**COURT OF APPEAL**
**FIRST CIRCUIT**
**STATE OF LOUISIANA**

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**DOCKET NO. 2021-CA-0703**

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

Plaintiff,

VERSUS

TERRY S. SHILLING *et al.*,

Defendants.

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**CIVIL APPEAL**

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# ORIGINAL BRIEF ON BEHALF OF DEFENDANT-APPELLANT MILLIMAN, INC.

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**On Appeal from the 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, Its Docket No. 651,069, Section 22, Division F Honorable Timothy E. Kelley, Presiding**

Respectfully submitted,

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**MAY IT PLEASE THE COURT:**

Defendant-Appellant Milliman, Inc. ("Milliman") respectfully submits this Brief in support of its devolutive appeal to reverse the Trial Court's February 25, 2021 Judgment ("Judgment") denying Milliman's Motion to Compel (the "Motion to Compel") non-party Louisiana Department of Insurance's (the "LDI") Compliance with a Subpoena *Duces Tecum* (the "Subpoena").[1] Milliman requests an order for the Trial Court to order the LDI to reverse the Judgment and remand with an order for the Trial Court to order the LDI to comply with, and produce documents and information responsive to, the Subpoena.

## I. STATEMENT OF GROUNDS FOR JURISDICTION

This Court has jurisdiction over this appeal from a civil proceeding within its circuit under Article VI, Section 10 of the Louisiana Constitution of 1974 and under Articles 2083, 2087, and 2121 of the Louisiana Code of Civil Procedure. This Court has jurisdiction to review and grant this devolutive appeal because the Judgment wholly disposed of the dispute between non-party LDI and Milliman, and is therefore final and immediately appealable as of right. *Oates v. Cenikor Found., Inc.*, 2021-0154 (La. App. 1 Cir. 2/12/21), 2021 WL 528514, at *1 (unpublished) (A judgment that "dispose[s] of the issues between a non-party. . . and a party is a final and appealable judgment."); *see also Amitech, U.S.A., Ltd. v. Nottingham Constr. Co.*, 2005-1981 (La. App. 1 Cir. 2/14/07), 2007 WL 466782 (unpublished); *R.J. Gallagher Co. v. Lent, Inc.*, (La. App. 1 Cir. 1978), 361 So. 2d 1231.

On February 25, 2021, Hon. Timothy E. Kelly of the 19th Judicial District Court (the "Trial Court") signed the written judgment at issue, formalizing a

[1] Milliman adopts and incorporates by reference the arguments in the Original Brief filed by Defendant-Appellant Buck Global, LLC f/k/a/ Buck Consultants, LLC ("Buck") in support of its appeal of the February 25, 2021 Judgment of the Trial Court denying Buck's Motion to Compel LDI's Compliance with *Subpoena Duces Tecum* filed with this Court on July 19, 2021.

judgment previously rendered through a minute entry on February 12, 2021. (R. Vol. 11 at 2246–50; Ex. A.) Milliman timely filed its notice of appeal on March 8, 2021. (R. Vol. 11 at 2257–60.) It was signed by the Trial Court on March 10, 2021. (R. Vol. 11 at 2261.)

## II. CONCISE STATEMENT OF THE CASE

This appeal arises from the LDI's wholesale refusal to produce documents responsive to a non-party subpoena, and the Trial Court's erroneous denial of Milliman's Motion to Compel the LDI's compliance with that Subpoena.

In the underlying action, the Louisiana Commissioner of Insurance (the "Receiver"), acting as Receiver and Rehabilitator of Louisiana Health Cooperative, Inc. ("LAHC"), an insolvent insurer, seeks to hold Milliman, a national actuarial firm, and its co-defendants jointly and severally responsible for LAHC's insolvency and all of its resultant losses. (R. Vol. 11 at 2299–331.) LAHC was a not-for-profit health insurance "CO-OP" established pursuant to the federal Patient Care and Affordable Care Act ("ACA"). (R. Vol. 11 at 2300.)

Among other things, the Receiver alleges that Milliman's reports supporting LAHC's start-up loan application and 2014 rate filings, which were submitted to the LDI, fell short of actuarial standards. (R. Vol. 11 at 2309–17, 2322–23.) The Receiver contends that Milliman relied on "unreasonable" assumptions concerning levels of policyholder enrollment, claim coding intensity, and provider discounts, particularly as compared to other carriers in Louisiana. (*Id.*)

Milliman contends that its work complied with applicable actuarial standards, and that factors unrelated to Milliman—including the federal government's unforeseeable, unlawful decision to withhold approximately $63 million in "Risk Corridor" payments that were designed to buffer LAHC's losses in its early years—caused LAHC's losses and insolvency.

The LDI, as the regulator with oversight over all Louisiana insurers, oversaw and had extensive involvement in LAHC's operations and finances from its inception. (R. Vol. 10 at 1981–83.) The LDI approved LAHC's license to operate as an HMO, had contemporaneous knowledge of LAHC's successful application for federal funding, reviewed and approved LAHC's 2014 premium rates, regularly communicated with the federal government about LAHC, closely monitored LAHC's financial condition, and ultimately recommended that LAHC wind down its operations in July 2015. (*Id.*) It therefore undoubtedly possesses—and may be the only source of—critical contemporaneous information that directly bears on whether Milliman's work caused any of LAHC's losses, and whether the actuarial assumptions that underlay Milliman's work were reasonable given what was known at the time.

Given the LDI's critical role, Milliman's Subpoena to the LDI sought information relating directly to the Receiver's claims and Milliman's defenses, including, but not limited to internal and external documents and communications concerning: (1) LAHC's financial feasibility at the time of its start-up and solvency loan applications; (2) LAHC's rate filings and Milliman's reports in support of those filings; (3) other insurers' 2014 rate filings, which are required to test the Receiver's allegations that Milliman relied on improper assumptions as compared to other Louisiana carriers; (4) LAHC's financial condition and the LDI's decision to place LAHC into rehabilitation; and (5) the Receiver's settlement of his claims against the federal government relating to LAHC's insolvency and losses. (R. Vol. 10 at 1953–70.)

In response to the Subpoena, the LDI did not dispute that it possessed responsive documents. However, it objected to the Subpoena in full, on the grounds that the information sought is not "relevant and not reasonably calculated to lead to the discovery of admissible evidence." (R. Vol. 11 at 2151–99.) The LDI

also objected that two Louisiana statutes preclude the discovery Milliman seeks: (1) La. R.S. § 22:2043.1, which, the LDI contends, insulates the LDI from liability and precludes defenses based on a regulator's pre-receivership "action or inaction"; and (2) La. R.S. § 22:2045, which allows the LDI to withhold documents from discovery that were "produced by, obtained by, or disclosed to the commissioner. . . in the course of" a receivership or rehabilitation action and are otherwise confidential or privileged. (*Id.*)

Milliman moved to compel the LDI's compliance with its Subpoena on January 7, 2021. (R. Vol. 10 at 1936–2077.) At a hearing on February 25, 2021, the Trial Court denied Milliman's Motion. (R. Vol. 11 at 2246–50; Ex. A.) The Trial Court held that, because Milliman cannot assert a legal defense ***at trial*** concerning the LDI's "action or inaction," ***discovery*** from the LDI is precluded in full and for any purpose:

> When I look at [La. R.S. §§ 2043.1] and 2045, I understand why they want the information and what they would like to try to do with it; however, I do not think that they are going to be allowed at the end of the day to utilize it, and therefore, there is not a reason to discover it… because it can never be used under the law, under the Insurance Code.

(R. Vol. 12 at 2537–38, [Tr. 34:14–22].) The Trial Court entered judgment reflecting its ruling on February 25, 2021 (the "Judgment"). (R. Vol. 11 at 2246–50; Ex. A.)

The Judgment is wrong and should be reversed for three reasons. First, it directly contravenes this Court's holding that "[t]he test of discoverability is not the admissibility of the particular information sought, but whether the information appears reasonably calculated to lead to the discovery of admissible evidence." *Lehmann v. Am. S. Home Ins. Co.*, 615 So. 2d 923, 925 (La. App. 1 Cir. 1993); *see also* La. Code Civ. P. art. 1422. At a November 2020 hearing in

which the Trial Court struck the defendants' defenses based on regulator "actions or inactions," the Trial Court recognized that striking those defenses should not prohibit discovery of the LDI, stating that "[a] defense against claims against LDI when you can't have claims [r]egarding their actions or inactions, has nothing to do with obtaining documents that are relevant and could lead to admissible evidence with regard to other parties in the matter." (R. Vol. 12 at 2489, [Tr. 39].) The Trial Court's Judgment directly contravenes its earlier—correct—articulation of how admissibility differs from discoverability.

