ARE APPROACHING THIS UNDER THE 2001, ET SEQ STANDARD. THIS IS AN ORDER OF REHABILITATION, AND AS SUCH, THE REHABILITATOR STANDS IN THE SHOES OF THE COMPANY. THEY

ACCEPT THE CONTRACTS AS THEY FIND THEM SUBJECT TO CERTAIN STATUTORY EXCEPTIONS TO THAT THAT ENABLE THEM TO DO CERTAIN THINGS WITH CONTRACTS THAT THEY ARE INVOLVED IN.

THE COURT: AND YOU DO NOT THINK THAT FALLS WITHIN ONE OF THOSE EXCEPTIONS?

MR. CLARK: ABSOLUTELY NOT, YOUR HONOR.

THE NATURE OF THOSE CONTRACTS TYPICALLY ARE THE CONTRACTS THAT THE ENTITY ISSUES SO THEY ARE ABLE TO CONTROL THEIR LIABILITIES GOING FORWARD TO THIRD PARTIES. NOT THE RESOLUTION OF A DISPUTE WITH A SERVICE PROVIDER SUCH AS MILLIMAN THAT OPERATED PURSUANT TO A CONSULTING AGREEMENT AND -- CONSULTING SERVICES AGREEMENT WITH THE PROPOSAL FOR SERVICES THAT SPECIFIES EVERYTHING THAT HAS BEEN ALLEGED AGAINST THEM AS BEING A PROBLEM FOR THE REHABILITATOR.

SO, IF WE LOOK AT THE SPECIFIC ALLEGATIONS AGAINST MILLIMAN -- YES, HERE WE GO. FAILING TO PRODUCE A FEASIBILITY STUDY THAT WAS ACCURATELY RELIABLE, FAILING TO DISCHARGE ITS DUTIES TO L.A.H.C. WITH REASONABLE CARE IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS, FAILING TO SET PREMIUM RATES AND GENERALLY FAILING TO EXERCISE A REASONABLE JUDGMENT EXPECTED OF PROFESSIONAL ACTUARIES UNDER THE CIRCUMSTANCES. THIS FAILURE ESSENTIALLY IS OTHERWISE STATED AS A BREACH OF CONTRACT, AND LOOKING BACK TO EXHIBIT-A, THE CONSULTING SERVICES AGREEMENT, PARAGRAPH 4, IN THE EVENT OF ANY DISPUTE ARISING OUT OF, RELATING TO OR

THE ENGAGEMENT OF MILLIMAN BY THE COMPANY, THE PARTIES AGREE THE DISPUTE WILL BE RESOLVED BY FINAL AND BINDING ARBITRATION. IN THAT PROCESS WE ARE ENTITLED TO CONFIDENTIALITY, THE APPOINTMENT OF A PANEL OF THREE ARBITRATORS, EACH OF WHOM HAVE EXPERIENCE IN ACTUARIAL SCIENCE OR LAW, AND UNFORTUNATELY, THAT IS NOT WHAT WE HAVE RIGHT NOW. AND ALSO, THAT PROCESS ENABLES FOR A FAIRLY EXPEDITIOUS RESOLUTION PURSUANT TO ITS TERMS. SO, THERE IS NO REASON ON THE FACE OF THE DOCUMENT WHY THIS CONTRACT PROVISION SHOULD BE STRICKEN.

MOREOVER, WHEN YOU LOOK AT THE PROPOSAL FOR ACTUARIAL SERVICES MARKED EXHIBIT-B, EACH OF THE ITEMS IDENTIFIED THERE ARE INCLUDED WITHIN THE TEXT OF THE SERVICES THAT ARE TO BE PROVIDED BY MILLIMAN. SO, GIVEN THE NATURE OF THE RIGHTS OF THE REHABILITATOR, THE OBLIGATION TO STAND IN THE SHOES OF THE INSURER THAT THEY TAKE OVER, PARTICULARLY DURING THE PHASE OF REHABILITATION, THE CONTRACTURAL RELATIONSHIP BETWEEN THE PARTIES, THE SCOPE OF SERVICES AND THE ALLEGATIONS LODGED AGAINST MILLIMAN, WE BELIEVE THERE IS NO OPTION OTHER THAN TO DISMISS THIS FOR SUBJECT MATTER JURISDICTION, ALLOW THE DISPUTE TO PROCEED UNDER THE ARBITRATION PROVISION, AND LET MILLIMAN AND L.A.H.C. AND REHABILITATION RESOLVE THEIR DISPUTES APPROPRIATELY.

SO, WE REQUEST THAT MILLIMAN BE DISMISSED FROM THIS PROCEEDING PURSUANT TO OUR EXCEPTION. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. MR. CULLENS, YOU ARE GOING TO TAKE THIS?

MR. CULLENS: YES, YOUR HONOR.

AS YOUR HONOR KNOWS, I AM SURE YOU HAVE READ ALL THE BRIEFS THAT WERE FILED. WE FILED A LOT OF PAPER WITH YOUR HONOR. THIS IS A SEEMINGS CONFLICT BETWEEN --

THE COURT: LET'S PUT IT THIS WAY. ALL YOUR BRIEFS, THESE ARE MY NOTES. I DO NOT THINK I HAVE EVER HAD NOTES THIS THICK FOR ANY CASE, OKAY. I HAVE READ IT.

MR. CULLENS: NO DOUBT. THIS IS AN ISSUE OF FIRST IMPRESSION IN LOUISIANA. IT IS NOT THE ISSUE OF FIRST IMPRESSION IN OTHER JURISDICTIONS WHICH WE HAVE GRAPPLED WITH THIS ISSUE, COMPARING THE EXTENSIVE AND COMPREHENSIVE REGULATORY AND MANIFESTATION OF THE POLICE POWERS OF THIS STATE IN REGULATING FAILED INSURANCE COMPANIES AGAINST AN ARBITRATION PROVISION IN A PRIVATE CONTRACT WHICH THE INSURANCE COMMISSIONER AND HIS COURT-APPOINTED RECEIVER WAS NOT SIGNATORIES TO. SO, HERE WE ARE.

WE HAVE A COMPLEX COMMERCIAL LITIGATION INVOLVING A FAILED H.M.O., ALLEGATIONS OF DAMAGES OVER EIGHTY-TWO MILLION DOLLARS, AND ONE OF THE PARTIES THAT HAS BEEN SUED WANTS TO PUT THIS OUT OF THIS COURT'S JURISDICTION INTO ARBITRATION. THE NEXT ACTUARY WHO WILL ARGUE NEXT WANTS TO MOVE IT TO NEW YORK.

THE COURT: LET ME ASK YOU A QUESTION THOUGH. YOU DO NOT NECESSARILY STAND IN THE

SHOES OF THE REHABILITATED COMPANY, AND THERE IS A DISTINCTION BETWEEN LIQUIDATION AND REHABILITATION THAT WE ARE AWARE OF AND IS PART OF SOME OF THE ARGUMENTS AS TO WHETHER CERTAIN THINGS OCCUR IN A LIQUIDATION, CERTAIN RIGHTS TO THE COMMISSIONER IN A LIQUIDATION VERSUS A RECEIVERSHIP; YET, IF YOU ARE TRYING TO ENFORCE AS PART OF YOUR CLAIM TERMS OF A CONTRACT AND THE BREACH THEREOF, AND YET YOU WISH TO EXCLUDE A TERM OF THE CONTRACT, HOW CAN YOU HAVE IT BOTH WAYS?

MR. CULLENS: WELL, I WOULD SUGGEST TO YOUR HONOR IT IS NOT THAT OF A BLACK-AND-WHITE DECISION.

THE COURT: AND I INTERRUPTED YOUR PRESENTATION, AND I APOLOGIZE. GO AHEAD AND FINISH YOUR PRESENTATION AND JUST REMEMBER MY QUESTION. THANK YOU, MR. CULLENS.

MR. CULLENS: CERTAINLY.

SO, HERE WE ARE. WE HAVE LOUISIANA'S STRONG POLICY THROUGHOUT THE VARIOUS STATUTES THAT APPLY IN REGULATING FAILED INSURANCE COMPANIES ON HAVING A SINGLE VENUE TO DECIDE ALL OF THE ISSUES, WHETHER IT WOULD BE IN LIQUIDATION OR REHABILITATION. THOSE ARE STATED IN POSITIVE LAW BEGINNING WITH 22:257.

I WILL START OFF BY SAYING, WHEN WE ARE INTERPRETING THESE CASES, WE HAVE READ ALL THE BRIEFS AS YOUR HONOR HAS, THERE IS NO CASES INTERPRETING WHAT THE LANGUAGE OF THESE STATUTES MEAN; OTHERWISE, I AM SURE ONE OF THE PARTIES WOULD HAVE INTERPRETED IT. SO, IT IS

YOUR HONOR'S JOB TO INTERPRET THE STATUTE.

THE COURT: YOU SAID 257; YOU MEANT 2057.

MR. CULLENS: WELL, I AM GOING TO START WITH TITLE 22:257, WHICH IS THE EXCLUSIVE VENUE APPLYING TO H.M.O.'S WHICH --

THE COURT: I JUST WANT TO GET THE STATUTE IN FRONT OF ME. THAT IS ALL.

MR. CULLENS: -- WHICH L.A.H.C. WAS. L.A.H.C. WAS REGULATED DURING ITS EXISTENCE AS A HEALTH MAINTENANCE ORGANIZATION, H.M.O. NOW, THESE ARE, THESE STATUTES, THE INSURANCE CODE ARE REMEDIAL STATUTES. THEY CODIFY A STRONG PUBLIC INTEREST. THEY ARE THEREFORE TO BE LIBERALLY CONSTRUED. THERE HAS BEEN NO CITATIONS, THERE HAS BEEN NO INDICATION THAT THEY SHOULD BE STRICTLY CONSTRUED AGAINST APPLICATION. IN FACT, THEY SHOULD BE LIBERALLY CONSTRUED TO ALLOW THE COMMISSIONER OF INSURANCE THROUGH HIS COURT-APPOINTED RECEIVER TO PROMOTE THE PUBLIC'S INTEREST, THE INTEREST OF THE POLICY, THE INTEREST OF THE STAKEHOLDERS, THE INTEREST OF THE CREDITORS WHO THE RECEIVER IS HERE TO PROTECT BY OPERATION OF STATE LAW.

STARTING THE ANALYSIS BY LOOKING AT 22:257, IT IS VERY CLEAR, SPECIFICALLY SECTION-F, WHICH READS, THE COMMISSIONER IS SPECIFICALLY EMPOWERED TO TAKE OVER AND LIQUIDATE THE AFFAIRS OF ANY HEALTH MAINTENANCE ORGANIZATION EXPERIENCING FINANCIAL DIFFICULTY AT SUCH TIME AS HE DEEMS IT NECESSARY BY APPLYING TO THE 19TH J.D.C. FOR PERMISSION TO

TAKE OVER AND FIX THE CONDITIONS THEREOF. IT GOES ON, THE 19TH J.D.C. SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY SUIT ARISING FROM SUCH TAKEOVER AND LIQUIDATION.

THE COURT: YOU BELIEVE THAT TRUMPS AN ARBITRATION CLAUSE?

MR. CULLENS: THAT IS CLEARLY -- THE DEFENDANTS TAKE THE POSITION THAT THAT DOES NOT APPLY. IT WOULD ONLY APPLY TO A LIQUIDATION, NOT A REHABILITATION.

LOOKING TO THE LANGUAGE, IF THIS IS NOT A TAKEOVER OF AN H.M.O., I DO NOT KNOW WHAT IS. THERE HAS BEEN NO CITATIONS TO ANY COURT, REPORTED CASES THAT SAY IT WOULD NOT, AND GENERALLY CONSTRUING THIS LANGUAGE, I THINK THIS IS A STRONG REPRESENTATION AS THE BEGINNING POINT OF AN ARGUMENT, NOT THE END POINT.

THE COURT: LET'S LOOK AT THE LANGUAGE OF 22:257(F), AND THE VERY FIRST LINE CONTAINS A CONJUNCTIVE RATHER THAN AN ALTERNATIVE ADJECTIVE. IT SAYS, SPECIFICALLY EMPOWERED TO TAKE OVER "AND LIQUIDATE;" NOT "OR LIQUIDATE," OKAY. SO, THIS IS A LIQUIDATION STATUTE, ISN'T IT? NOT A REHABILITATION STATUTE.

MR. CULLENS: THAT IS CERTAINLY THE DEFENDANT'S POSITION THAT IT DOES NOT APPLY. I WOULD OFFER TO YOUR HONOR THERE HAS BEEN NO CASES TO SUGGEST THAT, AND GIVEN THE REMEDIAL NATURE OF THESE STATUTES AND THE OVERALL PURPOSE OF THE COMMISSIONER OF INSURANCE GETTING THIS RECEIVER APPOINTED TO PROTECT, NOT

JUST L.A.H.C.'S INTEREST, NOT JUST SHAREHOLDERS, BUT POLICYHOLDERS, CREDITORS, OUTSIDE HEALTHCARE PROVIDERS, AND THE GENERAL PUBLIC, THERE SHOULD BE SOME LIBERALITY IN INTERPRETING THIS.

BUT PUTTING THAT ASIDE, LET'S CONTINUE THE ARGUMENT.

THE COURT: WOULD NOT THE LEGISLATURE IF IT WANTED -- IF IT INTENDED IT TO BE LIBERALLY CONSTRUED TO ALSO BE APPLICABLE TO RECEIVERSHIP, OR CONSERVATION, WE CALL THEM RECEIVERSHIP, WOULDN'T IT HAVE "OR" INSTEAD OF "AND?" THE LEGISLATURE'S INTENT IS PRESUMED TO HAVE SELECTED ITS LANGUAGE CAREFULLY AND WITH THOUGHT.

MR. CULLENS: THEN THE WORD "TAKEOVER," IF IT WAS JUST GOING TO BE EXCLUSIVELY APPLIED TO LIQUIDATION ONLY, THE LEGISLATURE CERTAINLY COULD HAVE MADE THAT MORE CLEAR, BUT BY SAYING TAKEOVER, WHICH IS NOT A DEFINED -- THIS IS THE REHABILITATION, LIQUIDATION AND CONSERVANCY ACT. TAKEOVER IS NOT -- IN FACT, THEY USE THE TERM ONCE IT IS ALL TOGETHER, ONCE IT IS SPLIT UP. I DO NOT KNOW IF IT IS GRAMMATICALLY CORRECT OR NOT. WHAT DOES IT MEAN BY TAKEOVER? THIS IS CERTAINLY A TAKEOVER.

SO, I THINK WE WOULD AGREE, YOUR HONOR, THE LEGISLATURE COULD CERTAINLY BE MORE SPECIFIC MANY TIMES WHEN THEY ENACT LEGISLATION, BUT THE ACTUAL LANGUAGE YOUR HONOR NEEDS TO INTERPRET IS TAKEOVER AND LIQUIDATION. SO, THAT IS WHERE I THINK WE START. THAT IS

NOT WHERE WE END.

THE COURT: I UNDERSTAND.

MR. CULLENS: WE GO ON TO THE STATUTES WHICH CLEARLY APPLY, NO ARGUMENT, TITLE 22:2001, ET SEQ. LOOKING SPECIFICALLY, THERE IS A SPECIFIC VENUE PROVISION WHICH CLEARLY APPLIES TO BOTH 2004 --

THE COURT: THAT IS 22:2004, RIGHT?

MR. CULLENS: CORRECT, AND THAT IS ENTITLED, VENUE, AND "A" PROVIDES ANY ACTION UNDER THIS CHAPTER BROUGHT BY THE COMMISSIONER OF INSURANCE IN THAT CAPACITY OR AS CONSERVATOR, REHABILITATOR OR LIQUIDATOR MAY BE BROUGHT, IT IS DISCRETIONARY, IN THE 19TH J.D.C. FOR THE PARISH OF BATON ROUGE, OR ANY COURT WHERE VENUE IS PROPER UNDER ANY OTHER PROVISIONS OF LAW.

THE COURT: LET ME ASK YOU A QUESTION THEN THAT I WAS CONCERNED WITH WHEN I LOOKED AT THIS, AND THAT IS, LIQUIDATION STATUTES, IT IS -- THE SOLE VENUE IS 19TH J.D.C. WITH REHABILITATION, THE COMMISSIONER IS GIVEN ALTERNATIVE VENUES. WHY? WHY WOULD THERE BE A DIFFERENCE?

MR. CULLENS: WELL, AND IT IS A GOOD QUESTION. OUR POSITION IS IT REALLY DOES NOT, BECAUSE WHEN WE GO THROUGH THIS ANALYSIS, IT DOES NOT COME RIGHT OUT AND SAY, EXCLUSIVE VENUE, BUT IN PRACTICE, THAT IS WHAT HAPPENS.

THE COURT: BUT MY QUESTION GOES TO THE MAIN THEME OF, LIQUIDATIONS ARE TREATED DIFFERENTLY IN SOME WAYS THAN REHABILITATIONS,

OKAY, AND ONE OF THE DIFFERENCES TO SHOW THAT THE LEGISLATURE INTENDED THEM TO BE TREATED DIFFERENTLY IS THAT LIQUIDATIONS, THE SOLE VENUE IS THE 19TH J.D.C. RECEIVERSHIPS, THEY CAN BE BROUGHT IN THE 19TH J.D.C., OR ANY OTHER J.D.C. WHERE IT TAKES PLACE. SO, WHY WOULD THEY DO THAT IF THEY DID NOT INTEND THERE TO BE A DIFFERENT TREATMENT OF LIQUIDATIONS FROM RECEIVERSHIPS?

MR. CULLENS: I THINK, YOUR HONOR, YOU MAY BE ASSUMING THAT THAT IS THE CASE.

THE COURT: OH, I AM NOT ASSUMING. I AM JUST LOOKING --

MR. CULLENS: NO, NO, I AM BREAKING UP MY ARGUMENT --

THE COURT: I AM JUST LOOKING AT THE LANGUAGE OF THE STATUTE AND WONDERING, BECAUSE YOU WANT TO USE 257(F) WHICH STATES CLEARLY LIQUIDATION AND LIQUIDATION TAKEOVER AND LIQUIDATE, AND THEN WE SEE AS THE STRUCTURE OF THESE STATUTES FLOW, THAT THERE ARE DIFFERENT TREATMENTS FOR LIQUIDATION AND RECEIVERSHIP.

MR. CULLENS: IN ALL OF THE PROBABLY HUNDREDS OF PAGES THAT ARE INVOLVED, NO ONE HAS CITED A CASE THAT ARTICULATED THE PRESUMPTION THAT THERE IS A MEANINGFUL DIFFERENCE BETWEEN LIQUIDATING PROCEDURES AND REHABILITATION, OR CONSERVANCY.

THE COURT: BUT WHETHER THEY HAVE CITED IT OR NOT, I HAVE CERTAINLY BROUGHT IT UP AND THOUGHT ABOUT IT, BECAUSE IN PART, I AM SURE THEY WOULD LIKE TO SAY, WAIT, YOUR POSITION

FLOWS FROM A LIQUIDATION PROCEEDING. YOUR CASE LAW, AND I THINK IT IS THE **HOWELL CASE** IS A LIQUIDATION CASE, NOT A RECEIVERSHIP CASE, ALTHOUGH THEY DO NOT HAVE RECEIVERSHIP IN OHIO, OR CONSERVATORSHIP IN OHIO; THEREFORE, THEY HAD TO DO IT THAT WAY. BUT YOU UNDERSTAND MY CONCERN I HOPE.

MR. CULLENS: CERTAINLY, YOUR HONOR, CONCEPTUALLY, BUT IN PRACTICE, THERE IS NO MEANINGFUL DIFFERENCE FOR THE PURPOSES THAT WE ARE HERE TODAY TO DETERMINE THE APPROPRIATE VENUE FOR THIS CASE, AND WHETHER OR NOT EITHER AN ARBITRATION OR FORUM SELECTION CLAUSE SHOULD BE GIVEN EFFECT.

THE COURT: I AM NOT WORRIED ABOUT THE VENUE FOR BRINGING THE ACTION. I AM WORRIED ABOUT GIVING EFFECT -- ONCE BROUGHT IN THIS JURISDICTION, DO I GIVE EFFECT TO THE ARBITRATION CLAUSE? THAT IS WHAT I AM REALLY WORRIED ABOUT. AND A LOT OF YOUR ANALYSIS HAS TO DO, OR YOUR BRIEF HAS TO DO WITH LIQUIDATIONS AND NOT RECEIVERSHIPS, SO THAT IS PART OF THE CONCERN THAT I HAVE.

MR. CULLENS: AND I HAVE KIND OF JUMP-AROUND THOUGHTS RIGHT NOW.

THE COURT: I KEEP INTERRUPTING YOU, I AM SORRY. I JUST WANT YOU TO BE THINKING ABOUT WHAT MY CONCERNS ARE WITH THIS, AND WHY I AM TROUBLED.

MR. CULLENS: ABSOLUTELY, YOUR HONOR. I WOULD LIKE TO CONTINUE WITH 2004.

THE COURT: GO AHEAD.

MR. CULLENS: B, ANY ACTION UNDER THIS CHAPTER, AS YOUR HONOR POINTED OUT, MAY ALSO BE BROUGHT IN THE PARISH WHERE AT LEAST 25 PERCENT OF THE POLICYHOLDERS OF THE INSURER RESIDES. C IS THE KILLER. C PROVIDES, IF AN ACTION IS FILED IN MORE THAN ONE VENUE, THE VENUE SHALL, THE COURT SHALL -- IT IS NOT DISCRETIONARY -- CONSOLIDATE ALL SUCH CASES INTO ONE COURT WHERE VENUE IS PROPER. THAT IS A MANDATORY OBLIGATION TO WHERE IF USING THE DISCRETION THAT THIS PROVISION PROVIDES, THERE IS MULTIPLE LAWSUITS OUT THERE, THIS SHOWS IT HAS TO BE, WHETHER IT IS LIQUIDATION OR CONSERVATORSHIP OR REHABILITATION, IT HAS GOT TO BE IN THE ONE VENUE WHERE JURISDICTION IS PROPER, WHICH IN THIS CASE IS THE 19TH J.D.C. THAT IS A VERY STRONG STATEMENT OF STRONG LOUISIANA POLICY, THAT GIVEN THE POLICE POWERS, YOU NEED TO BE IN ONE COURT, AND IT IS THE 19TH J.D.C., IF THAT IS WHERE VENUE APPLIES, WHICH IT DOES IN THIS CASE.

THE COURT: SO, UNDER EITHER ONE, LIQUIDATION OR RECEIVERSHIP, THE ACTION HAS TO BE BROUGHT IN A LOUISIANA COURT, AND GENERALLY, BASICALLY, THE 19TH J.D.C., WHICH MEANS HOW CAN WE LITIGATE AN ISSUE OUTSIDE OF THAT VENUE; I.E., BY ARBITRATION WITH THE AMERICAN ARBITRATION ASSOCIATION OR WHATEVER THE DISPUTE RESOLUTION, SECTION 4 OF THE CONSULTING SERVICES AGREEMENT SAYS, RIGHT? THAT IS YOUR ARGUMENT?

MR. CULLENS: ESSENTIALLY, BUT THERE IS

MORE. I HAVE SOME OTHER STATUTES AND OTHER ORDERS THAT CLEARLY POINT TO THAT POSITION, BUT AS A PRACTICAL MATTER, L.A.H.C. MAY GO INTO LIQUIDATION TOMORROW, COULD GO THIS AFTERNOON, COULD GO NEXT WEEK, COULD GO NEXT MONTH, COULD GO RIGHT IN THE MIDDLE OF THIS LITIGATION. THAT IS A VERY PRACTICAL POSSIBILITY, IN WHICH CASE I DO NOT THINK ANYBODY WOULD ARGUE THERE IS NO DISPUTE. IT MUST BE DECIDED IN THE 19TH J.D.C. THAT IS WHY I BELIEVE, ALTHOUGH INTELLECTUALLY AND CONCEPTUALLY IT IS PERFECTLY APPROPRIATE, AND IF I WAS DEFENDING THE DEFENDANTS, I WOULD RAISE THIS POSSIBLE INTELLECTUAL CONCEPTUAL DISTINCTION BETWEEN LIQUIDATION AND REHABILITATION, OR CONSERVATORSHIP, AND HOW IT APPLIES ON THE PARTICULAR ISSUE TODAY AS TO WHAT VENUE IS APPROPRIATE TO HEAR ALL THESE CASES.

THE COURT: I SAID THE WORD "RECEIVERSHIP" FOR SOME REASON. I APOLOGIZE. I MEANT "REHABILITATION" EACH TIME I SAID IT. I APOLOGIZE IF I DID. I AM THINKING IN MY MIND I MAY HAVE SAID THAT. GO AHEAD.

MR. CULLENS: BUT THAT VERY REAL PRACTICAL CONCERN, LET'S JUST SAY HYPOTHETICALLY, THE ARBITRATION, WE GO TO NEW YORK FOR BUCK, AND WE END UP IN AN ARBITRATION PROCEEDING FOR MILLIMAN, AND EVERYBODY ELSE IS HERE, AND THEN NEXT WEEK OR NEXT MONTH IT GOES INTO LIQUIDATION, WHICH IS A VERY REAL POSSIBILITY. THEN ALL THOSE COME BACK AND GO HERE. I THINK THAT REVEALS, IF YOU WILL, THE ILLUSORY NATURE

OF THAT CONCEPTUAL DISTINCTION BETWEEN THE REHABILITATION AND LIQUIDATION GIVEN THE IMMEDIATE ISSUE THAT YOUR HONOR HAS BEEN ASKED TO DECIDE TODAY. LET'S GO ON.

THE COURT: SO, WITH REGARD TO THE VENUE, I JUST WANT TO BE CLEAR THAT YOU ARE SUGGESTING I MAY BE TAKING AS A RED HERRING 2004(A) AND (B), BUT 2004(C) PUTS THE NAIL IN THE COFFIN BECAUSE IT IS A MANDATORY LANGUAGE, THAT IT SHALL BE BROUGHT IN ONE COURT WHERE VENUE IS PROPER, WHICH WOULD BE LOUISIANA.

MR. CULLENS: RIGHT. PUTTING ASIDE, CONCEDING FOR THE SAKE OF ARGUMENT ONLY THAT 257 DOES NOT APPLY, CLEARLY IN THE FACTS OF THIS PARTICULAR CASE, THE ONLY VENUE THAT APPLIES WOULD BE THE 19TH J.D.C. PURSUANT TO 2004(C). IT SHALL. IT IS NOT DISCRETIONARY. AND AGAIN, THIS RAISES A POINT; I MIGHT BE JUMPING A HEAD OF MYSELF, IT IS SOMEWHAT UNFAIR GIVEN THAT THE INSURANCE CODE, AND SPECIFICALLY, THE REHABILITATION, LIQUIDATION AND CONSERVANCY LAW OF LOUISIANA GIVES POLICE POWERS TO THE COMMISSIONER OF INSURANCE. IT MAY BE UNFAIR. IF I WERE REPRESENTING MILLIMAN, WAIT A MINUTE, I AGREED WITH THIS PRIVATE PARTY IN A PRIVATE CONTRACT TO ARBITRATE MY DISPUTES. WHERE DOES THE DEPARTMENT OF INSURANCE AND THE INSURANCE COMMISSIONER AND THIS RECEIVER GET OFF SAYING WE DO NOT HAVE TO DO THAT? WELL, THERE IS LARGER CONCERNS INVOLVED, AND THIS LAW, WHICH IS THE MANIFESTATION OF LOUISIANA POLICY SAYS,

WE DO IT ALL HERE IN THE 19TH J.D.C. GO FORWARD, 2006, TITLE 22:2006, IT IS ENTITLED, "INJUNCTION," AND IT IS A LONG -- I AM NOT GOING TO READ THE ENTIRE THING, BUT SEVERAL SENTENCES DOWN, LOUISIANA POSITIVE LAW PROVIDES, QUOTE, THE COURT MAY ISSUE SUCH OTHER INJUNCTIONS OR ENTER SUCH OTHER ORDERS AS MAY BE DEEMED NECESSARY TO PREVENT INTERFERENCE WITH THE PROCEEDINGS. AND AGAIN, THIS APPLIES TO LIQUIDATION, CONSERVATORSHIP, REHABILITATION.

SO, THIS IS THE POLICY OF LOUISIANA TO PROVIDE THE RECEIVERSHIP COURT, WHICH IS NOT THIS COURT, YOUR HONOR, AS YOU KNOW. THIS IS A PROCEEDING IN FRONT OF JUDGE JOHNSON.

THE COURT: JUDGE JOHNSON, YES.

MR. CULLENS: SO, THEN THAT REQUIRES US TO LOOK AT, WHAT SPECIFICALLY DID JUDGE JOHNSON ORDER IN THIS PARTICULAR CASE, AND THERE ARE NUMEROUS PROVISIONS IN THE REHABILITATION ORDER WHICH I WOULD LIKE TO FORMALLY INTRODUCE. IT WAS ATTACHED TO OUR OPPOSITION MEMORANDUM AS EXHIBIT-B. IF YOU LOOK TO THE PAGE 3 --

THE COURT: LET ME GET IT IN FRONT OF ME, OKAY. ALL RIGHT. I HAVE THE ONE THAT IT IS DATED ON THE TOP RIGHT CORNER AS SEPTEMBER 21, 2015, CORRECT?

MR. CULLENS: CORRECT.

THE COURT: AND IT WAS SIGNED -- LET ME GET THE RIGHT DATE ON IT, MAKE SURE WE ARE ALL LOOKING AT THE SAME DOCUMENT -- BY JUDGE JOHNSON ON SEPTEMBER 21, 2015, CORRECT?

MR. CULLENS: YES, YOUR HONOR.

THE COURT: ALL RIGHT. I HAVE GOT THE DOCUMENT. PAGE 3?

MR. CULLENS: THERE ARE SEVERAL, BUT STARTING WITH ON PAGE 3, THE FIRST FULL ORDER PARAGRAPH, IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT PURSUANT TO TITLE 22:2006, ANY AND ALL PERSONS AND ENTITIES SHALL BE AND HEREBY ARE PERMANENTLY ENJOINED FROM OBTAINING PREFERENCES, JUDGMENTS, ATTACHMENTS OR OTHER LIKE LIENS, OR THE MAKING OF ANY LEVY AGAINST L.A.H.C., ITS PROPERTIES AND ASSETS WHILE IN THE COMMISSIONER'S POSSESSION AND CONTROL.

I WOULD RESPECTFULLY SUGGEST TO YOUR HONOR, PURSUANT TO THE BROAD POLICE POWERS PROVIDED BY LOUISIANA LAW, THAT IS A DIRECT ORDER THAT NO ONE LIKE MILLIMAN CAN TRY TO GET ANY KIND OF PROCEEDING TO INTERFERE WITH THESE PROCEEDINGS WHERE EVERYONE IS JOINED PURSUANT -- THEY ARE ENJOINED. THEY ARE PERMANENTLY ENJOINED.

THE NEXT ONE, TURN, YOUR HONOR, TO PAGE 7, THE SECOND FULL ORDER. IT IS LONG. I AM NOT GOING TO READ THE WHOLE THING, BUT IN ESSENCE, IT IS ORDERED, ADJUDGED AND DECREED THAT MEMBERS, PRESCRIBERS, POLICYHOLDERS, EVERYBODY, THIRD-PARTY ADMINISTRATORS, ACTUARIES, ATTORNEYS, ANYONE AFFILIATED WITH L.A.H.C. ARE HEREBY PERMANENTLY ENJOINED EXCEPT WITH THE EXPRESSED PERMISSION OF THE RECEIVER, AND THEN LETTER-C, SUBPART 5, ROMAL NUMERAL FIVE, INTERFERING WITH THE ACQUISITION OF POSSESSION

BY THE EXERCISE OF DOMINION AND CONTROL OVER THE PROPERTY OF L.A.H.C. BY THE REHABILITATOR OR THE REHABILITATOR'S CONDUCT OF THE BUSINESS AND AFFAIRS OF L.A.H.C. AGAIN, EXTREMELY BROAD. ACTUARIES, ANY THIRD PARTIES PERMANENTLY ENJOINED FROM BASICALLY INTERFERING WITH THE ORDERLY DISPOSITION OF L.A.H.C. BY THE RECEIVER.

THE NEXT PARAGRAPH ON PAGE 7. AGAIN, IT IS LONG, AND TRYING TO SPEED IT UP, IT IS SOMEWHAT REDUNDANT, BUT AGAIN, IT IS EXTREMELY BROAD, AND IT PERMANENTLY ENJOINS ANYONE FROM DOING ANYTHING THAT MIGHT CONCEIVABLY UPSET THE ORDERLY DISPOSITION OF L.A.H.C., ITS ASSETS AND AFFAIRS. I MEAN, ARBITRATION IS CERTAINLY GOING TO DISRUPT THE ORDERLY ADMINISTRATION OF L.A.H.C.'S BUSINESS.

THE COURT: AND THAT WOULD FALL UNDER THE LANGUAGE ON THE THIRD -- SECOND AND THIRD LINE, ENJOINED FROM INSTITUTING AND/OR TAKING FURTHER ACTION IN ANY SUITS, PROCEEDINGS; PROCEEDINGS BEING AN ARBITRATION?

MR. CULLENS: YES, YOUR HONOR.

THE COURT: OKAY. I UNDERSTAND YOUR ARGUMENT.

