

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.: 651,069

SECTION 22

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

VERSUS

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

FILED: _____

DEPUTY CLERK

PETITION FOR ISSUANCE OF LETTERS ROGATORY

Defendant Buck Global, LLC (“Buck”) respectfully petitions this Court pursuant to La. R.S. § 13:3823 and article 1435 of the Louisiana Code of Civil Procedure to issue Letters Rogatory to non-party Lewis & Ellis, Inc. In support thereof, Buck respectfully represents to the Court the following:

1.

Louisiana Health Cooperative, Inc. (“LAHC”) was a qualified nonprofit health insurer co-operative organized in 2011. In September 2015, LAHC was placed into rehabilitation under the control of Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana, as Rehabilitator, through Billy Bostick as his appointed Receiver.

2.

In August 2016, James J. Donelon, the Commissioner of Insurance for the State of Louisiana, appearing herein as Rehabilitator, filed an initial petition in this suit against several Defendants, including LAHC’s former directors and officers (the “D&O Defendants”), the developer and initial manager of LAHC, Beam Partners, LLC (“Beam”), and LAHC’s third-party administrators, CGI Technology and Solutions, Inc. (“CGI”) and GRI. He later amended

his suit to name two Defendants who provided actuarial services to LAHC – Buck and Milliman, Inc., and, later, several insurers of LAHC’s directors and officers.

3.

In his Petition, Plaintiff has made allegations seeking damages related to the failure of LAHC.

4.

To properly defend itself in this litigation, Buck needs access to certain records maintained by Lewis & Ellis, Inc. (“Lewis & Ellis”), a non-party.

5.

In connection therewith, Lewis & Ellis possesses records in the ordinary course of its business which pertain to the allegations that underlie the Plaintiff’s claims.

6.

In order that there be full discovery of the relevant facts pertaining to this matter, Buck needs to obtain certified copies of records from Lewis & Ellis, which is located in Allen, Texas and which can be served at: 700 Central Expressway South, Suite 550, Allen, TX 75013.

7.

The records sought, all of which are relevant to the underlying litigation, are set out in detail in the attached Notice of Records Only Deposition, which is attached to this Petition.

8.

Accordingly, Buck respectfully requests this Honorable Court to issue Letters Rogatory to the appropriate authorities in Collin County, Texas so that it may issue a Subpoena Duces Tecum to Lewis & Ellis, to produce records as set forth in the attached Notice of Records Only Deposition.

WHEREFORE, Defendant, Buck Global, LLC, respectfully prays that this Honorable Court grant its Petition for Issuance of Letters Rogatory to request the appropriate authorities in

Collin County, Texas to process and issue a Subpoena Duces Tecum to Lewis & Ellis, Inc., to produce records as per the Notice of Records Only Deposition attached hereto as Exhibit "A."

Respectfully submitted,

/s/ James A. Brown

James A. Brown, T.A. (La. Bar #14101)

Sheri L. Corales (La. Bar # 37643)

LISKOW & LEWIS

701 Poydras Street, Suite 5000

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950 F Street NW

Washington, DC 20004

Telephone: (202) 239-3392

Facsimile: (202) 654-4922

David.Godofsky@alston.com

Attorneys for Buck Global, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petition for Issuance of Letters Rogatory has been served upon all known counsel of record by e-mail, this 14th day of October, 2020.

/s/ James A. Brown

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FILED: _____

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ORDER

Considering the foregoing Petition for Issuance of Letters Rogatory and the information contained therein;

IT IS ORDERED that letters rogatory issue to the appropriate authority in Collin County, Texas to issue a Subpoena Duces Tecum, to Lewis & Ellis, Inc., 700 Central Expressway South, Suite 550, Allen, TX 75013, for all purposes provided for by the Louisiana Code of Civil Procedure.

THUS DONE AND SIGNED at Baton Rouge, Louisiana this _____ day of _____, 2020.

Hon. Timothy Kelley
19th Judicial District Court
Parish of East Baton Rouge

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FILED: _____
DEPUTY CLERK

LETTER ROGATORY

TO: Any Judge or other Officer of the Collin County, State of Texas, with authority to issue a Subpoena Duces Tecum

In the 19th Judicial District Court for the Parish of Baton Rouge State of Louisiana, there is pending a case entitled *James J. Donelon, Commissioner of Insurance for the State of Louisiana v. Terry S. Shilling et al* (Number 651069, Section 22) and it appears to this Court that the just determination of the issues therein presented requires Lewis & Ellis, Inc. (“Lewis & Ellis”) to produce documents as per in the attached Notice of Records Only Deposition (Exhibit “A”).

