

**JAMES J. DONELON,
COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA, IN
HIS CAPACITY AS REHABILITATOR
OF LOUISIANA HEALTH
COOPERATIVE, INC.**

SUITE NO.: 651,069 SECTION: 22

versus

19TH JUDICIAL COURT

**TERRY S. SHILLING, GEORGE G.
CROMER, WARNER L. THOMAS, IV,
WILLIAM A. OLIVER, CHARLES D.
CALVI, PATRICK C. POWERS, CGI
TECHNOLOGIES AND SOLUTIONS,
INC., GROUP RESOURCES
INCORPORATED, BEAM PARTNERS,
LLC, MILLIMAN, INC., BUCK
CONSULTANTS, LLC, AND
TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA**

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**NOTICE OF INTENTION TO APPLY FOR SUPERVISORY WRITS AND
REQUEST FOR STAY**

Pursuant to Rule 4-2 of the Uniform Rules for the Courts of Appeal, Defendant, Milliman, Inc. (“*Milliman*”), hereby gives notice to the Court and to all other counsel of record of its intention to apply for Supervisory Writs from the First Circuit Court of Appeal in regards to the Court’s Judgment signed on September 19, 2017, and mailed to counsel of record on September 25, 2017, insofar as the Court denied Milliman’s Declinatory Exception of Lack of Subject Matter Jurisdiction.

In addition, in accordance with Rule 4-3 of the Uniform Rules for the Courts of Appeal, Milliman respectfully requests that the Court set **October 24, 2017** as the date by which the Application for Supervisory Writs shall be filed in the appellate court.

Furthermore, pursuant to Rule 4-4 of the Uniform Rules for the Courts of Appeal and for the reasons more fully set forth in the Supporting Memorandum filed herewith, Milliman also requests that further proceedings in this matter, including discovery, be stayed during the pendency of the Application for Supervisory Writs. Undersigned counsel has inquired as to whether Plaintiff will consent to Milliman’s Request for Stay, and Plaintiff’s counsel has responded that Plaintiff does not consent to any stay of these proceedings.

Respectfully submitted:

ADAMS AND REESE LLP



V. THOMAS CLARK, JR. (#20519)
GRANT J. GUILLOT (#32484)
450 Laurel Street, Suite 1900
Baton Rouge, Louisiana 70801
Telephone: (225) 336-5200
Facsimile: (225) 336-5220

Counsel for Milliman, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record via facsimile, e-mail and/or by placing same in the U.S. Mail, postage pre-paid and properly addressed.

Baton Rouge, Louisiana, this 29th day of September, 2017.



GRANT J. GUILLOT

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ORDER

Considering the foregoing Notice of Intention to Apply for Supervisory Writs and Request for Stay filed by Defendant, Milliman, Inc. ("*Milliman*");

IT IS ORDERED that Milliman has until the 24th of October, 2017, to file an Application for Supervisory Writs with the First Circuit Court of Appeal.

IT IS FURTHER ORDERED that Milliman's Request for Stay is GRANTED and that further proceedings in the above-captioned matter, including discovery, are hereby STAYED until further instructions are received from the First Circuit Court of Appeal.

Baton Rouge, Louisiana this ___ day of _____, 2017.

HONORABLE JUDGE TIMOTHY E. KELLEY
Nineteenth Judicial District Court

PLEASE NOTIFY ALL PARTIES UPON SIGNING.

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MEMORANDUM IN SUPPORT OF REQUEST FOR STAY

MAY IT PLEASE THE COURT:

Defendant, Milliman, Inc. (“Milliman”), submits the instant Memorandum in support of its Request for Stay. Milliman maintains its position that this Court does not have subject matter jurisdiction over this matter due to the fact that, by virtue of the arbitration clause contained in the Consulting Services Agreement executed by both parties, any disputes between Milliman and Louisiana Health Cooperative, Inc. (“LAHC”) are required to be resolved by final and binding arbitration. Undersigned counsel has inquired whether Plaintiff will consent to Milliman’s Request for Stay, and Plaintiff’s counsel has responded that Plaintiff does not consent to any stay of these proceedings. For the reasons that follow, Milliman respectfully requests that the Court issue a stay of further proceedings in this matter, including discovery.

Although the Court denied Milliman’s Declinatory Exception of Lack of Subject Matter Jurisdiction, Milliman is simultaneously filing herewith a Notice of Intention to Seek Supervisory Writs with the Louisiana Court of Appeal for the First Circuit, wherein Milliman is requesting that the First Circuit review and reverse this Court’s denial of Milliman’s Exception. While the First Circuit is considering the merits of Milliman’s Writ Application, Milliman

respectfully asks this Court to issue a stay of proceedings pursuant to Rule 4-4 of the Uniform Rules for the Courts of Appeal, which provides, in pertinent part,

(A) When an application for writs is sought, further proceedings may be stayed at the trial court's discretion. Any request for a stay of proceedings should be presented first to the trial court. The filing of, or the granting of, a writ application does not stay further proceedings unless the trial court or appellate court expressly orders otherwise.