MR. CULLENS: THE NEXT PAGE, PAGE 8, THE FIRST FULL PARAGRAPH. AGAIN, IT IS LONG. I DO NOT WANT TO READ THE WHOLE THING. THE DOCUMENT SPEAKS FOR ITSELF. FURTHER ORDERED, ADJUDGED AND DECREED THAT EXCEPT WITH THE CONCURRENCE OF THE REHABILITATOR; AGAIN, IT REFLECTS THE INHERENT FAIRNESS FROM THE DEFENDANT'S

PERSPECTIVE, BUT THE RECEIVER AND COMMISSIONER OF INSURANCE HAVE A LOT OF POWER. IF THEY WANT TO, WE CAN GO TO FEDERAL COURT, WE CAN GO TO OHIO, KENTUCKY OR OTHER VENUES, BUT DEFENDANTS CANNOT WITHOUT OUR CONSENT, WITHOUT OUR AGREEMENT. ORDER OF THIS COURT, ALL SUITS, PROCEEDINGS, SEIZURES AGAINST L.A.H.C. AND/OR ITS RESPECTIVE MEMBERS SHALL BE AND HEREBY ARE STAYED IN ORDER TO PREVENT THE OBTAINING OF ANY PREFERENCE. LETTER C, THE LITIGATION INVOLVES OR MAY INVOLVE THE ADJUDICATION OF LIABILITY, OR DETERMINES ANY POSSIBLE RIGHTS OR OBLIGATIONS OF ANY MEMBERS SUBSCRIBED OR ENROLLEE, POLICYHOLDER OR PERSON, ET CETERA.

WHAT MILLIMAN IS ASKING THIS COURT TO DO, AND IT DOVETAILS WITH WHAT BUCK WANTS THIS COURT TO DO IS TO SEND IT TO NEW YORK TO HAVE A NEW YORK COURT DECIDE WHAT THIS COURT IS PERFECTLY CAPABLE OF DECIDING ADJUDICATING THOSE RIGHTS. THEY HAVE BEEN PERMANENTLY ENJOINED FROM DOING SO PURSUANT TO 2006 OF TITLE 22, AND PURSUANT TO THE EXPRESSED TERMS OF JUDGE JOHNSON'S BINDING ORDER.

THE LAST SECTION, F. AGAIN, IT IS SOMEWHAT REDUNDANT, BUT IT ALSO PERMANENTLY ENJOINS ANY TYPE OF ARBITRATION PROCEEDING. PAGE 9, AND THIS IS THE LAST ONE, YOUR HONOR, THE SECOND FULL PARAGRAPH, ANY AND ALL INDIVIDUALS AND ENTITIES SHALL BE, QUOTE, PERMANENTLY ENJOINED FROM INTERFERING WITH THESE PROCEEDINGS OR WITH THE REHABILITATOR'S POSSESSION AND CONTROL, FROM INTERFERING WITH

THE CONDUCT AND BUSINESS OF L.A.H.C. BY THE REHABILITATOR, ET CETERA. THAT IS A VERBATIM ORDER THAT TRACKS THE LANGUAGE OF 2006 WHICH SAYS NO ONE, INCLUDING MILLIMAN AND BUCK, CAN INTERFERE WITH THE DUE PROCEEDINGS AS THEY STAND IN THIS CASE, AND THAT IS A REPRESENTATION -- IT IS NOT JUST A REPRESENTATION; IT IS AN EMBODIMENT OF THE STRONG PUBLIC POLICY GIVING SUCH BROAD AND COMPREHENSIVE POLICE POWERS TO THE COMMISSIONER OF INSURANCE AND THROUGH HIS COURT-APPOINTED RECEIVER.

MR. CLARK DID NOT -- I WOULD NOT BRING IT UP EITHER, HE DID NOT TALK ABOUT THE **TAYLOR CASE**. CERTAINLY, IT IS NOT LOUISIANA. WE ARE NOT SAYING IT IS BINDING IN ANY WAY ON YOUR HONOR, BUT IT IS FACTUALLY, DIRECTLY ON POINT. IT STARTED OUT AS A REHABILITATION --

THE COURT: MR. CULLENS, EXCUSE ME A MINUTE. DID YOU -- BECAUSE THIS IS A DIFFERENT PROCEEDING THAN THE REHABILITATION, DID YOU WANT TO PUT -- EVEN THOUGH I CAN TAKE JUDICIAL NOTICE OF IT, DO YOU WANT TO PUT THE ORDER OF REHABILITATION INTO EVIDENCE IN THIS HEARING?

MR. CULLENS: YES, YOUR HONOR. I BELIEVE IT WAS ATTACHED AS EXHIBIT B, AND I WOULD LIKE TO FORMALLY OFFER IT INTO EVIDENCE.

THE COURT: I WILL ACCEPT IT NOW.

I WANT EVERYBODY TO REMEMBER, YOUR ATTACHMENTS TO YOUR MEMORANDA AND EVERYTHING THAT YOU FILED ARE NOT EVIDENCE IN THIS HEARING UNLESS YOU PUT IT INTO THE RECORD OF THIS

HEARING, OKAY. SO, JUST REMEMBER IF YOU THINK SOMETHING IS IN, IT MAY NOT BE UNTIL I ACCEPT IT, OKAY.

MR. CULLENS: ABSOLUTELY.

SO, I WOULD LIKE TO, FOR THE RECORD, FORMALLY OFFER, FILE AND INTRODUCE THE PERMANENT ORDER OF REHABILITATION AND INJUNCTIVE RELIEF AS PREVIOUSLY DESCRIBED AS EXHIBIT-B TO OUR OPPOSITION MEMORANDA.

THE COURT: ANY OBJECTIONS?

MR. CLARK: NO OBJECTION, YOUR HONOR.

MR. CULLENS: LET'S CALL IT COMMISSIONER-B, PLEASE.

THE COURT: ADMIT IT. VERY GOOD. I WILL ACCEPT IT AS COMMISSIONER-B.

(EXHIBIT INTRODUCED INTO EVIDENCE AS COMMISSIONER EXHIBIT-B)

MR. CULLENS: AND BEFORE WE GO ON TO THE **TAYLOR CASE**, WHICH IS BRIEFED EXTENSIVELY, I WOULD FURTHER -- THIS WAS NOT DISCUSSED IN ANY OF THE PLEADINGS, BUT AGAIN, AS A PRACTICAL MATTER, YOUR HONOR, IF THERE IS ANY DOUBT, AND WE RESPECTFULLY SUGGEST THERE SHOULD NOT BE, THAT THE EXCLUSIVE VENUE FOR THIS PROCEEDING AGAINST MILLIMAN AND ALL THE OTHER DEFENDANTS IS MANDATED TO BE HERE IN THE 19TH J.D.C., IF THERE IS ANY AMBIGUITY OR DOUBT ABOUT THE SCOPE OF JUDGE JOHNSON'S ORDER, I WOULD RESPECTFULLY SUGGEST WE GO BACK TO JUDGE JOHNSON. IF THE WORD SPECIFICALLY "ARBITRATION" NEEDS TO BE IN THERE, HE CERTAINLY HAS THE POWER TO DO THAT. HE IS STILL PRESIDING. UNTIL THIS MATTER IS

CLOSED YEARS FROM NOW, HE STILL HAS -- IS CLOTHED WITH THE FULL AUTHORITY OF LOUISIANA LAW TO BE CLEAR.

THE COURT: I MUST TAKE THE ORDER AS IT EXISTS TODAY FOR THIS HEARING. SO, TO SAY I CAN GO BACK AND DO SOMETHING IS NOT GOING TO HELP ME TODAY IN RESOLVING THE MATTER, BUT I DO APPRECIATE THAT YOU HAVE THE ABILITY TO DO SO.

MR. CULLENS: FAIR ENOUGH, YOUR HONOR.

AS TO **TAYLOR**, **TAYLOR** STARTED AS A REHABILITATION PROCEEDING. IT WAS CONVERTED TO A LIQUIDATION. AGAIN, RECOGNIZING DEFENDANT'S ARGUMENT THAT THERE IS A DIFFERENCE, AND YOUR HONOR'S RECOGNITION THAT CONCEPTUALLY THERE MAY BE A DIFFERENCE, IT IS A DIFFERENCE IN ALL DUE RESPECT WITHOUT MEANING. IF IT HAD A MEANING, I KEPT LOOKING FOR IT, I KEPT WANTING TO SEE THAT CASE, OR THAT ARTICLE, OR THAT LAW REVIEW POSITION, OR SOME SCHOLAR THAT ARTICULATED HOW THE VERY CLEAR INTEREST IN THE STATE IN HAVING EXCLUSIVE VENUE IN THE 19TH J.D.C. IN PROSECUTING THESE CLAIMS IN ONE COURT IN A LIQUIDATION PROCEEDING WAS DIFFERENT OR SOMEHOW JUSTIFIED IN THE CONTEXT OF A REHABILITATION OR CONSERVATORSHIP. THAT HAS NOT BEEN OFFERED. WE CAN IMAGINE IT MAKES A DIFFERENCE, BUT AS A PRACTICAL MATTER, AND AS A MATTER OF LAW, IT DOES NOT. WE HAVE ALREADY GONE THROUGH THE STATUTORY INTERPRETATION, SO TRYING TO DISTINGUISH **TAYLOR** SIMPLY BECAUSE IT WAS CONVERTED FROM A REHABILITATION TO A LIQUIDATION, I RESPECTFULLY SUGGEST TO YOUR

HONOR, IT IS A DIFFERENCE WITHOUT A MEANING. THE FACTS WERE THE SAME. THE FACTS WERE IT WAS AN ACTUARY, JUST LIKE MILLIMAN AND BUCK, AGAIN WITH A CONTRACT WITH AN INSURER THAT WENT INSOLVENT, AND THEY, OF COURSE, TRIED TO ENFORCE THAT ARBITRATION PROVISION AGAINST THE INSOLVENT INSURER. IT WENT ALL THE WAY UP TO THE OHIO SUPREME COURT, AND AFTER ANALYZING THE ISSUES, I RESPECTFULLY SUGGEST, ALTHOUGH IT IS NOT BINDING ON YOUR HONOR, THAT THE OHIO SUPREME COURT GOT IT RIGHT. THEY RECOGNIZED THE BROAD AND EXPANSIVE POWERS THAT THEY DO NOT, AS THE **LEBLANC CASE**, FIRST CIRCUIT CASE RECOGNIZES CLEARLY THAT THE COMMISSIONER AS REHABILITATOR, QUOTE, DOES NOT STAND PRECISELY IN THE SHOES, CLOSE QUOTE, OF THE INSURER. OHIO RECOGNIZED THAT, RECOGNIZED THAT THEY ARE NOT A SIGNATORY. RECOGNIZED THAT THERE IS -- IT IS NOT A QUESTION OF PRIVATE CONTRACT INTERPRETATION. YOU HAVE GOT TO BALANCE THE STATE'S INTEREST IN EXERCISING THE POLICE POWERS OF THE INSURANCE COMMISSIONER AGAINST WHETHER THIS ARBITRATION PROVISION SHOULD APPLY.

THE COURT: LET ME CORRECT ONE STATEMENT I MAY HAVE MADE EARLIER THAT WAS A MISTAKE. I MAY HAVE SAID OHIO, THE OHIO CASE, **TAYLOR CASE** WAS A LIQUIDATION CASE BECAUSE THEY DO NOT HAVE REHABILITATION; THAT IS INCORRECT. IT DID START AS REHABILITATION. THEY DO HAVE REHABILITATION THERE. I WAS THINKING OF A DIFFERENT STATE IN SOME OF MY RESEARCH EARLIER

IN THE WEEK. SO, I JUST WANTED TO CORRECT THAT STATEMENT. GO AHEAD.

MR. CULLENS: EVERY STATE, AND THAT -- INSURANCE IS PROBABLY ONE OF THE MOST IMPORTANT STATE INTERESTS THAT THEY HAVE, AND EACH STATE DOES THINGS A LITTLE BIT DIFFERENTLY.

THE COURT: I JUST WANTED TO CORRECT A STATEMENT I HAD MADE IN AN OFFHAND COMMENT, THAT THAT WAS AN INCORRECT STATEMENT. GO AHEAD.

MR. CULLENS: SO, LOOKING AT IT, LOOKING AT THE EQUITIES INVOLVED, THE LAW INVOLVED, RECOGNIZING IT IS NOT AN IRRELEVANT OR UNIMPORTANT FACT, MILLIMAN IS TRYING TO ENFORCE AN ARBITRATION PROVISION, NOT AGAINST A SIGNATORY TO THE CONTRACT, L.A.H.C. I THINK THAT WOULD BE A PRETTY STRAIGHTFORWARD CASE. THEY ARE TRYING TO ENFORCE AN ARBITRATION PROVISION AGAINST A NON-SIGNATORY TO THE CASE; NAMELY, THE COMMISSIONER OF INSURANCE THROUGH THE RECEIVER.

IF YOUR HONOR HAS READ **TAYLOR**, IN OHIO THEY DEVELOPED A JURISPRUDENTIAL RULE THAT SAYS UNDER THOSE CIRCUMSTANCES, INSTEAD OF BEING A PRESUMPTION OF ARBITRABILITY, IF YOU TRY TO ENFORCE AN ARBITRATION PROVISION AGAINST A NON-SIGNATORY, THERE IS A PRESUMPTION OF NON-ENFORCEABILITY. WE LOOKED FOR LOUISIANA COUNTERPART. LOUISIANA -- NO LOUISIANA CASE HAS ADDRESSED THAT ISSUE. THEY HAVE NOT RULED ONE WAY OR THE OTHER. IT SIMPLY HAS NOT BEEN BROUGHT UP, BUT I WOULD RESPECTFULLY, WE WOULD

RESPECTFULLY SUGGEST TO YOUR HONOR, THAT KIND OF MAKES SENSE.

THE COURT: YES. YOU HAVE NOT ADDRESSED IT YET, BUT I ASSUME YOU WERE GOING TO TALK ABOUT 9:4201 WHICH IS THE BINDING ARBITRATION LAW AND THE LANGUAGE IN IT, WHICH SPECIFICALLY STATES THAT ARBITRATION AGREEMENTS ARE ENFORCEABLE SAVE UPON SUCH GROUNDS AS EXIST AT LAW OR IN EQUITY. SO, IT IS NOT AUTOMATIC THAT WE HAVE TO. THEY ARE FAVORED, BUT IF THERE IS LAW THAT REQUIRES SOMETHING ELSE --

MR. CULLENS: AND THAT IS THE SPRINGBOARD THAT GETS US RIGHT IN TO THE INSURANCE CODE, AND THE CONSERVATORSHIP, REHABILITATION, LIQUIDATION LAW, WHICH APPLIES --

THE COURT: I BRING THAT UP FOR THE NEXT ONE THAT IS COMING UP BY THE WAY, BECAUSE THAT IS A FORUM AND LAW SELECTION ISSUE THAT DOES NOT NECESSARILY, OR MAY NOT HAVE THAT SAME LANGUAGE AS THE ARBITRATION STATUTE DOES.

MR. CULLENS: VERY CLOSELY RELATED ARGUMENTS.

THE COURT: BUT WE ARE NOT GOING TO WORRY ABOUT THAT NOW. I DID NOT WANT -- IF I FIND IN YOUR FAVOR ON THIS ONE, I DID NOT THINK -- I DID NOT WANT THE OTHER PEOPLE TO THINK THEY WERE GOING TO LOSE ON THE FORUM SELECTION, ET CETERA. GO AHEAD.

MR. CULLENS: FAIR ENOUGH, YOUR HONOR.

SO, YES. THE **CRIST CASE** I BELIEVE, WHICH WAS CITED MAYBE 20 YEARS AGO, THERE WAS AN ARGUMENT ON WHETHER GENERAL CONTRACT LAW OF

LOUISIANA APPLIED, OR THE SPECIFIC PROVISIONS OF THE LOUISIANA INSURANCE CODE. CLEARLY, THE PROVISIONS OF THE MORE SPECIFIC INSURANCE CODE APPLY, SO IT IS REALLY A FALSE CONFLICT.

IF WE WERE ANALYZING THE ACTUAL CONTRACT BETWEEN L.A.H.C. AND MILLIMAN, YES, THE ARBITRATION, THE FAVORABLE -- THE PRESUMPTION OF ARBITRATION, THE FEDERAL ACT, THE STATE ACT WOULD ALL BUT COMPEL ARBITRATION IF L.A.H.C. WERE TRYING TO FILE SUIT OUTSIDE OF ARBITRATION, BUT THAT IS NOT THE CASE. THE INSURANCE CODE PROVISIONS, ALL THE STATUTES THAT WE HAVE CITED APPLY, AND YOUR HONOR IS FACED WITH MAKING THE DECISION ON WHETHER OR NOT, AS A MATTER OF LOUISIANA LAW AND PUBLIC POLICY, THAT THE ARBITRATION PROVISION CAN BE ENFORCED AGAINST A NON-SIGNATORY, THE COMMISSIONER OF INSURANCE, GIVEN THE OVERLAY OF LOUISIANA'S INTEREST IN POSITIVE LOUISIANA LAW.

SEVERAL OF THE CASES, **TAYLOR** AGAIN WAS WELL THOUGHT OUT, ANOTHER REASON **TAYLOR** DECIDED THIS WAS NOT PURELY A CONTRACTURAL DISPUTE. MR. CLARK RIGHTFULLY SO TRIED TO CHARACTERIZE OUR CLAIMS AS PURE BREACH OF CONTRACT. THAT IS SIMPLY NOT AN ACCURATE CHARACTERIZATION OF OUR CLAIMS. WE HAVE CERTAINLY MADE BREACH OF CONTRACT ALLEGATIONS, BUT IF YOU LOOK AT COUNT 4, PAGE 23, PARAGRAPH 74 TO 103 OF OUR PETITION, OUR AMENDED PETITION, CLEARLY WE HAVE ALLEGED NEGLIGENCE, GROSS NEGLIGENCE, AND MORE IMPORTANTLY, PROFESSIONAL MALPRACTICE.

YOUR HONOR, ACTUARIES AND DOCTORS DO NOT

STAND IN THE SAME SHOES, BUT BOTH OF THEM HAVE A PROFESSIONAL DUTY THAT STANDS INDEPENDENTLY OF ANY CONTRACT. CERTAINLY THE LIMITS OF THE CONTRACT BETWEEN L.A.H.C. AND MILLIMAN DO NOT DEFINE OR GIVE RISE TO ALL OF THE CLAIMS THAT THE RECEIVER HAS AGAINST MILLIMAN. WE ARTICULATED IN OUR PETITION VARIOUS STANDARDS OF PROFESSIONAL CONDUCT WHICH APPLY TO MILLIMAN WHICH WE ALLEGE THEY BREACHED. THAT IS OUTSIDE OF THE CONTRACT. WE ARE NOT SPECIFICALLY -- IT IS PART OF IT, BUT IT IS NOT THE ENTIRE ALLEGATION. IT IS NOT OUR ENTIRE CLAIMS. THE **TAYLOR COURT** I SUGGEST TO YOU FOUND SIGNIFICANT, AND SPECIFICALLY LOOKING AT BOTH, TWO FORMS OF CLAIMS, MALPRACTICE CLAIMS IN **TAYLOR** LIKE WE HAVE HERE, AND PREFERENCE OR WHAT IS CALLED AVOIDANCE CLAIMS, WHICH WE DO NOT HAVE AT ISSUE HERE. IN ANALYZING BOTH OF THOSE CLAIMS, THE OHIO SUPREME COURT CORRECTLY CAME TO THE CONCLUSION, BECAUSE IT IS NOT EXCLUSIVELY ARISING OUT OF THE CONTRACT AT ISSUE. BECAUSE THE DUTIES ARE IMPOSED OUTSIDE OF THE CONTRACT, THAT ARBITRATION PROVISION, YOU DO NOT HAVE TO TAKE THE ENTIRE -- WE ARE NOT -- IF WE GOT RID OF THE CONTRACT COMPLETELY, INCLUDING THE ARBITRATION, WE WOULD STILL HAVE A BASIS TO SUE MILLIMAN GIVEN THOSE PROFESSIONAL VIOLATIONS AND THEIR NEGLIGENCE. THE DUTY EXISTS OUTSIDE OF THE CONTRACT. SO, THAT OVERCOMES THE **TAYLOR COURT**, AND I RESPECTFULLY SUGGEST TO YOUR HONOR THAT YOU HAVE GOT TO TAKE ALL OF IT OR NOTHING. THAT

IS NOT THE WAY TO PRESENT THE ISSUE OR RESOLVE IT.

IF THIS WERE PURELY -- IF THIS WERE AN INTERPRETATION OF PROVISION 12.5 OF THIS CONTRACT, AND IT WAS CLEAR THAT THE ARBITRATION APPLIED TO THAT SPECIFIC PROVISION, AND THAT WAS ALL WE WERE FIGHTING ABOUT, THEIR ARGUMENT WOULD HAVE MORE IMPACT. THAT IS NOT THE CASE HERE. MANY OF OUR CLAIMS IF NOT THE PREDOMINANT CLAIMS RELATE TO THEIR PROFESSIONAL NEGLIGENCE, THEIR PROFESSIONAL MALPRACTICE, WHICH IS ROOTED IN THEIR STANDARDS SET BY THE INDUSTRY AND THEIR PROFESSION; NOT THIS SPECIFIC CONTRACT.

SEVERAL OTHER CASES, THERE WERE A LOT OF CASES CITED, THE **REPUBLIC OF TEXAS CASE** I THINK IS INSTRUCTIVE. IT IS FACTUALLY NOT ON POINT, BUT IT MAKES THIS POINT, THAT ONCE AN INSURER GOES -- BECOMES INSOLVENT AND IS PLACED IN RECEIVERSHIP --

THE COURT: LET ME GET THE CASE IN FRONT OF ME, I AM SORRY. I HAVE GOT IT HERE. I JUST WANT TO HAVE IT IN FRONT OF ME.

MR. CULLENS: IT IS A FIRST CIRCUIT 1982 CASE, 417 SO.2D 1251.

IN BRIEF, THE FACTS OF THAT CASE WERE SIMILAR TO THE ARGUMENTS HERE. NO. THE RECEIVER, ONCE THEY ARE APPOINTED, THEY STAND IN THE PRECISE SAME SHOES, AND THEY SINK OR SWIM WITH THE SAME DEFENSES AND THE SAME POSTURE THAT WERE AVAILABLE TO THE INSUREDS. THIS CASE INVOLVED MISREPRESENTATIONS. ONE OF

THE DEFENDANTS WANTED TO SAY, NO. ONE OF THE DIRECTORS OR OFFICERS OF THIS FAILED INSURANCE COMPANY MADE MISREPRESENTATIONS WHICH WOULD EFFECTIVELY DEFEND AGAINST THE CLAIMS THE RECEIVER IS ASSERTING AGAINST US. THE FIRST CIRCUIT CORRECTLY HELD, NO, IT IS DIFFERENT PARTIES, IT IS A DIFFERENT CONTEXT.

WE ARE NOW IN THE REALM AND THE CONTEXT OF THE INSURANCE DEPARTMENT TRYING TO PROTECT, NOT JUST THE INTEREST OF THE INSURANCE COMPANY AND ITS SHAREHOLDERS, BUT IN REPRESENTING THE PUBLIC, THE CREDITORS OF THAT COMPANY, THE HEALTHCARE PROVIDERS. IT IS MUCH BROADER, AND YOU ARE NOT BOUND BY ANY ALLEGED MISREPRESENTATIONS BY FORMER MANAGEMENT.

THE COURT: BASICALLY, THE SAME -- IT IS HAND-IN-HAND WITH WHAT THE **TAYLOR CASE** ALSO SAYS, AND THEY BASE THEIRS ON THE U.S. SUPREME COURT CASE, THE **WAFFLE HOUSE CASE.**

MR. CULLENS: EXACTLY, YOUR HONOR.

THE COURT: SO, LOUISIANA IS CONSISTENT, AND THEREFORE, I SHOULD MAYBE TAKE NOTE OF WHAT OHIO HAS DONE.

MR. CULLENS: EXACTLY, YOUR HONOR, AND THAT WAS THE NEXT CASE I WAS GOING TO TALK TO, THE **WAFFLE HOUSE CASE**, THE E.E.O.C. CASE, WHICH I THINK THE **TAYLOR COURT** EFFECTIVELY AND COMPELLINGLY POINTS OUT. NO. THE EMPLOYER AND THE EMPLOYEE HAD A BINDING CONTRACT, WHICH IF THE DISPUTE WAS BETWEEN THE TWO OF THEM, YES, THAT ARBITRATION PROVISION, GIVEN THE OVERRIDING CONCERN WITH THE FEDERAL STATUTE AND

STATE STATUTE, IT WOULD APPLY, BUT E.E.O.C. GETS INVOLVED, THEY ARE REPRESENTING A MUCH LARGER INTEREST, THE PUBLIC INTEREST, DISCRIMINATORY, PERHAPS CONSTITUTIONAL INTEREST, AND THERE IS A WHOLE NOTHER FRAMEWORK OF STATUTES AND LAW THAT APPLY THAT THAT ARBITRATION PROVISION IS NOT, IS NOT NECESSARILY BINDING, AND WHEN YOU CONSIDER ALL OF THE EQUITIES AND THE LAW AND THE EXTREME STRONG PUBLIC POLICIES INVOLVED, THE SUPREME COURT OF THE UNITED STATES SAID, NO, THE E.E.O.C. IS NOT BOUND BY THAT ARBITRATION PROVISION. IT IS NOT MUCH OF AN EXTENSION AT ALL. IN FACT, I THINK IT IS COMPELLING AND IT IS A LOGICAL EXTENSION, THAT IN THIS CASE, JUST AS IN **TAYLOR** AND **WAFFLE HOUSE**, AND TO SOME DEGREE THE **REPUBLIC OF TEXAS CASE** --

THE COURT: I ASSUME WE ARE GOING TO HEAR THAT CASE AGAIN WITH REGARD TO THE PRESCRIPTION ARGUMENT.

MR. CULLENS: YES, YOUR HONOR.

THE COURT: BECAUSE THEY ADDRESS THAT, THE U.S. SUPREME COURT ADDRESSES THAT DIRECTLY IN THEIR ANALYSIS.

MR. CULLENS: YES, YOUR HONOR.

THE COURT: OKAY.

MR. CULLENS: AND THEN THE NEXT POINT, GOING BACK TO THE STATUTES, 2009, TITLE 22:2009, SPECIFICALLY, THIS IS A LONG STATUTE, BUT SUBPART E(4).

THE COURT: HOLD ON A SECOND. A LOT OF PAPER HERE.

MR. CULLENS: AND IT SPECIFICALLY, AND THIS AGAIN APPLIES -- THERE IS NOT EVEN THE SPECTER OF ANY CONCERN ABOUT WHETHER IT APPLIES TO LIQUIDATION, REHABILITATION, CONSERVATOR. IT APPLIES TO ALL. IT GIVES THE EXPRESS POWER TO THE REHABILITATOR TO AFFIRM OR DISAVOW ANY CONTRACTS TO WHICH THE INSURER IS A PARTY, AND THAT PERMEATES -- I DO NOT WANT TO GET AHEAD OF OURSELVES, WE ARE GETTING INTO THE RELEASE, BUT THAT IS CERTAINLY WHAT I RESPECTFULLY SUGGEST TO YOUR HONOR, WHEN WE WENT THROUGH THE REHABILITATION ORDER PERMANENTLY ENJOINING ANY AND ALL PARTIES, INCLUDING THE ACTUARIES, OR THE THIRD-PARTY ADMINISTRATORS FROM INTERFERING WITH THE ORDERLY PROCEEDINGS AND DISPOSITION WITH THE RECEIVER DOING HIS JOB IN THIS COURT, AND ARBITRATION; I CAN PROBABLY COME UP WITH MUCH MORE DISRUPTIVE THINGS IN ARBITRATION, BUT FORCING THE COMMISSIONER OF INSURANCE TO GO TO AN ARBITRATION. CUTTING IT OUT FROM ALL THE OTHER LITIGATION THAT WE ALREADY HAVE HERE IS EXTREMELY DISRUPTIVE, EXPENSIVE, THE THREAT, THE POSSIBILITY OF CONTRADICTORY RULINGS, NOT TO MENTION THE EXPENSE AND EFFORT, IT IS A DEFINITE DISRUPTION, AND TO QUOTE 2006 AGAIN, TO PREVENT, QUOTE, INTERFERENCE WITH THESE PROCEEDINGS. THAT IS CERTAINLY INTERFERENCE.

SAME WAY, AND I DO NOT WANT TO MIX THEM UP TOO MUCH, BUT TO ENFORCE THE FORUM SELECTION, ENFORCE THE COMMISSIONER OF INSURANCE TO GO TO NEW YORK TO LITIGATE JUST HIS CLAIMS AGAINST ONE OF THE ACTUARIES WHEN VENUE IS PROPER HERE,

AND WE RESPECTFULLY SUGGEST IS MANDATED HERE UNDER THE CONTEXT OF THIS RECEIVERSHIP PROCEEDING IN THE 19TH J.D.C.

I WILL TRY TO WRAP THIS UP, YOUR HONOR. HAPPY TO, IF YOU WOULD LIKE ME TO, YOUR HONOR. MR. CLARK DID NOT REALLY RAISE ANY OF THE OTHER CASES THAT WERE CITED UNDER OTHER JURISDICTIONS LIKE PENNSYLVANIA OR TEXAS OR CONNECTICUT, BUT AS I THINK WE HAVE LAID OUT HOPEFULLY CONVINCINGLY IN OUR MEMORANDUM, YOU CANNOT COMPARE LOUISIANA TO TEXAS, FOR INSTANCE. THEY DO NOT HAVE -- THEY SPECIFICALLY RECOGNIZE IN THEIR INSURANCE CODE ARBITRATION. THAT IS NOT THE CASE IN LOUISIANA. LOUISIANA IS VERY COMPARABLE, IT IS A RECIPROCAL STATE WITH OHIO. THE LAWS ARE COMPATIBLE. PENNSYLVANIA LAW IS NOT COMPATIBLE, IS NOT THE SAME AS LOUISIANA, AND IN ONE OF THE CASES CITED, THE ACTUAL REHABILITATION COURT, LIKE JUDGE JOHNSON, ACTUALLY PROVIDED FOR THE POSSIBILITY OF ARBITRATION. AGAIN, WE CAN DECIDE, IT IS NOT ENTIRELY FAIR. LOUISIANA LAW GIVES THE INSURANCE COMMISSIONER AND THE RECEIVER A LOT OF DISCRETION. IF FOR SOME REASON WE WANTED TO ARBITRATE THIS, NOTHING WOULD PREVENT US FROM DOING SO, BUT IF WE DO NOT WANT TO, THE LAW PROVIDES THIS IS THE VENUE, AND ANYTHING THAT WOULD INTERFERE WITH THE ORDERLY --

THE COURT: PERHAPS YOU MISSPOKE, JUST LIKE I HAVE DONE A COUPLE OF TIMES TODAY, WHEN YOU SAID SOMETHING TO THE EFFECT OF, AND AGAIN, IT IS NOT FAIR. YOU PROBABLY MEANT TO SAY --

WAIT, IT IS NOT ENTIRELY FAIR. WHAT YOU PROBABLY MEANT TO SAY WAS, IT MAY NOT APPEAR TO BE FAIR.

MR. CULLENS: IT MAY NOT APPEAR TO BE FAIR FROM THE PERSPECTIVE OF MILLIMAN, FROM THE PERSPECTIVE OF PRIVATE PARTIES WHO CONTRACTED WITH THE NOW-INSOLVENT L.A.H.C., IT MAY NOT APPEAR TO BE FAIR, BUT THAT IS NOT -- WE ARE NOT HERE DIRECTLY IN THE SHOES OF L.A.H.C. WE ARE HERE REPRESENTING, THROUGH THE COMMISSIONER OF INSURANCE, THE DEPARTMENT OF INSURANCE, THE PUBLIC OF LOUISIANA, THE MANY CREDITORS OF THIS FAILED INSURANCE COMPANY TO TRY TO FIGURE OUT WHAT HAPPENED, WHO IS RESPONSIBLE, AND THE ORDERLY DISPOSITION OF THE BUSINESS OF THE RECEIVER IN THIS COURT.

I AM SURE I WILL HAVE SOME ADDITIONAL POINTS WHEN THE OTHER PARTIES ARGUE, BUT DO YOU HAVE ANY QUESTIONS AT THIS TIME, YOUR HONOR?

THE COURT: NO. I HAVE PEPPERED YOU PRETTY GOOD ALREADY, HAVEN'T I?

MR. CULLENS: PART OF THE, PART OF THE, PART OF THE NATURE OF THE BEAST. THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT, SIR. BALL IS IN YOUR COURT TO REPLY IF YOU WISH.

MR. CLARK: THANK YOU, YOUR HONOR, AND I THINK MR. CULLENS MAY HAVE SLIGHTLY CONFLATED THE CLAIM FOR SEEKING VENUE IN NEW YORK. THAT IS NOT PART OF OUR ARGUMENT.

THE COURT: RIGHT. THEY WERE SUCKED IN FROM, I THINK THE NEXT PARTY THAT IS COMING UP.

BUT THAT IS ALL RIGHT. GO AHEAD.

MR. CLARK: CORRECT.

NO, I GET HIS POINT, HE BELIEVES IT WILL INTERFERE WITH THE PROCEEDING, IT IS UNFAIR, AND SO FORTH AND SO ON. THE PHRASE "THEY WANT THEIR CAKE AND THEY WANT TO EAT IT TOO" JUST KEEPS RESONATING HERE.

THE COURT: I AM SORRY TO INTERRUPT, BUT I DO FIND ONE OF THEIR ARGUMENTS FAIRLY COMPELLING, AND THAT IS, YOU HAVE A PERMANENT ORDER OF REHABILITATION AND INJUNCTIVE RELIEF THAT APPEARS ON ITS FACE TO PREVENT YOU FROM BEING ABLE TO EXERCISE YOUR ARBITRATION CLAUSE, AND IN SEVERAL DIFFERENT SECTIONS OF IT. CAN YOU ADDRESS THAT FOR ME?

MR. CLARK: ABSOLUTELY, YOUR HONOR.