Second, Milliman is not seeking discovery from the LDI to assess the regulator's "actions or inactions" or "delegate responsibility to a state agency" in contravention of La. R.S. § 22:2043.1. Rather, Milliman is seeking information concerning whether ***its own*** work, and work of other third-party contractors prior to LAHC's insolvency, was reasonable and competent given what was known at the time. Likewise, Milliman's requests for LDI's documents relate to the reasons for LAHC's financial insolvency and/or the LDI's review and approval of the Receiver's settlement of LAHC's claims against the federal government, and concern whether other parties, like the federal government, or factors caused LAHC's losses. (R. Vol. 10 at 1953–70.) Neither information concerning LAHC's financial condition, nor the LDI's communications with the federal government regarding its approval and funding of LAHC, attack the LDI's pre-receivership "actions or inactions." At the oral argument on Milliman's motion, the Receiver's counsel actually conceded that several categories of documents Milliman requested do not implicate La. R.S. § 22:2043.1(B). (R. Vol. 12 at 2529, [Tr. 26:15–24]; Ex. B, [Tr. 26:15–24].) The Trial Court ignored that concession. (R. Vol. 11 at 2246–50; Ex. A.)

Third, La. R.S. § 22:2045 only shields documents that are both (1) produced or received during a receivership action, ***and*** (2) are otherwise "confidential or

privileged pursuant to any other provision of law." Here, Milliman seeks primarily contemporaneous evidence from before LAHC was placed in receivership, and the LDI has not asserted any privilege applicable to the documents Milliman has requested.

Discovery from the LDI about the propriety of Milliman's work and the reasons for LAHC's losses is directly relevant to Milliman's ability to defend itself in this case. The Trial Court's Judgment ignored controlling law concerning the threshold for discoverability, and ignored what Milliman's subpoena actually requests, and instead precluded all discovery from the LDI based on two inapplicable statutes. The Trial Court's erroneous Judgment should be reversed, and the LDI should be ordered to comply with the Subpoena.

## III. ASSIGNMENT OF ALLEGED ERRORS

The Trial Court's decision to preclude discovery of all information in the possession of the LDI, based on its conclusion that none of this information could possibly be admissible at trial, is erroneous because it:

1. Contravenes La. Code Civ. P. art. 1422 and this Court's controlling precedent holding that evidence is discoverable, regardless of its ultimate admissibility, if it reasonably may lead to admissible evidence. The Trial Court's premature rush to deprive Milliman of the opportunity to obtain and review information from the LDI, and to make a proffer of specific evidence and show the basis for each item's relevance if challenged by the Receiver, impermissibly deprives Milliman of discovery rights long protected by Louisiana law;

2. Ignores that Milliman's Subpoena does not seek evidence concerning the LDI's "action or inaction"; and

3. Misapplies La. R.S. § 22:2045, which does not bar production of non-confidential, non-privileged, and/or pre-receivership documents sought by the Subpoena.

## IV. LISTING OF ISSUES PRESENTED FOR REVIEW

1. Whether the Trial Court erred by disregarding La. Code Civ. P. art. 1422 and this Court's controlling precedent holding that admissibility of evidence at trial does not preclude discovery of information that is reasonably calculated to lead to admissible evidence;

2. Whether the Trial Court erroneously denied Milliman's Motion to Compel by holding that the discovery it seeks from the LDI is barred by La. R.S. § 22:2045, when Milliman has demonstrated that it is not seeking documents and information prepared or received in the course of a receivership or rehabilitation action, and/or which are not otherwise privileged.

## V. STATEMENT OF FACTS

### A. The Receiver's Action Against Milliman

The ACA established the Consumer Operated and Oriented Plan, or "CO-OP," program to fund not-for-profit health insurance companies to offer health insurance to individuals and small groups. (R. Vol. 11 at 2302.) LAHC was the Louisiana CO-OP created under the ACA. (*Id.*) LAHC began offering health insurance coverage effective January 1, 2014. (*Id.*) LAHC experienced such financial hardship that it decided to stop doing business in July 2015. (R. Vol. 11 at 2303.)

The LDI's Commissioner testified before Congress that the LDI played an active role in monitoring LAHC's financial condition before ultimately recommending that LAHC wind down, including the review of an "alarming" number of consumer complaints against LAHC. (R. Vol. 10 at 1982.) Per the Commissioner's Congressional testimony, the LDI conducted an on-site market conduct and financial examination and determined that LAHC had triggered several provisions of the state's Hazardous Financial Condition Regulation in March 2015. (R. Vol. 10 at 1983.) In the months that followed, the LDI examined

LAHC's ongoing viability, ultimately recommending in July 2015 that "[LAHC] . . . wind down its operations over the remainder of the 2015 calendar and plan year, rather than risk insolvency in 2016 and force enrollees to find new coverage in the beginning of the 2016 plan year." (*Id.*) The LDI obtained a court order placing LAHC into rehabilitation in September 2015. (*Id.*)

On November 29, 2016, the Receiver filed an Amending Petition in which he, for the first time, named Milliman as a defendant. (R. Vol. 2 at 149–92.) Milliman provided actuarial services to LAHC from August 2011 to March 2014. (R. Vol. 11 at 2309–17.) The Receiver's core allegations against Milliman assert that (1) Milliman's 2012 feasibility study, which supported LAHC's start-up and solvency loan applications to the federal government, and (2) Milliman's reports supporting LAHC's 2014 rate filings, which filings were submitted to and approved by the LDI, were misleading and contravened governing actuarial standards. (R. Vol. 11 at 2309–17, 2322–23.) The Petition further alleges that LAHC's 2014 rate filings unreasonably assumed that: (1) "LAHC would achieve provider discounts on their statewide PPO product that were equal to Blue Cross Blue Shield of Louisiana" (R. Vol. 11 at 2313, ¶ 58); and (2) "there would be no difference in coding intensity between LAHC and the other insurance carriers in the State of Louisiana" (R. Vol. 11 at 2315–16, ¶ 67).

Milliman contends that its actuarial work was proper and met all applicable actuarial standards, and that other entities, including the federal government, caused LAHC's losses. (R. Vol. 2 at 333–35.)

### B. Relevant Procedural History Leading To Milliman's Subpoena To The LDI

Milliman and the other defendants in the underlying action served requests for production of documents on the Receiver, which sought, *inter alia*, information from the LDI relevant to several of the claims and defenses in the case. (R. Vol. 4

at 695–706; R. Vol. 4 at 707–21; R. Vol. 4 at 730–38). In response to those requests, the Receiver admitted that LDI's review of Milliman's reports and/or approval of LAHC's rates are probative by agreeing to produce documents "in [the Receiver's] possession and control" concerning "LDI's review and approval of LAHC's 2014 and 2015 premium rates," as well as "actuarial documents by anyone including LDI [and] Milliman." (R. Vol. 4 at 695–706; R. Vol. 4 at 722–29; R. Vol. 4 at 739–44.) However, the Receiver then refused to produce LDI documents, other than those on LAHC's own servers, on the basis that the Insurance Commissioner, in his capacity as receiver, did not have possession, custody, and control of LDI's documents as regulator. (*Id.*)

On September 3, 2020, Defendants moved to compel the Receiver to produce LDI documents. (R. Vol. 4–5 at 642–770). In opposing that motion, the Receiver argued that Defendants could obtain the documents being sought through "other vehicles. I mean, a third-party subpoena. . . . Nothing prevents the defendants from issuing a third-party subpoena to the [LDI] which would be bound by the discovery rules set by Your Honor."[2] The Trial Court, in denying Defendants' Motion, stated that Defendants could proceed by "third-party subpoena, which the court believes is the proper vehicle through which to obtain the documentation [from the LDI]." (R. Vol. 12 at 2448, [Tr. 48].)