It is therefore requested that you assist this Court by issuing a Subpoena Duces Tecum in accordance with the attached Notice of Records Only Deposition directed to **Lewis & Ellis, 700 Central Expressway South, Suite 550, Allen, TX 75013**, to appear on **November 19, 2020 at 10:00 a.m.**, at the law offices of **Spector & Cox, PLLC, 12770 Coit Road, Suite 1100, Dallas, TX 75251** and to produce documents as noticed per the attached Exhibit “A” (Notice of Records Only Deposition).

THUS DONE AND SIGNED at Baton Rouge, Louisiana this _____ day of _____, 2020.

Hon. Timothy Kelley, 19th JDC Judge

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

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FILED: _____

DEPUTY CLERK

**NOTICE OF RECORDS ONLY DEPOSITION AND
SUBPOENA DUCES TECUM**

TO:

Lewis & Ellis, Inc.
Attn: Custodian of Records
700 Central Expressway South
Suite 550
Allen, TX 75013.

PLEASE TAKE NOTICE that Buck Global, LLC f/k/a Buck Consultants, LLC (“Buck”) will take the records-only deposition of Lewis & Ellis, Inc. (“Lewis & Ellis”) **on November 19, 2020, beginning at 10:00 a.m. at the offices of Spector & Cox, PLLC, 12770 Coit Road, Suite 1100, Dallas, TX 75251**, continuing from day to day until completed. Lewis & Ellis is hereby requested to designate and to make available for deposition at the stated time and place one or more officers, directors or managing agents, or other persons designated to testify on its behalf concerning the production of and identification of the documents specified in Attachment “A.”

All counsel are invited to participate as they deem fit.

THIS IS A RECORDS ONLY DEPOSITION. NO APPEARANCE WILL BE NECESSARY IF THE DOCUMENTS REQUESTED ON ATTACHMENT “A” ARE PRODUCED BY THE ABOVE SPECIFIED DATE AND TIME. This deposition notice

and subpoena may be satisfied by mailing certified copies of the subpoenaed materials to the following address: James A. Brown, Liskow & Lewis, 701 Poydras St., Suite 5000, New Orleans, La. 70139, Telephone: (504) 581-7979.

In lieu of producing hard copies, the records may be produced electronically to jabrown@liskow.com and scorales@liskow.com.

A copy of article 1354 of the Louisiana Code of Civil Procedure is attached as Exhibit “B.”

Respectfully submitted,

/s/ James A. Brown
James A. Brown, T.A. (La. Bar #14101)
Sheri L. Corales (La. Bar # 37643)
LISKOW & LEWIS
701 Poydras Street, Suite 5000
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Washington, DC 20004
Telephone: (202) 239-3392
Facsimile: (202) 654-4922
David.Godofsky@alston.com

Attorneys for Buck Global, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been served upon all counsel of record by e-mail this 14th day of October, 2020.

/s/ James A. Brown

EXHIBIT A TO SUBPOENA DUCES TECUM
INSTRUCTIONS

A. These document requests and the terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

B. Each paragraph herein shall be construed independently and not with reference to any other paragraph for the purposes of limitation.

C. In construing these document requests, the singular shall include the plural and the plural shall include the singular.

D. Information shall not be withheld merely because such information is stored electronically (*e.g.*, word processing files, electronic mail, text messages, databases, accounting information, and spreadsheets). For retrievable information stored in computers, please provide a copy both on paper and on magnetic media, and provide or identify a suitable program or method of retrieving the information.

E. Should you have any questions or concerns about these requests, please immediately contact undersigned counsel.

DEFINITIONS

1. The term "Document" shall be broadly construed as provided by the Louisiana Code of Civil Procedure and shall include, without limitation, every writing, drawing, graph, chart, photograph, sound recording, image, or other data that is in your possession, custody, or control, including those kept by electronic, magnetic, photographic, or mechanical means, any drafts or revisions pertaining to any of the foregoing, and any other data compilations from which information may be obtained. Any document or copy of any document that contains any note, comment, addition, deletion, insertion, annotation, alteration or otherwise comprises a nonidentical copy of another document shall be treated as a separate document subject to production.