TAKEN ON ITS FACE, WE HAVE HEARD A LOT OF ARGUMENT ABOUT 2001, ET SEQ, AND THE ENTIRE SCHEME OF REHABILITATION AND LIQUIDATION, WHICH IS SEPARATE, AND WE CAN ONLY DEAL WITH THE FACTS AS THEY ARE PRESENTED TO US TODAY, JUST AS WE ARE DEALING WITH JUDGE JOHNSON'S CURRENT ORDER. WE ARE NOT A PARTY TO THAT ORDER. WHY? BECAUSE WHEN ORDERS OF REHABILITATION ARE IMPOSED, IT IS TYPICALLY A SINGULAR ACT, PERHAPS A DIRECTOR OPPOSES THAT OR WHATEVER, BUT ESSENTIALLY, THERE WAS NO VETTING OF THAT ORDER; HOWEVER, AN ORDER CAN EXTEND TO A PARTY'S RIGHTS THAT ARE NOT GRANTED TO IT BY STATUTE.

THE COURT: WELL, LET ME ASK YOU THIS: YOU ARE SUBSUMED INTO THE REHABILITATION,

AREN'T YOU? YOUR RELATIONSHIP WITH LOUISIANA HEALTH COOPERATIVE, INC., WOULD THAT NOT BRING YOU UNDER THE UMBRELLA OR -- NOT BRING YOU WITHIN HAVING TO COMPLY WITH THE ORDER OF REHABILITATION AND INJUNCTIVE RELIEF IN THAT THE CLAIMS YOU ARE ASSERTING ARE CLAIMS THAT ARISE OUT OF THAT -- YOUR RELATIONSHIP WITH THAT COMPANY, WHICH IS SUBJECT TO THE ORDER?

MR. CLARK: I WOULD AGREE WITH YOUR HONOR IF WE WERE, AND I THINK AS MR. CULLENS EVEN ACKNOWLEDGED, DEALING WITH A POSITION SUCH THAT WAS PRESENTED IN THE **TAYLOR CASE** WHERE THE ACTUARIAL FIRM ACTUALLY POSSESSED ASSETS, WAS SUBJECT TO THE PREFERENTIAL TREATMENT ARGUMENT. THAT IS NOT PRESENT IN THAT CASE, AND COUNSEL HAS ACKNOWLEDGED THAT THAT IS NOT PRESENT HERE.

WHAT WE HAVE IS A PURE CONTRACTURAL DISPUTE, AND I WILL TALK ABOUT THE PROFESSIONAL RESPONSIBILITIES IN JUST A SECOND, BUT JUST TO FOCUS SPECIFICALLY ON THAT. MY CLIENT, MILLIMAN, EXITED STAGE LEFT BACK IN 2014. THEY PROVIDED THE SERVICES RENDERED TO THE COMPANY AT THAT TIME. TO OUR KNOWLEDGE THERE HAS BEEN NO ALLEGATION THAT THERE WAS ANY QUESTION OF PREFERRABLE PAYMENT, IMPROPER PAYMENT OR WHATEVER. THIS IS A DISPUTE BETWEEN THE NOW RECEIVER, REHABILITATOR AND MILLIMAN REGARDING THE NATURE AND THE SCOPE OF SERVICES PROVIDED BY MILLIMAN AT THAT TIME. IT IS A CLASSIC BUSINESS DISPUTE, AND EVERYTHING THAT COUNSEL HAS POINTED TO THAT FALLS UNDER 2001, ET SEQ, DEALS WITH THE NATURE OF HOLDING PROPERTY,

CONTRACTURAL RIGHTS AT THAT TIME. THE ONE THAT PARTICULARLY IS NOTABLE IS THE, I BELIEVE IT IS TWO THOUSAND -- I AM MISSING MY NOTES RIGHT NOW, BUT THE POINT WHERE WE COULD DISAVOW CONTRACTS OR AFFIRM CONTRACTS, AND IF THAT IS WHAT WE WERE DEALING WITH, I MIGHT BE MORE INCLINED TO AGREE WITH COUNSEL, BUT THAT IS NOT WHAT IS HAPPENING HERE. THIS IS THEY-WANT-THEIR-CAKE-AND-EAT-IT-TOO ARGUMENT. WE WANT TO LINE-ITEM THIS ARBITRATION CLAUSE. THE CONFIDENTIALITY CLAUSE, THE ABILITY TO HAVE SOME EXPERTS IN THE FIELD TO SPECIFICALLY ADDRESS THE NATURE OF THE DISPUTE BETWEEN OUR PARTY WHILE THEY WANT TO ENFORCE THE OBLIGATION OF THE CONTRACT ITSELF AGAINST MILLIMAN. THEY WANT TO BRING THEM IN TO A COURT THAT WAS NOT ENVISIONED AT THE TIME THAT CONTRACT WAS EXECUTED, AND IS A TYPE OF RESOLUTION THAT IS QUITE TYPICAL IN THESE RELATIONSHIPS, BUT IT IS ALSO FAVORED UNDER OUR LAW.

AS YOUR HONOR POINTED OUT, 9:4201, IT SHALL BE VALID, IRREVOCABLE AND ENFORCEABLE SAVE UPON GROUNDS AS EXIST AT LAW. COUNSEL HAS NOT SHOWN A SINGLE ELEMENT OF LAW SPECIFICALLY THAT DISFAVORS ARBITRATION CLAUSES. I WILL ACKNOWLEDGE THAT THERE IS NOT A CASE OUT THERE EITHER, BUT WE ARE ALSO A CIVILIAN JURISDICTION. UNLESS THAT CLAUSE IS UNAMBIGUOUS, OR SOME OTHER PROVISION IS UNAMBIGUOUS, WE DO NOT REALLY GO TO THE NEXT STEP TRYING TO FIND SOME OTHER BASIS FOR ASSERTING THAT IT SHOULD NOT APPLY IN THIS

CASE. SO, IT IS TRUE THERE IS A COMPELLING PUBLIC INTEREST IN THE REGULATION OF INSURANCE COMPANIES THAT HAS BEEN RECOGNIZED BY CONGRESS AND THE PREEMPTION THAT IS GRANTED THERE TO ALLOW STATES TO REGULATE, BUT THERE IS ALSO A STRONG PUBLIC POLICY RECOGNIZED BY OUR SUPREME COURT THAT FAVORS ARBITRATION OF DISPUTES. TO CONTEND THAT SOMEHOW ARBITRATION WILL EXTEND, MAKE THE PROCESS MORE TROUBLESOME, MORE COSTLY, MORE DELAYING IS NOT BASED ON ANYTHING OTHER THAN JUST PURE SUPPOSITION. INSTEAD, THE DESIGN OF THIS PARTICULAR ARBITRATION PROVISION ENVISIONS SOMETHING HAPPENING FAIRLY QUICKLY. THIS CASE HAS BEEN PENDING FOR A YEAR NOW. ARBITRATION COULD HAVE BEEN NOTICED AND COMPLETED WELL IN ADVANCE OF THAT.

LIMITED JURISDICTION -- EXCUSE ME -- LIMITED DISCOVERY IS ALL THAT IS ALLOWED UNDER THIS PARTICULAR CLAUSE. SO, IF ONE OF THE COMMISSIONER'S OTHER OBLIGATION IS TO MARSHAL THE ASSETS OF THESE COMPANIES; IN THIS CASE, REHABILITATION TO PUT THE COMPANY BACK ON ITS FEET TO REMOVE THE BASES FOR THE REHABILITATION IN THE FIRST PLACE, TO ENTER INTO LITIGATION THAT IS MULTI-FACETED AND MULTI-PARTY EXTENDED FOR YEARS OF TIME POTENTIALLY, AND AS SOME HAVE DONE IN THE PAST, IS NOT NECESSARILY CONSISTENT WITH PUTTING THAT COMPANY BACK ON ITS FEET.

WE HEARD COUNSEL SAY, WELL, WE MIGHT GO INTO LIQUIDATION NEXT WEEK OR WHATEVER. WELL, THEY HAVE NOT. I DO NOT KNOW WHAT THEIR RATIONALE IS, BUT WE TAKE THE SITUATION AS IT

IS PRESENTED TO US, AND AS IT IS PRESENTED TO US, WE HAVE AN ORDER OF REHABILITATION ENTERED PURSUANT TO 2001, NOT 257, AND IN THAT CASE WE HAD A CLAIM THAT ARISES OUT OF THE CONTRACTURAL SERVICES PROVIDED BY MY CLIENT TO THE CO-OP. SO, AND WE HAVE A STRONG PUBLIC POLICY RECOGNIZED BY THE SUPREME COURT AND STATUTORILY EMBODIED THAT FAVORS ARBITRATION CLAUSES. IN THE ABSENCE OF THAT, ALL WE HAVE HEARD SO FAR IS REFERENCE TO AN OHIO CASE, AND IRONICALLY, HOW OTHER STATE LAWS DO NOT APPLY EITHER BECAUSE THERE ARE NUANCES ASSOCIATED WITH THEM. WELL, THERE ARE NUANCES ASSOCIATED WITH OHIO LAW TOO. OHIO LAW IS NOT EXACTLY A DUPLICATE OF LOUISIANA LAW RELATIVE TO LIQUIDATIONS. BUT EVEN IF WE -- WHILE THIS COURT IS NOT BOUND BY THAT, AND OUR ARGUMENT IS IT SHOULD NOT BE PERSUADED BY THAT, WHEN WE LOOK AT THE FACTS OF THAT CASE, THOSE FACTS AS ACKNOWLEDGED BY COUNSEL FOR THE REHABILITATOR ARE NOT PRESENT HERE. THIS IS SIMPLY A DISPUTE THAT ARISES UNDER THE FOUR CORNERS OF THE CONTRACT.

NOW, WE HEARD REGARDING THAT THAT THERE WERE OTHER CLAIMS FOR NEGLIGENCE AND OF THIS SORT. THAT HAS NOT BEEN ARTICULATED IN ANY GREAT NATURE OTHER THAN TO SAY THAT THE NATURE OF THE SERVICES PROVIDED WERE NEGLIGENT IN NATURE. THIS IS A CONTRACTURAL CLAIM, WHICH BY VIRTUE OF THE CONSULTING AGREEMENT AND THE ENGAGEMENT LETTER, EMBODIES WITHIN IT AS PROFESSIONALS THE OBLIGATION TO PERFORM THOSE SERVICES IN ACCORDANCE WITH THE PROFESSIONAL

STANDARDS ASSOCIATED WITH PROVIDING THE SERVICES. WE ARE NOT PROVIDING HOUSE PAYMENT SERVICES OR SOMETHING ELSE. THESE WERE ACTUARIAL SERVICES DELINEATED IN THAT ENGAGEMENT LETTER PROVIDED TO THE CO-OP.

THE COURT: ALL RIGHT. LET ME ASK YOU A QUESTION, BECAUSE THIS KIND OF GOES TO PART OF MY CONCERN. THE COMMISSIONER IN THE RECEIVERSHIP -- IN THE REHABILITATION ASSUMES THE RIGHTS OF L.A.H.C., CORRECT?

MR. CLARK: THAT IS CORRECT, AS HE FINDS THEM.

THE COURT: WELL, THIS REHABILITATION ORDER IN SEVERAL PLACES TALKS ABOUT ENJOINING JUDGMENTS, SEIZURES, *LEVEES, LIENS, BUT NOT LIMITED TO SUITS AND PROCEEDINGS AND ALL LITIGATION WHERE L.A.H.C. IS A PARTY. THE COMMISSIONER IS NOW L.A.H.C. FOR PURPOSES OF YOUR WANTING TO ARBITRATE. HOW ARE YOU NOT COVERED BY THE REHABILITATION ORDER? I BELIEVE IT IS VERY DIFFICULT FOR ME TO SAY YOU ARE NOT.

MR. CLARK: WELL, YOUR HONOR, IF I COULD, CAN I MAKE SURE WE ARE LOOKING AT THE SAME PARAGRAPH? I THOUGHT WE WERE STARTING WITH THE ONE ON PAGE 3. WHICH PAGE WERE YOU JUST READING FROM?

THE COURT: I WAS READING FROM PAGE 8, AND I KNOW YOUR ARGUMENT IS GOING TO BE TO PROPERTY, ASSETS, ET CETERA, RATHER THAN CLAIMS BY L.A.H.C. AGAINST, BUT AT THE END OF THE DAY IT SAYS, INCLUDING BUT NOT LIMITED TO SUITS AND PROCEEDINGS IN ALL LITIGATION ON PAGE 8 WHERE

L.A.H.C. IS A PARTY, WHICH MEANS WHERE THE COMMISSIONER IS A PARTY. SO, IT EXPANDS IT -- IT IS VERY EXPANSIVE.

MR. CLARK: IT IS EXPANSIVE, YOUR HONOR, AND AS I MENTIONED BEFORE, THIS IS AN ORDER THAT WAS DRAFTED ESSENTIALLY UNILATERALLY BY THE PARTIES SEEKING LIQUIDATION. THEY HAVE PUT IN HERE THINGS THAT I CANNOT FIND A COROLLARY AUTHORITY FOR WITHIN TITLE 22:2001, ET SEQ.

THE COURT: WELL, WHY DIDN'T YOU ATTACK THE REHABILITATION ORDER UNDER JUDGE JOHNSON'S MATTER? I HAVE TO LIVE -- LIKE I TOLD HIM BEFORE, IT CAN BE CONVERTED TO LIQUIDATION TOMORROW, IT DOES NOT HELP ME ANY. I HAVE TO LIVE WITH WHAT WE HAVE NOW. THIS IS WHAT WE HAVE NOW AND THIS IS WHAT THIS CASE HAS TO BE DECIDED UNDER. IF YOU WANTED TO AMEND THIS TO CLARIFY YOUR POSITION AND MAKE A STRONGER ARGUMENT FOR YOURSELF, YOU COULD HAVE APPLIED TO JUDGE JOHNSON FOR A MODIFICATION OF THE PERMANENT -- BUT I DO NOT HAVE THAT. I HAVE WHAT I HAVE, AND I HAVE TO ABIDE BY IT. THAT IS WHAT KIND OF CREATES MY CONCERN WHEN IT SAYS, ALL LITIGATION, AND IT DOES NOT SAY, INVOLVING ASSETS. IT STARTS WITH ASSETS, PROPERTY AND EVERYTHING, AND THEN IT GETS VERY EXPANSIVE. IT GOES FROM LISTING -- NOW, YOU ARE GOING TO SAY PARI MATERIA, I OUGHT TO SAY THAT ALL LITIGATION MEANS ALL LITIGATION OVER ASSETS AND PROPERTY, BUT THAT IS NOT WHAT IT SAYS, AND THAT IS NOT HOW I INTERPRET IT.

MR. CLARK: I UNDERSTAND, YOUR HONOR. WE

ARE NOT A PARTY TO THAT PROCEEDING. WE WOULD HAVE TO INTERVENE TO DO THAT. WE ARE A PARTY TO THIS PROCEEDING WHICH WE BELIEVE IS PREDICATED UPON AN ORDER WHICH IS TOO EXPANSIVE, AND IT GOES BEYOND THE AUTHORITY GRANTED TO THE COURT AND TO THE COMMISSIONER TO SEEK THAT.

THE COURT: BUT THAT IS NOT AN ISSUE FOR ME. THAT IS AN ISSUE FOR JUDGE JOHNSON. I HAVE TO ACCEPT THIS AS A BINDING ORDER AT THIS POINT IN TIME. I CANNOT CHANGE JUDGE JOHNSON'S ORDER, SO I MUST ABIDE BY IT UNTIL IT IS CHANGED. YOU CANNOT ATTACK THE REHABILITATION INJUNCTIVE ORDER IN JUDGE JOHNSON'S COURT THROUGH A SEPARATE DISTRICT COURT PROCEEDING. YOU MUST DO IT THERE. I CANNOT RESOLVE THAT FOR YOU. I CANNOT HELP YOU ON THAT, AND SO, I MUST TAKE THAT ORDER AS IT STANDS. IT IS KIND OF SAUCE FOR THE GOOSE, SAUCE FOR THE GANDER. HE TRIED TO ARGUE A SIMILAR THING WHEN I WAS ARGUING ABOUT LIQUIDATION VERSUS REHABILITATION, AND I TOLD HIM THEN, YES, YOU MAY GO LIQUIDATE, BUT I HAVE TO GO BY WHAT WE HAVE, AND WHAT THE ORDER IS, AND I HAVE TO APPLY THIS ORDER, EVEN IF YOU BELIEVE, MAYBE PROPERLY SO, MAYBE IMPROPERLY SO, IT DOES NOT MATTER, I HAVE TO TAKE THIS ORDER, OKAY. LAWS CHANGE, ORDERS CHANGE ALL THE TIME. THE SUPREME COURT CHANGES ITS MIND ON THINGS WHEN THEY REINVESTIGATE IT LATER AND THEY SAY, OKAY, NOW WE ARE GOING TO SAY WE ARE NOT GOING TO HAVE SEPARATE BUT EQUAL EDUCATION ANYMORE, THAT

IS NOT RIGHT, OKAY, WHERE AT ONE TIME THAT WAS LAW. SO, ALL THE COURTS HAD TO LIVE BY WHAT IT WAS AT THAT TIME UNTIL IT GOT CHANGED WITH **BROWN**. HERE, YES, THIS THING MAY BE ATTACKED, THIS ORDER MAY BE ATTACKED, CHANGED, AMENDED, WHATEVER, BUT IT HAD NOT BEEN YET, SO I MUST APPLY THIS AS IT IS WRITTEN. THAT IS MY CONCERN.

MR. CLARK: WELL, YOUR HONOR, IN LIGHT OF THAT THEN, WOULD THE COURT ENTERTAIN A STAY OF THIS PROCEEDING SO THAT WE CAN PURSUE A COLLATERAL ATTACK ON THAT ORDER?

THE COURT: NOT AT THIS TIME. WE ARE ALREADY IN THE MIDDLE OF THE HEARING ON THIS MATTER. I AM NOT GOING TO STAY THIS FOR YOU TO GO TO JUDGE JOHNSON AND HOPEFULLY GET HIM TO CHANGE IT, AND THEN WE COME BACK HERE SIX MONTHS LATER WHEN HE DOES NOT CHANGE IT, YOU KNOW.

MR. CLARK: I APPRECIATE THAT, YOUR HONOR. OUR CONTENTION REMAINS THE SAME.

THE COURT: BECAUSE AT THE END OF THE DAY, AT THE END OF THE DAY, IF I RULE IN FAVOR OF THE COMMISSIONER, YOU STILL HAVE THAT OPTION LATER, DON'T YOU? SO, IT IS NOT A HARM TO YOU TO GO FORWARD WITH THIS TODAY AND DENY THE STAY. NOW, HE IS THE ONE THAT, IF I RULE IN FAVOR OF YOU AND LET YOU OUT, OUGHT TO BE SAYING, WOULD YOU STAY THE EFFECT OF THE ORDER ALLOWING THEM OUT SO THAT WE CAN GO CLARIFY.

MR. CLARK: I APPRECIATE IT. YOUR HONOR, IT IS THE INTERPRETATION --

THE COURT: SO, WHAT I AM SAYING IS, IT IS JUST NOT PREJUDICIAL FOR ME TO DENY YOUR STAY.

MR. CLARK: RIGHT. I UNDERSTAND, YOUR HONOR. WHERE WE ARE, YOUR HONOR, IS AN EXPANSIVE AUTHORITY. I MEAN, IT IS SOMETHING THAT IS NOT CONTAINED WITHIN THE AUTHORITY GRANTED BY LAW TO THEM, SO WE DO NOT BELIEVE THAT IT DOES APPLY, BY EXTENDING THIS TO ALL LITIGATION. THAT NEEDS TO BE WEIGHED AGAINST THE ARBITRATION CLAUSE STILL. IN THAT CASE, THE ARBITRATION CLAUSE PROVISION IS A MANDATORY PROVISION THAT SAYS IT IS SUBJECT ONLY TO EXCEPTIONS FOR LAW AND EQUITY. THERE IS NO LAW THAT REALLY AUTHORIZES THE ELIMINATION OR THE IGNORING THE ARBITRATION CLAUSE.

THE COURT: ALL RIGHT. HERE IS MY CONCERN. IT IS AMONG MANY, AND, YES, I GAVE HIM A HARD TIME, SO I GUESS IT IS OKAY FOR ME TO GIVE YOU A HARD TIME TOO, RIGHT?

MR. CLARK: ABSOLUTELY.

THE COURT: IF WE HAVE IN LOUISIANA LAW A MANDATORY VENUE PROVISION UNDER 22:2004, DO NOT EVEN WORRY ABOUT 257(F), AND THE WHOLE QUESTION OF WHETHER LIQUIDATION -- IT SAYS "AND LIQUIDATION," AS OPPOSED TO, "OR LIQUIDATION." IF WE GO JUST TO 2004(C), SHALL BE HERE, WHICH MEANS THAT SHOULD OVERRIDE -- THE PUBLIC POLICY BEHIND THIS SHOULD OVERRIDE AN ARBITRATION CLAUSE, SHOULDN'T IT? YOU SAY, NO.

MR. CLARK: AND I WILL EXPLAIN WHY.

2004, FIRST SENTENCE, AN ACTION UNDER THIS CHAPTER. THIS IS A CHAPTER THAT PERTAINS TO

REHABILITATION, LIQUIDATION AND CONSERVATION. IT IS NOT A CHAPTER THAT DEALS SPECIFICALLY WITH THE RESOLUTION OF ADVERSARIAL DISPUTES ARISING FROM THE COMMISSIONER ASSUMING THE POSITION OF REHABILITATOR AND STEPPING INTO THE SHOES OF THE COMPANY.

THE COURT: OH, BUT THE AUTHORITY IS GIVEN TO THE COMMISSIONER THROUGH THE REHABILITATION ORDER. SO, YES, IT FALLS WITHIN THE REHABILITATION. ABSOLUTELY.

MR. CLARK: WE ARE NOT IN THE REHABILITATION SUIT, YOUR HONOR.

THE COURT: IT FALLS WITHIN THEIR AUTHORITY TO HANDLE THESE MATTERS UNDER OUR REHABILITATION, CONSERVATORSHIP, AND LIQUIDATION STATUTES.

MR. CLARK: CORRECT, YOUR HONOR.

THE COURT: SO, YES, YOUR DISPUTE WITH L.A.H.C. DOES FALL WITHIN THIS, BECAUSE L.A.H.C. IS THAT ENTITY THAT THE COMMISSIONER, THROUGH THE REHABILITATION ORDER, HAS AUTHORITY TO ASSUME THE RIGHTS AND OBLIGATIONS OF.

MR. CLARK: I AGREE. I DID NOT MEAN TO INDICATE IN THE REPLY THAT I DID NOT AGREE THAT IT LACKED THE AUTHORITY TO STEP INTO THE SHOES OR TO PURSUE CERTAIN CLAIMS. I WAS SPECIFICALLY REFERENCING TO THIS VENUE PROVISION IN 2004 WHICH SAYS, AN ACTION UNDER THIS CHAPTER. ACTIONS UNDER THIS CHAPTER IS TO PLACE COMPANIES INTO LIQUIDATION, REHABILITATION, CONSERVATION, ET CETERA; NOT TO PURSUE CLAIMS THAT THEY FIND IN THE COURT.

THIS CLAUSE, SECTION 2004 DEALS ONLY WITH THE VENUE FOR THOSE PROCEEDINGS. THEY CAN GO CHASE COMPANIES OR INDIVIDUALS WHEREVER THEY WANT. AS YOU SEE, IF YOU LOOK UNDER PARAGRAPH-B, THERE IS A PREDICATE THERE FOR 25 PERCENT OF THE POLICYHOLDERS AND WHERE THEY RESIDE.

THE COURT: YES, BUT IT TALKS ABOUT IN THE PARISH. WHAT IS THE ONLY STATE THAT HAS PARISHES? US.

MR. CLARK: WHAT I MEANT THOUGH, YOUR HONOR, WAS, IT IS DRIVEN BY NATURE OF WHERE ARE THE INTERESTS HELD TO PURSUE AN ORDER OF LIQUIDATION AND REHABILITATION, NOT TO PURSUE A BUSINESS CLAIM.

THE COURT: I UNDERSTAND WHAT YOU ARE TRYING TO ARGUE. YOU ARE SAYING THIS IS NOT -- YOUR ACTION, WHERE THEY ARE CHASING CLAIMS TO OBTAIN FUNDS FOR THE HEALTHY REHABILITATION OF THIS IN ORDER TO ENABLE THAT TO OCCUR DOES NOT FALL UNDER THAT CHAPTER. IT FALLS UNDER GENERAL CONTRACT OR TORT LAW.

MR. CLARK: EXACTLY, AND IN THAT CASE, THE ARBITRATION CLAUSE -- EXCUSE ME, THE ARBITRATION PROVISION RECOGNITION AND 9:4201 SHOULD CONTROL THIS.

THE COURT: OKAY. THANKS.

MR. CLARK: THANK YOU, YOUR HONOR.

THE COURT: I THINK YOU AND I JUST HAVE TO AGREE TO DISAGREE, AND UNFORTUNATELY, THE DISAGREEMENT AMONG US GOES AGAINST YOU.

THE DISPUTE VERY DEFINITELY PRESENTS A

NOVEL QUESTION, WHETHER THE COMMISSIONER AS THE REHABILITATOR IS EQUALLY BOUND TO THE TERMS OF THE AGREEMENT ENTERED INTO BY THE INSOLVENT INSURER THAT HAS BEEN PLACED IN ITS CHARGE. IN THIS CASE, THE PLAINTIFF'S CLAIMS AT LEAST IN PART ARISE OUT OF HIS CONTRACTURAL OBLIGATIONS SET FORTH IN A CONSULTING SERVICES AGREEMENT. THE PLAINTIFF HAS SET FORTH SEVERAL ARGUMENTS ATTEMPTING TO EXCULPATE HIM FROM ARBITRATING IN NEW YORK; HOWEVER, HIS ONLY PUBLIC POLICY ARGUMENT FRANKLY IS VERY SUCCESSFUL IN DOING SO. THE PUBLIC POLICY CONSIDERATIONS IMPLICATED HERE ARE OVERWHELMINGLY IN FAVOR OF THE PLAINTIFF. AS A REHABILITATOR, THE COMMISSIONER HAS AN OVERRIDING DUTY TO PROTECT OUR PUBLIC. AS NOTED IN THE **LEBLANC VERSUS BERNARD** -- THE COMMISSIONER'S OFFICE IS BECAUSE THE INSURANCE INDUSTRY IS, QUOTE, AFFECTED WITH THE PUBLIC INTEREST.

LOUISIANA R.S. 22:2, ANY DUTIES IMPOSED UPON THAT OFFICE THEREFORE MUST BE PERFORMED WITH THE PUBLIC INTEREST FOREMOST IN ITS MIND. FOR THIS REASON THE COMMISSIONER AS REHABILITATOR DOES NOT MERELY STAND IN THE SHOES OF L.A.H.C. DONELON'S DUTIES OWED UNDER THE R.L.C. ARE MUCH MORE EXPANSIVE AND EXTENDS NOT ONLY TO L.A.H.C., BUT ALSO TO THE CITIZENS OF LOUISIANA. IT IS IMAGINABLE THAT MANY DOMESTIC INSURANCE COMPANIES' LOCATIONS WITHIN THE STATE HAVE ENTERED INTO AGREEMENTS WITH THIRD PARTIES THAT CONTAINS ARBITRATION OR

FORUM SELECTION CLAUSES, AND IT WOULD BE ABSURD TO REQUIRE DONELON TO LITIGATE ANY DISPUTE ARISING OUT OF THESE AGREEMENTS ALL OVER THE U.S. NOT ONLY WOULD IT STRAIN THE FINANCIAL RESOURCES OF THE STATE, BUT IT WOULD ALSO COMPROMISE DONELON'S ABILITY TO EFFECTIVELY EXECUTE HIS STATUTORY RESPONSIBILITIES AS REHABILITATOR. THUS, WHILE LOUISIANA'S PUBLIC INTEREST IN ENFORCING ARBITRATION AGREEMENTS IS STRONG, DONELON'S DUTY TO THE PUBLIC IS STRONGER.

IT SHOULD BE NOTED THAT MILLIMAN ENTERED INTO AN AGREEMENT WITH THE LOUISIANA INSURANCE COMPANY. IT IS CERTAINLY FORESEEABLE THAT SHOULD L.A.H.C. GO UNDER, IT WOULD BE SUBJECT TO A TAKEOVER BY THE INSURANCE COMMISSION. MILLIMAN ARGUES THAT LOUISIANA R.S. 22:2004 IS PERMISSIVE AND THEREFORE ALLOWS FOR ARBITRATION. HOWEVER, LOUISIANA R.S. 22:2004 READ IN PARI MATERIA WITH 22:257 OF THE H.M.O. ACT SUGGESTS OTHERWISE. ALTHOUGH THE COMMISSIONER MAY CHOOSE THE VENUE IN WHICH TO BRING THIS ACTION, THE ACTION MUST NONETHELESS BE BROUGHT IN A LOUISIANA STATE COURT. IT WOULD NOT MAKE SENSE FOR THE LEGISLATURE TO RESTRICT JURISDICTION TO LOUISIANA ONLY FOR LIQUIDATION ACTIONS WHILE ALLOWING REHABILITATION ACTIONS TO BE LITIGATED ANYWHERE IN THE UNITED STATES.

NEXT, LOUISIANA R.S. 9:4201 OF THE LOUISIANA BINDING ARBITRATION LAW PROVIDES THAT ARBITRATION AGREEMENTS ARE ENFORCEABLE SAVE

UPON SUCH GROUNDS AS EXIST AT LAW OR IN EQUITY. IN THIS CASE THERE ARE GROUNDS THAT EXIST AT LAW, AND PUBLIC POLICY CONCERNS WHICH FALL WITHIN THAT STATUTE AS THE EXCEPTION TO A BINDING ARBITRATION REQUIREMENT. FURTHER, THE REHABILITATION ORDER SPECIFICALLY EXCLUDES THE ABILITY TO ADJUDICATE ANY ISSUE IN ANY OTHER VENUE OTHER THAN THIS.

SO, I HAVE TO DENY THE EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION, AND COSTS ASSESSED FOR THIS HEARING ONLY AGAINST MILLIMAN.

NEXT WOULD BE IMPROPER VENUE BY BUCK CONSULTANTS, L.L.C. I WONDER HOW THAT IS GOING TO GO. GO AHEAD.

MR. BROWN: YOUR HONOR, I WOULD BEGIN BY POINTING OUT THAT THERE IS A DISTINCTION BETWEEN ARBITRATION AND FORUM SELECTION.

THE COURT: THERE SURE IS.

MR. BROWN: JAMES BROWN REPRESENTING BUCK CONSULTANTS. THE REHABILITATION ORDER --

THE COURT: I AM SORRY, LET ME INTERRUPT YOU. MR. CULLENS, AS YOU WON THAT, WOULD YOU DO THE ORDER ON THAT EXCEPTION OF LACK OF SUBJECT MATTER JURISDICTION, PLEASE?

MR. CULLENS: YES, YOUR HONOR.

THE COURT: MAKE SURE UNDER 9.5 YOU PROVIDE IT TO OPPOSING COUNSEL AT LEAST FIVE DAYS PRIOR TO SUBMITTING IT TO ME. TIME FOR THE CLOCK TO START FOR YOUR POST-HEARING RELIEF; IN THIS CASE IT WOULD BE A WRIT, WOULD BE THE DAY AFTER MY SECRETARY, WHO IS A DEPUTY

CLERK OF COURT, PLACES THE ORDER IN THE MAIL. IT WILL BE SIGNIFIED BY A CERTIFICATE ON THE FACE OF THE ORDER. DO NOT LOOK FOR POSTMARKS. IT IS ON THAT CERTIFICATE, THAT DATE, OKAY.

MR. CLARK: ALL RIGHT. THANK YOU, YOUR HONOR.

THE COURT: I AM SORRY, MR. BROWN, I INTERRUPTED YOU. PLEASE, GO AHEAD.

MR. BROWN: THANK YOU, YOUR HONOR.

LOOKING BACK AT THE INJUNCTIVE LANGUAGE IN THE REHABILITATION ORDER THAT YOUR HONOR WAS CONCERNED ABOUT, IT SAYS THAT ANY AND ALL INDIVIDUALS AND ENTITIES ARE HEREBY PERMANENTLY ENJOINED FROM INSTITUTING AND/OR TAKING FURTHER ACTION IN ANY SUITS, PROCEEDINGS AND SEIZURES AGAINST L.A.H.C.

THE COURT: RIGHT. WHAT ABOUT ON PAGE 8, WHICH IS WHAT I QUOTED TO COUNSEL IN THE LAST PROCEEDING WHERE IT STARTS SEMI-RESTRICTIVE, AND THEN GETS VERY EXPANSIVE TO SAYING INCLUDING BUT NOT LIMITED, SUITS, PROCEEDINGS AND ALL LITIGATION?

MR. BROWN: IT IS FURTHER ORDERED AND DECREED THAT EXCEPT WITH THE CONCURRENCE OF THE REHABILITATOR, ALL SUITS, PROCEEDINGS AND SEIZURES AGAINST L.A.H.C. AND/OR ITS MEMBERS INCLUDING BUT NOT LIMITED TO. THE "INCLUDED BUT NOT LIMITED TO" MODIFIES THE BEGINNING LANGUAGE OF SUITS, PROCEEDINGS AGAINST L.A.H.C. SO, WHAT I AM SUBMITTING TO YOUR HONOR IS THAT THE ORDER OF REHABILITATION IS DESIGNED AS A SHIELD TO PREVENT OFFENSIVE LITIGATION AGAINST

THE INSURANCE COMPANY OR ITS RECEIVERSHIP. WE HAVE NOT, MY CLIENT BUCK HAS NOT SUED ANYBODY. MY CLIENT BUCK HAS NOT BROUGHT A PROCEEDING AGAINST THE REHABILITATOR. ALL OF THESE INJUNCTIVE PROCEEDINGS BEGIN WITH THE CONCEPT OR NOTION THAT SOMETHING IS BEING DONE AGAINST THE REHABILITATOR OR INSURANCE COMPANY, AND IT ENJOINS THAT. THAT IS NOT WHAT WE ARE HERE ABOUT TODAY. WE ARE NOT THE PLAINTIFF. WE ARE THE DEFENDANT. THERE IS NOTHING IN THIS ORDER THAT SUGGESTS THAT A REHABILITATOR SHOULD BE PERMITTED TO TAKE UP A CONTRACT, SUE SOMEONE PURSUANT TO A CONTRACT ON CLAIMS ARISING FROM THE CONTRACT WHILE WANTING TO DISAVOW OR CHERRYPICK PART OF THE CONTRACT. NOTHING IN THE ORDER ALLOWS THAT, YOUR HONOR. NOTHING IN THE INSURANCE CODE ALLOWS THAT. THERE IS NO CASE ANYWHERE THAT I HAVE FOUND THAT ALLOWS THAT.