Shortly thereafter, on September 17, 2020, the Receiver moved pursuant to La. R.S. § 22:2043.1(B) to strike Milliman's and all of the other defendants' defenses to the extent they were based on "the action or inaction of insurance regulatory authorities." (R. Vol. 5 at 774–77.) Both in its opposition brief, and at the November 20, 2020 hearing on the Receiver's motion to strike, Milliman argued—correctly, as it turned out—that striking these defenses would likely lead

[2] *See also* R. Vol. 12 at 2438–39, [Tr. 38:30–39:6] (Receiver's counsel advising the Court that "any discovery requests relating to these regulatory records should be and must be properly directed to the Department of Insurance as regulator.").

the Receiver and the LDI to (erroneously) argue later on that Defendants were not entitled to any discovery from the LDI. (R. Vol. 7 at 1252–54; R. Vol. 12 at 2485–89, [Tr. 35–39].) The Trial Court acknowledged Milliman's concern, and made clear that striking defenses based on regulator "action or inaction" would not preclude discovery of the LDI:

> I don't see how granting this motion pursuant to the language of the 22:204[3.]1B damages your ability to argue discoverability. Now, he may argue it's no longer an issue so therefore it's irrelevant but we really all know some of these things really are at issue and are relevant and ***even though it may involve action of the regulatory entity and therefore not admissible it could lead to admissible evidence with regard to actions of other parties that form your defenses***.... I just can't see how he could prevent you from gathering information that he obtains just by striking defenses regarding their actions.... If this whole thing is about discovery don't worry about it. Because ***discovery is totally different than whether you can use action or inaction as a defense***.

(R. Vol. 12 at 2489, [Tr. 39]) (emphasis added). The Trial Court granted the Receiver's motion to strike.[3]

**C. <u>The Subpoena And Motion To Compel</u>**

Following the Trial Court's and the Receiver's direction, on or about November 19, 2020, Milliman served the Subpoena on the LDI. (R. Vol. 10 at 1953-70). The Subpoena generally sought the following four categories of documents that relate directly to the Receiver's claims against Milliman, and to Milliman's defenses:

1) <u>Communications concerning Milliman's reports in support of LAHC's 2012 feasibility study and 2014 rate filings (*See, e.g.*, R. Vol. 10 at 1960–61, Reqs. 1, 6, 9, 12, 13, 15)</u>. The LDI's communications are probative because they establish a contemporaneous record—unaffected by hindsight or after-the-fact

[3] Although Milliman is not at this time appealing the Trial Court's order striking its "regulator fault" defenses, Milliman reserves the right to appeal the Trial Court's erroneous ruling on that motion at the appropriate time.

attempts to shift blame for LAHC's losses—that cannot be obtained from other sources concerning the quality and reasonableness of Milliman's work for LAHC.

2) Information concerning other Louisiana insurers' 2014 rate filings (R. Vol. 10 at 1961–62, Reqs. 16, 17). In order to test the Receiver's allegations concerning the reasonableness of Milliman's assumptions as compared to other Louisiana carriers, Milliman needs information from the LDI concerning, *inter alia*, state-wide enrollment levels, rates of other carriers, and whether or to what extent these allegedly "unreasonable" assumptions actually impacted LAHC's financial condition. ***Only*** the LDI has this contemporaneous information. Milliman has none of it.

3) Documents concerning LAHC's financial condition and insolvency, including communications with the federal government concerning changes to, and implementation of, the ACA. (R. Vol. 10 at 1962–64, Reqs. 19, 20, 29–33). The LDI closely monitored LAHC's financial condition, recommended that LAHC voluntarily wind down its operations, and had constant contact with the federal government, which oversaw the ACA CO-OP program. The LDI most likely has information that bears on Milliman's contention that its work did not cause LAHC's losses, but rather that other factors, including the federal government's improper withholding of $63 million in "Risk Corridor" payments in 2015, and/or work of other third-party providers of pre-insolvency services to LAHC, caused those losses.

4) Post-receivership communications concerning the *Health Republic* settlement (R. Vol. 10 at 1964–65, Reqs. 37, 38). LAHC participated in the federal *Health Republic Insurance Company v. U.S.,* class action in the Court of Federal Claims, in which several ACA CO-OPs and other carriers sued the federal government for its improper withholding of "Risk Corridor" payments. The case settled in 2020, and LAHC was the only insurer—out of 148—that did not get paid

100% of what the federal government owed it. The Receiver has conceded that Milliman is entitled to put on a defense and "conduct reasonable discovery" concerning the Receiver's post-receivership conduct, including the *Health Republic* settlement. (R. Vol. 7 at 1411).

On December 8, 2020, the LDI responded to the Subpoena by asserting wholesale objections to every one of Milliman's requests. (R. Vol. 11 at 2183–99). With no explanation, the LDI objected that Milliman's requests seek documents that are "not relevant and are not reasonably calculated to lead to the discovery of admissible evidence," and/or are "overbroad, lacking a reasonably accurate description of the documents being requested, lacking proportionality, unreasonable, oppressive, and incomprehensible." (*Id.*, Resp. to Reqs. 1–38). The LDI also incorrectly claimed that its documents are protected from disclosure under La. R.S. §§ 22:2043.1 and/or 22:2045. (*Id.*, Resp. to Reqs. 1, 7, 9, 10, 12-15, 17–24, 28–34, 38).

On December 15, 2020, counsel for Milliman met and conferred by telephone with counsel for the LDI in accordance with Local Rule 10.1. (R. Vol. 10 at 1938.) Although Milliman offered to negotiate the scope of its requests to try to ease any burden on the LDI, LDI's counsel stated that the LDI would maintain its wholesale statutory objections. (*Id.*)

On January 7, 2021, Milliman moved to compel the LDI to respond to the Subpoena. (R. Vol. 10 at 1936–2078.) The LDI opposed the motion, (R. Vol. 10–11 at 2094–223), as did the Receiver.[4] (R. Vol. 11 at 2224–28.) The Trial Court held a Zoom hearing on the motion on February 12, 2021. (R. Vol. 12 at 2504–39; Ex. A; Ex. B.)

[4] The Receiver's opposition was improper because he lacks standing to challenge a subpoena directed at the LDI. *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979) (a litigant lacks standing to object to or challenge a subpoena not directed at it unless it either possesses the materials subpoenaed or alleges a personal right or privilege with respect to the materials subpoenaed).

At the conclusion of the Zoom hearing, the Trial Court denied Milliman's motion. The Court held:

> [W]hen I look at [2043.1], and 2045, I understand why they want the information and what they would like to do with it; however, I do not think that they are going to be allowed at the end of the day to utilize it, and therefore, there is not a reason to discover it.... [S]ince it cannot be used it will never be admissible. Just legally it could not be asserted, and therefore, I am going to deny the Motion to Compel at Mover's cost.[5]

On February 25, 2021, the Trial Court entered the Judgment denying Milliman's Motion to Compel "for the reasons stated at the conclusion of the Zoom hearing." (R. Vol. 11 at 2246–50; Ex. A.)

## VI. SUMMARY OF ARGUMENT

The Trial Court's erred in holding that La. R.S. §§ 2043.1 and 22:2045 preclude Milliman from obtaining highly relevant LDI documents and information for three reasons.

First, the Trial Court's holding directly contravenes this Court's holding that "[t]he test of discoverability is not the admissibility of the particular information sought, but whether the information appears reasonably calculated to lead to the discovery of admissible evidence." *Lehmann*, 615 So. 2d at 925; *see also* La. Code Civ. P. art. § 1422. As the Trial Court itself had previously recognized, the LDI's putative immunity from ***liability*** under La. R.S. § 22:2043.1(B) does not immunize it from ***discovery***. Courts in analogous cases have held that regulatory documents are relevant and discoverable in receivership actions, even when "regulator fault" defenses are disallowed. *See, e.g.*, *Donelon v. Herbert Clough, Inc.*, No. CV 03-282-A-M2, 2006 WL 8436324, at *6 (M.D. La. Oct. 19, 2006); *F.D.I.C. v. Dosland*, No. C13-4046-MWB, 2014 WL 1347118, at *4 (N.D. Iowa Apr. 4, 2014); *F.D.I.C. v. Berling*, No. 14-CV-00137-CMA-MJW, 2015 WL 3777408, at

[5] R. Vol. 12 at 2537-38, [Tr. 34:14-35:2]; Ex. B, [Tr. 34:14-35:2].

*2 (D. Colo. June 16, 2015); *F.D.I.C. v. Clementz*, No. 2:13-CV-00737-MJP, 2014 WL 4384064, at *2-3 (W.D. Wash. Sept. 4, 2014).

