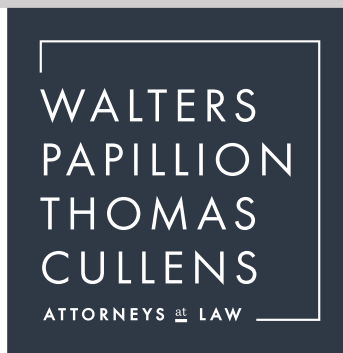


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May 14, 2020

Via Fax To: 225-389-3392

Clerk of Court
19th Judicial District Court
300 North Boulevard
Baton Rouge, LA 70801

Re: James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. v. Terry S. Shilling, *et al.*
Suit No.: 651,069, Section 22, 19th Judicial District Court
Our File No.: 15142

Dear Sirs:

Enclosed please find a Brief Reply to Defendants' Joint Status Report in Advance of 5/14/2020 Status Conference, in the above matter. Please fax file the original today and provide us with the costs of filing. Once we have received the costs information, we will forward the originals and appropriate number of copies to complete the filing.

Thank you for your assistance and, as always, please contact me if you have any questions or concerns.

Sincerely,

**WALTERS, PAPILLION,
THOMAS, CULLENS, LLC**

J. E. Cullens, Jr.

JECjr/kr
Enclosures

JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.	:	SUIT NO.: 651,069 SECTION: 22
versus	:	19 TH JUDICIAL DISTRICT COURT
TERRY S. SHILLING, GEORGE G. CROMER, WARNER L. THOMAS, IV, WILLIAM A. OLIVER, CHARLES D. CAL VI, PATRICK C. POWERS, CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC, AND TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA	:	PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

**BRIEF REPLY TO DEFENDANTS' JOINT STATUS REPORT
 IN ADVANCE OF 5/14/2020 STATUS CONFERENCE**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. ("LAHC"), through his duly appointed Receiver, Billy Bostick ("Plaintiff" or the "Commissioner"), who respectfully submits this reply to defendants' "Joint Status Report" filed herein on Tuesday, May 12th, in advance of the status conference set for later today at 3:30 pm. Plaintiff will be brief.

A. A CASE MANAGEMENT SCHEDULE IS NECESSARY

Given the number of parties and attorneys involved, it is imperative that this case proceed pursuant to a binding Case Management Schedule ("CMS"). As Your Honor may recall, following the hearing on defendants' numerous exceptions argued in August 2017, it took the parties more than three (3) months to work out and agree upon the prior CMS signed in December 2017; see attached copy. Given the Louisiana Supreme Court's ruling of April 27, 2020, and the lifting of the stay in this matter, Plaintiff respectfully suggests that it is time to revise the prior CMS and resume discovery and litigation without further delay.

On Monday, May 11th, undersigned counsel circulated a proposed CMS to all defense counsel which adopts the identical framework and schedule as the prior CMS; attached is a copy of this proposed CMS. Unfortunately, rather than confer with undersigned counsel and attempt to work out mutually acceptable dates and deadlines in advance of today's status conference, defense counsel instead filed their "Joint Status Report" which, in essence, requests that this Honorable Court refrain from issuing a new CMS and, in effect, extend the prior stay order. A further stay

JAMES J. DONELON, COMMISSIONER	:	SUIT NO.: 651,069 SECTION: 22
OF INSURANCE FOR THE STATE OF	:	
LOUISIANA, IN HIS CAPACITY AS	:	
REHABILITATOR OF LOUISIANA	:	
HEALTH COOPERATIVE, INC.	:	
	:	
versus	:	19 TH JUDICIAL DISTRICT COURT
	:	
TERRY S. SHILLING, GEORGE G.	:	
CROMER, WARNER L. THOMAS, IV,	:	
WILLIAM A. OLIVER, CHARLES D.	:	
CALVI, PATRICK C. POWERS, CGI	:	PARISH OF EAST BATON ROUGE
TECHNOLOGIES AND SOLUTIONS,	:	
INC., GROUP RESOURCES	:	
INCORPORATED, BEAM PARTNERS,	:	
LLC, AND TRAVELERS CASUALTY	:	
AND SURETY COMPANY OF	:	
AMERICA	:	STATE OF LOUISIANA

**BRIEF REPLY TO DEFENDANTS’ JOINT STATUS REPORT
IN ADVANCE OF 5/14/2020 STATUS CONFERENCE**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. (“LAHC”), through his duly appointed Receiver, Billy Bostick (“Plaintiff” or the “Commissioner”), who respectfully submits this reply to defendants’ “Joint Status Report” filed herein on Tuesday, May 12th, in advance of the status conference set for later today at 3:30 pm. Plaintiff will be brief.