WE WILL TALK ABOUT THAT OHIO CASE IN A MINUTE, AND I WOULD SUBMIT TO YOU THAT THE DISSENT IS THE MUCH MORE INTELLECTUALLY HONEST APPROACH WHICH SAYS THAT, OF COURSE THIS IS A CASE ARISING UNDER A CONTRACT. IN THIS CASE, THE REHABILITATOR QUOTES THE SCOPE OF UNDERTAKING IN OUR ENGAGEMENT AGREEMENT. HIS CLAIMS ARE BASED UPON THAT SCOPE OF UNDERTAKING. IF WE HAD NOT UNDERTAKEN THOSE OBLIGATIONS IN THE CONTRACT, HE WOULD HAVE NO CLAIM. HIS CLAIMS OF PROFESSIONAL NEGLIGENCE ARE BASED UPON THE SCOPE OF THE UNDERTAKING IN THE CONTRACT, AND TO MAKE IT COMPLETELY CLEAR,

HE SUES US FOR BREACH OF THE CONTRACT. THAT IS ONE OF THE COUNTS IN THE COMPLAINT. HOW CAN HE POSSIBLY SAY THAT THIS CLAIM DOES NOT ARISE UNDER THE CONTRACT? IT DOES AS THE DISSENTERS POINTED OUT IN THAT OHIO CASE. THE BREACH OF PROFESSIONAL DUTY ARISES OUT OF THE CONTRACT IS BASED UPON THE OBLIGATIONS UNDERTAKEN IN THE CONTRACT, BUT HERE YOU DO NOT EVEN HAVE TO ENGAGE IN THE INTELLECTUAL GYRATIONS THAT THE MAJORITY ENGAGED IN HERE BECAUSE HE EXPLICITLY SUES US UNDER THE CONTRACT. THERE IS NO ASPECT OF THIS INJUNCTIVE ORDER. THERE IS NOTHING IN THE INSURANCE CODE THAT SAYS THAT THE RECEIVER CAN DO THAT. HE CAN TAKE UP A CONTRACT, SUE A THIRD PARTY BASED UPON CLAIMS OF THE INSURANCE COMPANY ARISING UNDER THE CONTRACT WHILE AT THE SAME TIME CHERRYPICKING THE CONTRACT. YOUR HONOR, THAT IS ALSO COMPLETELY ADVERSE TO FEDERAL RECEIVERSHIP LAW.

IF YOU LOOK AT THE **ERNST & YOUNG CASE,** WHICH IS AN F.D.I.C. RECEIVERSHIP, VERY SIMILAR TO WHAT WE HAVE IN LOUISIANA, THE COURT SAID THERE IS NOTHING IN THE FEDERAL LIQUIDATION LAWS APPLYING TO BANKS THAT ALLOWS A RECEIVER TO PICK UP PARTS OF A CONTRACT BUT DISAVOW OTHERS. HE CAN DISAVOW THE WHOLE CONTRACT. IF THE REHABILITATOR OVER HERE WOULD LIKE TO DISAVOW BUCK'S CONTRACT WITH THE COMPANY, WE WOULD BE FINE WITH THAT, WE WILL GO HOME, BUT THEY DO NOT WANT TO DO THAT, AND WHAT THE **F.D.I.C. VERSUS THE ERNST & YOUNG CASE** SAYS IS THAT NO RECEIVER CAN DO THAT. OTHER THAN THAT

OHIO CASE, BECAUSE OF THE GYRATIONS THAT THE MAJORITY WENT THROUGH, THERE IS NO COURT IN THIS COUNTRY THAT I KNOW OF THAT HAS ALLOWED A REHABILITATOR TO DO WHAT THIS REHABILITATOR IS TRYING TO DO IN THIS CASE. THE INJUNCTIVE PROVISIONS OF THE REHABILITATION ORDER ARE A TOTAL FALSE TRAIL I WOULD RESPECTFULLY SUBMIT, YOUR HONOR. THERE IS NOTHING IN THE INSURANCE CODE THAT ALLOWS THE REHABILITATOR TO DO THIS.

NOW, LET'S TALK ABOUT THIS EXCLUSIVE VENUE STATUTE THAT APPLIES HOWEVER YOU WANT TO INTERPRET IT TO H.M.O. RECEIVERS. LET'S JUST THINK ABOUT THAT FOR A MINUTE. THE REHABILITATOR IN HIS BRIEFING ACKNOWLEDGES THAT IT IS ACTUALLY A VENUE STATUTE. WHAT IT CONTEMPLATES IS SUITS BROUGHT IN LOUISIANA. IF A SUIT IS BROUGHT IN LOUISIANA; HOWEVER, YOU INTERPRET IT, HOWEVER YOU INTERPRET THE STATUTE, THE SUIT HAS TO BE BROUGHT IN THE 19TH J.D.C. THE SUIT DOES NOT CONTEMPLATE THE SITUATION WHERE THE REHABILITATOR WOULD HAVE TO SUE OUTSIDE OF LOUISIANA. TAKE, FOR EXAMPLE, A SITUATION WHERE THE REHABILITATOR COULD NOT GET PERSONAL JURISDICTION OVER AN OUT-OF-STATE PARTY THAT IT WANTED TO SUE. ARE WE TO READ THAT STATUTE AS PRECLUDING THE REHABILITATOR FROM DOING THAT? OF COURSE NOT.

LET'S LOOK AT POST-RECEIVERSHIP CONTRACTS. LET'S ASSUME THE REHABILITATOR ENTERS INTO A POST-RECEIVERSHIP CONTRACT WITH SOME THIRD-PARTY CONSULTANT. THAT HAPPENS ALL THE TIME. IF IT HAS AN EXCLUSIVE FORUM SELECTION

PROVISION IN IT, ARE WE TO READ THAT AS BEING INVALID? ARE WE TO READ THAT AS NOT SAYING THAT THE RECEIVER IS NOT GOING TO BE HELD TO THAT? WELL, THE SAME APPLIES HERE. THE SAME PRINCIPLE APPLIES HERE. WHEN THE REHABILITATOR TAKES UP A CONTRACT, ASSERTS CLAIMS NOT OF THE COMMISSIONER, BUT CLAIMS OF THE INSURANCE COMPANY, PRE-RECEIVERSHIP CLAIMS, PRE-REHABILITATION CLAIMS ARISING UNDER THE CONTRACT, HOW IN THE WORLD CAN HE CHERRYPICK THAT?

THE COURT: BUT LET ME JUST GO AHEAD AND ASK YOU THE FIRST QUESTION I WAS GOING TO ASK ANYWAY, AND THAT IS, WOULD THIS PARTICULAR ACTION AGAINST YOUR CLIENT, WOULD THAT BE AN ACTION BROUGHT BY THE COMMISSIONER IN HIS CAPACITY AS A REHABILITATOR?

MR. BROWN: IT IS, BUT IT IS A CLAIM OF THE INSURANCE COMPANY THAT BELONGED TO THE COMPANY THAT THE COMPANY COULD HAVE BROUGHT THEORETICALLY BEFORE THE COMPANY EVER FAILED.

THE COURT: BUT IT IS BEING BROUGHT BY THE COMMISSIONER IN HIS CAPACITY AS REHABILITATOR, SO WHY DOES, WHY DOES THE VENUE VERSION IN 2004 A, B AND/OR C NOT --

MR. BROWN: THIS IS A PRE-FAILURE CLAIM THAT BELONGS TO THE COMPANY. THEY COULD HAVE BEEN BROUGHT BY THE COMPANY BEFORE IT FAILED, AND WHAT I AM SUBMITTING TO YOUR HONOR IS THAT THIS IS A VENUE STATUTE, AS THE RECEIVER ACKNOWLEDGED IN HIS BRIEFING, AND IT APPLIES TO LAWSUITS BROUGHT IN LOUISIANA. AS AMONGST ALL

THE COURTS IN LOUISIANA, DEPENDING ON HOW YOU INTERPRET THE STATUTE AS TO WHETHER IT APPLIES TO POST-LIQUIDATION OR PRE-LIQUIDATION CLAIMS --

THE COURT: IT WOULD SEEM TO TRUMP, IT WOULD SEEM TO TRUMP THE FORUM SELECTION CLAUSE.

MR. BROWN: BUT WHAT WE ARE SAYING, YOUR HONOR, IS THAT THIS IS A LAWSUIT THAT SHOULD BE BROUGHT OUTSIDE OF LOUISIANA. IF IT WERE PROPERLY IN LOUISIANA, I WOULD NOT QUARREL WITH THE FACT THAT IT SHOULD BE HERE, BUT JUST AS THIS STATUTE COULD NOT PREVENT THE REHABILITATOR FROM GOING OUTSIDE OF THE STATE IF IT HAD TO IN ORDER TO HAVE PERSONAL JURISDICTION OVER SOMEONE, SO TOO IF THE REHABILITATOR IS REQUIRED TO GO OUT OF STATE IN ORDER -- BECAUSE IT IS TAKING UP A CONTRACT THAT HAS AN EXCLUSIVE FORUM SELECTION PROVISION IN IT, SO TOO IT SHOULD BE BOUND TO THAT.

THE COURT: IF THE --

MR. BROWN: THIS STATUTE DOES NOT CONTEMPLATE THE SITUATION.

THE COURT: LET ME ASK YOU THIS:

THE CLAIMS IN THIS ARE THAT THE COMPANY FOR WHICH THE COMMISSIONER HAS NOW ASSUMED THE ROLE OF, AND HAS BEEN ORDERED TO ASSUME THE ROLE OF REHABILITATOR, THE HARM WAS IN THIS STATE. THE INSURANCE COMPANY CONTRACTED WITH YOUR CLIENT WHO IS OUT OF STATE. THEREFORE, THEY ARE SUFFICIENT CONTACT WITH THIS STATE THROUGH THAT TRANSACTION OF CONTRACTING FOR THERE TO BE JURISDICTION IN THIS STATE. WHY DO

YOU TELL ME HE COULD NOT HAVE BROUGHT IT HERE; HE WOULD HAVE HAD TO GO THERE IF IT WAS JUST L.A.H.C.?

MR. BROWN: BECAUSE THE LOUISIANA SUPREME COURT IN THE **RIMKUS SHELTER CASE** HAS SAID CLEARLY THAT THE POLICY OF LOUISIANA IS TO ENFORCE EXCLUSIVE FORUM SELECTION CLAUSES. THEY REVERSED THE BURDEN. IT IS NOT OUR BURDEN TO PROVE THE REASONABLENESS OF THE CLAUSE. IT IS THEIR BURDEN TO PROVE THE IMPROPRIETY OF THE CLAUSE.

THE COURT: THAT IS WHAT THEIR ARGUMENT HAS BEEN, AND, YES, IT IS THEIR BURDEN OF PROOF WHICH THEY SEEM TO BE CARRYING THROUGH THEIR ARGUMENTS OF THE LOUISIANA LAW ON REHABILITATION.

NOW, LET ME COMPLETE MY THOUGHT PROCESS, JAMES, AND NOW I HAVE LOST MY THOUGHT PROCESS. WE ARE ALL GETTING OLD, AREN'T WE?

ANYWAY, IT DOES NOT -- OUR LAW HAS A STRONG PREFERENCE FOR ENFORCING THEM. IT DOES NOT MANDATE THE ENFORCEMENT OF IT, OKAY. JUST LIKE AN ARBITRATION CLAUSE, WE HAVE A STRONG PREFERENCE FOR ENFORCING ARBITRATION CLAUSES. IT DOES NOT MANDATE THAT THEY MUST ALWAYS BE ENFORCED. SO, IF I HAVE A SPECIFIC LAW THAT APPEARS VERY CLEARLY TO GO AGAINST YOUR FORUM SELECTION CLAUSE, WHY WOULD THAT NOT ALSO BE THE EXCEPTION TO THE STRONG PREFERENCE AFFORDED FORUM SELECTION CLAUSES AND ARBITRATION CLAUSES?

MR. BROWN: BECAUSE, YOUR HONOR, I WOULD

RESPECTFULLY SUBMIT THERE IS NO SUCH LAW. I THINK I HAVE ALREADY DEMONSTRATED, OR TRIED TO, THAT THE INJUNCTIVE ORDER DOES NOT PREVENT IT, BECAUSE THIS APPLIES TO CLAIMS AGAINST THE COMPANY.

THE COURT: YES, BUT, BUT 24 -- 2004(A), WHICH FOLLOWS THROUGH WITH THE SAME TYPE OF ACTION, A THROUGH C, AN ACTION OF THIS CHAPTER BROUGHT BY THE COMMISSIONER. THIS IS AN ACTION BROUGHT BY THE COMMISSIONER.

MR. BROWN: YOUR HONOR, WHAT I AM SAYING IS THAT CONTEMPLATES SUITS THAT HAVE TO BE BROUGHT IN LOUISIANA. IF A SUIT HAS TO BE BROUGHT IN LOUISIANA --

THE COURT: WHERE DOES IT SAY --

MR. BROWN: -- THEN IT HAS TO BE --

THE COURT: WHERE DOES IT SAY THAT?

MR. BROWN: YOUR HONOR, IF YOUR READING, IF THE COURT'S READING OF THAT WERE CORRECT, THAT WOULD MEAN THAT THAT STATUTE WOULD PRECLUDE A LAWSUIT OUTSIDE OF LOUISIANA IN ALL CASES. IT DOES NOT. THE REASON IT DOES NOT IS BECAUSE IT IS TALKING ABOUT WHAT IS HAPPENING IN LOUISIANA, AND IT IS DESIGNED TO GET EVERYTHING IN LOUISIANA INTO A SINGLE COURT IF IT IS IN LOUISIANA AND IT HAS TO BE IN COURT. WE ARE TALKING ABOUT THINGS OUTSIDE OF LOUISIANA.

IF THE COMMISSIONER HAS TO GO SOMEWHERE ELSE TO SUE, AND ALL WE ARE SAYING IS THAT, THERE IS NO LAW, THERE IS NOTHING IN THE INSURANCE CODE, THERE IS NOTHING IN THIS

INJUNCTIVE ORDER THAT ALLOWS A RECEIVER OR A REHABILITATOR TO TAKE UP A CONTRACT, ASSERT CLAIMS ARISING UNDER THE CONTRACT, BUT AT THE SAME TIME DISAVOW AN EXCLUSIVE FORUM SELECTION CLAUSE, A CLAUSE THAT THE LOUISIANA SUPREME COURT HAS SAID SHOULD BE ENFORCED EXCEPT IN EXCEPTIONAL CIRCUMSTANCES WHERE THERE IS A CLEAR LAW TO THE CONTRARY, AND THERE JUST IS NO SUCH LAW IS WHAT I AM SAYING TO THE COURT.

THE COURT: I HAVE TO SAY, MR. BROWN, YOU ARE A WONDERFULLY PERSUASIVE ORATOR. YOU ARE A VERY PERSUASIVE LEGAL WRITER. YOU ARE FAR BRIGHTER THAN I AM AS WE KNOW FROM LAW SCHOOL, BUT BE THAT AS IT MAY -- AS IS MR. PHILIPS --

MR. BROWN: THAT IS NOT THE WAY I REMEMBER IT.

THE COURT: AS IS MR. PHILIPS BACK THERE, BUT ANYWAY, BE THAT AS IT MAY, I THINK YOU ARE BENDING THE UNAMBIGUOUS LANGUAGE OF THE STATUTE IS WHAT I THINK, OKAY. I COULD BE WRONG. I AM SURE THE FIRST CIRCUIT OR THE SUPREME COURT WILL TELL ME I AM WRONG, BUT WE JUST SEEM TO HAVE A DISAGREEMENT, ALTHOUGH I HAVE TO TELL YOU, YOU ARE VERY PERSUASIVE. MY CONCERN IS, THE DIRECT LANGUAGE OF IT IS, WHEN THEY FILE ONE IN LOUISIANA, THAT THEY HAVE A RIGHT AND JURISDICTION IN LOUISIANA TO DO IT, THIS IS WHERE IT IS, OKAY. ONCE IT IS DONE, ONCE THEY FILE IT, YOU CAN FORGET YOUR FORUM SELECTION CLAUSES BECAUSE THIS STATUTE TRUMPS THAT, OKAY.

MR. BROWN: YOUR HONOR, I WOULD REFER YOU TO THE LOUISIANA FOURTH CIRCUIT'S DECISION IN

DURR HEAVY EQUIPMENT COMPANY.

THE COURT: AM I GUIDED BY THE FOURTH CIRCUIT? I AM GUIDED BY THE FIRST CIRCUIT. I HAVE TO FOLLOW THE SUPREME COURT AND THE FIRST CIRCUIT. I DO NOT HAVE TO FOLLOW THE FOURTH CIRCUIT. THE FOURTH CIRCUIT HAS BEEN OVERRULED AS MUCH AS THE FIRST CIRCUIT, THIRD CIRCUIT MOST OF ALL, AND THE SECOND CIRCUIT. BUT I AM JUST SAYING, MAYBE I CAN BE GUIDED BY IT, BUT I AM NOT BOUND BY IT.

MR. BROWN: AND ALSO, THE U.S. FIFTH CIRCUIT'S DECISION IN THE **FIREMAN'S FUND CASE**, FORUM SELECTION CLAUSES OVERRIDE OTHERWISE APPLICABLE VENUE STATUTES. AGAIN, I ACKNOWLEDGE IT IS NOT SOMETHING YOU ARE BOUND TO, BUT I JUST --

THE COURT: RIGHT. THIS IS LOUISIANA. IT IS NOT -- WHERE IS THE FIRST CIRCUIT ANYWAY, FEDERAL FIRST CIRCUIT?

MR. BROWN: FIFTH CIRCUIT. THIS WAS A U.S. FIFTH CIRCUIT CASE ARISING OUT OF LOUISIANA. IT WAS UNDER THE FEDERAL MILLER ACT. I WILL ACKNOWLEDGE THAT.

THE COURT: LET ME ASK YOU A QUESTION. DID THEY CERTIFY THE QUESTION TO THE SUPREME COURT?

MR. BROWN: NO.

THE COURT: WELL, THEN I AM NOT BOUND BY IT THEN. IF IT WOULD HAVE BEEN CERTIFIED TO THE SUPREME COURT TO RESOLVE THAT ISSUE, I WOULD BE, BUT I AM NOT. I THINK THIS STATUTE TRUMPS IT, BUT I AM NOT RULING YET, BECAUSE I

WANT TO SEE HOW WEAK HIS ARGUMENT IS ON THE OTHER SIDE, BECAUSE YOU HAVE GIVEN A VERY STRONG ARGUMENT.

MR. BROWN: THANK YOU, YOUR HONOR.

AND IF COULD, I WOULD LIKE TO OFFER INTO EVIDENCE OF THE HEARING THE AFFIDAVIT OF HARVEY SOBEL, HARVEY SOBEL WITH THE ATTACHED ENGAGEMENT AGREEMENT AND THE ADDENDUM TO THE ENGAGEMENT AGREEMENT. WE HAVE A STIPULATION, AND THE COURT HAD PREVIOUSLY ORDERED THAT THE AFFIDAVIT WOULD BE ADMITTED SUBJECT TO THE REHABILITATOR'S RELEVANCY OBJECTION.

MR. CULLENS: THAT IS CORRECT, YOUR HONOR.

THE COURT: I AM GOING TO ADMIT IT. THANK YOU. IF YOU WILL PROVIDE THE COURT REPORTER A COPY.

(EXHIBIT INTRODUCED INTO EVIDENCE AS BUCK EXHIBIT-A)

MR. BROWN: I HAVE LABELED IT EXHIBIT BUCK A.

THE COURT: THANK YOU, SIR.

MR. BROWN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. I ASSUME THERE IS A RESPONSE TO THAT.

DO NOT TAKE -- YOU GUYS KNOW ME WELL ENOUGH, I MAY SOUND LIKE I AM TAKING ONE POSITION WHEN SOMEBODY IS UP HERE, BUT I AM THE DEVIL'S ADVOCATE OF ALL DEVILS' ADVOCATES OF JUDGES. DO NOT THINK YOU ARE GOING TO WIN THIS THING, BUDDY.

MR. CULLENS: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. JUMP IN.

MR. CULLENS: JUMP IN. BEFORE I FORGET, I WOULD LIKE TO FORMALLY OFFER AND INTRODUCE COMMISSIONER EXHIBIT-B, WHICH WAS ATTACHED TO OUR OPPOSITION MEMORANDUM, WHICH IS ANOTHER COPY OF THE REHABILITATION ORDER OF SEPTEMBER 2015.

THE COURT: I WILL ACCEPT IT INTO EVIDENCE. YOUR AFFIDAVIT OF SOBEL CONTAINS THE ENGAGEMENT LETTER AND THE ADDENDUM, RIGHT?

MR. CULLENS: YES, YOUR HONOR, IT DOES. IT ATTACHES THE TWO -- IT IDENTIFIES THEM, DESCRIBES THEM AND ATTACHES THEM, YES.

THE COURT: THANK YOU. YES. ANY OBJECTION TO THE OFFER OF THE REHABILITATION ORDER BY THE COMMISSIONER?

MR. BROWN: NO OBJECTION FROM BUCK, YOUR HONOR.

THE COURT: ADMIT IT. I DO NOT THINK YOU HAVE TO SUBMIT INTO EVIDENCE THE FIRST SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR A JURY TRIAL. I KNOW YOU ATTACHED IT AS AN EXHIBIT, BUT IT IS PART OF THE RECORD UNDER WHICH WE ARE BRINGING THESE ACTIONS TODAY.

MR. CULLENS: I TEND TO AGREE, YOUR HONOR. THAT IS WHY WE ARE JUST SUBMITTING COMMISSIONER-B, THE REHABILITATION ORDER, WHICH IS PART OF ANOTHER COURT PROCEEDING.

MR. BROWN: YES, YOUR HONOR. THE AMENDED PETITION IS IN THE RECORD, AND OUR BRIEF DIRECTS THE COURT TO THE RELEVANT PART OF THE PETITION. THANK YOU.

THE COURT: VERY GOOD. THANK YOU. MR. CULLENS.

MR. CULLENS: YES, YOUR HONOR.

BRIEFLY, A FEW POINTS TO MR. BROWN'S COMPELLING ARGUMENT. HE RELIES UPON THE LOGIC AND THE REASONING OF THE DISSENTING OPINION IN **TAYLOR**, AND AS YOUR HONOR KNOWS, IT WAS A SIX-TWO OPINION, AND WE RESPECTFULLY SUGGEST THE SIX JUDGES WHO CAREFULLY REVIEWED THE ANALOGOUS FACTS CAME OUT ON THE RIGHT SIDE. SPECIFICALLY, MR. BROWN SAID THAT ALL OF OUR CLAIMS --

THE COURT: SIR, I APOLOGIZE. BEFORE YOU START TO ARGUE, I MEANT TO TAKE A BRIEF BATHROOM BREAK.

(OFF RECORD)

THE COURT: MR. CULLENS, YOU CAN BEGIN AGAIN IF YOU WISH.

MR. CULLENS: NO PROBLEM, YOUR HONOR.

I BELIEVE THE FIRST POINT I WANTED TO MAKE AFTER WE ADMITTED THE REHABILITATION ORDER, COMMISSIONER EXHIBIT-B, WAS THAT THE **TAYLOR CASE**, WHICH IS INSTRUCTIVE ON THIS ISSUE AS IT WAS FOR THE FIRST EXCEPTION THAT YOUR HONOR HAS ALREADY RULED ON, WAS A SIX-TO-TWO DECISION. SO, WHEN MR. BROWN COMPLIMENTS ONE OF THE DISSENTING JUDGES FOR HIS LOGIC AND REASONING, I WILL JUST POINT OUT THE OBVIOUS, THAT SIX OF HIS COLLEAGUES ON THE OHIO SUPREME COURT DISAGREED. AND IMPORTANTLY FOR THE ARGUMENT, ALTHOUGH BUCK LIKE MILLIMAN ATTEMPTS TO CHARACTERIZE ALL OF THE RECEIVER'S CLAIMS ARE

ARISING OUT OF THE CONTRACT, THAT SIMPLY IS NOT THE CASE. WE HAVE ALLEGED BREACH OF CONTRACT, BUT WE ALSO ALLEGE GROSS NEGLIGENCE AND MALPRACTICE.

IN **TAYLOR**, THEY CONSIDERED TWO DIFFERENT CLASSES OF CLAIMS THAT WERE BROUGHT BY THE REHABILITATOR, THEN THE LIQUIDATOR IN THAT CASE; ONE FOR MALPRACTICE, ACTUARIAL MALPRACTICE, WHICH IS THE SAME AS WE HAVE HERE, AND ONE FOR PREFERENCES OR AVOIDANCE CLAIMS, WHICH ARE CLAIMS THAT ARE SOMEWHAT UNIQUE TO EITHER BANKRUPTCY PROCEEDINGS OR RECEIVERSHIP PROCEEDINGS. THAT IS NOT AT ISSUE HERE, PREFERENCE OR AVOIDANCE. MALPRACTICE IS CERTAINLY AS SPECIFICALLY ALLEGED STARTING AT PAGE 30, PARAGRAPH 104 THROUGH PAGE 35, PARAGRAPH 127, WE HAVE LAID OUT SPECIFICALLY THE PROFESSIONAL STANDARDS WHICH HAVE NOTHING TO DO WITH THE WORDS OF THE CONTRACT OR THE ENGAGEMENT LETTER IN THIS CASE THAT WE HAVE ALLEGED BUCK VIOLATED IN PERFORMING THE WORK THEY DID FOR L.A.H.C.

THE COURT: HE ARGUES HOWEVER THAT THOSE CLAIMS ARISE OUT OF THEIR CONTRACTURAL OBLIGATIONS AND PERFORMANCE OF THE CONTRACT, AND THEREFORE, SHOULD BE SUBSUMED WITHIN THE CONTRACT CLAIM.

MR. CULLENS: IF WE HAD A CASE, AND HYPOTHETICALLY, IN ARGUING AGAINST MILLIMAN, AND THIS IS NOT THIS CASE, BUT IF THERE WERE A CASE WHERE ALL OF THE RECEIVER'S CLAIMS WERE TIED TO AND AROSE EXCLUSIVELY TO A CONTRACT --

THE COURT: YOU SAID MILLIMAN; THIS IS BUCK.

MR. CULLENS: THIS IS BUCK. THIS WAS AN ARGUMENT THAT WAS MADE IN MILLIMAN.

THE COURT: I SEE. GO AHEAD.

MR. CULLENS: BUT THAT IS A DIFFERENT CASE, YOUR HONOR. A CONCEIVABLE CASE WHERE THERE WAS ONE PROVISION OF A CONTRACT, OR A VERY SIMPLE CONTRACT WHERE THE RECEIVER WAS ATTEMPTING TO ENFORCE THAT SPECIFIC CONTRACTURAL PROVISION WHICH IN A SENSE FENCED IN OR PRESCRIBED THE ENTIRE SCOPE OF THE SINGLE EXCLUSIVE CLAIM, AND IT WAS ATTACHED TO AN ARBITRATION PROVISION, THEN MR. BROWN'S ARGUMENT WOULD BE MORE COMPELLING. THAT IS SIMPLY NOT THIS CASE. ALTHOUGH THE RECEIVER HAS ASSERTED BREACH OF CONTRACT CLAIMS, HE HAS ALSO ASSERTED NEGLIGENCE, GROSS NEGLIGENCE, NEGLIGENT MISREPRESENTATION, AND MOST IMPORTANTLY, PROFESSIONAL MALPRACTICE.

PROFESSIONAL NEGLIGENCE, WHICH WAS ALSO, IT IS INSTRUCTIVE, WHICH WAS AT ISSUE IN THE **TAYLOR CASE**, AND AS THE MAJORITY, THE SIX MEMBERS OF THE SUPREME COURT --

THE COURT: YES. ONE WOULD ARGUE THAT IF PROFESSIONAL MALPRACTICE WERE SUBSUMED WITHIN THE CONTRACT CLAIM, THEN IT WOULD HAVE A TEN-YEAR PRESCRIPTIVE PERIOD, BUT IT DOES NOT, IT HAS A DIFFERENT PRESCRIPTIVE PERIOD, SO IT IS CLEARLY AN INDEPENDENT AND DIFFERENT CLAIM, RIGHT?

MR. CULLENS: EXACTLY, YOUR HONOR.

THE DUTY -- YOU CAN ASSUME HYPOTHETICALLY AS A PRACTICAL MATTER, THIS IS PURELY HYPOTHETICAL BECAUSE I CANNOT REALLY IMAGINE OF A PROFESSIONAL ACTUARY DOING WORK FOR THE INSURANCE COMPANY OUTSIDE THE CONTEXT OF SOME WRITTEN AGREEMENT, BUT IF THAT DID HAPPEN, ONCE THEY ASSUMED THAT OBLIGATION TO DO PROFESSIONAL ACTUARIAL WORK, THEY WERE PRESCRIBED BY THEIR INDUSTRY, BY THEIR PROFESSION TO DO THAT WORK IN COMPLIANCE WITH THOSE PROFESSIONAL STANDARDS EXPECTED OF A REASONABLE ACTUARY, REGARDLESS OF WHETHER THERE WAS A PIECE OF PAPER THAT SET THEIR HOURLY RATE OR WHATEVER IT DID. THE CONTRACT AT ISSUE HERE DOES NOT PRESCRIBE, OR DOES NOT FENCE IN ALL OF THE CLAIMS THAT HAVE BEEN ASSERTED.

AND AS THE MAJORITY IN **TAYLOR** HELD AS PART OF THEIR -- IT IS AT PAGE -- I HAD IT WRITTEN DOWN, YOUR HONOR. PAGE 124 OF THE REPORTED **TAYLOR CASE**, QUOTE, FOR ALL OF THESE REASONS, THE MALPRACTICE CLAIM DOES NOT ARISE FROM THE ENGAGEMENT LETTER THAT CONTAINS THE ARBITRATION PROVISION, AND THEREFORE, THE LIQUIDATOR IS NOT BOUND BY IT, CLOSE QUOTE. THAT RESULT IS THE SAME HERE. SO, THE FACT THAT WE ARE NOT PURELY ASSERTING CONTRACT CLAIMS IS VERY IMPORTANT I BELIEVE TO YOUR HONOR'S ANALYSIS.

AS TO MR. BROWN'S ARGUMENT THAT THE REHABILITATION ORDER IS ONLY DIRECTED TO CLAIMS AGAINST THE LANGUAGE, AT LEAST OF ONE OF THE PROVISIONS, THE LAST ONE, THIS IS ON PAGE 9 OF EXHIBIT, WHAT HAS BEEN ADMITTED AS EXHIBIT-B,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT ANY AND ALL INDIVIDUALS AND ENTITIES SHALL BE AND HEREBY ARE PERMANENTLY ENJOINED FROM INTERFERING WITH THESE PROCEEDINGS OR WITH THE REHABILITATOR'S POSSESSION AND CONTROL. THAT IS VERY, AS YOUR HONOR HAS POINTED OUT, EXPANSIVE LANGUAGE. IT IS NOT ABOUT AGAINST. IT IS NOTHING ABOUT WHO BRINGS IT. THIS IS ABOUT THE ORDERLY DISPOSITION OF THE RECEIVERSHIP'S ESTATE, AND LOUISIANA'S STRONG INTEREST IN DOING IT. AND THAT SPECIFIC ORDER IN THE REHABILITATION ORDER WAS MADE WITHIN THE SCOPE OF AUTHORITY OF TITLE 22:2006 REGARDING INJUNCTION WHICH GIVES THAT RECEIVERSHIP COURT THE POWER TO, QUOTE, ISSUE SUCH OTHER INJUNCTIONS OR ENTER SUCH OTHER ORDERS AS MAY BE DEEMED NECESSARY TO PREVENT INTERFERENCE WITH THE PROCEEDINGS.

JUST AS WAS THE CASE WITH MILLIMAN, AN ARBITRATION FORCING THE COMMISSIONER TO GO SOMEWHERE ELSE TO SPLIT THESE CAUSES OF ACTION, TO SPLIT THESE CLAIMS UP, ARBITRATE IT IN ANOTHER VENUE, FORUM SELECTION CLAUSE LIKE THE ONE IN BUCK'S CONTRACT, WHICH CERTAINLY INTERFERE WITH THESE PROCEEDINGS, IS IN VIOLATION OF THE EXPRESSED TERMS OF THE REHABILITATION ORDER, AND WE WOULD RESPECTFULLY SUGGEST TO YOU IS IN VIOLATION OF NOT ONLY LOUISIANA'S STRONG PUBLIC POLICY, BUT POSITIVE LAW.