Second, La. R.S. § 2043.1(B), which bars defenses based on regulator "action or inaction," is irrelevant to Milliman's requests for documents concerning whether or not it was the cause of LAHC's losses, or whether other parties and non-parties, like the federal government, caused or contributed to LAHC's losses. As the entity that monitored LAHC's financial condition before ultimately recommending that it wind down, the LDI had unique insight into the reasons for LAHC's losses, including financial reports and consumer complaints that are solely in the LDI's possession. It is also clear that the LDI possesses documents and information that informed the Commissioner's extensive testimony about LAHC's financial collapse before the U.S. House of Representatives, none of which has been produced.

Nor does La. R.S. § 2043.1(B) apply to Milliman's requests for information in LDI's possession concerning other carriers' provider discount assumptions, and levels of policyholder enrollment. Milliman is entitled to determine whether or to what extent the allegedly "unreasonable" assumptions underlying its work for LAHC actually impacted LAHC's financial condition, or were even unreasonable at all.

Third, the Trial Court erred in holding that La. R.S. § 22:2045 precludes the LDI from producing the contemporaneous, ***pre-receivership*** documents sought by the Subpoena when that statute only shields otherwise privileged documents produced or received in the course of a receivership action. The LDI has neither asserted any applicable privilege, nor produced the requisite privilege log identifying privileged documents.

## VII. ARGUMENT

### A. Standard Of Review

A court of appeal may overturn a judgment of the trial court if there is "an error of law or a factual finding which is manifestly erroneous or clearly wrong." *Stobart v. State Through Dep't of Transp. & Dev.*, 617 So. 2d 880, 882 n.2 (La. 1993).

While discovery rulings are usually reviewed for abuse of discretion,[6] when as here, the erroneous discovery ruling is based upon errors of law, the ruling is subject to de novo review. *See Daigre v. Int'l Truck & Engine Corp.*, 2010-1379, p. 10 (La. App. 4 Cir. 5/5/11), 67 So. 3d 504, 510, *writ denied*, 2011-1099 (La. 9/16/11), 69 So. 3d 1144 (Mem). Further, "when addressing legal issues, a reviewing court gives no special weight to the findings of the trial court." *Campbell v. Markel Am. Ins. Co.*, 00–1448 (La. App. 1 Cir. 9/21/01), 822 So. 2d 617, 620, *writ denied*, 01–2813 (La. 1/4/02), 805 So. 2d 204. Instead, it "conducts a de novo review of questions of law and renders a judgment on the record." *Id.*

### B. The Trial Court Erred By Denying Milliman's Motion To Compel On The Basis That It May Not Obtain Discovery Where "It Will Never Be Admissible"

The sole basis for the Trial Court's erroneous Judgment is that the LDI's documents and information purportedly "will never be admissible" at trial. (R. Vol. 12 at 2537, [Tr. 34:32]; Ex. B, [Tr. 34:32].) The Trial Court's purported determination of admissibility was not only premature, it also ignores that admissibility is not the threshold for whether documents are discoverable under this Court's well-settled precedent.

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[6] *See Hutchinson v. Westport Ins. Corp.*, 2004–1592 (La. 11/8/04), 886 So. 2d 438, 440. A trial court abuses its discretion when it denies a motion to compel seeking discoverable information. *Francois v. Norfolk S. Corp.*, 2001–1954 (La. App. 4 Cir. 3/6/02), 812 So. 2d 804. *See also Bishop v. Shaw*, 43,137 (La. App. 2 Cir. 3/12/08), 978 So. 2d 568, 572; *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 819 (5th Cir. 2004) (concluding that the district court abused its discretion when it quashed the subpoena and denied the motion to compel outright).

Litigants in Louisiana are entitled to "extremely broad" discovery, *MTU of North America, Inc. v. Raven Marine, Inc.*, 475 So. 2d 1063, 1067 (La. 1985), of "any relevant matter, not privileged." *Collins v. Crosby Grp., Inc.*, 551 So. 2d 42, 43 (La. App. 1 Cir. 1989), *writs denied*, 556 So. 2d 39, 42 (La. 1990); *see also* La. Code Civ. P. art. 1422. "The test of discoverability is not the admissibility of the particular information sought, but whether the information appears reasonably calculated to lead to the discovery of admissible evidence." *Lehmann*, 615 So. 2d at 925. "[N]ot only may discovery be had of any matter not privileged which is relevant to the subject matter involved in the pending action, but any matter ***even if inadmissible at trial*** which appears reasonably calculated to lead to the discovery of admissible evidence." *Royal Am. Corp. v. Republic Sec. Corp.*, 392 So. 2d 98, 99 (La. App. 1 Cir. 1980) (holding that deposition questions concerning option agreement not sued upon must be answered where the answers may potentially be relevant to option agreement sued upon) (emphasis added); *Clark v. Matthews*, 04-848 (La. App. 5 Cir. 1/11/05), 891 So. 2d 799, 804, *writ denied*, 2005-0473 (La. 4/22/05), 899 So. 2d 577 (Mem) ("Even information which will be inadmissible at trial, but that is 'reasonably calculated to lead to the discovery of admissible evidence' is discoverable.") (quoting La. Code Civ. P. art. 1422).

Moreover, Milliman is aware of no authority, and the LDI and Receiver have cited none, that insulates an insurance regulator from producing documents that relate to an insurer's insolvency in a suit where, as here, a receiver seeks damages from a defendant for allegedly causing that insurer's insolvency. On the contrary, courts in Louisiana and elsewhere have consistently determined that regulators must produce relevant documents in such cases. In *Donelon v. Herbert Clough, Inc.*, the court compelled the LDI to produce documents related to its supervision of a failed insurer where the Commissioner, as receiver, alleged that

defendants caused the insurer's losses and insolvency. 2006 WL 8436324, at *6. The *Herbert Clough* court held that the Commissioner's suit opened the door to the LDI's regulatory records and that the Commissioner "has an obligation, in his capacity as 'regulator' or 'director' of the DOI, to produce all non-privileged documents relevant to the supervision of [the insurer] prior [to] its rehabilitation and liquidation." *Id.*[7]

Similarly, in *Benjamin v. Sawicz*, an Ohio appellate court affirmed the trial court's discovery order compelling the regulator to produce documents about a failed insurer. 159 Ohio App. 3d 265, 270 (2004). *Sawicz* firmly rejects the notion that the "[Ohio Department of Insurance] should be permitted to take control of a privately owned company, put it out of business, sue its officers for failing to run the company properly, and deny the officers access to documents that could allow them to defend themselves." *Id.* at 275 (internal quotations omitted).

The *Sawicz* court held that "[u]nder these circumstances, and where [the Superintendent] has under her control, through the department of insurance, special and direct knowledge vital to the action, [. . .] the superintendent must disclose all information material and relevant to this action, whether in the superintendent's capacity as regulator or liquidator." *Id.* (internal quotations omitted). *See also Matter of Ideal Mut. Ins. Co.*, 532 N.Y.S.2d 371, 375–76 (1st Dep't 1988); *Resolution Tr. Corp. v. Deloitte & Touche*, 145 F.R.D. 108 (D. Colo. 1992) (granting defendants' motion to compel production of regulatory documents concerning the cause for a failed thrift's insolvency).

The LDI documents and information Milliman requested are reasonably calculated to lead to admissible evidence, regardless of whether or not LDI

[7] The Louisiana Supreme Court has stated that Louisiana's discovery rules are derived from the Federal Rules of Civil Procedure, and therefore authority construing analogous federal rules is persuasive in Louisiana. *In re Marriage of Kuntz*, 2006-0487 (La. 05/26/06), 934 So. 2d 34, 35.

documents themselves are admissible at trial. For example, regardless of whether specific LDI communications concerning LAHC's premium rates may be admissible, if the LDI's analysis relied on data from other insurance companies or rate books, then that factual rate data, which does not implicate the LDI's "actions or inactions," could be admissible evidence bearing on the reasonableness of Milliman's rate-making assumptions. Similarly, documents concerning the LDI's knowledge of LAHC's financial condition and the process by which the LDI decided to wind-down LAHC and place it into rehabilitation proceedings, may be critical to understanding the reasons for LAHC's failure, even if those documents are not admissible to show the regulator's fault.