2. "Person" shall mean natural persons, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations, governments or political subdivisions thereof, and governmental agencies.

3. The terms "and" and "or," as used herein, shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this demand any document or information that might be deemed outside its scope by another construction of these terms.

4. The singular form of any noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun so used, and vice versa. The masculine form of a noun or pronoun shall be considered to include within its meaning the feminine and neuter genders.

5. "You" and "Your" and means Lewis & Ellis, its employees, directors, officers, members, agents and/or representatives.

6. "LDI" means the Louisiana Department of Insurance, its employees, directors, officers, members, agents and/or representatives.

7. "Rehabilitator" means James J. Donelon, the Commissioner of Insurance for the State of Louisiana, in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc, through his duly appointed Receiver, Billy Bostick.

8. "Buck" means Buck Global, LLC f/k/a Buck Consultants, LLC ("Buck"), its employees, directors, officers, agents and/or representatives.

9. “Milliman” means Milliman, Inc., its employees, directors, officers, agents and/or representatives.

10. “LAHC” means Louisiana Health Cooperative, Inc., its employees, directors, officers, members, agents and/or representatives.

11. “CMS” refers to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.

12. “SAP” refers to Plaintiff’s October 25, 2017 Second Supplemental, Amended and Restated Petition in the matter captioned *Donelon v. Shilling et al*, No. 651,069, 19th JDC, Parish of East Baton Rouge, State of Louisiana.

13. “Communication” shall mean any transmission or exchange of information by written, oral, pictorial, electronic, or other perceptible means, including, but not limited to, correspondence, hand deliveries, mailings, telefaxes, facsimiles, telecopies, telegraphs, cables, emails, cellular/telephone conversations, text messages, video conferences, instant messages or chats, video conversations through applications like Skype or FaceTime, personal conversations, meetings, and the like—whether in email accounts (including emails and attachments located in deleted folders), cellphones, laptops, netbooks/notebooks, workstations, servers, other drives, drive images, backup tapes and databases at your headquarters, one of your facilities, or hosted by your vendor.

DOCUMENTS TO BE PRODUCED

1. All documents reflecting Buck's professional services and work for LAHC.
2. All documents reflecting Milliman's professional services and work for LAHC.
3. All documents, including e-mail, reflecting communications between You and Buck.
4. All documents, including e-mail, reflecting communications between You and Milliman.
5. All documents, including e-mail, reflecting communications between You and the LDI and/or CMS, pertaining to LAHC.
6. All documents, including e-mail, reflecting communications between You and the Rehabilitator, pertaining to LAHC.
7. All documents reflecting or analyzing the role and impact of expected risk corridor payments in the formation of LAHC and in the planning and projections for its financial performance following its formation.
8. All documents reflecting or analyzing the impact of the failure to make risk corridor payments to LAHC upon its operations and financial condition.
9. All documents reflecting LDI's review and approval of LAHC's 2014 and 2015 rates.
10. All documents reflecting Your review, assessments, findings and/or conclusions relating to Buck's and Milliman's actuarial analyses, reports and other work for LAHC.
11. All documents reflecting Your assessments and reviews of LAHC's rates arising from or related to Milliman's actuarial work for LAHC.
12. All documents reflecting Your assessments and reviews of LAHC's rates arising from Buck's actuarial work for LAHC, including but not limited to, Your 2014 review of LAHC's 2015 QHP (Individual Health) filing for individual and catastrophic products and LAHC's 2015 Small Group filing.
13. All documents reflecting any attempt by LAHC, LDI, You, or other person or entity to pressure or otherwise influence Milliman to lower the 2014 rates.
14. All documents reflecting or analyzing a) LAHC's CO-OP application (including any feasibility study or business plan), b) pro forma submissions, c) rate filing submissions, d) requests for additional funding, e) any corrective action plan, f) the "3Rs" set out under the Patient Protection and Affordable Care Act (the "ACA"), g) the decision to retain or terminate any consulting actuary or third-party administrator, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party consultant.