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of this litigation—which has been on hold for almost three (3) years now—is not appropriate and will cause additional prejudice to the Commissioner if entertained, much less enacted.

B. A FURTHER STAY OF THIS PROCEEDING IS UNECESSARY

Defendants claim that discovery and pre-trial practice in this case should not proceed for three (3) primary reasons: (1) the recent ruling by the Supreme Court regarding LAHC’s potential recovery of Risk Corridor payments may impact the extent of Plaintiff’s recovery in this case; (2) there are discovery disputes; and (3) the parties should try to mediate this case rather than litigate it. Each of defendants’ contentions are briefly addressed and refuted in turn.

1. Whether and to What Extent LAHC May Recover Some Risk Corridor Payments from the Federal Government is an Issue that Does not Require a Stay

Without accepting or trying to refute defendant’s characterization of the effect, if any, of the recent Supreme Court ruling on the Commissioner’s total, compensable damages here, suffice it to say that this is not the first case where defendants challenge the extent and amount of a plaintiff’s recoverable damages. Like in any other case, issues surrounding such damage issues should be explored through discovery and appropriate pre-trial motion practice if indicated. Defendants cite no cases or authority to support their position that because they may (and I stress may) have an argument that the Commissioner’s ultimate damages may be reduced by the potential recovery of certain Risk Corridor payments, that discovery and pre-trial practice should be suspended. The Commissioner respectfully requests that Your Honor allow the parties to proceed with discovery and pre-trial practice in an orderly and efficient manner by issuing a new CMS without further delay.

2. Just Because Discovery Disputes May Exist is No Reason to Stay this Matter

Like in any other case, discovery dispute may arise between the parties. Indeed, earlier this week, GRI filed a Motion to Compel Discovery herein against Plaintiff. Plaintiff will oppose this motion in due course and pursuant to law. And, given that Milliman and Buck have refused to produce essential, core documents prior to the stay order in this case back in March 2018, Plaintiff certainly contemplates filing an appropriate Motion to Compel if Milliman and Buck cannot work out this discovery dispute and produce these important documents voluntarily in the very near future. To avoid further prejudice to Plaintiff, it is imperative that discovery proceed pursuant to a new CMS. For this reason, Plaintiff respectfully requests that Your Honor adopt the modified dates and deadlines as proposed by undersigned counsel in the attached, new CMS—

which are essentially the same that were in effect since December 2017 before the appellate court stayed this matter.

3. “Mediation would be appropriate before engaging in lengthy and expensive discovery” (p. 3 of Joint Status Report)

Since the August 2017 hearing regarding defendants’ exceptions, the Commissioner has settled his claims against the D&O defendants, the D&O primary insurance carrier (Travelers), the consulting firm that set LAHC up (Beam Partners), and the first TPA who managed LACH for a few months before GRI took over (CGI). Indeed, Plaintiff has actively pursued settlement with each and every defendant and will continue to do so. Unfortunately, many settlement demands made by the Commissioner have been ignored to date by the remaining defendants. Again, like in any other case, the parties can engage in discovery and actively litigate the case while simultaneously exploring settlement. Indeed, absent robust discovery and litigation, settlement negotiations often stagnate. The Commissioner respectfully suggests that issuing an appropriate, new CMS is the best and most efficient way to encourage the parties to explore settlement in earnest. Further delay will get us nowhere, will cause additional prejudice to the Commissioner (and the public he represents), and will frustrate the interests of substantial justice.

C. CONCLUSION

We look forward to this afternoon’s status conference, and for the reasons set forth herein, the Commissioner respectfully requests and prays that Your Honor reject defendants’ attempt to stall and delay this proceeding any further, and after due consideration, issue an appropriate CMS to control the future discovery and pre-trial practice in this case.

Respectfully submitted,



J. E. Cullens, Jr., T.A., La. Bar #23011
Edward J. Walters, Jr., La. Bar #13214
Darrel J. Papillion, La. Bar #23243
Andrée M. Cullens, La. Bar #
**WALTERS, PAPILLION,
THOMAS, CULLENS, LLC**
12345 Perkins Road, Bldg One
Baton Rouge, LA 70810
Phone: (225) 236-3636

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via e-mail to all counsel of record this 14th day of May, 2020, in Baton Rouge, Louisiana.

A handwritten signature in blue ink, appearing to be 'J. E. Cullens, Jr.', written in a cursive style.

J. E. Cullens, Jr.

V.