### C. The Trial Court Incorrectly Held That LDI's Documents Are Not Admissible In This Action Pursuant To La. R.S. § 22:2043.1(B)

Milliman's requests for LDI documents related to the reasons for LAHC's financial insolvency, LDI's communications with the federal government, and/or the LDI's review and approval of the settlement in the federal *Health Republic* class action have nothing to do with regulator "action or inaction," as the Receiver's counsel has conceded. (R. Vol. 12 at 2529, [Tr. 26:15-24]; Ex. B, [Tr. 26:15–24].) Rather, these requests seek documents and evidence concerning whether other parties, including other current or former defendants in this case, the federal government, or the Receiver, may have caused or contributed to LAHC's losses. Similarly, Milliman's requests for information concerning 2014 and 2015 rates filed with the LDI by LAHC and other Louisiana health insurers seek documents that can be used to test the reasonableness of Milliman's assumptions, not to fault the LDI for its review or approval of those insurers' rates. This information is therefore discoverable notwithstanding the Court's dismissal of Defendants' "regulator fault" affirmative defenses pursuant to La. R.S. § 22:2043.1(B). (R. Vol. 12 at 2489, [Tr. 39]).

Courts in analogous cases have held that regulatory documents are relevant and discoverable in receivership actions, even when "regulator fault" defenses are disallowed. For example, in *F.D.I.C. v. Dosland*, the court held that the internal Office of Thrift Supervision ("OTS") regulatory documents were relevant and discoverable even though the court had previously "limit[ed] defendants' ability to rely on OTS's actions as an affirmative defense." 2014 WL 1347118, at *4. The court held that "FDIC-R must prove that the defendants' conduct violated an applicable standard of care. It is within the realm of reasonable possibility that internal OTS documents may contain information that is relevant to the defendants' denials that any such violations occurred." *Id.* (footnote omitted); *see also F.D.I.C. v. Berling*, 2015 WL 3777408, at *2 (compelling production of documents in regulator's possession even where they "may ultimately prove inadmissible for a variety of reasons," because "they might nonetheless contain information leading to the discovery of admissible evidence").

Similarly, in *F.D.I.C. v. Clementz*, 2014 WL 4384064, at *2–3, the court, over the FDIC receiver's objections, granted the defendant's motion to compel production of internal documents held by FDIC regulators "related to any regulatory examinations, loans, and handling of loans, warnings, or criticisms and oversight." *Id.* at *1. The court held that the FDIC's contemporaneous evaluation of the loans in question was relevant to the FDIC receiver's claims against the defendants and thus discoverable. *Id.*; *see also F.D.I.C. v. Clementz*, No. C13-737 MJP, 2015 WL 11237021, at *4 (W.D. Wash. Sept. 24, 2015) (reiterating that "the FDIC's conduct as regulator and examiner remains relevant to whether defendants breached their duties of care, and Defendants are still entitled to raise the FDIC's approval and authorization of specific loans to attack plaintiff's case in chief"); *Colonial BancGroup, Inc. v. PricewaterhouseCoopers, LLP*, 110 F. Supp. 3d 37, 41-42 (D.D.C. 2015) (pre-receivership regulatory documents discoverable even

though regulator fault defenses were barred because documents "would reflect real-time observations, analyses, and assessments of bank management, the MWLD, risk factors, controls, audits, and other aspects of the bank that relate directly to the claims and defenses [. . . ], or at least reasonably could lead to information bearing on [these] issues").

### D. The Trial Court Incorrectly Held That LDI's Documents Will Not Be Admissible In This Action Pursuant To La. R.S. § 22:2045

The Trial Court erred by misapplying La. R.S. § 22:2045, which does not shield contemporaneous documents and information Milliman is seeking that was in LDI's possession prior to LAHC's receivership.

Moreover, La. R.S. § 22:2045 only protects documents that are otherwise "confidential or privileged pursuant to any other provision of law." The LDI has the burden of proving that that privilege applies and must log such documents pursuant to La. Code Civ. P. art. 1424. *Nelson v. Carroll Cuisine Concepts, LLC*, 2018-1079 (La. App. 1 Cir. 11/09/18), 2018 WL 5881710, at *1 (unpublished). As this Court held in *Nelson*, "the party asserting the privilege has the burden of proving that the privilege applies; further, the party asserting the privilege must adequately substantiate the claim and cannot rely on a blanket assertion of privilege." *Id.* The LDI provided no such privilege log and did not identify any applicable privilege that governs here. The LDI's blanket assertion of privilege pursuant to La. R.S. § 22:2045 is not sufficient to sustain its burden.

## VIII. CONCLUSION

For all of the foregoing reasons, the Trial Court's Judgment denying Milliman's Motion to Compel was manifestly erroneous. Accordingly, Milliman respectfully requests that the Court and reverse the Trial Court's Judgment denying Milliman's Motion to Compel LDI's compliance with Milliman's Subpoena, and remand with an order for the Trial Court to order the LDI to comply with, and

produce documents and information responsive to, the Subpoena, and for any other and further relief that this Court deems just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail, postage prepaid, and via-email, to the trial court and all counsel of record as follows:

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New Orleans, Louisiana this 19th day of July, 2021

/s/ Harry Rosenberg

# EXHIBIT A

**19TH JUDICIAL DISTRICT COURT**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

| | | |
|---|---|---|
| **JAMES J. DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA, IN HIS CAPACITY AS REHABILITATOR OF LOUISIANA HEALTH COOPERATIVE, INC.,** | * | **NUMBER: 651,069** |
| | * | **SECTION: "22"** |
| **Plaintiff,** | * | |
| **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,** | * | |
| **Defendants** | * | |

**ORDER**

A hearing, conducted by Zoom, at 9:30 a.m. on February 12, 2021, was held to consider (1) a motion to compel production of documents by the Louisiana Department of Insurance ("**LDI**") pursuant to subpoena **duces tecum** requested by Defendant, Buck Global, LLC, f/k/a Buck Consultants, LLC ("**Buck Global**"), (2) a motion to compel production of documents by Lewis & Ellis, Inc. ("**L&E**") pursuant to subpoena **duces tecum** requested by Defendant, Buck Global, and (3) a motion to compel production of documents by LDI pursuant to subpoena **duces tecum** requested by Defendant, Milliman, Inc. ("**Milliman**"). Participating in this Zoom hearing were:

John Ashley Moore, for LDI and L&E;

J. Cullens, for Plaintiff, the Receiver of Louisiana Health Cooperative, Inc. ("**LAHC**" or "**Plaintiff**" or the "**Receiver**");

James A. Brown, Sheri Corales, and David Godofsky for Defendant, Buck Global;

Harry Rosenberg, Justin Kattan, and Justine Margolis, for Defendant, Milliman;

W. Brett Mason for Defendant, Group Resources, Inc.;

Considering the briefs filed by the parties, all exhibits attached to the memoranda filed by the parties and filed into the record, applicable law, and the arguments of counsel:

**IT IS ORDERED** that Defendant Buck Global's motion to compel the Louisiana Department of Insurance is **DENIED**, specifically for the reasons stated at the conclusion of the Zoom hearing;

**IT IS FURTHER ORDERED** that Defendant Buck Global's motion to compel Lewis & Ellis, Inc. is **DENIED**, specifically for the reasons stated at the conclusion of the Zoom hearing;

**IT IS FURTHER ORDERED** that Defendant Milliman's motion to compel the Louisiana Department of Insurance is **DENIED**, specifically for the reasons stated at the conclusion of the Zoom hearing;

**IT IS FURTHER ORDERED** that Defendants, Buck Global and Milliman, shall bear the cost associated with these discovery motions heard by Zoom hearing on February 12, 2021.

**SO ORDERED**, this February 25, 2021 day of February, 2021.

Honorable Timothy E. Kelley
Judge, 19th Judicial District Court

Respectfully submitted,

**TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.**

By

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***Attorneys for Louisiana Department of Insurance and Lewis & Ellis, Inc.***

**I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS FOR JUDGMENT / JUDGMENT / ORDER / COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED.**
**SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.**

**DONE AND MAILED ON March 01, 2021**

**DEPUTY CLERK OF COURT**

# EXHIBIT B

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

SECTION 22

JAMES DONELON, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA — DIVISION F

VS. — SECTION 22

TERRY SHILLING, ET AL — 651069

HEARING

FEBRUARY 12, 2021

THE HONORABLE TIMOTHY KELLEY, PRESIDING



REPORTED BY:

KRISTINE FERACHI

OFFICIAL COURT REPORTER

IN AND FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

FEBRUARY 12, 2021

**THE COURT:** THIS IS A MOTION TO COMPEL WITH REGARD TO, WITH REGARD TO A SUBPOENA DUCES TECUM ISSUED TO THE DEPARTMENT. IT WAS FILED BY BULK GLOBAL AND MILLIMAN. WHO WANTS TO TAKE THIS ONE?