THE **SHELTER CASE** THAT BUCK RELIES ON FAIRLY HEAVILY IN THEIR REPLY MEMO IS A

LOUISIANA SUPREME COURT CASE THAT DID RECOGNIZE THAT AS A GENERAL PROPOSITION, FORUM SELECTION CLAUSES ARE TO BE GIVEN EFFECT. IT IS JUST SIMPLY FACTUALLY *INAPPOSITE. IT DID NOT INVOLVE AN INSOLVENT INSURANCE COMPANY. IT DID NOT INVOLVE TRYING TO ENFORCE A FORUM SELECTION CLAUSE AGAINST A NON-SIGNATORY TO THAT CONTRACT. IT DID NOT EVEN CITE MUCH LESS CONTEMPLATE HOW THIS COURT IS SUPPOSED TO BALANCE THE ALREADY COMPELLING AND STRONG STATE INTEREST AS MANIFESTED IN OUR LAWS GIVEN TO THE COMMISSIONER OF INSURANCE TO PROTECT THE PUBLIC WELFARE WHEN AN INSURANCE COMPANY GOES INSOLVENT AS WAS CERTAINLY THE CASE IN L.A.H.C. SO, **SHELTER**, PERHAPS IN A DIFFERENT CASE IS COMPELLING. IT IS NOT, IT IS NOT VERY INSTRUCTIVE GIVEN THE FACTS OF THIS PARTICULAR CASE, YOUR HONOR.

HAPPY TO ANSWER ANY QUESTIONS, BUT I BELIEVE WE HAVE DISCOVERED IT FOR THE SAME REASONS OR SIMILAR REASONS THAT WE ARGUED ABOUT THIS MORNING IN OPPOSITION TO MILLIMAN'S EXCEPTION. WE BELIEVE THAT THE LAW AND THE FACTS AND THE CONSIDERATION OF LOUISIANA PUBLIC POLICY, EVEN MORE OVERWHELMINGLY AND STRONGLY SUPPORT YOUR HONOR DENYING BUCK'S EXCEPTION.

THE COURT: MR. BROWN, ANY REPLY?

MR. BROWN: YES, YOUR HONOR. JUST BRIEFLY.

IN THE **SHELTER CASE**, THE STATE'S INTEREST IS EXPRESSED JUST ABOUT AS CLEARLY AS IT CAN BE. FORUM SELECTION CLAUSES PROMOTE COMMERCE,

THEY MAKE IT POSSIBLE FOR OUT-OF-STATE COMPANIES TO CONTRACT BUSINESS IN LOUISIANA.

THE COURT: SO, YOU DO NOT LIKE, YOU DO NOT LIKE THE DISSENT IN **SHELTER**, DO YOU? YOU DO NOT THINK A DISSENT IN **SHELTER** IS SOMETHING THAT I SHOULD LOOK AT, BUT I SHOULD LOOK AT THE DISSENT IN **TAYLOR**?

MR. BROWN: WELL, YOUR HONOR, THAT IS BECAUSE WITH RESPECT TO -- THE LOUISIANA SUPREME COURT'S DECISION IS CONTROLLING TO THE EXTENT IT APPLIES. THAT IS THE LAW OF LOUISIANA, SO WITH DUE RESPECT TO THE DISSENTERS --

THE COURT: I THINK THERE WAS ONE. I THINK IT WAS JUSTICE VICTORY.

MR. BROWN: WITH DUE RESPECT TO JUSTICE VICTORY, THE MAJORITY OPINION IS THE LAW OF LOUISIANA. THE COURT IS NOT BOUND TO EITHER THE MAJORITY OR DISSENTING OPINION FROM THE OHIO CASE. I AM SIMPLY ARGUING TO YOU THAT THE DISSENTING OPINION MAKES A WHOLE LOT MORE SENSE. I DO NOT UNDERSTAND HOW THE RECEIVER CAN SAY THAT THESE CLAIMS DO NOT ARISE OUT OF A CONTRACT. THE PETITION QUOTES THE SCOPE OF UNDERTAKING VERBATIM, AND IT SAYS THAT THE MALPRACTICE IS BASED UPON THE NOT CARRYING OUT THOSE UNDERTAKINGS IN ACCORDANCE WITH THE STANDARD OF CARE.

THE COURT: BUT LET ME ASK YOU THE SAME QUESTION OR SAME STATEMENT, GIVE YOU THE SAME STATEMENT I GAVE TO HIM. THEY HAVE LAID OUT IN THE AMENDED PETITION A CLAIM FOR PROFESSIONAL

MALPRACTICE, RIGHT? AND CLAIMS FOR PROFESSIONAL MALPRACTICE, EVEN IF ARISING OUT OF A CONTRACT, HAVE A DIFFERENT PRESCRIPTIVE PERIOD THAN THE TEN-YEAR PRESCRIPTIVE PERIOD FOR THE CONTRACT, SO THEY ARE RECOGNIZED AS AN INDEPENDENT CAUSE OF ACTION.

MR. BROWN: YOUR HONOR, I GUESS I WOULD DIFFER WITH YOU ON THAT.

THE LEGISLATURE DECIDED TO IMPOSE A ONE-YEAR PRESCRIPTIVE PERIOD ON ALL CLAIMS AGAINST LAWYERS, ARCHITECTS, WHATEVER, AND IT SAID, HOWEVER BASED ON OR ARISING OUT OF WHATEVER GROUND. SO, WHAT THE LEGISLATURE HAS DONE IS REMOVED THAT DEBATE BY IMPOSING PRESCRIPTIVE PERIODS ON CERTAIN TYPES OF CLAIMS, BUT IF YOU LOOK AT THE **GRAND ISLE CAMPSITE CASE** AND OTHER CASES, PROFESSIONAL MALPRACTICE CLAIMS REQUIRE PRIVITY. THEY ARE BASED ON CONTRACT. I THINK IT WAS IN THE, AT LEAST ONE OTHER CASE FROM LOUISIANA SUPREME COURT THAT PROFESSIONAL DUTIES CANNOT BE INVOLUNTARILY THRUST UPON PROFESSIONALS. THEY ARISE OUT OF CONTRACT. THEY ARISE OUT OF ENGAGEMENTS. THEY ARISE OUT OF UNDERTAKINGS, AND IN THIS CASE THE REHABILITATOR'S CLAIMS AGAINST MY CLIENT ARE ENTIRELY BASED UPON THE SCOPE OF THE UNDERTAKING IN THE ENGAGEMENT AGREEMENT. THEY ACCUSE MY CLIENT OF MALPRACTICE IN NOT PROPERLY SETTING PREMIUM RATES BECAUSE THEY SAY THE SETTING OF PREMIUM RATES WAS A PROFESSIONAL OBLIGATION THAT OUR CLIENT UNDERTOOK PURSUANT TO THE CONTRACT. THE

PROFESSIONAL NEGLIGENCE CLAIM IS BASED ON THE CONTRACT. IT REQUIRES INTERPRETATION OF THE CONTRACT. IF WE HAD NOT UNDERTAKEN TO SET PREMIUM RATES, THERE WOULD BE NO PROFESSIONAL NEGLIGENCE CLAIM. SO, HOW THEN CAN A PROFESSIONAL NEGLIGENCE CLAIM NOT BE BASED ON THE CONTRACT? IF WE HAD NOT UNDERTAKEN THE CONTRACT TO PERFORM AN ACTUARIAL OPINION IN 2015, HOW THEN COULD THEY HAVE A CLAIM FOR PROFESSIONAL NEGLIGENCE FOR NOT HAVING DONE THAT PROPERLY, SO THEY SAY? THAT MAKES NO SENSE AS THE DISSENTERS POINTED OUT IN THE OHIO CASE. THESE CLAIMS ARISE OUT OF THE CONTRACT. WHETHER FRAMED AS PROFESSIONAL NEGLIGENCE OR BREACH OF CONTRACT, THEY STAND ON THE CONTRACT, THEY FALL ON THE CONTRACT, THEY RISE OR FALL BASED UPON THE CONTRACT, AND ANY OTHER ARGUMENT, YOUR HONOR, WITH ALL DUE RESPECT I WOULD JUST SAY IS JUST WINDOW DRESSING. IT DOES NOT MAKE SENSE. IT DID NOT MAKE SENSE.

SO, WE COME BACK TO THE POINT THAT NO COURT, NO COURT EXCEPT THAT OHIO DECISION PERHAPS HAS ALLOWED A REHABILITATOR TO TAKE UP A CONTRACT, ASSERT CLAIMS ARISING OUT OF THE CONTRACT, BUT SEEK TO CHERRYPICK AND AVOID OTHER PROVISIONS OF THE CONTRACT THAT HE DOES NOT LIKE SUCH AS AN EXCLUSIVE FORUM SELECTION CLAUSE.

NOW, YOUR HONOR, WE ARE NOT TRYING TO INTERFERE WITH ANYTHING. THE PROVISIONS IN THE REHABILITATION ORDER THAT SAY THAT WE SHOULD NOT INTERFERE, WE HAVE DONE NOTHING. WE HAVE

NOT DONE ANYTHING TO INTERFERE WITH ANYBODY. WE HAVE BEEN SUED. ALL WE ARE TRYING TO DO IS HOLD THE RECEIVER TO THE CONTRACT THAT HE IS SUING US UNDER. THAT IS NOT INTERFERING WITH ANYTHING. THERE ARE OTHER PROVISIONS IN THE CONTRACT. ARE WE NOT ALLOWED TO RAISE THOSE BECAOSE IT WOULD INTERFERE WITH THE COMMISSIONER? FOR EXAMPLE, THERE IS A PROVISION IN THE CONTRACT THAT HE MAY NOT RECOVER CONSEQUENTIAL DAMAGES. IF WE ASSERT THAT, ARE WE INTERFERING WITH THE COMMISSIONER? THERE IS A PROVISION THAT SAYS THAT NO RECOVERY CAN EXCEED FIVE HUNDRED THOUSAND DOLLARS. IF WE RAISE, ARE WE INTERFERING WITH THE COMMISSIONER? WHERE DOES THE COMMISSIONER GET THESE PERCEIVED ARROGATED POWERS TO DO WHATEVER HE WANTS? HE DOES NOT HAVE THE POWER IF HE WANTS TO BRING UP A CONTRACT AND SUE PEOPLE UNDER IT. HE HAS GOT TO LIVE WITH THE CONTRACT.

AND THERE IS NO CASE IN THE COUNTRY I WOULD SUBMIT THAT SAYS OTHERWISE EXCEPT MAYBE THAT OHIO CASE, AND I WOULD REFER THE COURT TO THE **TAYLOR VERSUS ERNST & YOUNG** -- I MEAN, THE **F.D.I.C. VERSUS ERNST & YOUNG CASE** WHICH IS RIGHT ON POINT. IT ARISES OUT OF THE FAILURE OF A BANK, AND THE COURT SAYS, WAIT A MINUTE, RECEIVER, IF YOU ARE GOING TO SUE AN ACCOUNTING FIRM BASED UPON PROFESSIONAL MALPRACTICE, YOU HAVE TO LIVE WITH THE ARBITRATION CLAUSE THAT IS IN THE CONTRACT. IN THE **RICH VERSUS CANTILO CASE** OUT OF TEXAS, VERY GOOD DECISION, AND THAT

BY THE WAY WAS BY THE MAJORITY IN TEXAS; HOWEVER -- I AM QUOTING, HOWEVER, FOR THE ACTIONS ACCRUING INDEPENDENTLY OF THE RECEIVER'S APPOINTMENT AND ARISING UNDER THE LEGAL SERVICES AGREEMENT, THE RECEIVER, STANDING IN THE SHOES OF SANTA FE, IS BOUND BY THE ARBITRATION AGREEMENT TO THE SAME EXTENT THAT SANTA FE IS BOUND. AND AGAIN, YOUR HONOR, I WOULD SUBMIT THERE IS NOTHING IN THE INSURANCE CODE THAT SAYS OTHERWISE. THERE IS NOTHING IN THE LAW OF LOUISIANA THAT SAYS OTHERWISE. IN FACT, THE LAW OF LOUISIANA CONTROLLING FOR MY CASE IS THE **SHELTER CASE** WHERE THE LOUISIANA SUPREME COURT COULD NOT HAVE BEEN CLEARER, EXCLUSIVE FORUM SELECTION CLAUSES PROMOTE COMMERCE, THEY ENCOURAGE CONTRACTORS TO COME IN TO THIS STATE TO DO WORK, ITS RELIANCE UPON THAT, AND HERE THE POLICE POWERS SHOULD NOT BE ALLOWED TO PERMIT SOMEONE TO VIOLATE THAT. IF THEY CAN -- WE CANNOT EXPECT OUT-OF-STATE CONTRACTORS TO WANT TO DO BUSINESS IN LOUISIANA. THAT IS THE PUBLIC POLICY OF THE FORUM. THAT IS THE CLEARLY-STATED PUBLIC POLICY, IS THE **SHELTER CASE** FROM THE LOUISIANA SUPREME COURT.

YOUR HONOR, IF I COULD TAKE ONE MORE RUN AT THAT STATUTE, THAT 22:257(F). AGAIN, THE RECEIVER CONCEDES THAT THAT IS A VENUE STATUTE. HE SAYS IT IS A SPECIFIC VENUE STATUTE. THE COURT HAS UNIFORMILY RECOGNIZED THAT SPECIFIC VENUE STATUTE. EXCLUSIVE VENUE STATUTES GIVE WAY TO EXCLUSIVE FORUM SELECTION AND

ARBITRATION CLAUSES. NOW, I KNOW THESE DECISIONS ARE NOT BINDING, BUT I WOULD SUBMIT TO YOU THAT THEY REALLY MAKE THE POINT. THE **DURR HEAVY EQUIPMENT CASE** FROM THE LOUISIANA FOURTH CIRCUIT, I KNOW IT IS NOT BINDING, BUT THE COURT HELD PROPERLY THAT AN ARBITRATION CLAUSE OVERRODE A STATE STATUTE PROVIDING EXCLUSIVE JURISDICTION AND VENUE FOR CONTRACTURAL SUITS AGAINST POLITICAL SUBDIVISIONS IN THE STATE COURT OF THE PARISH WHERE THE CLAIM AROSE. NOW, THAT I WOULD SUBMIT MAKES PERFECT SENSE. VENUE EXISTS FOR THE PROTECTION OF THE PARTIES. THE STATUTE 22:257(F) EXISTS FOR THE PROTECTION OF THE PARTIES, BUT THOSE PROVISIONS GIVE WAY TO CONTRACTURAL PROVISIONS THAT ARE ENFORCEABLE ARBITRATION CLAUSES, EXCLUSIVE VENUE CLAUSES.

THE COURT: ONCE AGAIN THOUGH, YOUR ARGUMENT SEEMS TO BE GROUNDED IN AN OPINION THAT THE COMMISSIONER STANDS IN THE SHOES OF THE INSURER AND HAS NO FURTHER RIGHTS.

MR. BROWN: THE COMMISSIONER STANDS IN THE SHOES OF THE CONTRACT. WHEN HE TAKES UP A CONTRACT AND SUES PEOPLE UNDER A CONTRACT, HE STANDS IN THE SHOES OF THE CONTRACT. SO, THE COURT NEED NOT EVEN ADDRESS THE ISSUES ABOUT, TO THE EXTENT HE STANDS IN THE SHOES, OR HE IS HALFWAY IN THE SHOES, OR HIS TOES ARE IN THE SHOES BUT HIS HEEL IS NOT IN THE SHOES. THE FEDERAL COURTS HAVE DEBATED THAT IN THE F.D.I.C. WORLD AND THE BANKING WORLD FOR YEARS, AND THE LOUISIANA COURTS DEBATE IT AS WELL. IT

IS JUST NOT AN ISSUE HERE, BECAUSE HE STANDS IN THE CONTRACT. THAT IS THE POINT I AM MAKING.

AND AS I WAS SAYING, THE COURTS UNIFORMILY ALLOW ARBITRATION CLAUSES AND EXCLUSIVE FORUM SELECTION CLAUSES TO OVERRIDE OTHERWISE APPLICABLE STATE COURT EXCLUSIVE VENUE AND JURISDICTION STATUTES. LOOK AT THE **DURR HEAVY EQUIPMENT CASE**. LOOK AT THE **IN RE: FIREMAN'S CASE** OUT OF THE U.S. FIFTH CIRCUIT. I KNOW IT IS NOT BINDING, YOUR HONOR, BUT I WOULD SUBMIT THAT ITS RATIONALE IS CORRECT, FORUM SELECTION CLAUSES OVERRIDE OTHERWISE APPLICABLE FEDERAL VENUE STATUTES. VENUE IS FOR THE PROTECTION OF THE PARTIES AND IT CAN BE OVERRIDDEN BY AGREEMENT. IT CAN BE OVERRIDDEN BY AGREEMENT.

SO, I COME BACK TO THE POINT, YOUR HONOR, THAT THERE IS NO LAW. THERE IS NOTHING IN THE REHABILITATION ORDER. THERE IS NOTHING IN THE INJUNCTIVE PROVISIONS. THERE IS NOTHING IN THE INSURANCE CODE THAT EVEN SUGGESTS THAT THIS REHABILITATOR CAN COME IN HERE, SUE MY CLIENT ON CLAIMS THAT PLAINLY ARISE UNDER A CONTRACT, BUT DISAVOW AND CHERRYPICK AND AVOID THE PARTS OF THE CONTRACT HE DOES NOT LIKE. I WILL SUBMIT TO YOU THAT THAT IS UNFAIR, I WILL SUBMIT TO YOU IT IS WRONG, AND IT VIOLATES THE VERY STRONG POLICY SET FORTH BY THE LOUISIANA SUPREME COURT JUST THREE YEARS AGO IN THIS **SHELTER CASE**. FORUM SELECTION CLAUSES ARE GOOD FOR COMMERCE, THEY ARE GOOD FOR BUSINESS. THEY PROMOTE COMMERCE INSIDE OF LOUISIANA. THEY PROMOTE COMPANIES TO DO BUSINESS IN LOUISIANA,

WHICH LORD KNOWS WE NEED, AND I WOULD SUBMIT THAT THAT IS THE POLICY OF THE FORUM THAT THE COURT SHOULD APPLY, AND I APPRECIATE YOU LISTENING TO ME, YOUR HONOR.

THE COURT: CAN I ASK YOU A QUICK QUESTION? THE **CRIST CASE**, EASTERN DISTRICT --

MR. BROWN: I NEED TO APOLOGIZE TO THE COURT ABOUT THAT.

THE COURT: WASN'T THAT OVERRULED?

MR. BROWN: YES, IT WAS.

THE COURT: YOU JUST DID NOT CATCH THAT?

MR. BROWN: WELL, I HEAR FROM MY TEAM THERE WAS SOMETHING ABOUT THE WAY IT WAS CONSOLIDATED THAT MESSED UP THE SHEPARD'S REPORT, BUT WE WERE WRONG ON THAT, SO I APOLOGIZE TO THE COURT ABOUT THAT.

THE COURT: ALL RIGHT. I JUST WANTED TO CHECK BECAUSE THAT IS SO UNLIKE YOU. OKAY.

MR. BROWN: WE MISSED THAT ONE, AND I DO APOLOGIZE TO THE COURT, YOUR HONOR. THANK YOU.

THE COURT: ALL RIGHT. I AM GOING TO DENY THE EXCEPTION OF IMPROPER VENUE IN THIS. I AM GOING TO ASSIGN AS REASONS, IN ADDITION TO WHAT I AM ADDITIONALLY GOING TO SAY, THOSE REASONS I GAVE WITH REGARD TO THE DENIAL OF THE SUBJECT MATTER JURISDICTION IN THE ARBITRATION CASE THAT WAS BROUGHT BY -- ARBITRATION CLAUSE THAT WAS BROUGHT BY MILLIMAN. JUST LIKE THE ARBITRATION CLAUSE ISSUE, ENFORCING THE FORUM SELECTION CLAUSE WOULD CONTRAVENE A STRONG PUBLIC INTEREST IN LITIGATING THIS ACTION WITHIN THE STATE.

THE THIRD EXCEPTION SET FORTH IN **BREMEN VERSUS ZAPATA OFFSHORE COMPANY** APPLIES. PLAINTIFF IS NOT BOUND BY THE FORUM SELECTION CLAUSE CONTAINED IN THE ENGAGEMENT LETTER. AGAIN, THE COMMISSION DOES NOT MERELY STAND IN THE SHOES OF L.A.H.C.'S OBLIGATIONS OWED UNDER THE R.L.C. ARE MUCH MORE EXPANSIVE. I UNDERSTAND THAT BUCK'S POSITION IS THAT THEY MAY NOT STAND IN THE SHOES OF L.A.H.C., BUT THEY CERTAINLY STAND IN THE CONTRACT. WE JUST HAVE A GENERAL DISAGREEMENT ON THAT.

I DO BELIEVE WITH REGARD TO THE INSURANCE REHABILITATION AND LIQUIDATION MATTERS, THAT THE PUBLIC POLICY AND PROTECTION OF PUBLIC ISSUES FOR LOUISIANA CITIZENS OUTWEIGHS THE GENERAL RULE THAT FORUM SELECTION CLAUSES ARE VERY MUCH FAVORED, AND IN THIS PARTICULAR CASE, WITH REGARD TO REHABILITATION AND/OR LIQUIDATION, 2004, THAT PARTICULAR SPECIFIC VENUE PROVISION IS APPLICABLE ONCE THE COMMISSIONER WAS MADE REHABILITATOR, AND UNDER THIS STATUTE, HE IS AFFORDED THE RIGHT TO CHOOSE THE VENUE IN WHICH HE WISHES TO MAINTAIN THE ACTION. I DO NOT THINK WE HAVE TO GET INTO THE UNIFORM INSURER'S LIQUIDATION ACT ISSUES.

BUT ANYWAY, FOR THE REASONS SET FORTH IN THE MILLIMAN DECISION ON LACK OF SUBJECT MATTER JURISDICTION, AS WELL AS MY ADDITIONAL COMMENTS HERE, FOR THOSE REASONS I WILL DENY THE EXCEPTION OF IMPROPER VENUE. COSTS FOR THIS HEARING ASSESSED AGAINST BUCK CONSULTANTS.

MR. CULLENS, AS YOU HAVE PREVAILED ON THIS

ISSUE, WOULD YOU DO THE JUDGMENT? PROVIDE IT UNDER 9.5 TO COUNSEL FOR BUCK AT LEAST FIVE DAYS PRIOR TO SUBMITTING IT TO ME. TIME LIMITS FOR THE -- THE TIME CLOCK FOR SEEKING RELIEF FROM THIS DECISION WILL START FROM THE DAY AFTER THE SECRETARY, WHO IS A DEPUTY CLERK OF COURT, PLACES THE SIGNED ORDER AND/OR JUDGMENT IN THE MAIL. THAT WILL BE SIGNIFIED BY A CERTIFICATION ON THE FACE OF THE JUDGMENT ITSELF. OKAY.

MR. BROWN: THANK YOU. IN VIEW OF THE IMPORTANCE OF THESE ISSUES, WOULD THE COURT ENTERTAIN A MOTION FOR INTERLOCUTORY APPEAL?

THE COURT: WELL, YOU ARE ASKING FOR -- HOW IS THIS AN APPEALABLE MATTER? THIS IS AN INTERROGATORY WRIT. IT WOULD NOT -- IT IS AN INTERLOCUTORY DECISION, SO IT IS TECHNICALLY A WRIT, ISN'T IT?

MR. BROWN: IT IS, BUT I WOULD SUBMIT THAT IT IS ONE OF THOSE SITUATIONS WHERE IF THE CASE GOES FORWARD LONG, AND THEN THE APPELLATE COURT WERE TO DETERMINE AT SOME POINT THAT THESE CLAUSES ARE ENFORCEABLE, THEN THERE COULD BE A LOT OF WASTED TIME AND EFFORT HERE. I AM NOT ASKING FOR A STAY, BUT AN INTERROGATORY APPEAL WOULD BE TREATED AS AN APPEAL AND WOULD GIVE US A CHANCE TO HAVE THE COURT TREAT IT AS AN APPEAL, AND YOUR HONOR RECOGNIZED THE IMPORTANCE OF THESE ISSUES AT THE BEGINNING OF THE HEARING, SO I WAS JUST GOING TO APPEAL TO THE COURT THAT BECAUSE OF THAT, THIS WOULD SEEM I WOULD SUGGEST TO BE THE KIND OF MATTER THAT

WOULD BE APPROPRIATE FOR INTERLOCUTORY APPEAL, WHETHER THE REHABILITATOR CAN BE BOUND TO THESE FORUM SELECTION ARBITRATION CLAUSES, PRETTY IMPORTANT ISSUE, AND I WOULD SUBMIT WOULD BE A PROPER GROUND FOR A CERTIFICATION OF AN INTERLOCUTORY APPEAL.

THE COURT: I AM GOING TO DECLINE YOUR KIND REQUEST AND MAINTAIN THAT IT IS AN INTERROGATORY DECISION SUBJECT TO A WRIT.

MR. BROWN: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, SIR. ALL RIGHT, GUYS. LET'S GO AHEAD AND RECESS UNTIL 1:30.

(OFF RECORD)

THE COURT: THIS IS THE CONTINUATION OF OUR HEARING THAT STARTED THIS MORNING ON CASE 651069. WE ARE UP TO THE PEREMPTORY EXCEPTION OF PRESCRIPTION FILED BY GROUP RESOURCES, INC., SOMETIMES IN THIS HEARING TO BE REFERRED TO AS G.R.I. READY TO GO FORWARD?

MR. MASON: I AM, YOUR HONOR. BRETT MASON ON BEHALF OF GROUP RESOURCES, INC.

THE COURT: JUMP IN, SIR.

MR. MASON: HOPEFULLY I WON'T BE AS LONG-WINDED AS THE GENTLEMEN THIS MORNING.

THE COURT: WELL, I THINK I CAUSED THEM TO BE LONG-WINDED QUITE FRANKLY. A LOT OF ISSUES AND THOUGHTS GOING THROUGH MY BRAIN THAT THEY CLEARED UP FOR ME, SO HOPEFULLY YOU WILL HELP ME, TOO.

MR. MASON: WE ARE HERE ON AN EXCEPTION OF PRESCRIPTION, WHICH IS FOCUSED SOLELY ON THE NEGLIGENCE CLAIMS, OR THE NEGLIGENCE

ALLEGATIONS THAT ARE CONTAINED IN THE PLAINTIFF'S FIRST SUPPLEMENTAL --

THE COURT: YES, YOU DO NOT THINK IT IS A CONTINUING TORT.

MR. MASON: NO, YOUR HONOR, I DO NOT.

I THINK FIRST OF ALL, ARTICLE 3492 HAS THE LIBERATIVE PRESCRIPTION OF ONE YEAR. THE ALLEGATIONS OF NEGLIGENCE HAVE NOT BEEN PLED TO IDENTIFY WHAT PERIOD OF TIME THEY ARE REFERRING TO. THE FIRST CIRCUIT IN **KIRBY VERSUS FIELD**, IT IS A FIRST CIRCUIT CASE, SEPTEMBER 23RD OF 2005, REQUIRES THAT FOR PRESCRIPTION PURPOSES, THE ALLEGATIONS OF NEGLIGENCE MUST BE SPECIFIED AS FAR AS A SPECIFIC TIME.

THE COURT: YES. THAT THE PROPERLY-PLEADED MATERIAL ALLEGATIONS OF FACT AS OPPOSED TO ALLEGATIONS DEFICIENT IN MATERIAL DETAIL, CONCLUSORY FACTUAL ALLEGATIONS OR ALLEGATIONS OF LAW, RIGHT?

MR. MASON: THAT IS CORRECT, YOUR HONOR.

THE COURT: OKAY.

MR. MASON: AND SO, IF YOU TAKE A LOOK AT PARAGRAPH 69 THROUGH 70.

THE COURT: HOLD ON A SECOND. LET ME JUST GRAB THAT. I WANT TO MAKE ONE NOTE AND THEN I AM GOING TO GRAB THE PETITION. THIS IS THE AMENDED PETITION, RIGHT?

MR. MASON: CORRECT, YOUR HONOR. PARAGRAPH 69. IT IS ON PAGE 22.

THE COURT: ALL RIGHT. I AM WITH YOU.

MR. MASON: G.R.I. BREACHED THEIR DUTIES AND NEGLIGENTLY FAILED TO CAUSE L.A.H.C. TO

ACCURATELY PROCESS AND PAY HEALTH INSURANCE CLAIMS IN A TIMELY MANNER AT CORRECT RATES AND AMOUNTS. THERE IS NO TEMPORAL ALLEGATION ASSOCIATED WITH THAT. IN OTHER WORDS, THERE IS ONE ASSOCIATED WITH 70 OR 71, AND I POINT THESE OUT BECAUSE THEY DO NOT INCLUDE A TIME REFERENCE.

THE COURT: HOLD ON. I APOLOGIZE.

MR. MASON: THE REASON I POINTED THESE OUT IS BECAUSE THERE IS NO TEMPORAL ALLEGATION AS TO WHEN THESE ALLEGED BROADLY CONCLOSORY WORDED NEGLIGENCE ALLEGATIONS OCCURRED. BECAUSE THEY ARE CONCLUSORY, THERE IS NO WAY FOR THE COURT TO TELL WHEN THE ALLEGED -- OR FOR THE DEFENDANTS FOR THAT MATTER TO TELL WHEN THE ALLEGED NEGLIGENCE TOOK PLACE. BECAUSE THERE IS A ONE-YEAR LIBERATIVE PRESCRIPTION PERIOD FOR DELECTUAL ACTIONS, THEY HAD ONE YEAR WITHIN WHICH TO BRING NEGLIGENCE CLAIMS.

IN OPPOSITION TO OUR MOTION, THE INSURANCE COMMISSIONER RESPONDS WITH A STATUTE THAT SAYS, WHEN THEY FILED THE PETITION FOR REHABILITATION, IT SUSPENDS PRESCRIPTION; IN PARTICULAR, IT IS 22:08(B). IT SAYS, NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE FILING OF THE SUIT BY COMMISSIONER OF INSURANCE SEEKING AN ORDER OF CONSERVATIONAL REHABILITATION SHALL SUSPEND THE RUNNING OF PRESCRIPTION AND PREEMPTION AS TO ALL CLAIMS IN FAVOR OF THE SUBJECT MATTER INSURER, BUT THIS IS THE KEY, DURING THE PENDENCY OF SUCH PROCEEDING.

SO, THEY FILE THEIR PETITION FOR RECEIVERSHIP. TWENTY-ONE DAYS LATER THERE IS -- A PERMANENT ORDER ISSUED IN THE PROCEEDINGS IS OVER. SO, THEY HAVE GOT A 21-DAY SUSPENSION, BUT THE ALLEGATIONS THAT HAVE BEEN ALLEGED IN THEIR AMENDED PETITION DO NOT SAY THAT THESE NEGLIGENT ACTS OCCURRED WITHIN 21 DAYS OF THE FILING OF THE PETITION FOR RECEIVERSHIP, AND FOR THOSE REASONS, THE ONE-YEAR LIBERATIVE PRESCRIPTION APPLIES TO THE TORT ACTIONS. ANY ALLEGATIONS IN TORT THAT HAD NOT BEEN RAISED BY L.A.H.C. WITHIN THE 21-DAY PERIOD HAVE PRESCRIBED. SO, WHEN THEY STEP INTO THE SHOES OF L.A.H.C., THEY GET THE 21 DAYS, BUT THEY DO NOT GET 21 DAYS AND A YEAR OR WHATEVER. IT IS NOT SUSPENDED INDEFINITELY. IT IS VERY CLEAR THAT THIS IS A REHABILITATION PROCEEDING, AND THAT THE SUSPENSION ONLY TAKES PLACE FOR 21 DAYS.

THE COURT: AND THEY DEFINE THE TEMPORAL PERIOD FOR YOUR CLIENT UNDER PARAGRAPH 11(B) WHICH STATES FROM APPROXIMATELY MAY 14 TO APPROXIMATELY MAY '16, YOU SERVED AS THIRD PARTY -- YOUR CLIENT SERVED AS THIRD-PARTY ADMINISTRATOR OF L.A.H.C., AND THAT G.R.I. CONTRACTED WITH AND DID WORK FOR L.A.H.C.

I AM SORRY, I JUST WANT TO FOLLOW THROUGH ON MY THOUGHT.

SO, ONE MUST PRESUME FROM A READING OF THE PETITION THAT IT LOOKS AS THOUGH THERE IS A PRESCRIPTION ISSUE AS TO A GOOD BIT OF THE ACTIVITIES, RIGHT? WHEN YOU SAY THERE IS NO

TEMPORAL ASPECT TO 69, 71 AND 72, IT REFERS BACK TO THE T.P.A. DEFENDANTS, AND THEREFORE -- AND THEREIN, IT SETS FORTH THE TIMEFRAMES THAT THE ACTIVITIES TOOK PLACE, OR PRESUMED TO HAVE TAKEN PLACE BECAUSE THEY SET FORTH A TIME THAT YOU WOULD DO WORK FOR THEM. SO, AND BECAUSE MAY 2014 TO MAY 2016, MOST OF IT REACHES -- I AM SO SORRY, I AM TRYING TO HELP YOU -- MOST OF IT REACHES BACK TO MORE THAN A YEAR, PLUS 21 DAYS, THEN ON THE FACE OF THE PETITION, IT APPEARS PRESCRIBED.

MR. MASON: CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT. I JUST WANT TO MAKE SURE I HAVE YOUR ARGUMENT CORRECT, BECAUSE THAT IS WHAT I THOUGHT IT WAS, BUT I WANTED TO MAKE SURE. I KNOW THAT PART OF YOUR ARGUMENT WAS THAT 69, 71 AND 72 DO NOT SET FORTH A TIMEFRAME WITHIN WHICH THESE ALLEGED ACTIVITIES TAKES PLACE, BUT THEY ARE ACTUALLY DEFINED IN PARAGRAPH 11(B), THE TIMEFRAMES. ONE MUST -- ONE COULD PRESUME ANYWAY THAT THEY ARE. BUT THEN AGAIN, WE DO NOT KNOW WHAT SPECIFIC ACTS OR THINGS THAT THEY ARE TALKING ABOUT, SO THEY MAY HAVE ALL OCCURRED MAY 2014 AND THEY MAY HAVE ALL OCCURRED IN MAY 2016. WE DO NOT KNOW. ON IT FACE, MOST IF NOT ALL HAVE PRESCRIBED, RIGHT?