15. All documents, including e-mail, reflecting communications with the LDI and /or with CMS concerning: a) LAHC's CO-OP application (including any feasibility study or business plan), b) pro forma submissions, c) rate filing submissions, d) requests for additional funding, e) any corrective action plan, f) the "3Rs" set out under the Patient Protection and Affordable Care Act (the "ACA"), g) the decision to retain or terminate any consulting actuary or third-party administrator, h) LAHC's financial condition, i) the basis for terminating any actuary or third-party consultant.
16. All documents, including e-mail, reflecting communications between LDI and You, regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.
17. All documents and communications, including e-mail, between LAHC and LDI regarding (i) the review of LAHC's premium rates for any and all years, (ii) any and all work and services performed by Milliman for LAHC, and (iii) any and all work and services performed by Buck for LAHC.
18. All internal documents and communications, including e-mail, within Lewis & Ellis regarding the review of any and all of LAHC's premium rates.
19. All documents and communications, including e-mail, between You and LDI and/or CMS regarding the review of any and all of LAHC's premium rates.
20. All documents and communications reflecting or analyzing LAHC financial statements for the 2014, 2015, 2016, and 2017 calendar years, including but not limited to: (a) GAAP financial statements; (b) Financial statements prepared in accordance with statutory accounting principles, including convention statements filed with LDI; (c) Actuarial memoranda prepared by actuaries other than Buck supporting the calculation of claim reserves, IBNR (incurred but not reported) liabilities, and any other liabilities used in the preparation of the LAHC financial statements.
21. All documents and communications, including e-mail, between You and LDI and/or CMS regarding LAHC's projected financial condition and solvency.
22. All documents and communications, including e-mail, between You and LDI and/or CMS regarding LAHC's operational problems.

23. All engagement agreements and/or other agreements entered into between You and the LDI pertaining to LAHC.

24. All documents and communications reflecting any instructions from LDI, or any agreements between You and LDI, as to the method, standards, manner, procedure, and/or scope for Your reviews of premium rates and/or of the reports, analyses, recommendations or other work product of Buck, Milliman, or other actuaries.

**EXHIBIT “B” TO NOTICE OF RECORDS DEPOSITION AND
SUBPOENA DUCES TECUM**

Louisiana Code of Civil Procedure Article 1354

A. A subpoena may order a person to appear and produce at the trial, deposition, or hearing, books, papers, documents, any other tangible things, or electronically stored information, in his possession or under his control, if a reasonably accurate description thereof is given. A subpoena may specify the form or forms in which electronically stored information is to be produced. A party or an attorney requesting the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to that subpoena. The court in which the action is pending in its discretion may vacate or modify the subpoena if it is unreasonable or oppressive. Except when otherwise required by order of the court, certified copies, extracts, or copies of books, papers, and documents may be produced in obedience to the subpoena duces tecum instead of the originals thereof. If the party or attorney requesting the subpoena does not specify that the named person shall be ordered to appear, the person may designate another person having knowledge of the contents of the books, papers, documents, other things, or electronically stored information, to appear as his representative.

B. A person commanded to respond to a subpoena duces tecum may within fifteen days after service of the subpoena or before the time specified for compliance, if such time is less than fifteen days after service, send to the party or attorney designated in the subpoena written objections, with supporting reasons, to any or all of the requests, including objection to the production of electronically stored information in the form or forms requested. If objection is so made, the party serving the subpoena may file a motion to compel compliance with the subpoena and may move for sanctions for failure to reasonably comply.

C. A person responding to a subpoena to produce books, papers, or documents shall produce them as they are kept in the usual course of business or may organize and label them to correspond with the categories in the demand.

D. If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably useable.

E. A person responding to a subpoena need not produce the same electronically stored information in more than one form.

F. A person responding to a subpoena need not produce books, papers, documents, or electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel production or to quash, the person from whom production is sought shall show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order production from such sources if the requesting party shows good cause. The court may specify conditions, including an allocation of the costs, for the production.

G. When the person subpoenaed is an adverse party, the party requesting the subpoena duces tecum may accompany his request with a written request under oath as to what facts he believes the books, papers, documents, electronically stored information, or tangible things will prove, and a copy of such statement shall be attached to the subpoena. If the party subpoenaed fails to comply with the subpoena, the facts set forth in the written statement shall be taken as confessed, and in addition the party subpoenaed shall be subject to the penalties set forth in Article 1357.

H. Subpoenas duces tecum shall reproduce in full the provisions of this Article.