**THE DEFENDANT:**

**MS. KATTAN:** JUSTINE KATTAN ON BEHALF OF MILLIMAN. THANK YOU, YOUR HONOR FOR YOUR TIME TODAY. I WANT TO START BY FOCUSING ON MILLIMAN'S ACTUAL REQUEST FOR DOCUMENTS BECAUSE THE LOUISIANA SUPREME COURT HAS SAID THAT IT IS L.D.I.'S BURDEN TO SHOW WHY THE DISCOVERY THAT MILLIMAN AND BUCK IS SEEKING IS IMPROPER. WHEN YOU LOOK AT L.D.I.'S OBJECTIONS AND THE PAPERS THAT THEY SUBMITTED IN OPPOSITION, THEY IGNORE THE ACTUAL DOCUMENTS MILLIMAN HAS ASKED FOR AND WHY MILLIMAN HAS ASKED FOR THEM, AND IN DOING SO, THE L.D.I. HAS FAILED TO MEET ITS BURDEN. I WANT TO START BY FOCUSING JUST ON FOUR BROAD CATEGORIES OF DOCUMENTS THAT WERE ENCOMPASSED BY THE QUESTION. THOSE ARE INFORMATION CONCERNING OTHER INSURERS' 2014 RATE FILINGS. DOCUMENTS CONCERNING L.H.C.'S FINANCIAL CONDITION OF INSOLVENCY, COMMUNICATION WITH AN ABOUT THE FEDERAL GOVERNMENT BOTH CHANGES INFORM L.C.L. IMPACTED THE FINANCIAL CONDITION AND CONCERNING THE HEALTH REPUBLIC SETTLEMENT. THOSE FOUR CATEGORIES TOGETHER COMPRISE ROUGHLY A THIRD OF MILLMAN'S REQUEST, BUT NONE OF THE L.D.I. ARGUMENTS OR OBJECTIONS HAVE ANY RELATION TO THOSE REQUESTS. FOR EXAMPLE, LET'S START WITH INFORMATION REGARDING L.A.H.C.'S FINANCIAL CONDITION AND COMMUNICATION REGARDING CHANGES TO

THE A.C.A. AND THE IMPACT THAT THAT HAD ON THEIR FINANCIAL CONDITION OR WHETHER OTHER ECONOMIC FACTORS OR PARTIES OR MACHINE PARTIES LIKE THE FEDERAL GOVERNMENT CAUSED OR CONTRIBUTED TO L.A.H.C.'S LOSSES. L.D.I. THAT ENTITY THAT MONITORED THEIR FINANCIAL CONDITION AND RECOMMENDED IT WIND DOWN SO IT UNDOUBTEDLY HAS DOCUMENTS THAT BEAR ON WHAT CAUSED L.A.H.C. INSOLVENCY AND ITS LOSSES. AGAIN, THOSE ARE DOCUMENTS THAT ARE CLEARLY RELEVANT. THEY ARE CLEARLY NOT PRIVILEGED. THEY WERE THE DOCUMENTS OBTAINED IN THE COURSE OF A REHABILITATION PROCEEDING. THE INFORMATION DOES NOT CONCERN REGULATOR INACTION OR ACTION, SO NONE OF THE L.D.I. STATED OBJECTIONS OR ARGUMENTS APPLY TO THOSE CATEGORIES OF REQUESTS THAT MILLIMAN HAS MADE. LETS GO TO ANOTHER CATEGORY, INFORMATION REGARDING OTHER INSURERS' RATE FILINGS. THIS GOES TO PLAINTIFF'S CORE ALLEGATION AGAINST MILLIMAN AND BUCK, WHICH IS THAT MILLIMAN RELIED ON IMPROPER ASSUMPTIONS; I WILL GIVE YOU A SPECIFIC ALLEGATION FROM THE RECEIVER'S COMPLAINT OF THEY ALLEGE MILLIMAN WORK WAS IMPROPER AND NEGLIGENT BECAUSE IT, QUOTE, ASSUMED THAT L.A.H.C. WOULD ACHIEVE PROVIDER DISCOUNTS OR THEY HAVE L.P.L. PRODUCTS THAT WERE CALLED TO B.C.B. SHIELD. FACED IN THAT ALLEGATION THEY HAVE TO BE ALLOWED TO SEE THE DOCUMENTS SHOWING BLUE CROSS BLUE SHIELD 2014 -- THEIR RATE INFORMATION, THEIR RATE FILINGS BECAUSE THAT WILL HAVE BLUE CROSS BLUESHIELD PROVIDERS DISCOUNTS SUGGESTIONS AND THAT WAY WE WILL BE ABLE TO SEE WHETHER THE REFERRALS

ALLEGATION IS TRUE OR NOT TRUE WHETHER IT IS UNREASONABLE. WHETHER THAT ASSUMPTION HAD ANY IMPACT OR L.A.H.C.'S FINANCES. ANOTHER EXAMPLES TAKEN FROM THE REARS COMPLAINT THEY ASSUMPTION THEIR REPORTS CONCERNING POLICY ENROLLMENT. L.D.I. HAVE DOCUMENTS CONCERNING ACTUAL THAN STATE WHITE INVOLVEMENT IN A.C.L. COMPLIANT PLANS STATE WIDE LET'S SEE WHETHER THEY WERE ASSUMPTIONS OR UNREASONABLE OR NOT MUCH. LET'S SEE WHETHER THAT ASSUMPTION ACTUALLY IMPACTED L.A.H.C.'S FINANCIAL CONDITION. THE RECEIVER CAN MAKE THESE ALLEGATIONS AGAINST MILLIMAN AND THEN SEEK TO BLOCK THEM THE ACCESS TO THE DOCUMENTS THAT MAY DISPROVE THOSE ALLEGATIONS. THESE ARE DOCUMENTS THAT ARE CLEARLY RELEVANT, CLEARLY NOT PRIVILEGED. CLEARLY OBTAINED IN THE COURSE OF A REHABILITATION PROCEEDING. AND THE INFORMATION HAS NOTHING DO WITH REGULATOR ACTION OR INACTION THE L.D.I. STATED OBJECTIONS OR ARGUMENTS HAVE NO BEARING ON THESE CATEGORIES OF DOCUMENTS THAT MILLIMAN IS SEEKING. GOING TO DISCOVERY REGARDING THE HEALTH REPUBLIC COMMUNICATION REGARDING THE HEALTH REPUBLIC SETTLEMENT. THE RECEIVER REFER BACK IN THE NOVEMBER AND IT'S IN THE BRIEFING BRIEFING ON THAT MOTION TO COMPEL -- I AM SORRY THAT WAS THE MOTION TO STRIKE CONCEDED THAT MILLIMAN IS ENTITLED TO PUT ON A DEFENSE CONCERNING THE POST RECEIVERSHIP SETTLEMENT. WELL IF EVIDENCE CONCERNING THAT ISSUE IN THE RECEIVERS OBJECTIONS, RELEVANCE AND DISCOVERABLE THE SAME EVIDENCE IS GOING TO BE RELEVANT FROM THE L.D.I. SO, I COULD GO ON LIKE THIS FOR QUITE A WHILE AND

OUR PAPERS HAVE SEVERAL OTHER SPECIFIC EXEMPTION OF WHY OUR REQUESTS ARE PROPER AND HAVE NOTHING TO WITH THE OBJECTIONS AND ARGUMENTS THAT THE L.D.I. HAS ASSERTED, BUT THE POINT IS THAT IT IS THE L.D.I.'S BURDEN TO SHOW WHY MILLIMAN IS NOT ENTITLED TO THE DISCOVERY IT IS SEEKING, AND THEY FAILED TO MEET THAT BURDEN -- ASSERTED THE GENERALIZED OBJECTIONS THAT DO NOT ADDRESS WHAT MILLIMAN IS DOING HERE.