MR. MASON: CORRECT, YOUR HONOR.

THE COURT: OKAY. GO AHEAD. SO, WHAT THAT DOES IS IT SHIFTS THE BURDEN TO THEM.

MR. MASON: CORRECT.

WITH REGARD TO THE CONTINUING TORT,

MR. CULLENS REFERS THE COURT TO THE **CLINIC OF MONROE VERSUS RUHL**. THIS IS A BIT DIFFERENT, YOUR HONOR. THAT INVOLVED RETIREMENT PLANS, THREE OR FOUR RETIREMENT PLANS, A SUIT AGAINST AN ACTUARY WHERE THE ACTUARY WAS USING AN IMPROPER INTEREST RATE OVER A PERIOD OF LIKE TEN YEARS. OUR CLIENT, G.R.I., IS A THIRD-PARTY ADMINISTRATOR. WE WERE NOT SETTING INTEREST RATES. WE WERE PROCESSING CLAIMS FOR SHORT PERIODS OF TIME BEFORE L.A.H.C. WENT INTO RECEIVERSHIP. SO, THAT CASE DOES NOT SUPPORT THE CONTINUING TORT AS THEY SUGGEST IT DOES.

OF PARTICULAR IMPORTANCE IS -- PART OF THEIR ALLEGATION IS THAT WE NEGLIGENTLY ENTERED INTO THE CONTRACT. WELL, THE CONTRACT WAS ENTERED INTO IN JULY OF 2014. CLEARLY, JULY -- ANY NEGLIGENCE THAT OCCURRED IN JULY OF 2014 IS MORE THAN A YEAR BEFORE JULY OF '15, AND CERTAINLY, TWO YEARS BEFORE JULY OF '16. I MEAN, IF YOU ARE GOING TO BUY THAT CONTINUING TORT ARGUMENT, WE DID NOT CONTINUE TO NEGLIGENTLY ENTER INTO THE CONTRACT OVER AND OVER AND OVER AGAIN. WE DID NOT.

AND FOR THOSE REASONS WE RESPECTFULLY URGE THIS HONORABLE COURT TO DISMISS THE TORT ALLEGATIONS AGAINST G.R.I. IN THE ALTERNATIVE, TO DISMISS ALL NEGLIGENCE ALLEGATIONS AGAINST G.R.I. THAT WERE NOT ASSERTED WITHIN 21 DAYS BEFORE THEY FILED THIS LAWSUIT, YOUR HONOR.

THE COURT: I AM THINKING ABOUT SOMETHING OBVIOUSLY. THE ORDER WAS SIGNED, PERMANENT ORDER OF REHABILITATION AND INJUNCTIVE RELIEF

WAS AUGUST 21ST. THEY FILED FOR IT ON SEPTEMBER 1ST OF 2015.

MR. MASON: CORRECT.

THE COURT: ALTERNATIVELY, YOU WOULD LIKE TO HAVE ANY TORT CLAIMS PRIOR TO SEPTEMBER 1, 2014 PRESCRIBED, RIGHT? OR IS IT FROM -- NO.

MR. MASON: NO.

THE COURT: THEY HAVE THEIR 21-DAY SUSPENSION, SO PRIOR TO SEPTEMBER 21, 2014, RIGHT?

MR. MASON: NO, YOUR HONOR.

THE COURT: WHY?

MR. MASON: IT WOULD ACTUALLY BE 21 DAYS BEFORE THEY FILED THIS AMENDED PETITION, OR THE ORIGINAL --

THE COURT: OH, THE AMENDED PETITION?

MR. MASON: NOT THE AMENDED PETITION, BUT THE ORIGINAL PETITION, 21 DAYS BEFORE AUGUST 31ST OF '16, A YEAR BEFORE THAT. SO, 20 DAYS --

THE COURT: YOU ARE TALKING ABOUT THIS PARTICULAR LAWSUIT AS OPPOSED TO -- YES, OKAY.

MR. MASON: CORRECT, YOUR HONOR.

THE COURT: I UNDERSTAND.

MR. MASON: SO, IT WOULD BE 21 DAYS BEFORE AUGUST 31ST OF 2015.

THE COURT: I UNDERSTAND. THANK YOU. YOU ARE RIGHT.

MR. MASON: WITH REGARD TO THE CONTRA NON VALENTEM THAT IS TO BE USED IN EXCEPTIONAL CIRCUMSTANCES. THOSE CIRCUMSTANCES DO NOT APPLY HERE AS SET FORTH IN OUR MEMORANDUM.

WITH RESPECT TO THE CONTINUING TORT ALLEGATIONS AS WELL, MANY OF THE ALLEGATIONS APPEAR TO TRY AND CAPTURE NEGLIGENCE, BUT THEY ARE CONCLUSORY IN NATURE AND SHOULD BE DISREGARDED AS WELL. FOR THOSE REASONS, WE WOULD ASK THAT YOU DISMISS THE NEGLIGENCE ALLEGATIONS AGAINST G.R.I. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. ARE YOU TAKING THIS ONE ALSO, MR. CULLENS?

MR. CULLENS: YES, YOUR HONOR.

THE COURT: ALL RIGHT. GO AHEAD, SIR.

MR. CULLENS: BRIEFLY, YOUR HONOR, WITH ALL DUE RESPECT, WE MAINTAIN THAT G.R.I. HAS A FUNDAMENTAL MISUNDERSTANDING AND INTERPRETATION OF TITLE 22:2008. I THINK IT IS IMPORTANT TO NOTE THAT IN THEIR ORIGINAL EXCEPTION AND MEMORANDUM IN SUPPORT, THEY DO NOT CITE ANY PROVISION OF THE INSURANCE CODE, INCLUDING BUT MOST IMPORTANTLY 22:2008, WHICH HAS THE EFFECT OF SUSPENDING PRESCRIPTION AND PREEMPTION UPON THE FILING OF A CONSERVATORY OR REHABILITATION ACTION. G.R.I. DID NOT FILE ANY TYPE OF -- WE RAISED THAT ISSUE VERY SQUARELY IN OUR OPPOSITION MEMORANDUM. G.R.I. DID NOT FILE A REPLY MEMORANDUM. QUITE CANDIDLY, THE INTERPRETATION OFFERED TODAY IN ORAL ARGUMENT BY G.R.I. IS NOT LOUISIANA LAW. 2008(B) PROVIDES, NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, MEANING SPECIFICALLY CIVIL CODE ARTICLE 3492, OR ANY STATUTE OR CIVIL CODE ARTICLE THAT PRESCRIBES EITHER A PRESCRIPTIVE

PERIOD OR A PREEMPTIVE PERIOD, QUOTE, THE FILING OF A SUIT BY THE COMMISSIONER OF INSURANCE SEEKING AN ORDER OF CONSERVATION OR REHABILITATION SHALL SUSPEND THE RUNNING OF PRESCRIPTION AND PREEMPTION AS TO ALL CLAIMS IN FAVOR OF THE SUBJECT INSURER DURING THE PENDENCY OF SUCH PROCEEDING, END QUOTE. THAT PROCEEDING, THE REHABILITATION PROCEEDING WHICH WE TALKED ABOUT THIS MORNING IS STILL PENDING IN FRONT OF JUDGE DON JOHNSON. IT IS NOT A 21-DAY PERIOD BY WHICH PREEMPTION OR PRESCRIPTION IS EXTENDED JUST UNTIL AN ORDER IS ENTERED. THERE ARE CERTAINLY NO CASES TO THAT. I DO NOT UNDERSTAND THAT INTERPRETATION.

THE COURT: MY QUESTION WAS, AND I HAD A NOTE ON THIS FOR MYSELF TO ASK YOU, WHAT DOES THE SECOND SENTENCE OF 2008(B) MEAN IN REGARD TO THIS PARTICULAR MATTER BEFORE US UNDER PRESCRIPTION OF THIS CLAIM?

MR. CULLENS: THE SECOND --

THE COURT: IT SAYS, THE FILING OF A SUIT BY COMMISSIONER OF INSURANCE SEEKING AN ORDER OF LIQUIDATION SHALL INTERRUPT THE RUNNING OF PRESCRIPTION AND PREEMPTION AS TO SUCH CLAIMS FROM THE DATE OF THE FILING OF SUCH PROCEEDING FOR A PERIOD OF TWO YEARS IF AN ORDER OF LIQUIDATION IS GRANTED. THAT IS NOT EFFECTIVE IN THIS CASE, RIGHT?

MR. CULLENS: AS OF THIS DATE, NO. THE COURT-APPOINTED RECEIVER HAS NOT SOUGHT AN ORDER OF LIQUIDATION.

THE COURT: I DID NOT KNOW IF YOU WERE

GOING TO TRY TO TAKE ADVANTAGE OF THAT. IF YOU WERE, I WAS GOING TO SUGGEST THESE ARE NOT LIQUIDATION PROCEEDINGS. OKAY.

MR. CULLENS: NO. IF, IN FACT, TOMORROW OR NEXT WEEK THE RECEIVER FOR WHATEVER REASON DECIDES TO ASK FOR AN ORDER OF LIQUIDATION, WHICH IS STILL HER PREROGATIVE, AND MAY VERY WELL HAPPEN AS A PRACTICAL MATTER, THE LAW THEN, PURSUANT TO THIS STATUTE, SETS A TWO-YEAR PERIOD WHICH PRESCRIPTION IS SUSPENDED. SO, AS LONG AS THIS REHABILITATION PRESCRIPTION AND PREEMPTION IS SUSPENDED INDEFINITELY AS LONG AS THAT REHABILITATION PROCEEDING IS PENDING, WHICH IS CERTAINLY THE CASE, IT IS NOT EXTENDED FOR UNTIL AN ORDER IS ENTERED OR THE INTERPRETATION WHICH IS NOT SUPPORTED BY A FAIR CONSTRUCTION OF THAT LANGUAGE, OR CERTAINLY ANY CASE LAW, AND AS AN OFFICER OF THE COURT AND SOMEONE WHO HAS REPRESENTED RECEIVERSHIPS AND PRACTICES IN THIS AREA, THAT IS CERTAINLY NOT THE INTERPRETATION AND THE APPLICATION AND PRACTICE.

THE COURT: SO, IT IS YOUR POSITION THAT THE PERMANENT ORDER OF REHABILITATION INJUNCTIVE RELIEF IS NOT THE END OF THAT PROCEEDING? THE END OF THAT PROCEEDING WOULD BE THE RELEASE FROM REHABILITATION OR THE LIQUIDATION?

MR. CULLENS: IT IS EITHER WHEN AN ORDER ISSUED, IT HAS BEEN REHABILITATED, GO BACK TO BUSINESS AS USUAL, OR THERE IS A WHOLE BUNCH OF DIFFERENT -- SOME OTHER ORDER ENDS THAT

PROCEEDING, OR IT IS CONVERTED TO A LIQUIDATION, IN WHICH CASE YOU ARE ON THE CLOCK. YOU HAVE GOT TWO YEARS NO MATTER HOW LONG IT MIGHT TAKE TO WIND DOWN THIS --

THE COURT: YOU BELIEVE THEY HAVE MISINTERPRETED THAT STATUTE TO MEAN JUST THE ISSUANCE OF AN ORDER OF REHABILITATION ENDS THAT PROCESS.

MR. CULLENS: CORRECT, YOUR HONOR.

THE COURT: IT DOES NOT, AND YOUR POSITION IS IS THAT IT DOES NOT; IT IS STILL ONGOING.

MR. CULLENS: RIGHT. AS LONG AS THAT REHABILITATION PROCEEDING IS ONGOING, PRESCRIPTION AND PREEMPTION IS SUSPENDED INDEFINITELY, AND I BELIEVE IT IS TELLING THAT THE ARGUMENT THAT WE JUST HEARD IN ORAL ARGUMENT IS NOT CONTAINED WITHIN THE FOUR CORNERS OF THE MEMORANDUM IN SUPPORT, AND THERE WAS NOT ANY REPLY OPPOSITION, AND AS AN OFFICER OF THE COURT, CERTAINLY NOT AWARE, THERE HAS BEEN NO CASES OR AUTHORITY CITED TO SUPPORT THAT INTERPRETATION, AND IF THERE ARE ANY, I AM CERTAINLY NOT AWARE OF IT. I BELIEVE IT IS JUST A FUNDAMENTAL MISUNDERSTANDING AND INTERPRETATION OF 22:2008.

THE COURT: SO, YOUR POSITION AT A MINIMUM, AND WE WILL GET INTO THE CONTINUING TORT ASPECT OF IT, IS AS TO ANY TORTIOUS ACTIVITY COMPLAINED OF BY THE COMMISSIONER. ANYTHING THAT HAD NOT YET PRESCRIBED AS OF AUGUST 31, 2015, THE LAST DAY BEFORE THE FILING, BECAUSE THE DAY OF OCCURRENCE DOES NOT

COUNT, THAT STILL WOULD BE RIPE, BECAUSE IMMEDIATELY, PRESCRIPTION IS SUSPENDED AS TO ALL OF THOSE CLAIMS. OF COURSE, WE DO HAVE ALLEGATIONS BACK TO MAY 2014 WHICH WOULD FALL UNDER YOUR CONTINUING TORT THEORY, RIGHT?

MR. CULLENS: RIGHT, AS TO THE TORT CLAIMS.

THE COURT: AND THAT IS YOUR ARGUMENT? THAT IS THE NUTS AND BOLTS OF YOUR ARGUMENT?

MR. CULLENS: IN ESSENCE, IF IT WAS VIABLE AND ALIVE AND NOT PRESCRIBED OR PEREMPTED AS OF AUGUST 21, 2015, IT IS AS LONG AS THE REHABILITATION PROCEEDING IS PENDING --

THE COURT: BECAUSE THE REHABILITATION PROCEEDING IS ONGOING BECAUSE THERE HAS NOT BEEN A RESOLUTION OF THE REHABILITATION, AND JUDGE JOHNSON STILL HAS JURISDICTION OVER THAT CASE, RIGHT?

MR. CULLENS: EXACTLY.

THE COURT: NOW WE HAVE TO -- IF I BUY YOUR CASE, WHAT DO WE DO FOR THOSE FROM MAY 2014 UNTIL AUGUST 31 OF 2014?

MR. CULLENS: TO THE EXTENT THAT WE HAVE ASSERTED PURELY TORT CLAIMS THAT ARE ROOTED IN A ONE-YEAR PRESCRIPTION AS WE HAVE ARGUED IN OUR MEMORANDUM, WE BELIEVE THAT THE CONTINUING TORT DOCTRINE APPLIED TO COMMERCIAL DISPUTES LIKE THIS IS DIRECTLY ON POINT.

THE COURT: DO YOU BELIEVE THAT YOUR PLEADING PUTS THEM ON NOTICE OF A CLAIM OF A CONTINUING TORT? GO AHEAD.

MR. CULLENS: YES, YOUR HONOR.

WE HAVE SPECIFICALLY PLED CONTINUING TORT IN OUR AMENDED PETITION. I BELIEVE IT IS IN ONE OF THE CONCLUDING PARAGRAPHS. PARAGRAPH 139 ON PAGE 36. WE BELIEVE THEY ARE ON NOTICE GIVEN THE NATURE AS IS LAID FORTH IN THE **RUHL CASE**. WE CAN GET INTO DETAIL, BUT BASICALLY, GIVEN THE NATURE OF THE SERVICES PROVIDED BY THE THIRD-PARTY ADMINISTRATOR, G.R.I., IT WAS ESSENTIALLY THE D&O'S OF THIS COMPANY, THIS INSURANCE COMPANY ATTEMPTED TO DELEGATE ALL ASPECTS OF THE RUNNING OF THIS COMPANY. G.R.I. DID IT, WE HAVE ALLEGED, WE BELIEVE, WITH MORE THAN SUFFICIENT FACTUAL SPECIFICITY AT THIS EARLY STAGE OF THE LITIGATION; THAT THEY DID SO NOT JUST NEGLIGENTLY, BUT GROSS NEGLIGENTLY. THAT IS, ACTUARIAL SERVICES PROVIDED TO A COMPANY FIT WITHIN THE AMBIT OF CONTINUING TORT IN A COMMERCIAL SETTING, THESE TYPE OF DAILY RELIANCE ON A T.P.A. TO RUN THE BUSINESS CERTAINLY FIT SQUARELY WITHIN THE CONTINUING TORT DOCTRINE; THEREFORE, AS WE HAVE ALLEGED BEGINNING AT THE BEGINNING OF WHEN THEY STARTED SERVICES, MAY, I BELIEVE OF 2014, UNTIL THEY ENDED, WHICH WAS ROUGHLY IN MAY OF 2016, WHICH WAS ABOUT 10 MONTHS AFTER THE REHABILITATION, AFTER THE RECEIVER TOOK OVER THIS INSURANCE COMPANY AND CONTINUED TO ALLOW G.R.I. TO TRY TO PROCESS THESE CLAIMS UNTIL THEY WERE RELIEVED OF THOSE DUTIES.

UNDER THE CIRCUMSTANCES, OUR ORIGINAL COMPLAINT WAS FILED IN LATE AUGUST OF 2015. IT WAS AMENDED IN NOVEMBER OF 2015. WE BELIEVE WE

HAVE ALLEGED WITH SUFFICIENT SPECIFICITY TO PUT G.R.I. ON NOTICE OF THE NATURE OF OUR BREACH OF CONTRACT CLAIMS, WHICH AS YOUR HONOR KNOWS, TO THE EXTENT THEY DO SOUND IN CONTRACT, IT IS NOT A ONE-YEAR PRESCRIPTIVE PERIOD, IT IS A TEN-YEAR PRESCRIPTIVE PERIOD GIVEN THE TOLLING NATURE OF THE SUSPENSION PURSUANT TO TITLE 22:2008. THERE IS QUITE FRANKLY NOT A LEGAL BASIS FOR THE EXCEPTION THAT WAS FILED BY G.R.I., AND ALTHOUGH IT IS A BIT UNUSUAL TO, IN MY EXPERIENCE AT LEAST, TO RAISE ISSUES OR QUESTIONS WITH A LACK OF FACTUAL SPECIFICITY IN A PETITION PURSUANT TO AN EXCEPTION OF PRESCRIPTION, TYPICALLY THAT IS VAGUENESS OR NO CAUSE OF ACTION OR SOMETHING ALONG THOSE LINES. IF YOUR HONOR BELIEVES THAT THERE IS INSUFFICIENT FACTS HERE, THE CODE OF CIVIL PROCEDURE MANDATES, ESPECIALLY AT THIS EARLY STAGE OF THE PROCEEDING BEFORE THERE HAS BEEN EVEN ONE ATTEMPT AT ANY SUBSTANTIVE DISCOVERY BY DEPOSITION OR EVEN WRITTEN DISCOVERY, THAT THE RECEIVER WOULD HAVE A REASONABLE AMOUNT OF TIME TO AMEND TO CURE ANY DEFICIT. WE DO NOT BELIEVE THERE ARE ANY DEFICITS, YOUR HONOR. WE THINK THIS IS PLED WITH ENOUGH FACTUAL SPECIFICITY ON G.R.I.'S PART. I THINK WE HAVE PLED OVER BY MY COUNT 56 SPECIFIC THINGS THAT WE ALLEGE THEY DID WRONG LEADING TO THE ONE KIND OF SENSATIONAL EXAMPLE THAT WE PLED WITH SPECIFICITY WAS, WHEN THE RECEIVER TOOK THIS COMPANY OVER, THERE WERE OVER 50,000 CLAIMS THAT HAD NOT BEEN PROCESSED, WHICH IS KIND OF

AN ASTOUNDING -- THAT IS THE ESSENTIAL OBLIGATION OF AN INSURANCE COMPANY LIKE L.A.H.C. WHEN A CLAIM IS PRESENTED, YOU ARE ON A VERY TIGHT TIMELINE, 30 DAYS TO PROCESS THE CLAIM, X-NUMBER OF DAYS TO PAY IT, X-NUMBER OF DAYS TO DO THINGS. FOR THERE TO BE A CATALOG OR AN INVENTORY OF OVER 50,000 CLAIMS THAT HAD NOT BEEN PROCESSED BY EITHER C.G.I. OR G.R.I., I THINK THAT GIVES SOME SPECIFIC EXAMPLE OF THE EXTENT OF THE GROSS NEGLIGENCE WHICH WE HAVE ALLEGED. THIS WAS NOT JUST A SIMPLE, MADE A FEW MISTAKES. THIS WAS A -- WE HAVE PAINTED A PICTURE, AND AS IS THE CASE OF A GROSSLY INCOMPETENT INSURANCE VENTURE THAT LED TO OVER EIGHTY MILLION DOLLARS IN DAMAGES TO THE POLICYHOLDERS, THE HEALTHCARE PROVIDERS WHO RELIED UPON THEIR SERVICES, AND THE GENERAL PUBLIC AT LARGE, AND THAT IS THE LAST POINT, YOUR HONOR.

AGAIN, ALTHOUGH IT IS A BIT UNUSUAL IN MY EXPERIENCE TO HAVE QUESTIONS ABOUT THE FACTUAL ALLEGATIONS THAT WERE PLED, IF YOUR HONOR HAS ANY RESERVATIONS OF THAT AND YOU BELIEVE IT IS REQUIRED, IF YOU ORDERED US TO AMEND, IF G.R.I. WANTS OR NEEDS AND YOU THINK IT IS APPROPRIATE, WE CERTAINLY -- YOU ARE UNDER THE OBLIGATION TO GIVE US THAT OPPORTUNITY, AND WE WILL COMPLY IF THAT IS HOW YOUR HONOR SEES IT.

BUT JUST TO WRAP IT UP, GIVEN THEIR FUNDAMENTAL -- GIVEN G.R.I.'S FUNDAMENTAL MISINTERPRETATION AND UNDERSTANDING OF 22:2008, WE DO NOT BELIEVE THERE IS A LEGAL BASIS FOR

THEIR EXCEPTION OF PRESCRIPTION AT THIS TIME, YOUR HONOR.

THE COURT: OKAY. ANY FOLLOW-UP?

MR. MASON: NO, YOUR HONOR.

MR. CULLENS: IF I MAY, AS EXHIBIT, OFFER AND INTRODUCE AS EXHIBIT, COMMISSIONER EXHIBIT-B, THE PETITION FOR REHABILITATION AND INJUNCTIVE RELIEF AND RULE TO SHOW CAUSE, WHICH WAS ATTACHED TO OUR OPPOSITION MEMORANDUM.

THE COURT: ALL RIGHT. I AM GOING TO GO AHEAD AND ADMIT THE ATTACHMENTS TO THE MOVER AND THE OPPOSITION MEMOS FOR PURPOSES OF THIS HEARING. I KNOW WE HAVE THEM IN TODAY DURING OTHER PORTIONS ON DIFFERENT MATTERS, BUT FOR THE HEARING ON THE PRESCRIPTION, I WILL ALLOW THEM IN AS EVIDENCE.

OKAY. 22:2008(B) STATES, NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE FILING OF A SUIT BY THE COMMISSIONER OF INSURANCE SEEKING AN ORDER OF CONSERVATION OR REHABILITATION, WHICH IS WHAT WE HAVE HERE, SHALL SUSPEND THE RUNNING OF PRESCRIPTION AND PREEMPTION AS TO ALL CLAIMS IN FAVOR OF THE INSURER DURING THE PENDENCY OF SUCH PROCEEDING PROVIDING IT IS STILL PENDING. IT HAS NOT BEEN RESOLVED, SO CLEARLY THE PLAIN LANGUAGE OF 22:2008 OPERATED TO SUSPEND THE PRESCRIPTION ON THE DATE THAT THE PLAINTIFF FILED HIS PETITION FOR REHABILITATION. THUS, THE QUESTION BECOMES WHETHER G.R.I.'S ALLEGED NEGLIGENCE OCCURRING BEFORE SEPTEMBER 2, 2015 HAD PRESCRIBED. ACTUALLY, SEPTEMBER 1, 2014, RATHER, THOSE ARE PRESCRIBED. I DO NOT NEED TO

GO TO **RUHL**, BUT IT IS PERSUASIVE, AND I AM NOT BOUND BY IT BECAUSE IT IS A SECOND CIRCUIT CASE, BUT IT DOES PROVIDE -- IT HAS SOME VERY GOOD LANGUAGE THAT I HAPPEN TO AGREE WITH. **ORTHOPEDIC CLINIC OF MONROE VERSUS** RUHL, 786 SO.2D 323, SECOND CIRCUIT, 2001. **RUHL** INVOLVED A MALPRACTICE ACTION AGAINST AN ACTUARY WHO USED AN INCORRECT INTEREST RATE IN COMPUTING A RETIREMENT BENEFIT. IN DETERMINING WHETHER THE ACTUARY'S NEGLIGENCE CONSTITUTED A CONTINUING TORT, THE COURT MADE THE FOLLOWING FINDING, AND I AM GOING TO QUOTE, BECAUSE OF THE TYPE OF TRANSACTION, EACH DECISION REGARDING CONTINUATION OR TERMINATION OF THE PLAN AFFECTED BOTH THE ONGOING PERFORMANCE OF THE PLAN AS WELL AS ITS ULTIMATE OUTCOME. IN THIS SENSE, BAD OR UNINFORMED DECISIONS CAN POTENTIALLY CAUSE A CONTINUING DECLINE IN BENEFITS UNTIL PLAN TERMINATION. ACCORDINGLY, THE VERY NATURE OF THE TRANSACTION RESULTED IN THE SYNERGISM BETWEEN THE ALLEGED NEGLIGENT ADVICE AND RESULTING DAMAGE WHICH IN OUR VIEW CANNOT JUSTLY BE CLASSIFIED AS SEPARATE ACTS OF NEGLIGENCE WHICH WERE TO PRODUCE DISTINCT AND PARTICULAR DAMAGE. WE CONCLUDE THEREFORE THAT IF PROVEN THE SERIES OF NEGLIGENT ACTS BY WYATT IN THAT CASE WOULD HAVE CONTINUED TO COMPOUND THE PLAINTIFF'S DAMAGE. THE CONTINUOUS NEGLIGENT ACTS BY THE SAME PARTY COUPLED WITH THE CUMULATIVE NATURE OF THE DAMAGES MAKES THIS CASE ANALOGOUS TO, IF NOT CLASSIFIED AS A CONTINUING TORT FOR WHICH PRESCRIPTION DID NOT

BEGIN TO RUN AT THE VERY LEAST UNTIL THE WYATTS' INCORRECT USE OF HIS P.P.G.C. RATES WAS REVEALED TO PLAINTIFF IN MARCH OF 1984. HERE THE ALLEGATIONS SET FORTH AGAINST G.R.I. IN PLAINTIFF'S AMENDED PETITION ARE NOT DISCREET ACTS. THEY ALL RELATE TO G.R.I.'S ALLEGED FAILURE TO COMPETENTLY PROCESS AND PAY CLAIMS FOR L.A.H.C. MEMBERS. THESE ALLEGED ACTS OF GROSS NEGLIGENCE AND NEGLIGENCE COMPOUNDED UNTIL PLAINTIFF FILED A PETITION FOR REHABILITATION ON SEPTEMBER 1, 2015. THESE ACTS COLLECTIVELY RESULTED IN THE BACKLOGS OF APPROXIMATELY 50,000 CLAIMS, AND THUS, AT LEAST IN PART, CAUSED A SINGLE INJURY; NAMELY, THE FAILURE OF THE CO-OP.

ACCORDINGLY, PLAINTIFF'S ALLEGATIONS AGAINST G.R.I. CONSTITUTE A CONTINUING TORT; THEREFORE, BASED UPON PARAGRAPH 11(B), PARAGRAPHS 16 THROUGH 18, PARAGRAPHS 69, 71 AND 72, AND 139 AND 140 OF THE AMENDED PETITION, THE DEFENDANT WAS PLACED ON SUFFICIENT NOTICE OF THE ACTIVITIES THAT WERE IN QUESTION, SUFFICIENT ENOUGH TO KNOW WHAT THE CLAIMS AGAINST IT WERE, AND THAT IT WAS IN THE NATURE OF A CONTINUING TORT. THEREFORE, I AM GOING TO DENY THE EXCEPTION OF PRESCRIPTION AT DEFENDANT'S COST. MR. CULLENS, WOULD YOU DO AN ORDER FOR ME, PLEASE?

MR. CULLENS: CERTAINLY, YOUR HONOR.

THE COURT: COSTS ASSESSED FOR THIS HEARING ARE AGAINST MOVER, G.R.I.

ONCE AGAIN, TIMEFRAME FOR SEEKING RELIEF

FROM THIS RULING RUNS FROM THE DAY AFTER MY SECRETARY, WHO IS A DEPUTY CLERK OF COURT, PLACES THE SIGNED JUDGMENT IN THE MAIL. THAT WILL BE SIGNIFIED BY A CERTIFICATE STAMPED ON THE FRONT OF THE JUDGMENT ITSELF. MR. CULLENS, IF YOU WILL DO THE JUDGMENT FOR ME. UNDER RULE 9.5, PLEASE WAIT FIVE DAYS BEFORE -- EXCUSE ME, MAKE SURE THAT HE HAS IT FOR FIVE DAYS PRIOR TO SUBMITTING IT TO ME FOR SIGNATURE.

MR. CULLENS: WILL DO, YOUR HONOR. THANK YOU.

MR. MASON: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, SIR.

NOW WE HAVE A MOTION FOR SUMMARY JUDGMENT THAT IS FILED BY C.G.I. TECHNOLOGIES AND SOLUTIONS, INC. I KNOW YOU MADE APPEARANCES EARLIER, SO LET'S GO AHEAD AND MAKE APPEARANCES FOR THIS SUMMARY JUDGMENT.

MR. PHILIPS: GOOD AFTERNOON, YOUR HONOR. SKIP PHILIPS AND RYAN FRENCH ON BEHALF OF MOVERS, C.G.I.

MR. CULLENS: AFTERNOON, YOUR HONOR. JAY CULLENS AND JENNIFER MOROUX FOR THE PLAINTIFF, THE RECEIVER FOR L.A.H.C.

THE COURT: THANK YOU. THERE IS AN OBJECTION TO ONE OF THE EXHIBITS THAT THE MOVER ATTACHED TO HIS MEMORANDUM, AND THAT IS THE AFFIDAVIT OF DANIEL SCOTT NEICE. I HAVE TO TAKE UP THAT OBJECTION PRIOR TO GOING FORWARD AND ACCEPTING ANY OTHER DOCUMENTS.

MR. PHILIPS: YOUR HONOR, MAY IT PLEASE THE COURT, I THINK THE OBJECTION FROM THE

RECEIVER TO THAT WAS THE AUTHENTICATION OF THE TERMINATION LETTER THAT WAS APPENDED TO MR. NEICE'S AFFIDAVIT.

THE COURT: CORRECT.

MR. PHILIPS: AND NOT THE AFFIDAVIT ITSELF, AND I WOULD NOTE THAT WE HAVE ALSO IN OUR REPLY MEMORANDUM OBJECTED TO TWO PORTIONS OF MR. BOSTICK'S AFFIDAVIT.

THE COURT: I AM PLEASED TO HEAR YOU SAY THAT YOU, IN YOUR REPLY MEMORANDUM, YOU OBJECTED TO IT. WHY IS THAT NOT CONSIDERED A LATE FILING?

MR. PHILIPS: YOUR HONOR, I BELIEVE THE REVISED -- THE REVISIONS TO ARTICLE 966 OF THE CODE OF CIVIL PROCEDURE DEALING WITH SUMMARY JUDGMENT ANTICIPATED EXACTLY THIS CIRCUMSTANCE. IT SAYS TWO THINGS, WE DO NOT FILE SEPARATE MOTIONS TO STRIKE ANYMORE, WE OBJECT IN OUR RESPONSIVE PLEADINGS, AND I CANNOT, AS THE MOVER, I CANNOT FILE ANY NEW OR ADDITIONAL DOCUMENTS WHEN I FILED MY REPLY. SO, I HAVE NO OTHER ALTERNATIVE BUT THEN TO RAISE MY OBJECTION TO THE RECEIVER'S AFFIDAVIT AT THE FIRST OPPORTUNITY I HAVE, WHICH IS THE REPLY MEMORANDUM.

SO, I THINK IT IS AN APPROPRIATE TIME TO RAISE IT, AND I WOULD JUST SUGGEST TO THE COURT THAT IT NEEDS TO BE RULED ON AS PART OF THIS PROCEEDING. I DO NOT KNOW WHETHER YOU NEED TO RULE ON IT BEFORE WE ARGUE.

THE COURT: MR. PHILIPS, PERHAPS YOU MISSED THE THRUST OF MY QUESTION TO YOU.

MR. PHILIPS: NO DOUBT I DID, JUDGE. IF YOU ARE ASKING ME, I MISSED --

THE COURT: THE THRUST OF MY QUESTION TO YOU DID NOT HAVE TO DO WITH THE MAKING OF THE OBJECTION; IT HAD TO DO WITH THE TIMELINESS OF THE FILING. TODAY IS THE 25TH; THE FILING WAS ON THE 21ST.

MR. PHILIPS: FILING, YOUR HONOR, WAS DUE FIVE DAYS BEFORE TODAY, WHICH WOULD HAVE PLACED US LAST SUNDAY, AND THE CODE SAYS EXPRESSLY THAT YOU FILE ON THE NEXT NON-LEGAL, NON-HOLIDAY DAY, WHICH WOULD HAVE BEEN MONDAY. SO, WE BELIEVE IT IS TIMELY FOR THAT BASIS. I APOLOGIZE, I DID MISS THE THRUST OF YOUR QUESTION.