JUDGE TIMOTHY KELLEY

TERRY S. SHILLING, ET AL

COURT 10D

CASE MANAGEMENT SCHEDULE

BY ORDER OF THIS COURT, the following Case Management Schedule shall control this case. No variance of this Order shall be allowed without written approval of this Court:

1. Parties shall respond to written discovery propounded prior to October 16, 2017, on or before Feb. 2, 2018, 2018.

2. Parties shall reciprocally exchange preliminary witness lists on or before March 16, 2018.

3. Joinder of parties and amendment of pleadings must be completed on or before May 18, 2018.

4. Parties shall supplement their witness list on or before July 13, 2018.

5. Final discovery cutoff regarding fact witnesses is set for November 30, 2018. All motions to compel and for protective orders, must be filed no later than 21 days after this date.

6. The parties have agreed to set aside the following dates for depositions:

January 2018: 19, 22, 23	June 2018: 18, 19, 20, 21, 22
February 2018: 19, 20, 22, 23	August 2018: 21, 22, 23, 24
March 2018: 19, 20, 22, 23	September 2018: 24, 25, 26, 27, 28
April 2018: 23, 24, 26, 27	October 2018: 22, 23, 24, 25, 26
May 2018: 14, 15, 16	November 2018: 8, 9, 12, 13, 16

Absent prior consent and agreement of all parties, depositions shall not be scheduled on any date not listed herein.

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 COURT CLERK
 TERRY S. SHILLING, ET AL

7. Expert witness testimony is required:

All Plaintiff's reports shall be produced to defendant(s) on or before January 15, 2019.

b. All Defendant(s) expert reports shall be produced to plaintiff on or before February 15, 2019.

8. All expert discovery, including depositions of all experts, shall be completed on or before May 15, 2019.

9. Parties shall exchange pretrial inserts on or before June 5, 2019.

10. The pretrial order shall be prepared, signed by all parties, and filed by plaintiff counsel with the court on June 20, 2019.

11. It is the intent and desire of the parties, subject to the discretion and Order of this Court, that the trial of this matter shall be set in the late summer or fall of 2019.¹

The foregoing Case Management Schedule is adopted as an Order of this Court this 13 day of Dec, 2017.

Timothy E. Kelley
 Judge Timothy E. Kelley

¹ Buck Consultants, LLC and Milliman, Inc. sign this Case Management Schedule subject to and fully reserving their respective Declinatory Exceptions of Improper Venue and Declinatory Exception of Lack of Subject Matter Jurisdiction and their applications for supervisory review of the court's September 19, 2017 Judgment denying these exceptions.



JAMES J. DONELON

NO. 651,069 SEC. 22

V.

JUDGE TIMOTHY KELLEY

TERRY S. SHILLING, ET AL

COURT 10D

CASE MANAGEMENT SCHEDULE

BY ORDER OF THIS COURT, the following Case Management Schedule shall control this case. No variance of this Order shall be allowed without written approval of this Court:

1. Parties shall reciprocally exchange preliminary witness lists on or before June 15, 2020.
2. Joinder of parties and amendment of pleadings must be completed on or before August 14, 2020.
3. Parties shall supplement their witness list on or before October 15, 2020.
4. Final discovery cutoff regarding fact witnesses is set for March 1, 2021. All motions to compel and for protective orders, must be filed no later than 21 days after this date.
5. The parties have agreed to set aside the following dates for depositions:

June 2020:	Nov. 2020:
July 2020:	Dec. 2020:
August 2020:	Jan. 2021
Sept. 2020:	Feb 2021:
Oct. 2020:	

Absent prior consent and agreement of all parties, depositions shall not be scheduled on any date not listed herein.

The parties agree that depositions shall be taken either in person or via Zoom (or its equivalent) and shall be admissible at the trial of this matter just as any other authorized deposition.

6. Expert witness testimony is required:
 - a. All Plaintiff's reports shall be produced to defendant(s) on or before April 15, 2021.
 - b. All Defendant(s) expert reports shall be produced to plaintiff on or before May 15, 2021.
7. All expert discovery, including depositions of all experts, shall be completed on or before August 15, 2021.

8. Parties shall exchange pretrial inserts on or before September 15, 2021.
9. The pretrial order shall be prepared, signed by all parties, and filed by plaintiff counsel with the court on October 1, 2021.
10. It is the intent and desire of the parties, subject to the discretion and Order of this Court, that the trial of this matter shall be set in the winter of 2021 or spring of 2022.

The foregoing Case Management Schedule is adopted as an Order of this Court this ____ day of _____, 2020.

Judge Timothy E. Kelley