**THE COURT:** ALL RIGHT. THANK YOU. I AM SORRY I THOUGHT -- GO AHEAD.

**MS. KATTAN:** JUST TURNING FOR A MINUTE OR TWO TO THE MERITS OF THE OBJECTIONS THAT THE L.D.I. DID ASSERT TO THE EXTENT THE COURT CONSIDERS THOSE OBJECTIONS ON THEIR MERITS AND FIRST TURNING TO THE OBJECTION THAT MILLIMAN CANNOT SEEK DISCOVERY FROM THE L.D.I. BECAUSE WE CANNOT PRESENT DEFENSES AT TRIAL CONCERNING REGULATORS' ACTIONS OR INACTIONS. FIRST OF ALL, THIS IS DISCOVERY. THE FIRST CIRCUIT, LOUISIANA FIRST CIRCUIT AND THE LOUISIANA SUPREME COURT HAVE MADE CLEAR THAT THE TEST FOR DISCOVERABILITY IS NOT ADMISSIBILITY AT TRIAL BUT WHETHER THE INFORMATION IS REASONABLY CALCULATED TO LEAD TO ADMISSIBLE EVIDENCE AND IT IS EASY HERE TO SEE HOW THE L.D.I. AND LUTUS AND ELLIS RESEW OF MILLIMAN AND BUCKS WORK CAN LEAD TO ADMISSIBLE EVIDENCE. FOR EXAMPLE, WHEN THEY REVIEWED MILLIMAN'S WORK TO THE EXTENT THAT THEY TOOK ANY DATA INTO ACCOUNT, LET'S SEE THAT DATA. IT DOES NOT MATTER WHETHER THE L.D.I. SAID. ULTIMATELY THE CONCLUSION MATTERS LESS THAN LET'S SEE THE DATA THEY RELIED ON THAT IS DISCOVERABLE

EVIDENCE. I DO NOT THINK THERE IS A DISPUTE ABOUT THAT. THAT IS HOW THESE REQUESTS, EVEN IF ULTIMATELY THE EVIDENCE ABOUT REGULATOR INACTION OR ACTIONS I KNOW HAD USABLE THE DISCOVERY REQUESTS CAN LEAD TO DISCOVERABLE INFORMATION. THAT IS WHY EVERY SINGLE COURT THAT HAS LOOKED AT THIS ISSUE HAS SAID THAT REGULATOR DOCUMENTS ARE DISCOVERABLE EVEN WHERE REGULATOR \FACILITY\FAULT DEFENSES ARE NOT ALLOWED. WE CITED THOSE CASES AT PAGE NINE AND TEN OF OUR MOVING BRIEF, AND THE L.D.I. DOES NOT ADDRESS THAT AUTHORITY IN ITS RESPONSE TO MILLMAN'S MOTION. SECOND, THESE DOCUMENTS ARE INDISPUTABLY RELEVANT, AND THE STATUTE ON WHICH THE L.D.I. RELIES DOES NOT PRECLUDE THE DISCOVERY THAT WE ARE SEEKING. PLAINTIFF'S CENTRAL ALLEGATION OF WRONGDOING AGAINST MILLIMAN SHEEN ON REPORTS THAT MILLIMAN SUBMITTED TO THE L.D.I. AND THEY APPROVED RATES BASED ON THAT WORK AND LUSUS AND ELLIS REVIEWED THAT WORK. MILLIMAN AND BUCK IS ENTITLED TO SEE THE L.D.I. DOCUMENTS ABOUT THOSE REPORTS AND PRESENT A DEFENSE BASED ON THEM; NOT TO PROVE L.D.I.'S LIABILITY OR TO ASSESS THE ACTION OR INACTION, WHICH IS WHAT THE STATUTE SECTION 2043 .1 ADDRESSES. WE ARE ENTITLED TO OBTAIN EVIDENCE BEARING ON WHETHER MILLIMAN'S WORK PRODUCT WAS REASONABLE AND PREPARED COMPETENTLY, OR WHETHER THE ASSUMPTIONS UNDERLYING MILLIMAN'S WORK WAS REASONABLE GIVEN WHAT WAS KNOWN AT THE TIME. SO, THE STATUTE DOES NOT APPLY AND DOES NOT PREVENT DISCOVERY IN THIS CONTEXT. JUST QUICKLY TURNING TO THE L.D.I.'S OBJECTIONS BASED ON THE STATUTE

22:2045 CONFIDENTIALITY. THAT STATUTE APPLIES TO DOCUMENTS THAT ARE PRODUCED BY OBTAINED BY OR DISCLOSED TO THE COMMISSIONER IN THE COURSE OF A RECEIVER SHY OR REHABILITATION ACTION OTHERWISE PRIVILEGED NEITHER CRITERIA IS SATISFIED HERE SINCE THE SUBPOENA REQUESTS SOLVENCY DOCUMENTS AND L.D.I. HAS NOT IDENTIFIED ANY PRIVILEGE THAT SHIELD EVERYTHING MILLIMAN HAS ASKED FOR FROM DISCOVERY. SO THAT DEPOS IS OF 22:2045. TURNING QUICKLY TO THE L.D.I. MINIMAL PRODUCTION THAT THEY MADE IN RESPONSE TO MR. CULLENS, THE PUBLIC RECORDS REQUEST, JUST LOOKING AT THE STATISTICS OF THAT PRODUCTION IT WAS 51 DOCUMENTS AND THOSE 51 DOCUMENTS CONTAIN ZERO RELATING TO L.A.H.C. PREMIUM RATES, THEIR FINANCIAL LOSSES OTHER THAN ONE FINANCIAL STATEMENT FOR A SINGLE QUARTER. NO DOCUMENTS CONCERNING THEIR STATE WIDE ENROLL FIGURES, NO DOCUMENTS CONCERNING THE DECISIONS TO PLACE THEM IN REHABILITATION OTHER THAN THE PETITION FOR REHABILITATION, AND NO DOCUMENTS CONCERNING OTHER INSURER RATE INFORMATION, AND ONLY ONE E-MAIL THAT REFERENCES MILLIMAN IN ANY WAY AT ALL. CLEARLY THAT PRODUCTION DOES NOT SAW THE REQUESTS THAT MILLIMAN MADE IN CONNECTION WITH THIS SUBPOENA. AND THE LAST ARGUMENT I JUST WANT TO ADDRESS IS ONE THAT THE RECEIVER BROUGHT UP IN THEIR IMPROPER BRIEF IN RESPONSE TO MILLIMAN'S MOTION, WHICH IS THE RECEIVER SAID -- I AM SORRY -- THAT MILLIMAN IS NOT ENTITLED TO DISCOVERY BECAUSE DISCOVERY SHOULD BE LIMITED TO THE INFORMATION THAT MILLIMAN AND BUCK HAD CONSIDERED WHEN PERFORMING THEIR WORK. THERE IS

NO BASIS. THERE IS NO LEGAL OR LOGICAL BASIS FOR THAT ARGUMENT. THE RECEIVER ALLEGES THAT MILLMAN'S WORK WAS IMPROPER BECAISE WE FAILED TO CONSIDER CERTAIN DATA. MILLIMAN IS ENTITLED TO SEE WHAT THAT DATA SHOWED AND WHETHER IT MAKES A DIFFERENCE OR NOT. MORE OVER, THERE IS INFORMATION AS I DISCUSSED EARLIER CONCERNING CAUSATION, CONCERNING DAMAGES THAT WE ARE ENTITLED. THAT IS ENCOMPASSED BY MILLMAN'S REQUESTS, EACH IF YOU CONSIDER THE MERITS OF THE L.D.I. OR RECEIVER'S ARGUMENTS THEY FILL ON THEIR MERITS AS WELL. JUST BRIEFLY, I WANT TO TOUCH ON MR. CULLENS PAPERS SAY THAT MILLIMAN SHOULD FOOT THE BILL AND BUCK SHOULD FOOT THE BILL FOR ANY DOCUMENTS OR ANY DISCOVERY THAT THE L.D.I. ULTIMATELY IS COMPELLED TO MAKE HERE. I THINK THAT IGNORES A, THAT THIS IS NOT SOME FISHING EXPEDITION. ALL OF THE DOCUMENTS I TALKED ABOUT HERE TO DATA MILLIMAN HAS REQUESTED ARE THE CENTER OF THE PLATE STOCK THAT GOES TO THE CORE OF THE ALLEGATION THAT THE RECEIVER MAKES AGAINST MILLIMAN, NOR EVER REMEMBER HOW WE GOT HERE IS WE ASKED MR. CULLENS TO PRODUCE THIS INFORMATION. HE SAID, I CANNOT DO IT. I DO NOT HAVE A DOG IN THIS FIGHT. THEY SAID L.D.I. SAID THEY WILL NOT GIVE US A SINGLE DOCUMENTS. AND THEN MR. CULLENS ENDED UP WEIGHING IN WITH A BRIEF IN SUPPORT OF L.D.I.'S POSITION EVEN THOUGH HE HAD EARLIER SAID HE DID NOT HAVE A DOG IN THIS FIGHT. IF ANYONE IS OWED THE COST SHIFTING IT IS NOT THE L.D.I. THEY DID NOT RAISE ANY KIND OF BURDEN ARGUMENT THIS. IT IS PAPERS AND -- AS WE MENTIONED IN MILLMAN'S PAPER,