THE COURT: NO, I AGREE WITH WHAT YOU JUST SAID. I JUST NEEDED TO -- BECAUSE ON THE FACE OF IT, IT IS LESS THAN FIVE DAYS. IF MR. CULLENS WOULD LIKE TO MAKE AN ISSUE OF IT, I THINK THE CODE IS -- THE UNIFORM RULES ARE CORRECT, HE IS CORRECT IN THAT. DO YOU HAVE ANY OBJECTION WITH THE REPLY?

MR. CULLENS: AFTER CONFERRING WITH MY CLIENTS, YOUR HONOR, WE HAVE NO OBJECTION OR PROBLEM WITH THE TIMELINESS OF MR. PHILIPS'S FILING.

THE COURT: JUST MAKING A RECORD, GUYS. SOME LAW CLERK UP AT THE FIRST CIRCUIT IS GOING TO LOOK AND SAY, WAIT A MINUTE. JUST TO MAKE IT CLEAR.

MR. PHILIPS: NO, NO. THAT WAS A TOPIC OF SOME DISCUSSION WHEN THE LAW INSTITUTE WAS

TRYING TO REVISE THIS JUST TO MAKE IT CLEAR.

YOUR HONOR, WE CAN ADDRESS -- FROM MY PERSPECTIVE, I AM HAPPY TO ADDRESS THE OBJECTIONS AND THE RESPONSE --

THE COURT: LET'S TALK ABOUT HIS OBJECTION FIRST, AND THEN TALK ABOUT YOUR OBJECTIONS, BUT RIGHT NOW THE QUESTION IS, THE AFFIDAVIT AND ATTACHMENTS, ESPECIALLY WITH REGARD AS TO THE AGREEMENT, WHETHER NEICE CAN AUTHENTICATE IT.

MR. PHILIPS: YES, YOUR HONOR. SO, MR. NEICE'S AFFIDAVIT, HE SETS FORTH THE BASIS FOR HIS PERSONAL KNOWLEDGE OF THE STATEMENTS MADE IN THE AFFIDAVIT. HE WAS ON BOARD AT C.G.I. PRIOR TO THIS ADMINISTRATIVE SERVICES AGREEMENT BEING IN PLACE. HE WAS ABLE TO LOCATE AND VERIFY THE PRESENCE OF THIS TERMINATION AGREEMENT, AND I WILL JUST REFER TO IT THAT WAY EVEN THOUGH WE WILL BE TALKING MORE ABOUT THE RELEASE PROVISION IN IT, BUT HE FOUND THAT IN THE FILES OF C.G.I., AND HE SAYS, THIS IS PART OF THE BUSINESS RECORDS OF THE COMPANY, AND YOUR HONOR, TO SOME EXTENT, THE OBJECTION IS MOOT BECAUSE THE RECEIVER HIMSELF HAS APPENDED THIS VERY SAME DOCUMENT TO MR. BOSTICK'S AFFIDAVIT.

THE COURT: FOR A DIFFERENT REASON.

MR. PHILIPS: FOR A DIFFERENT REASON, BUT IT IS IN.

THE COURT: HE IS NOT APPENDING IT FOR THE CONTENT THEREOF; HE IS APPENDING IT TO COMPARE DISPARATE SIGNATURES.

MR. PHILIPS: BUT HE ALSO SAYS THAT

DOCUMENT THAT HE FOUND WAS IN THE BUSINESS RECORDS OF THE CO-OP AFTER HE TOOK OVER AS RECEIVER. SO, I THINK MR. NEICE'S AFFIDAVIT PROPERLY AUTHENTICATES THIS DOCUMENT, BUT I THINK ANY --

THE COURT: BUT IF NOT, THEY PUT IT ANYWAYS, SO.

MR. PHILIPS: ANY RESERVATION THAT THE COURT MIGHT HAVE ABOUT WHETHER THIS IS AN AUTHENTICATED DOCUMENT PROPERLY BEFORE THE COURT FOR PURPOSES OF A MOTION FOR SUMMARY JUDGMENT OUGHT TO BE ALLEVIATED BY THE FILING BY THE RECEIVER.

THE COURT: MR. CULLENS.

MR. CULLENS: THIS IS A BIT UNUSUAL. I PRIDE MYSELF ON NOT GETTING HUNG UP ON FORM OR TECHNICALITIES. I LIKE TO GET TO THE SUBSTANCE AND ISSUES. YOU DO NOT NEED TO BE A HANDWRITING EXPERT TO SEE THAT THE SIGNATURE OF MR. CROMER, YOU CAN HAVE LAY OPINION TESTIMONY, IT IS NOT THE SAME.

THE COURT: YES. I THOUGHT I WAS, I THOUGHT I WAS TOSSING YOU A PRETTY GOOD SOFTBALL WHEN I SAID IT IS SUBMITTED FOR THE PURPOSE OF THE SIGNATURE ON IT AS OPPOSED TO THE CONTENT AND TRUTHFULNESS THEREOF OF THE DOCUMENT; WHEREAS, NEICE IS BEING PLACED FOR THE PURPOSE OF THE CONTENT AND THE TRUTH THEREOF.

MR. CULLENS: RIGHT, AS TO THE -- MR. NEICE IS FAMILIAR WITH THE BUSINESS TRANSACTIONS THAT WE DO NOT HAVE THAT BUT FOR

THE DISPARITY OF THE HANDWRITING.

LET'S BACK UP. WE WERE NOT, THE RECEIVER WAS NOT AWARE, GIVEN THE STATE HAS SET FORTH IN HIS AFFIDAVIT, THE RECORDS, THE BUSINESS RECORDS OF THIS INSURANCE COMPANY WERE A MESS. THEY WERE NOT KEPT IN ANY TYPE OF ORDER. IT WAS NOT EASY TO FIND, AND AS WE STATED IN OUR OPPOSITION MEMORANDUM, WE WERE NOT AWARE OF THIS PURPORTED LETTER OF RELEASE UNTIL WELL INTO THIS LITIGATION. SO, WHEN WE FOUND IT, TO BE CANDID WITH THE COURT, YES, WE FOUND IT, BUT IT IS CLEARLY NOT THE SAME SIGNATURE, IT DOES NOT COMPORT TO THE ONE THEY ATTACHED TO IT. THE WHOLE POINT OF THIS IS, YOUR HONOR, THIS IS THE VERY BEGINNING OF THIS CASE. GIVEN THE WEIRD SIGNATURE, THE DIFFERENCE, THAT RAISES AN ISSUE THAT NORMALLY WOULD NOT EVEN BE HERE. WE JUST DEALT WITH NUMEROUS CONTRACTS WHICH ARE CENTRAL TO THIS CASE WHICH WE DID NOT TAKE ANY ISSUE WITH. IT IS, I THINK INTERESTING AT LEAST, SOMETHING THAT NEEDS TO BE EXPLORED THAT NEITHER SIGNATORY MR. CROMER NOR MR. HENDERSON, WHO ACCORDING TO OUR GOOGLE SEARCH STILL WORKS FOR C.G.I., HE COULD HAVE EASILY AUTHENTICATED HIS SIGNATURE AND PRESUMABLY MR. CROMER'S. I DO NOT KNOW WHY THEY DID NOT DO THAT.
MR. CROMER, HE -- TO GET A SETTLEMENT IN THIS CASE, BUT HE IS A PARTY, HE DID NOT COME FORWARD. WE JUST HAVE SOME RESERVATIONS, AND WE WANTED TO PRESERVE OUR OBJECTION BECAUSE WE DO NOT THINK, GIVEN THAT DISCREPANCY THAT IS OBVIOUS TO THE LAY EYE, I WOULD LIKE TO TALK TO

MR. CROMER AND OTHERS AND FIND OUT IF, IN FACT, THIS IS SOMETHING THAT WAS FORMALLY AGREED TO BY THE PARTIES BEFORE WE EVEN GET INTO THE SUBSTANCE OF WHAT IT MIGHT MEAN.

THE COURT: WELL, I AM GOING TO OVERRULE YOUR OBJECTION. I WILL ALLOW THE AFFIDAVIT IN, AND THIS INCLUDES ATTACHMENTS.

NOW, IT IS MY UNDERSTANDING, SIR, THAT YOU DO HAVE OBJECTIONS TO TWO I THINK OF THEIRS.

MR. PHILIPS: YOUR HONOR, WE DID IN OUR REPLY MEMO OBJECT TO TWO STATEMENTS IN THE AFFIDAVIT OF MR. BOSTICK, AND THE AFFIDAVIT OF MR. BOSTICK, SPECIFICALLY PARAGRAPHS 5 AND 6. AS TO THE CONCLUSORY AND OPINION STATEMENTS CONTAINED THEREIN REGARDING THE SIGNATURE OF GREG CROMER ON THE DOCUMENT WE WERE JUST TALKING ABOUT, AND THE SIMPLE COMPARISON LEADS YOU TO THE CONCLUSION THAT THEY ARE NOT THE SAME SIGNATURE, THOSE ARE IMPROPER OPINIONS, STATEMENTS AND CONCLUSORY, AND THE AFFIDAVIT DOES NOT ESTABLISH THAT MR. BOSTICK IS OTHERWISE QUALIFIED TO RENDER THOSE OPINIONS.

AND THEN THE SECOND OBJECTION HAS TO DO WITH PARAGRAPH 7 AND 8, AND MR. BOSTICK'S LACK, JUST BY DEFINITION, HE COMES TO THE GAME MUCH LATER. HE COMES TO THE GAME AFTER THE COMPANY HAS WOUND DOWN, BUT THE TESTIMONY IN PARAGRAPH 7 AND 8 DO NOT ESTABLISH A FOUNDATION FOR ANY PERSONAL KNOWLEDGE THAT MR. BOSTICK MAY HAVE, AND THEY SPEAK TO THINGS THAT HAPPENED AT OR AROUND APRIL 30, 2014, FULLY 15 TO 16 MONTHS BEFORE THE RECEIVERSHIP WAS INVOKED, AND LONGER

THAT THAT, BEFORE SUIT -- JUST ABOUT THE SAME TIME SUIT WAS FILED.

I UNDERSTAND THAT THE RECEIVER DOES HAVE ACCESS TO AND SUCCEEDS TO ALL THE RECORDS, BUT THAT DOES NOT EQUATE TO PERSONAL KNOWLEDGE, AND MR. BOSTICK'S TESTIMONY HERE DOES NOT LAY A FOUNDATION ABOUT THE BASIS FOR HIS KNOWLEDGE BEING IN BUSINESS RECORDS. IT RECITES IT AS THOUGH HE WAS PRESENT AND AN OBSERVER ON THE SCENE, WHICH IS JUST NOT POSSIBLE BECAUSE OF THE DATES THAT HE IS REFERRING TO HERE; NAMELY APRIL 30, WAY BEFORE THE RECEIVERSHIP WAS INVOKED.

SO, WE THINK THOSE FOUR PARAGRAPHS OUGHT TO BE STRICKEN FROM MR. BOSTICK'S AFFIDAVIT AS BEING IMPROPER AND INADMISSIBLE FOR SUMMARY JUDGMENT PURPOSES.

THE COURT: MR. CULLENS.

MR. CULLENS: YOUR HONOR, FIRST TO THE ONES REGARDING MR. CROMER'S SIGNATURE, PARAGRAPHS 5 AND 6, AS I HAVE INTIMATED BEFORE, HE IS ADMITTEDLY NOT A HANDWRITING EXPERT, BUT YOU DO NOT NEED TO BE A HANDWRITING EXPERT TO SEE THAT THESE SIGNATURES DO NOT COINCIDE. LAY OPINION, IF IT IS WITHIN THE PROVINCE OF A LAY WITNESS TO SEE THAT IT IS NOT EVEN CLOSE, YOU DO NOT NEED TO BE AN EXPERT.

AS TO SEVEN AND EIGHT, AND I AM PERHAPS GOING TO GET AHEAD OF MYSELF WITH ARGUMENT, YES, MR. BOSTICK AND EVERYBODY WHO IS STILL AROUND AT L.A.H.C., THEY CAME ON THE SCENE IN THE LATE SUMMER OF 2015 AND HAVE BEEN TRYING TO

REHABILITATE AND RUN THIS COMPANY SINCE THEN. SO, YES, DID BILLY BOSTICK OR ANYBODY ELSE NOW ASSOCIATED WITH L.A.H.C. HAVE PERSONAL KNOWLEDGE OF WHAT ALL THE CORPORATE DOCUMENTS THAT HE IS NOW THE CUSTODIAN AND THE REHABILITATOR OF SAY? NO, BUT HE HAS CERTAINLY REVIEWED THE CLAIMS PROCESSES THAT G.R.I. AND C.G.I. DID, LET'S SAY THE CONSEQUENCES OF THEIR ALLEGED NEGLIGENCE, GROSS NEGLIGENCE IN FAILING TO PROCESS THESE CLAIMS. CERTAINLY, ALL THE ACCOUNTING RECORDS WHICH IS PART OF HIS STATEMENT SHOWING HOW MUCH WORK WAS DONE BY C.G.I. AFTER A CERTAIN DATE IN TIME, THOSE ARE NATURALLY STEMMING FROM HIS WORK AS REHABILITATOR, AND WHERE I AM GETTING AHEAD OF MYSELF IS, CERTAINLY, YES, WHEN WE GET INTO THIS CASE AND WE START DISCOVERY, WE ARE GOING TO NEED TO DEPOSE THE PEOPLE WHO DID THE WORK FOR C.G.I. AND WHO DID THE WORK FOR L.A.H.C. AND WHO ACTUALLY HAVE PERSONAL KNOWLEDGE OF HOW, ACCORDING TO OUR ALLEGATIONS, NEGLIGENTLY THESE CLAIMS WERE PROCESSED AND WHAT A POOR JOB C.G.I. DID. SO, AT THIS STAGE OF THE LITIGATION, TO OBJECT TO MR. BOSTICK, THE RECEIVER'S AFFIDAVIT BECAUSE HE LACKS PERSONAL KNOWLEDGE, WHICH IS A FAIRLY COMMONSENSE STATEMENT, I THINK BELIES OR FORESHADOWS. ONE OF THE BASES FOR OUR OBJECTION TO C.G.I.'S SUMMARY JUDGMENT AT THIS STAGE IS, SURE, WE HAVE NOT GOTTEN TO THAT POINT WHERE, LET'S PICK ON MR. CROMER. MR. CROMER IS DEPOSED. PRACTICALLY, YOUR HONOR, HAD WE WANTED TO

DEPOSE MR. CROMER -- THIS REALLY GOT STARTED MARCH/APRIL WHEN THE EXCEPTIONS WERE FILED. THOSE PARTIES ALL HAD AT THE TIME EXCEPTIONS WHICH WOULD HAVE DENIED THIS COURT JURISDICTION WHICH WOULD HAVE DELAYED IT AND WHICH WE WOULD HAVE DISMISSED IT. THERE IS NO WAY THAT A DEPOSITION OF ANY MATERIAL WITNESS COULD HAVE BEEN TAKEN BY THIS POINT WITHOUT UPSETTING AND GENERATING OTHER MOTIONS TO TRY TO STAY THAT DISCOVERY, WHICH HAS ALREADY BEEN STAYED PURSUANT TO YOUR PRIOR ORDER.

SO, I AM AHEAD OF MYSELF, BUT I BELIEVE THESE OBSERVATIONS IN PARAGRAPH 7 AND 8 BY MR. BOSTICK, ALTHOUGH NOT TECHNICALLY, HAVE PERSONAL KNOWLEDGE BEFORE BECAME RECEIVER, THEY ARE BASED UPON HIS REVIEW OF BUSINESS RECORDS CONDUCTED IN THE ORDINARY SCOPE OF BUSINESS AND L.A.H.C. BUSINESS RECORDS OF WHICH HE IS THE CUSTODIAN.

MR. PHILIPS: JUDGE, I AM SORRY. COULD I HAVE BRIEF REBUTTAL ON THAT?

THE COURT: ABSOLUTELY.

MR. PHILIPS: SO, TO THE LAY OPINION, HANDWRITING IS NOT WITHIN THE PURVIEW OF LAY OPINION. IT IS JUST NOT, AND I AM GOING TO HAVE SOMETHING TO SAY ABOUT THE CONTENTION THAT THESE SIGNATURES ARE SOMEHOW DISPARATE, PARTICULARLY IN LIGHT OF THE EVIDENCE THAT HAS BEEN SUBMITTED TO THE COURT. AND THAT IS REALLY WHAT I WANTED TO MENTION.

WE ARE ON SUMMARY JUDGMENT, YOUR HONOR, AND WE NEED TO BE SURE THAT THE EVIDENCE

SUBMITTED IN OPPOSITION OR IN SUPPORT OF THE SUMMARY JUDGMENT COMPORTS WITH WHAT ARTICLE 966 TELLS US, AND IT IS JUST NOT SUFFICIENT TO SAY IT IS LAY EVIDENCE, OR IT IS NOT SUFFICIENT TO SAY, ANYBODY COULD TELL THAT THESE SIGNATURES ARE DIFFERENT, OR WITH ALL DEFERENCE TO MR. BOSTICK, I UNDERSTAND HE COMES TO THE GAME LATE, BUT YOU CANNOT PUT IN AN AFFIDAVIT, CONCLUSORY STATEMENTS BASED ON BUSINESS RECORDS AND THEN SAY, WELL, I CANNOT GIVE YOU THIS BASED ON PERSONAL INFORMATION, AND I DID NOT GIVE YOU BUSINESS RECORDS, AND I DID NOT TELL YOU WHERE THEY CAME FROM. THAT IS THE CRUX OF THE MOTION FOR SUMMARY JUDGMENT. WE HAVE GOT TO HAVE COMPETENT EVIDENCE HERE.

NOW, I HAVE GOT SOMETHING TO SAY ABOUT THE PREMATURITY ISSUE, TOO, BUT I DO NOT WANT TO GET AHEAD OF MYSELF SINCE WE FOCUSED ON THIS AFFIDAVIT. I JUST DO NOT THINK THIS KIND OF OPINION IN PARAGRAPHS 5 AND 6 IS ADMISSIBLE BY A LAY WITNESS, AND I DO NOT THINK THE CONCLUSORY STATEMENTS ABOUT THE BUSINESS ACTIVITIES, THE RELATIONSHIP BETWEEN L.A.H.C. AND C.G.I. AFTER APRIL 30TH OF 19 -- OF 2014 IS ADMISSIBLE THE WAY IT IS STATED IN THIS AFFIDAVIT, AND THAT IS THE REASON WE ASK YOU TO STRIKE IT.

THE COURT: WELL, WITH REGARD TO THE ISSUE OF THE SIGNATURES, I GUESS PART OF MY CONCERN, MR. CULLENS, IS, DOESN'T YOUR PETITION ACKNOWLEDGE THAT THERE WAS AN ORIGINAL AGREEMENT AND THEN THE AMENDMENT?

MR. CULLENS: NO, YOUR HONOR. WE DID NOT DISCOVER, GIVEN THE DISARRAY OF L.A.H.C.'S RECORDS AS ATTESTED TO BY MR. BOSTICK IN HIS AFFIDAVIT THAT THIS PAGE-AND-A-HALF LETTER RELEASE EXISTED. I MEAN, MR. PHILIPS --

THE COURT: SO --

MR. CULLENS: IT IS NOT, IT IS NOT, IT IS NOT PART OF OUR PETITION, YOUR HONOR.

THE COURT: OKAY. WELL, GIVE ME JUST A SECOND BECAUSE I WAS JUST LOOKING AT THE PETITION AND MAYBE I WAS LOOKING AT ANOTHER DEFENDANT AND NOT YOU, AND I MAY APOLOGIZE. YOU DEFINE C.G.I., THEIR PERIOD FOR WHICH YOU COMPLAINED, THE MARCH '13 TO MAY 2014, THE DOCUMENT IN QUESTION IS A JUNE 19, 2014 LETTER AGREEMENT, SOMETIMES CALLED THE AMENDMENT, RIGHT?

MR. PHILIPS: CORRECT.

THE COURT: I HAVE GOT CIRCLES AND ARROWS ALL OVER THIS STUFF, AND ONE CIRCLE MAY NOT CORRESPOND TO THE ARROW I THOUGHT IT DID. GIVE ME ONE MORE SECOND TO LOOK AT WHAT I WAS LOOKING AT, OKAY. I AM LOOKING AT THE AMENDED AT THAT PARAGRAPH 41 AND JUST GOING FORWARD. GIVE ME JUST A SECOND, BECAUSE THAT IS WHAT THE C.G.I. CLAIMS ARE. (PERUSING DOCUMENT)

HERE IS WHERE MY CONFUSION MAY HAVE COME. IF Y'ALL WILL TURN TO PAGE 16 OF THE PETITION, 48 AND 49. FORTY-EIGHT TALKS ABOUT WHEN G.R.I. GETS INVOLVED, THE ADMINISTRATIVE SERVICES AGREEMENT, AND THEN 49 SAYS THAT THE TERMS OF THE AGREEMENT THAT C.G.I. REPRESENTED AND

WARRANTED THAT G.R.I. PERSONNEL WHO PERFORMED OR PROVIDED THE DELEGATED SERVICES SPECIFIED UNDER THIS AGREEMENT SHALL POSSESS APPROPRIATE -- IF I TAKE YOUR REPRESENTATIONS FOR THE DEFINITION OF THE TIME PERIOD OF C.G.I.'S INVOLVEMENT OVER WHICH YOU ARE COMPLAINING, YOU SAY FROM APPROXIMATELY MARCH 2013 TO MAY 2014. THIS IS AFTER MAY 2014. I GUESS THAT IS WHY I THOUGHT YOU WERE IN AGREEMENT THAT THERE WAS AN AMENDMENT THAT CONTINUED THE WORK OF C.G.I. WERE THEY PREVIOUSLY INVOLVED?

MR. CULLENS: NO, YOUR HONOR, AND I THINK THE CONFUSION -- ONE CONFUSION IS THAT THAT APPEARS TO BE WHAT YOU HAVE CITED IN PARAGRAPH 49, THAT SHOULD HAVE READ G.R.I. AND NOT C.G.I.

THE COURT: IMAGINE MY CONFUSION THEN.

MR. CULLENS: AND I APOLOGIZE WITH THESE TYPES, BUT MORE IMPORTANTLY --

THE COURT: AND THAT IS THE ONLY REFERENCE THAT MADE ME BELIEVE THAT THERE WAS STILL A CONTINUING RELATIONSHIP BEING COMPLAINED OF WITH C.G.I.

MR. CULLENS: AS WE KNOW NOW, THE CONFUSION FACTUALLY IS, WE FILE OUR ORIGINAL PETITION, WE AMENDED IT, SERVED EVERYONE. THE FIRST TIME THE RECEIVER AND HIS COUNSEL BECAME AWARE OF THIS LETTER AGREEMENT WAS PROBABLY MARCH/APRIL OF THIS YEAR, SHORTLY BEFORE OR CLOSE IN TIME TO WHEN THE SUMMARY JUDGMENT WAS FILED, WHICH THEN AS POINTED OUT IN MR. BOSTICK'S AFFIDAVIT, PROMPTED HIM TO TRY TO FIND WHAT WE DID NOT -- WERE NOT EVEN AWARE OF

BEFORE. THAT IS WHEN HE FINDS WHAT WE HAVE ATTACHED. IT IS A DIFFERENT, IT HAS GOT A DIFFERENT SIGNATURE AT LEAST TO THE LAY EYE, IT IS A DIFFERENT SIGNATURE.

SO, THOSE PLEADINGS, THOSE FACTUAL ALLEGATIONS WERE NOT IN OUR AMENDED COMPLAINT BECAUSE WE WERE NOT EVEN AWARE OF IT, BUT NOW IT APPEARS, IF YOU ACCEPT THAT THIS LETTER AGREEMENT WAS IN PLACE, THAT THERE WAS A WIND-DOWN PERIOD AS SUPPORTED BY MR. BOSTICK'S AFFIDAVIT, THAT ABOUT HALF OF THE 1.1 MILLION THAT WAS PAID BY L.A.H.C. TO C.G.I. WAS DONE AFTER APRIL 30TH, 2014 ALL THE WAY UP UNTIL NOVEMBER OF 2014. THERE IS A TRANSITION PERIOD WHERE THEY WORKED WITH G.R.I. TO TAKE OVER.

THE COURT: ONE OF YOUR ARGUMENTS BEYOND THE MERITS OF THE SUMMARY JUDGMENT, WHICH WE MAY OR MAY NOT GET INTO BECAUSE HERE IS THE ISSUE I WANT TO KNOW. YOU SUGGEST INSUFFICIENT DISCOVERY HAS HAD AN OPPORTUNITY TO TAKE PLACE, BUT HOW WOULD THE DISCOVERY IN ANY WAY CHANGE THAT AMENDMENT, THE TERMS OF THAT AMENDMENT AND ITS EFFECTIVENESS? I MEAN, WHAT WOULD CHANGE THAT WOULD GET RID OF THAT MUTUAL RELEASE THROUGH DISCOVERY?

MR. CULLENS: LOOKING SPECIFICALLY AND SOLELY AND TELESCOPICALLY TO WHETHER OR NOT IT IS AUTHENTIC, I THINK THERE IS SOME DISCOVERY TO BE DONE ON THAT, ASSUMING --

THE COURT: IN WHAT WAY? GET AHOLD OF MR. CROMER, WHATEVER HIS NAME IS?

MR. CULLENS: YES, BECAUSE THERE WAS THIS

DISCREPANCY. PUTTING THAT ASIDE, THAT IS OVERLY TECHNICAL. WE ARE NOT GETTING INTO IT. IT IS AUTHENTIC. SO, THAT IS THE FIRST HURDLE TO OVERCOME. THE SECOND HURDLE TO OVERCOME IS ASSUMING IT IS AN ENFORCEABLE AGREEMENT THAT IS NOT -- THAT THE COMMISSIONER THROUGH HIS RECEIVER CANNOT DISAVOW.

THE COURT: YOU MAY HAVE CLAIMS UNDER THE AMENDMENT; YOU MAY NOT HAVE CLAIMS UNDER THE ORIGINAL CONTRACT?

MR. CULLENS: PERHAPS, RIGHT. WHAT DOES THAT MEAN? RIGHT. THEN THAT GETS RIGHT INTO THE ARGUMENT, IF THAT IS THE CASE, AND THERE IS A LOT OF IF'S TO GET TO THAT POINT, IF THAT IS WHERE WE END UP, OKAY, WHAT WAS DONE BEFORE THAT DATE, WHAT WAS DONE AFTER, WHAT DAMAGES ARE ASSOCIATED WITH THAT, HOW DO YOU TIE IT TOGETHER? I MEAN, THERE IS -- YOU COULD COME UP, AS WE DID, WITH A WHOLE LITANY OF MATERIAL ISSUES OF FACT WHICH WOULD REQUIRE --

THE COURT: IT WOULD NOT CHANGE, IT WOULD NOT CHANGE HIS SUMMARY JUDGMENT MOTION BECAUSE THE SUMMARY JUDGMENT MOTION HAS TO DO WITH THAT RELEASE, OKAY. NOW, IT WOULD END UP BEING A PARTIAL SUMMARY JUDGMENT TO THE EXTENT THAT THERE MAY BE A SUBSEQUENT AMENDMENT TO, NOW THAT YOU HAVE DISCOVERED THIS AMENDMENT TO THE PLEADINGS, NOW THAT YOU HAVE DISCOVERED THIS LETTER AGREEMENT THAT WOULD ASSERT CLAIMS BASED UPON ACTIVITIES PURSUANT TO THE LETTER AGREEMENT; ALSO KNOWN AS AN AMENDMENT TO THE ORIGINAL, BUT THAT IS NOT IN THE PLEADINGS

RIGHT NOW.

MR. CULLENS: CORRECT, YOUR HONOR. PROCEDURALLY, GIVEN THE RECENT AMENDMENT, THEY HAVE AMENDED 966 AND 967 EVERY YEAR FOR THE LAST YEAR.

THE COURT: MORE THAN THAT. TRUST ME, MORE THAN THAT. I HAVE BEEN INVOLVED WITH A FEW OF THEM. SO HAS MR. PHILIPS.

MR. CULLENS: ABSOLUTELY. AS EVERYONE IN THIS COURTROOM KNOWS, PROCEDURALLY YOU CANNOT -- WHATEVER THE MOTION -- THIS IS NOT A MOTION FOR PARTIAL SUMMARY JUDGMENT. THIS IS A MOTION FOR COMPLETE SUMMARY JUDGMENT.

THE COURT: WELL, OF COURSE IT IS COMPLETE SUMMARY JUDGMENT.

MR. CULLENS: WHICH ASSUMING AUTHENTICITY, ASSUMING IT IS EFFECTIVE AND ASSUMING ENFORCEABILITY, YOU CANNOT GET TO COMPLETE SUMMARY JUDGMENT FOR THAT REASON ALONE.

THE COURT: WHY NOT? WHY NOT? BECAUSE THE ONLY CLAIMS YOU HAVE ASSERTED AGAINST THEM ARE UNDER THE ORIGINAL CONTRACT. YOU HAVE NOT ASSERTED CLAIMS AGAINST THEM UNDER THE LETTER AGREEMENT, AND THE LETTER AGREEMENT SPECIFICALLY RELEASES EACH OTHER.

MR. CULLENS: WHICH BASED UPON --

THE COURT: AM I MISSING SOMETHING?

MR. CULLENS: BASED UPON -- WELL, WE HAVE ALLEGED THROUGH -- OUR ORIGINAL ALLEGATIONS WERE THROUGH, I BELIEVE ON OR ABOUT JULY 2014. SO, WE GET INTO --

THE COURT: TIME OUT. TIME OUT. TIME

OUT.

MR. PHILIPS: THAT IS THE DATE OF THE RELEASE.

THE COURT: HERE IS THE PROBLEM IN MY HEAD FROM AN ADMINISTRATION-OF-JUSTICE-TO-ALL-PARTIES ISSUE.

WHAT IS THE EFFECT OF MY GRANTING THEIR SUMMARY JUDGMENT AND DISMISSING THEM? IT WOULD BE WITH PREJUDICE, AND THEN YOU COULD NOT AMEND TO BRING THEM BACK IN ON CLAIMS YOU MIGHT HAVE UNDER THE LETTER AGREEMENT, RIGHT? THAT IS NOT FAIR. IF I DENY THE SUMMARY JUDGMENT, IT IS CONTRARY TO THE EVIDENCE BEFORE ME BASED UPON THE PLEADINGS AND THE EVIDENCE I HAVE, RIGHT? SO, I THINK YOUR ONLY ESCAPE HERE, AND I THINK YOU ARE ACTUALLY -- SORRY, SKIP, BUT I THINK HE IS RIGHT, THAT I THINK THAT THERE IS JUST INSUFFICIENT DISCOVERY HERE IN THE INTEREST OF JUSTICE. I KNOW YOU WANT TO GET YOUR CLIENT KICKED OUT. I UNDERSTAND THAT.

MR. PHILIPS: JUDGE, YOU GOT IT. BASED ON THE ALLEGATIONS OF THIS PETITION, AND THIS MOTION FOR SUMMARY JUDGMENT, THE CLAIMS AGAINST C.G.I. OUGHT TO BE DISMISSED WITH PREJUDICE. IF THEY WANT TO COME BACK AND SAY POST JUNE 30, 2014 UNTIL WHATEVER THEY SAY WE DID NOT DO ANYTHING ELSE FOR THEM AND FILE A NEW SUIT, OR AMEND THE PETITION, OR ALLEGE MORE NEGLIGENCE OR BREACH OF OBLIGATIONS OR THINGS THAT WE WERE SUPPOSED TO DO AFTER THE RELEASE WAS SIGNED --

THE COURT: JUNE 19.

MR. PHILIPS: -- TELL THEM TO DO IT.

THE COURT: JUNE 19; NOT JUNE 30TH.

MR. PHILIPS: JUNE 19TH. THEY CAN DO THAT. THEY CAN DO THAT. AND IT MAY BE THAT THEY DO NOT HAVE CONTRACTUAL CLAIMS, BUT MAYBE THEY HAVE GOT NEGLIGENCE CLAIMS, BECAUSE IF YOU READ THE CONTRACTS IT SAYS, THE RELATIONSHIPS TERMINATED EXCEPT FOR STUFF THAT WE MAY ASK YOU TO DO DOWN THE ROAD FOR A PERIOD OF MONTHS, AND IF THEY WANT TO COME BACK AND SAY, WE ASKED YOU TO DO STUFF AND YOU DID IT WRONG, THAT IS NOT COVERED BY THIS RELEASE, AND IT IS NOT COVERED BY SUMMARY JUDGMENT. THEY HAVE JUST GOT TO AMEND.

TO THE QUESTION ABOUT DISCOVERY, I AM GLAD YOU BROUGHT IT UP BECAUSE NUMBER 1, THERE WAS NOTHING TO KEEP -- THE ONLY DISCOVERY THAT IS AT ISSUE, PRESENTED AT ISSUE IN THIS MOTION WAS WHEN THE RECEIVER RAISED THE AUTHENTICITY OF MR. CROMER'S SIGNATURE. NOW, DUPLICATE ORIGINALS, THE DOCUMENT SAYS THAT, SO I CAN POSIT FOR YOU JUST AS EQUALLY A PLAUSIBLE EXPLANATION ABOUT WHY THOSE SIGNATURES MAY NOT MATCH IF YOU PUT THEM OVER ONE ANOTHER, BECAUSE EVERYBODY IS SIGNING TWO SEPARATE DOCUMENTS, AND IF YOU DO NOT BELIEVE THAT THAT COULD HAPPEN, LOOK AT THE EVIDENCE THAT THE RECEIVER GAVE YOU AND ASKED YOU TO BECOME A HANDWRITING EXPERT.

THE COURT: I CANNOT DO THAT.