Milliman is seeking a stay of proceedings, including discovery, for the following reasons:

First of all, should the First Circuit grant writs and thereafter reverse this Court's Judgment, no discovery will be permitted to take place and the Plaintiff will have no choice but to arbitrate its claims against Milliman. Were this Court to require Milliman to engage in discovery prior to the issuance of the First Circuit's ruling on Milliman's Writ Application, Milliman would be prejudiced in having to provide other parties with information and documentation that the parties would otherwise not be entitled to obtain. One of the primary reasons the parties to the Consulting Services Agreement agreed to arbitration in the event of disputes was so that any issues between them would not be aired out in a public forum. However, requiring Milliman to respond to any discovery requests in this particular forum would defeat an essential purpose of the presence of the arbitration clause in the Consulting Services Agreement. Furthermore, the courts of this state have not hesitated to grant writ applications regarding a request for stay of proceedings pending a party's enforcement of an arbitration agreement. See *Hanlon v. Monsanto AG Prod., LLC*,¹ wherein the Louisiana Supreme Court granted a defendant's writ application in regards to a motion to stay pending arbitration and remanded the case to the court of appeal "for briefing, argument and full opinion."

In addition, should this Court refuse to issue a stay of discovery pending the First Circuit's consideration of Milliman's Writ Application, Milliman risks being accused of waiving its right to arbitration. After all, as stated by a Louisiana Supreme Court Justice in his dissenting opinion, "Utilization of discovery procedures is an affirmative acceptance of a judicial forum and

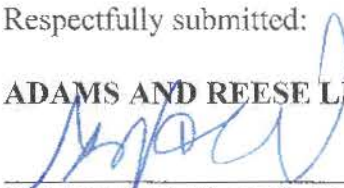
¹ 2013-0169 (La. 3/1/13); 108 So. 3d 781. See also, *Coleman v. Jim Walter Homes, Inc.*, 08-1221 (La. 03/17/09); 6 So. 3d 179; *Insulation Sales & Servs., LLC v. Mid-South Mech. Contrs., Inc.*, 2017-0239 (La. App. 1 Cir. 3/20/17); 2017 La. App. LEXIS 447; *La. Party Co., LLC v. Design/Build Assocs.*, 2016-1002 (La. App. 1 Cir. 12/12/16); 2016 La. App. LEXIS 2244.

should bar a party thereafter insisting on arbitration.”² Moreover, in *Ciolino v. First Guar. Bank & Capital One, N.A.*,³ the First Circuit ruled that First Guaranty Bank, despite originally raising its objection in a dilatory exception, waived its right to enforcement of the arbitration clause contained in its lease agreement with the plaintiffs by filing responsive pleadings and engaging in discovery. Granted, unlike Milliman in the instant matter, First Guaranty Bank in *Ciolino* filed third party demands against numerous parties and participated in discovery for approximately twenty months before filing a Motion for Summary Judgment again seeking to enforce the arbitration clause in its lease agreement.⁴ Nevertheless, just as in *Ciolino*, Milliman in the instant matter filed a declinatory exception seeking to enforce an arbitration clause, which was denied by the Court. Should this Court require Milliman to participate in discovery, Milliman will risk being found to have waived its right to enforce the arbitration agreement. *See also, Hosp. Serv. Dist. No. 3 v. Fid. & Deposit Co.*,⁵ wherein the First Circuit held that one party waived its right to demand arbitration against another party by pursuing judicial remedies against that party.

For the reasons set forth hereinabove, Milliman respectfully requests that the Court issue a stay of further proceedings in this matter, including discovery.

Respectfully submitted:

ADAMS AND REESE LLP



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GRANT J. GUILLOT (#32484)
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Counsel for Milliman, Inc.

² *Matthews-McCracken Rutland Corp v. Plaquemine*, 414 So. 2d 756 (La. 1982)(Watson, J., dissenting).

³ 2012-CA-2079 c/w 2012-CA-2080 (La. App. 1 Cir. 10/30/13); 133 So. 3d 686, 696.

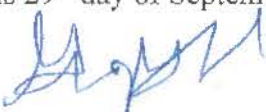
⁴ *Id.*

⁵ 1999-2773 (La. App. 1 Cir. 02/16/01); 809 So. 2d 145, 149.

CERTIFICATE OF SERVICE

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Baton Rouge, Louisiana, this 29th day of September, 2017.



GRANT J. GUILLOT