MR. PHILIPS: WELL, NO, YOU CANNOT DO THAT, BUT THAT IS MY POINT. THERE IS NO EVIDENCE THAT ESTABLISHES OTHER THAN

INFERENTIAL MR. BOSTICK'S CONCLUSORY AFFIDAVIT, OR THEM ASKING THE COURT TO BECOME THE HANDWRITING EXPERT THAT HAS ANYTHING TO DO WITH THE AUTHENTICITY OF THIS DOCUMENT. FOR SUMMARY JUDGMENT PURPOSES, THEY HAVE NOT MET THEIR BURDEN OF PROOF. THIS DOCUMENT RELEASES C.G.I. FROM ALL CLAIMS, AT LEAST FROM THE -- UP TO THE EFFECTIVE DATE OF THE DOCUMENT. IT WAS DONE, AND THOSE CLAIMS WERE EXTINGUISHED BEFORE ANYBODY THOUGHT THERE WOULD EVER BE A RECEIVERSHIP IN THIS CASE. I THINK THE COURT SHOULD GRANT THE SUMMARY JUDGMENT. THERE IS NO DISCOVERY THAT IS GOING TO FIX THIS, JUDGE, AND IF THERE WAS ANY --

THE COURT: WELL, THAT WAS KIND OF MY QUESTION TO HIM, WHAT DISCOVERY COULD FIX THAT DOCUMENT.

MR. PHILIPS: IF THERE WAS ANY -- WE WERE HERE IN APRIL WHEN YOU SET ALL OF THESE FOR HEARING TODAY, AND ONE OF THE THINGS YOU SAID ON THE RECORD WAS, IF THERE IS ANY LIMITED DISCOVERY YOU NEED FOR THOSE MOTIONS, YOU CAN GO TO IT BETWEEN APRIL AND AUGUST. WE DID NOT GET A REQUEST. MR. CROMER WAS A PARTY. HE WAS REPRESENTED. I GUARANTEE YOU THAT IF THE RECEIVER HAD PROPOUNDED ONE LITTLE REQUEST FOR ADMISSION AND ASKED GREG CROMER WHETHER THIS WAS HIS SIGNATURE, THEY WOULD HAVE RESPONDED TO THAT BECAUSE YOU WOULD HAVE MADE THEM RESPOND TO THAT, AND THAT WOULD HAVE TAKEN CARE OF THIS RED HERRING ISSUE. WE DID NOT EVEN GET THAT.

SO, JUDGE, I DO NOT THINK YOU CAN REOPEN

THIS AND SAY, GO DO SOME DISCOVERY AND SEE IF YOU CAN AMEND YOUR PETITION, AND SKIP, COME BACK AND FILE YOUR PARTIAL MOTION FOR SUMMARY JUDGMENT, I AM GOING TO GRANT IT. IF THEY WANT TO GO THERE, THEY CAN GET THERE, BUT THEY OUGHT TO GET THERE AFTER YOU GRANT THE MOTION FOR SUMMARY JUDGMENT AND DISMISS C.G.I.

THE COURT: WELL, I AM GOING TO LET MR. -- I JUST WANT TO LET Y'ALL KNOW WHAT MY THINKING IS. FOR ME TO MAKE THE RULING YOU JUST SUGGESTED THOUGH, THAT IS NOT A RULING BASED UPON THE FACTS AND THE EVIDENCE BEFORE THE COURT TODAY.

MR. PHILIPS: I THINK IT WOULD BE, YOUR HONOR.

THE COURT: NO, NO, NO, NO. I CANNOT, I CANNOT SAY, GO GET THE FACTS AND STUFF AND THEN GO AMEND. THAT CANNOT BE PART OF MY RULING.

MR. PHILIPS: NO, NO. I WAS NOT SUGGESTING THAT WOULD BE PART OF YOUR RULING. ALL I WAS SUGGESTING IS, LET MY PEOPLE GO. THAT IS MY BIBLICAL SPEECH FOR TODAY, LET MY PEOPLE GO, DISMISS C.G.I. BASED ON THE STRENGTH OF THIS MOTION FOR SUMMARY JUDGMENT.

THE COURT: AND THEN I AM GOING TO BE FACED WITH YOUR ARGUMENT WHEN HE AMENDS, SECOND AMENDMENT TO BRING YOU IN ON THE LETTER AGREEMENT THAT, WE HAVE BEEN RELEASED WITH PREJUDICE. YOU CANNOT BRING CLAIMS AGAINST US.

MR. PHILIPS: I WOULD SAY IN RESPONSE TO THAT, SORT OF WHAT YOU JUST SAID, LET ME SEE WHAT THE ALLEGATIONS ARE, BUT THE RECEIVER HAS

MADE NEGLIGENCE ALLEGATIONS AGAINST ALL OF THE OTHER DEFENDANTS. I WOULD HOPE THAT AFTER THE RECEIVER DOES THE PROPER INVESTIGATION, HE IS GOING TO FIND THAT HIS CONCLUSION ABOUT THE AMOUNT OF WORK THAT WAS DONE AFTER JUNE THE 19TH IS ERRONEOUS FACTUALLY, BUT THAT IS DOWN THE ROAD. THEY ARE BRINGING A NEGLIGENCE CLAIM FOR ACTS THAT OCCURRED AFTER THE DATE OF THE RELEASE. I AM NOT GOING TO COME AND TELL YOU --

THE COURT: I DISMISS YOU, THEN IT BECOMES DISCOVERY AGAINST A NON-PARTY.

MR. PHILIPS: I AM SORRY, YOUR HONOR.

THE COURT: IF I DISMISS THEM, IT IS DISCOVERY AGAINST A NON-PARTY.

MR. PHILIPS: WE KNOW HOW TO DO THAT. THEY ISSUE A SUBPOENA, WE SHOW UP. I DO NOT SEE -- I SEE WHERE YOU ARE TRYING TO GO, YOUR HONOR. I DO, AND I UNDERSTAND --

THE COURT: I AM JUST TRYING TO DO WHAT IS RIGHT AND JUST FOR ALL THE PARTIES. I DO NOT WANT YOU TO BE STUCK IN THIS CASE UNDER AN ORIGINAL AGREEMENT IF THE EVIDENCE BEFORE ME SHOWS YOU HAVE BEEN RELEASED ON IT.

MR. PHILIPS: WHICH IS I THINK WHERE WE ARE.

THE COURT: AT THE SAME TIME I AM TRYING TO THINK THROUGH THE EFFECT OF A GRANTING OF SUMMARY JUDGMENT. IT HAS NOT BEEN BROUGHT AS A PARTIAL SUMMARY JUDGMENT, SO I CANNOT SAY I AM GRANTING IT ON THE ISSUE OF. I JUST HAVE TO DISMISS YOU IN FULL, BUT THEN WHEN THEY COME

AND FIND OUT THAT, WELL, YOU DID DO STUFF AFTER THE EFFECTIVE DATE OF THAT RELEASE, YOU ARE GOING TO SAY, I HAVE BEEN RELEASED, SCREW YOU.

MR. PHILIPS: PART OF WHAT I AM GOING TO SAY IS, REALLY? WHY DIDN'T YOU PLEAD THAT IN YOUR ORIGINAL PETITION?

THE COURT: BECAUSE THEY WERE UNAWARE OF THE AGREEMENT.

MR. PHILIPS: THE AGREEMENT WOULD HAVE BEEN, THE AGREEMENT WOULD HAVE BEEN IRRELEVANT TO WHETHER OR NOT WE COMMITTED ACTS AFTER THAT DATE ABOUT WHICH THEY SAY CAUSED DAMAGE. I MEAN, THAT IS PART, THAT IS PART OF AN INVESTIGATION THAT THE RECEIVER COULD HAVE DONE, AND IN FACT, AFTER THEY GOT THROUGH THE DOCUMENTS -- I DO NOT ENVY MR. BOSTICK'S COMING INTO A TRUCKLOAD OF DOCUMENTS, BUT HIS OWN AFFIDAVIT SAYS, WE FOUND OUT THIS STUFF. THE PETITION HAS NOT BEEN AMENDED.

THE COURT: LET'S LET MR. CULLENS HAVE A COUPLE --

MR. PHILLIPS: I AM SORRY, YOUR HONOR.

MR. CULLENS: I COMMEND MR. PHILIPS'S EXCELLENT ARGUMENT, GOOD, BUT I WILL RESPECTFULLY SUGGEST TO YOUR HONOR THAT YOUR SENSE OF FAIRNESS AND YOUR CONCERN ABOUT THIS BEING THE RIGHT THING IS A RESULT OF TRYING TO IMPOSE SUMMARY JUDGMENT STANDARDS AT THIS STAGE OF THE LITIGATION. I WILL REMIND YOUR HONOR, WE ARE THE MANIFESTATION OF THE POLICE POWERS OF THE STATE, AND WE HAVE TRIED TO LAY IT OUT CLEARLY. THIS IS NOT A CASE WHERE AN INSURANCE

COMPANY, THEY DID NOT DO A GOOD JOB. THIS WAS AN ATROCIOUSLY INCOMPETENT INSURANCE COMPANY THAT RAN UP OVER EIGHTY MILLION DOLLARS OF LOSSES IN A VERY SHORT PERIOD OF TIME IN NO SMALL PART DUE TO C.G.I.'S GROSS NEGLIGENCE. WE DID NOT IN GOOD FAITH, WHEN YOU GET THE DETAILS OF HOW THE CORPORATE RECORDS WERE HANDLED, WE HAVE NOT MADE ANY BONES ABOUT IT, WE DID NOT DISCOVER IT UNTIL AFTER THE FACT, AND IT IS A REASONABLE NON-DISCOVERY.

SO, AT THIS POINT WE NEED TO AMEND, GET THAT IN THERE, GET IT IN THE RECORD BEFORE ANY DISCOVERY IS DONE. HAD I TRIED TO TAKE MR. CROMER OR ANYBODY ELSE'S DEPOSITION TO SUPPORT THIS, WHAT IS MILLIMAN AND BUCK, AND BEAM, WHO WAS IN THERE AT THE TIME, AND ALL THE OTHER D&O'S BEFORE THEY EVEN REQUESTED DOCUMENTS BE PRODUCED BY THE RECEIVER, THERE IS NO WAY THAT WOULD HAVE HAPPENED. SO, WE ARE IN A PROCEDURAL POSTURE WHERE I UNDERSTAND MR. PHILIPS'S MOTIVATION, HE IS A VERY GOOD ATTORNEY, I WOULD BE DOING THE SAME THING, BUT THIS IS JUST A PREMATURE ATTEMPT AT SUMMARY JUDGMENT.

IN ADDITION, YOUR HONOR, WE CANNOT IGNORE RES JUDICATA. LOUISIANA LAW NOW COMPLIES WITH FEDERAL LAW. IT HAS BEEN LIKE THAT FOR THE LAST 20 OR SO, LAST 25 YEARS. EVERY CAUSE OF ACTION, EVERY CLAIM THAT ARISES OUT OF THE SAME NUCLEUS OF OPERATIVE FACTS MUST BE PLED; OTHERWISE, IT IS BARRED AND MERGED.

THE COURT: THAT IS WHY I MADE THE COMMENT

I DID.

MR. CULLENS: IF MR. PHILIPS PULLS A MAGIC ACT AND GETS OUT OF HERE TODAY WITH A DISMISSAL WITH PREJUDICE, THERE WILL BE A VERY GOOD ARGUMENT ON THE OTHER SIDE THAT IT IS RES JUDICATA, WHICH TOTALLY FRUSTRATES THE POLICE POWERS AT THIS VERY, VERY EARLY STAGE OF THE LITIGATION.

THE COURT: MR. CULLENS, HERE IS MY CONCERN, OKAY. THIS SUMMARY JUDGMENT WAS FILED APRIL 13. TODAY IS AUGUST 25, ALL RIGHT.

MR. CULLENS: CORRECT.

THE COURT: FOUR MONTHS AGO, ALMOST FOUR-AND-A-HALF MONTHS AGO. DURING THAT TIME, YOU KNEW THAT THIS WAS THE ISSUE. HOW COULD YOU HAVE NOT, A, FILED THE SECOND AMENDED IF YOU AGREED WITH THEM, OR, B, CONDUCT THE DISCOVERY YOU NEEDED, BECAUSE RIGHT NOW IN FRONT OF ME, I HAVE A DOCUMENT THAT HAS BEEN AUTHENTICATED THAT RELEASES EACH OTHER FROM THE ORIGINAL AGREEMENT, ACTIONS ON THE ORIGINAL AGREEMENT. THAT IS TROUBLESOME, RIGHT? I KNOW IT IS A BIG CASE, AND I KNOW YOU HAD ANOTHER HUGE MATTER THAT TOOK UP A GREAT DEAL OF YOUR TIME ON A CASE IN TEXAS. NO DOUBT, I AM NOT UNSYMPATHETIC TO ALLOCATION OF TIME THAT ATTORNEYS HAVE TO MAKE CHOICES FOR WITH REGARD -- THIS IS NOT YOUR ONLY CASE, I DO UNDERSTAND THAT, BUT THAT IS A LONG TIME.

MR. CULLENS: AND I AM NOT EVEN GOING THERE, YOUR HONOR. I BELIEVE THE SPECIFIC FACTUAL PROCEDURAL STATUS OF THIS CASE DICTATED

THAT THE KIND OF DISCOVERY THAT WE NEED TO FLESH THIS OUT WAS NOT OPPORTUNE. THESE EXCEPTIONS AND SUMMARY JUDGMENTS WERE FILED, I BELIEVE MARCH/APRIL. WE HAD A HEARING DIVYING UP IN MAY, NO ONE'S PROBLEM. THAT WAS CONTINUED UNTIL TODAY. YOUR HONOR ISSUED AN ORDER STAYING ALL DISCOVERY WITH THE EXCEPTION OF THAT RELATED TO THE PENDING EXCEPTION, SUMMARY JUDGMENT. THERE HAS BEEN NO PRODUCTION OF DOCUMENTS OTHER THAN INSURANCE POLICIES WHICH FACILITATED THE SETTLEMENT WHICH WE HAVE BEEN WORKING ON DILIGENTLY FOR THE LAST THREE MONTHS. OTHER THAN THAT, NONE OF THESE DEFENDANTS HAVE GOTTEN ONE PIECE OF PAPER OR ONE ELECTRONIC DOCUMENT BECAUSE OF THE NATURE OF THIS CASE AND THESE EXCEPTIONS, THESE PRELIMINARY HEARINGS. SO, AS A PRACTICAL MATTER, IF I WANTED TO DEPOSE ANYBODY --

THE COURT: THERE IS NO DOUBT THAT THIS IS A BIG CHUNK OF COCONUT, AND IF ANYBODY HAS CHEWED COCONUT, YOU KNOW THE MORE YOU CHEW, THE BIGGER IT GETS, RIGHT? IT JUST KIND OF EXPANDS. WOULD IT BE UNJUST TO C.G.I. NOT TO GRANT THEIR SUMMARY JUDGMENT?

MR. CULLENS: ANOTHER POINT, YOUR HONOR.

THE COURT: ALL RIGHT. GO AHEAD.

MR. CULLENS: NO, I DO NOT THINK IT WOULD BE UNJUST AT ALL. THE NATURE OF WHAT THEY HAVE SAID THEY HAVE AUTHENTICATED, AND THE BASIS OF AT BEST, AT BEST IS A PARTIAL SUMMARY JUDGMENT WHICH THEY HAVE NOT PLED; THAT IS A WHOLE NOTHER PROCEDURAL ISSUE.

THE COURT: WELL, BUT YOU HAVE NOT -- HERE IS THE PROBLEM. YOUR PARAGRAPH 11(A) IN YOUR AMENDED PETITION SETS FORTH A TIME PERIOD OVER WHICH YOU ARE COMPLAINING, AND IT GOES UNTIL MARCH OF 2014, WHICH IS A COUPLE MONTHS AHEAD, THREE MONTHS BEFORE THIS AMENDMENT AND RELEASE.

MR. CULLENS: APPROXIMATELY MAY 2014, WHICH THE EFFECTIVE DATE OF THE RELEASE WAS APRIL 30, 2014. THE WIND-DOWN PERIOD WAS FROM APRIL 30, 2014 FOR SIX MONTHS, WHICH WOULD HAVE BEEN MAY, JUNE, JULY, AUGUST, SEPTEMBER. AS A MATTER OF FACT, AS SUBSTANTIATED BY THE INVOICES ATTACHED TO MR. BOSTICK'S AFFIDAVIT, THEY RECEIVED ABOUT 50 PERCENT OF THE 1.1 MILLION THEY WERE PAID FOR THEIR SERVICES UNTIL NOVEMBER 2014. SO, AS A TECHNICAL MATTER, WE HAVE PLED THROUGH MAY, SO AT LEAST FOR THAT MONTH, BUT I WOULD RESPECTFULLY SUGGEST, YOUR HONOR, SUBSTANTIAL CONCERNS FOR SUBSTANTIAL JUSTICE GIVEN THE VERY SPECIFIC PROCEDURAL POSTURE OF THIS CASE, THE NATURE OF THE ARGUMENTS WE ARE HAVING HERE, WHERE IS THE FIRE? THERE IS NO BASIS. JUDGE, THIS IS NOT A QUESTION OF WHETHER --

THE COURT: THE FIRE IS C.G.I. IS SPENDING SOME PRETTY GOOD ATTORNEYS' FEES TO KEEP GOING ON SOMETHING THAT THEY BELIEVE THEY CORRECTLY SHOULD BE RELEASED FROM.

MR. PHILIPS: YOU LOOK AT MR. NEICE'S AFFIDAVIT; HE SAYS NO WORK WAS DONE, NO, WE WERE NOT REQUESTED TO DO WORK AFTER THE TERMINATION DATE. MR. BOSTICK'S TESTIMONY IN

HIS AFFIDAVIT ABOUT WHEN INVOICES WERE PAID JUST PROVES THAT L.A.H.C. WAS A SLOW PAYER. IT DOES NOT SAY ANYTHING AS TO WHEN THAT WORK WAS DONE. IT DOES NOT COUNTER MR. NEICE'S TESTIMONY.

JUDGE, THIS MOTION FOR SUMMARY JUDGMENT ADDRESSES THE ALLEGATIONS IN THIS PETITION. WE HAVE ESTABLISHED THAT WE GOT A RELEASE. IT IS BILATERAL FOR CONSIDERATION. THERE IS NO ALLEGATIONS OF FRAUD. THE BEST YOU HEARD IS, WE THINK TO THE LAYMAN'S EYE, EITHER MR. BOSTICK OR YOU OUGHT TO CONCLUDE THAT THIS IS NOT AN AUTHENTIC SIGNATURE, BUT, OH, BY THE WAY, THESE ARE DUPLICATE ORIGINALS, AND WE HAVE ONE JUST LIKE IT IN THE COMPANY'S FILES, AND THIS IS A COMPLETE RELEASE OF ALL CLAIMS.

JUDGE, I AM SYMPATHETIC TO THE POLICE POWERS OF THE COMMISSIONER AND THE RECEIVER, BUT C.G.I. IS ENTITLED TO ITS SUBSTANTIVE DEFENSES. JUST BECAUSE THIS COMPANY IS IN RECEIVERSHIP DOES NOT MEAN THAT THE VENDORS THAT DID BUSINESS WITH IT ARE NOT ENTITLED TO THEIR SUBSTANTIVE DEFENSES, AND THIS IS A SUBSTANTIVE DEFENSE THAT IN OUR VIEW IS PROPERLY RAISED ON A TIMELY MOTION FOR SUMMARY JUDGMENT WHERE THERE WAS AMPLE TIME TO DISCOVER FACTS ABOUT THE ONLY APPARENT ISSUE HERE, WHICH IS MR. CROMER'S SIGNATURE. IT SIMPLY, IT WAS NOT DONE.

AND SO, I THINK THE COURT NEEDS TO VIEW THE SUMMARY JUDGMENT IN THAT LIGHT. IF THIS WAS A SUMMARY JUDGMENT BROUGHT BY SOMEBODY

OTHER THAN A RECEIVER, THE COURT WOULD HAVE NO DIFFICULTY GRANTING THIS MOTION.

THE COURT: I DO NOT THINK THE FACT OF THEM BEING A RECEIVER --

MR. PHILIPS: WELL --

THE COURT: -- HAS ANYTHING TO DO WITH MY DECISION.

MR. PHILIPS: I HOPE NOT, BECAUSE --

THE COURT: IT HAS TO DO WITH THE OTHER DECISIONS BASED ON THE LAW ASSOCIATED WITH THE DEFENSES TO THEM.

MR. PHILIPS: MOSTLY PROCEDURAL; THIS IS SUBSTANTIVE.

THE COURT: YES.

MR. PHILIPS: BUT I HEAR MY FRIEND MR. CULLENS TALKING ABOUT THE POLICE POWER AND DISCOVERY AND THE DOCUMENTS ARE IN DISARRAY. THOSE ARGUMENTS HAVE NOTHING TO DO WITH WHETHER OR NOT THIS SUMMARY JUDGMENT IS WELL-FOUNDED IN FACT AND LAW, AND WE THINK IT IS.

MR. CULLENS: IF I MAY, YOUR HONOR.

THE COURT: YES, SIR.

MR. CULLENS: ACCORDING TO THE TERMS OF THIS NEWLY DISCOVERED, NON-DISCOVERED, NON-PLED DOCUMENT, EXCEPT FOR THE OBLIGATIONS ASSUMED HEREIN, IT IS DATED JUNE 19, 2014. PUTTING ASIDE ALL THE AUTHENTICATION, PUTTING ASIDE THE ENFORCEABILITY, AND PUTTING ASIDE THE POLICE POWERS, BY ITS VERY TERM, AT BEST, THIS IS A PARTIAL RELEASE. THAT IS RIPE WITH ENUMERABLE ISSUES OF MATERIAL FACT WHICH DEMAND EXPLORATION.

MR. PHILIPS: WHAT ARE THEY?

MR. CULLENS: THE FACT THAT WE HAVE GIVEN, I BELIEVE COMPETENT EVIDENCE IN THE FORM OF PAID INVOICES THAT SHOW THAT ROUGHLY HALF OF THE 1.1 MILLION PAID TO C.G.I. WAS PAID AFTER THE EFFECTIVE DATE OF THIS ALLEGED AMENDMENT, WHICH WAS APRIL 30, 2014 TO NOVEMBER 2014. THIS IS EXTREMELY TECHNICAL ARGUMENT WHEN I BELIEVE THE FACTS ON THE GROUNDS GIVEN THE NATURE OF THIS LITIGATION, WHERE WE ARE, IT WOULD BE, IT WOULD BE INAPPROPRIATE TO IGNORE THE DICTATES OF ARTICLE 966(E) WHICH SAY AFTER, QUOTE, ADEQUATE DISCOVERY, A SUMMARY JUDGMENT IS APPROPRIATE.

I AM FULLY AWARE THAT A DEFENDANT MAY FILE SUMMARY JUDGMENT AT ANY TIME, BUT YOUR HONOR HAS GREAT DISCRETION, VAST DISCRETION WHEN CONSIDERING ALL THE FACTS OF THE CASE TO DETERMINE WHETHER OR NOT, QUOTE, ADEQUATE DISCOVERY HAS BEEN PERFORMED IN THIS CASE BEFORE ENTERTAINING A COMPLETE, NOT A PARTIAL, BUT A COMPLETE SUMMARY JUDGMENT UNDER THESE SPECIFIC FACTS.

ON BEHALF OF THE RECEIVER, WE WOULD URGE YOU TO DENY THIS COMPLETE SUMMARY JUDGMENT MOTION AT THIS TIME.

MR. PHILIPS: I GOT ONE LAST THING TO SAY, JUDGE, AND THEN I AM PROBABLY GOING TO SHUT UP, IF YOU WILL JUST INDULGE ME FOR JUST A MINUTE.

AFTER THIS RELATIONSHIP BEGAN TO UNRAVEL AND L.A.H.C. NOTIFIED C.G.I. THAT IT WAS GOING TO LOOK FOR ANOTHER T.P.A., THERE WAS AN

AGREEMENT, AND IT IS AN EXHIBIT TO MR. BOSTICK'S AFFIDAVIT, EXHIBIT 1J, AND IT AMENDS ON APRIL 17TH THE ADMINISTRATIVE SERVICES AGREEMENT, AND IT EFFECTIVELY EVISCERATES, IT TAKES BACK FROM C.G.I. A WHOLE HOST OF DELEGATED FUNCTIONS. MOST OF THE STUFF IT WAS HIRED TO DO, L.A.H.C. SAYS, YOU DO NOT HAVE TO DO IT ANYMORE. IN FACT, YOU CANNOT DO IT ANYMORE.

THERE WAS, THE POINT OF MY ARGUMENT HERE, JUDGE, IS THAT, IS TO THIS NOTION OF, QUOTE, OTHER CLAIMS. THE RECEIVER HAS NOT ARTICULATED WHAT THEY COULD POSSIBLY BE OTHER THAN TO SAY, WELL, THEY MUST BE SOMETHING BECAUSE YOU GOT PAID MUCH LATER IN THE YEAR FOR THAT. THE FACT OF THE MATTER IS, THERE WAS NOT MUCH OF ANYTHING BY THE RECEIVER'S OWN EXHIBIT GOING ON BETWEEN -- BY C.G.I. ON BEHALF OF L.A.H.C. AFTER -- ON OR AFTER APRIL 17 OF 2014, JUDGE. THE WHOLE NOTION OF ADDITIONAL DISCOVERY HERE TO ME IS THE QUINTESSENTIAL RED HERRING IN THE CASE.

WHEN WE STOOD IN YOUR COURTROOM BACK IN APRIL, YOU SAID THERE WAS TALK GOING ON ABOUT SETTLING WITH THE D'S AND THE O'S, AND WE HAD THESE EXCEPTIONS. I AM GOING TO GIVE THE GUYS SOME TIME TO GO FIGURE IT OUT, AND YOU SAID, DISCOVERY STAYED UNTIL FOR THE LIMITED DISCOVERY YOU MIGHT NEED HERE. WE DID NOT GIVE ONE REQUEST. NOBODY CAME BACK TO THE COURT AND SAID, JUDGE -- AND UNDERSTANDABLY, WE ARE ALL BUSY, BUT NOBODY CAME BACK TO THE COURT AND

SAID, I NEED SOME MORE TIME, I NEED SOME RELIEF FROM THIS ORDER. 966(E) IS DESIGNED TO GIVE THE COURT SOME DISCRETION, BUT YOU HAVE GOT TO DO YOUR PART HERE. YOU CANNOT JUST COME IN ON THE DAY OF THE HEARING ON THE MOTION FOR SUMMARY JUDGMENT AND SAY, I DID NOT HAVE ENOUGH TIME TO DO THE DISCOVERY WHEN I DID NOT ASK FOR ANY DISCOVERY.

IF YOU LOOK AT ALL OF THE DOCUMENTS THAT COMPRISE THE MOTION AND EXHIBITS SUBMITTED BY BOTH C.G.I. AND THE RECEIVER, AND YOU COBBLE ALL THAT TOGETHER, YOU HAVE GOT A RELATIONSHIP THAT UNRAVELS VERY QUICKLY AFTER THE ADMINISTRATIVE SERVICES AGREEMENT IS SIGNED. YOU HAVE GOT AN AMENDMENT THAT DEALS WITH DELEGATED FUNCTIONS TO WITHDRAW THEM FROM C.G.I. YOU HAVE GOT A TERMINATION AGREEMENT THAT IS RETROACTIVE TO APRIL THAT TAKES YOU THROUGH JUNE THE 19TH, AND YOU HAVE NOT ONE ALLEGATION, FACTUAL OR IN THE PLEADINGS, FROM THE RECEIVER THAT SAYS, AFTER THAT DATE YOU DID SOMETHING WRONG.

SO, ALL WE ARE DEALING WITH IS SHADOWBOXING. WE ARE TALKING ABOUT WHAT-IF'S AND HYPOTHETICALS, AND THAT IS NOT SUMMARY JUDGMENT MATERIAL. SO, WE WOULD URGE THE COURT TO GRANT THE MOTION FOR SUMMARY JUDGMENT AND DISMISS C.G.I.

MR. CULLENS: YOUR HONOR, IF I MAY.

THE COURT: MAN, THIS HAS BEEN A PRETTY GOOD TENNIS MATCH, BUT I AM READY TO RULE.

THERE IS NO DOUBT THAT THIS IS A

TREMENDOUSLY COMPLICATED MATTER AS ALL MATTERS ASSOCIATED WITH REHABILITATIONS ARE. IF THIS WERE A TRAFFIC ACCIDENT OR SOMETHING LIKE THAT, I WOULD THINK THAT FOUR-AND-A-HALF MONTHS IS ENOUGH TIME TO GET THE DISCOVERY YOU NEED BECAUSE THERE IS ONLY ONE OR TWO ISSUES IN THE WHOLE THING. UNFORTUNATELY IN THIS, THERE ARE SO MANY DIFFERENT ISSUES, AND, YES, I SAID DO DISCOVERY ON THE SUMMARY JUDGMENT, BUT I THINK THAT WHAT I AM GOING TO DO AT THIS POINT IS I AM GOING TO DENY THE SUMMARY JUDGMENT WITHOUT PREJUDICE TO ALLOW FOR SUFFICIENT DISCOVERY TO TAKE PLACE TO FLESH OUT THE ISSUES THAT WE HAVE TALKED ABOUT THAT ARE IN QUESTION.

SO, DENY WITHOUT PREJUDICE. EACH PARTY ASSUME YOUR OWN COSTS. IT WOULD REALLY CHAP YOUR BOTTOM IF I TOLD YOU TO DO THE ORDER, MR. PHILIPS, SO I AM GOING TO ASK MR. CULLENS TO DO THE ORDER.

MR. PHILIPS: I WAS GOING TO ASK IF I COULD ASK THE COURT FOR JUST A LITTLE CLARIFICATION.

THE COURT: YES, SIR.

MR. PHILIPS: I DO NOT THINK IT SERVES ANYBODY WELL IF WE KEEP IT OPEN-ENDED AND WE KEEP THE TOPICS OPEN-ENDED.

THE COURT: HOW MUCH TIME DO YOU NEED, MR. CULLENS?

MR. CULLENS: WELL, THE PROBLEM IS, AND I WAS GOING TO SUGGEST TO YOUR HONOR, I KNOW ALL COUNSEL ARE NOT HERE, BUT GIVEN THAT THERE ARE SO MANY PARTIES AND ATTORNEYS DOING DISCOVERY,

I AM READY TO ROLL, BUT IT HAS GOT TO BE COORDINATED, AND IT CANNOT JUST BE FOR SPECIFIC --

THE COURT: WELL, THE ISSUE THOUGH IS NOT ALL PARTIES. IT IS C.G.I.'S CLAIM.

MR. CULLENS: RIGHT, SO I WANT TO DEPOSE ALL THE DIRECTORS WHO HAVE KNOWLEDGE OF WHAT WORK C.G.I. DID FROM JANUARY 2014 TO NOVEMBER 2014. THAT IS GOING TO GENERATE, GIVEN THE ALLOCATION OF FAULT, EVERYBODY IS GOING TO WANT TO BE THERE, AND I THINK AS A PRACTICAL MATTER, THERE IS NO WAY TO LIMIT THAT WITHOUT GETTING EVERYBODY INVOLVED.

THE COURT: WHAT I WILL DO THEN IS, I AM GOING TO LEAVE IT OPEN AT THIS TIME SUBJECT TO A REQUEST FOR A DEADLINE DATE. AFTER 90 DAYS HAVE -- 90-TO-100 DAYS HAVE GONE PAST AND YOU DO NOT HAVE A FORESEEABLE CUT-OFF DATE, COME TO ME AND I WILL SET ONE.

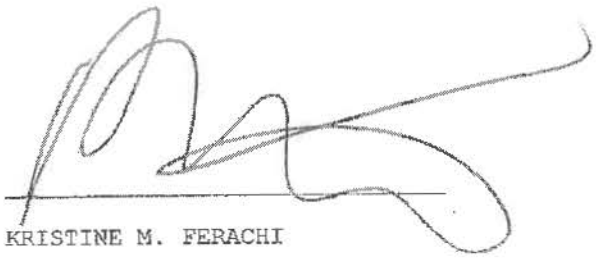
MR. CULLENS: THANK YOU, YOUR HONOR. I AM HAPPY TO PROVIDE THE ORDER, AND I WILL LET MR. PHILIPS REVIEW IT BEFORE WE SUBMIT IT.

THE COURT: SO, I AM GOING TO AGAIN DENY WITHOUT PREJUDICE. EACH PARTY ASSUME THEIR OWN COSTS.

C E R T I F I C A T E

I, KRISTINE M. FERACHI, CCR, OFFICIAL OR DEPUTY OFFICIAL COURT REPORTER IN AND FOR THE STATE OF LOUISIANA EMPLOYED AS AN OFFICIAL OR DEPUTY OFFICIAL COURT REPORTER BY THE 19TH JUDICIAL DISTRICT COURT FOR THE STATE OF LOUISIANA AS THE OFFICER BEFORE WHOM THIS TESTIMONY WAS TAKEN DO HEREBY CERTIFY THAT THIS TESTIMONY WAS REPORTED BY ME IN THE STENOTYPE REPORTING METHOD, WAS PREPARED AND TRANSCRIBED BY ME OR UNDER MY DIRECTION AND SUPERVISION, AND IS A TRUE AND CORRECT TRANSCRIPT TO THE BEST OF MY ABILITY AND UNDERSTANDING. THE TRANSCRIPT HAS BEEN PREPARED IN COMPLIANCE WITH TRANSCRIPT FORMAT GUIDELINES REQUIRED BY THE STATUTE OR BY RULES OF THE BOARD OR BY THE SUPREME COURT OF LOUISIANA, AND THAT I AM NOT RELATED TO COUNSEL OR TO THE PARTIES HEREIN, NOR AM I OTHERWISE INTERESTED IN THE OUTCOME OF THIS MATTER.

WITNESS MY HAND THIS 25TH DAY OF AUGUST, 2017.



KRISTINE M. FERACHI
OFFICIAL COURT REPORTER
19TH JUDICIAL DISTRICT COURT
CCR #87173