WE ACTUALLY SAID TO L.D.I. WE SHOULD NEGOTIATE ANYTHING OVER THE SCOPE OF OUR ACCOUNTS AND THE RESPONSE. WE GOT NO DON'T BOTHER, WE DO NOT NEED TO SEE, WE RESTING ON OUR WHOLESALE OBJECTIONS BASED ON THE STATUTES WE ARE RELYING ON. THERE IS NO BURDEN ISSUE HERE. THERE IS NOT A FISHING EXTRADITION. THEY HAVE NOT DONE ANYTHING IMPROPER MILLIMAN BY SUBPOENA THE L.D.I. THERE IS NO BASIS FOR COST SHIFTING HERE. YOUR HONOR, UNLESS YOU HAVE ANY QUESTIONS.

**THE COURT:** NO. THANK YOU. THANK YOU. DOES BUCK HAVE ANYTHING THEY WOULD, THEY WOULD LIKE TO ADD AS I BELIEVE THEY WERE JOINED IN THIS?

**MR. BROWN:** YES, YOUR HONOR. OUR SUBPOENA REQUESTS PRETTY WELL OVERLAP WITH MILLIMAN, SO I THINK I CAN ADOPT ALL OF JUSTIN'S ARGUMENT THAT HE JUST MADE SO VERY WELL. I WOULD SORT OF HATE THIS KIND OF OVERARCHING POINT. WE ARE AT STEP ONE, WHICH IS WHAT IS DISCOVERABLE OR WHAT COULD POTENTIALLY LEAD TO THE DISCOVERY OF RELEVANT EVIDENCE, AND THAT IS CONSTRUED VERY BROADLY. WHAT L.D.I. AND LEWIS AND ELLIS ARE TRYING TO DO IS MOVE US FAST FORWARD US TO STEP ONE HUNDRED, AND TRY TO SAY THAT WELL, ANYTHING THAT WE HAVE, ANYTHING THAT IS IN OUR DOCUMENTS OF NECESSITY IS NOT GOING TO BE ADMISSIBLE AT TRIAL. NOW, THAT IS STEP ONE HUNDRED. THAT IS WHAT YOU DO A YEAR-AND-A-HALF FROM NOW WHEN YOU GET THE MOTIONS IN LIMINE ABOUT WHAT IS ADMISSIBLE OR NOT, AND AS YOUR HONOR CORRECTLY RECOGNIZED THE LAST TIME WE WERE TOGETHER, THE QUESTION OF WHAT IS DISCOVERABLE UNDER THE LIBERAL, BROAD APPROACH TO

DISCOVERY OF ANYTHING THAT COULD LEAD TO SOMETHING RELEVANT AND ADMISSIBLE IS VERY BROAD AND IS QUITE DIFFERENT FROM THE MUCH NARROWER ISSUE OF WHAT IS ULTIMATELY GOING TO BE ALLOWED TO BE SHOWN TO THE JURY. SO, I WOULD JUST SUBMIT TO YOU WHAT THE L.D.I. AND LEWIS AND ELLIS ARE DOING IS REALLY PUTTING THE CART BEFORE THE HORSE AND YOU CANNOT DO THAT BEFORE WE HAVE EVEN SEEN THE MATERIAL. ARE WE SUPPOSED TO TAKE THEIR WORD FOR IT? THAT EVERYTHING THAT IS IN THEIR FILES IS ULTIMATELY NOT GOING TO BE ADMISSIBLE AT TRIAL, AND SO, THEREFORE, WE DO NOT EVEN HAVE THE RIGHT TO SEE IT? NO. WE GET TO SEE IT TO DETERMINE THAT FOR OURSELVES, AND THEN YOU ADDRESS ADMISSIBILITY ISSUES MUCH LATER IN THE CASE. THE BOX OF WHAT IS DISCOVERABLE IS A WHOLE LOT BIGGER, YOUR HONOR, THAN THE BOX OF WHAT MAY OR MAY NOT BE ADMISSIBLE AT TRIAL LATER, BUT IT IS THAT LARGER BOX THAT GOVERNS THE ANALYSIS HERE AND I THINK JUSTIN HAS DONE A GOOD JOB OF DISCUSSING VARIOUS WAYS IN WHICH THE MATERIAL WE ARE SEEKING COULD BE RELEVANT OR COULD LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE ON ISSUES THAT DO NOT GO TO ACCUSING THE REGULATORS OF HAVING COMMITTED FAULT, OR A DEFENSE, AN AFFIRMATIVE DEFENSE BASED ON REGULATOR ACTION OR INACTION. YOUR HONOR, WE HAVE A SEPARATE SUBPOENA THAT WE ISSUED TO LEWIS AND ELLIS. WOULD YOUR HONOR LIKE TO TAKE THAT UP SEPARATELY?

**THE COURT:** NO. ALL UP AT ONE TIME. GO AHEAD.

**MR. BROWN:** SO, WE, BUCK SUBMITTED A SEPARATE SUBPOENA TO LOUIS AND ELLIS, AND THEY DISAGREED,

GRACIOUSLY HAVE THAT DETERMINED BY YOUR HONOR HERE IN THIS COURT IN LOUISIANA, AND REALLY THE SAME ANALYSIS APPLIES. WE KNOW THAT LOUIS AND ELLIS CONTEMPORANEOUSLY REVIEWED BUCK'S RATE FILINGS FOR THE YEAR 2015, AND THAT REVIEW -- THE L.D.I. PUBLISHED THAT REVIEW ON THAT PUBLIC WEBSITE FOR THE WORLD TO SEE. YOUR HONOR, THAT IS THE ONLY REVIEW THAT IS IN EXISTENCE OF BUCK'S RATES FILING THAT WAS CONTEMPORANEOUS, THAT WAS DONE AT THE TIME UNCONTAMINATED BY HIND-SIGHT VIEW OF UNKNOWN FUTURE EVENTS. ACTUARIES ARE REQUIRED MY CLIENTS REQUIRED TO PREDICT THE FUTURE BASED ON WHAT IS UNKNOWN. ONCE YOU HAVE HIND-SIGHT YOU CANNOT DO THAT ANYMORE. SO, THE L&E REVIEW THAT WAS DONE IN 2014 AND PUBLISHED ON THE L.D.I. PUBLIC WEBSITE IS THE ONLY OTHER PLACE TO LOOK AT FOR A CONTEMPORANEOUS REVIEW OF WHAT WE DID WITHOUT BENEFIT OF HINDSIGHT, AND WE KNOW THAT LOUIS AND THAT OUR RATES IN STANDARD -- WAS LOGICAL AND PREFERRABLE TO THE VERY LIMITED COMPANY HISTORY THAT WAS IN EXISTENCE AT THAT TIME WHICH WAS FOUND TO BE NON-CREDIBLE, AND BY THE WAY, THE PLAINTIFF'S PETITION ADMITS THAT IT WAS NON-CREDIBLE. SO, TO SAY THAT THERE IS NOTHING IN LOUIS AND ELLIS IS FILE THAT COULD POTENTIALLY BE RELEVANT OR LEAD TO DISCOVERY OF ADMISSIBLE EVIDENCE DOES NOT MAKE ANY SENSE AT ALL, YOUR HONOR. WHAT IF THEY USED OTHER RATE MANUALS THAT COULD PROVIDE FURTHER SUPPORT FOR OUR ARGUMENTS? WHAT IF -- AS JESSE POINT OUT ONE OF THE ALLEGATION IN THE PETITION IS THAT OUR RATE FILINGS WERE INCONSISTENT WITH THE INFORMATION

THAT THE L.D.I. HAD FROM OTHER CARRIERS INCLUDING BLUE CROSS. WELL, LEWIS AND ELLIS WAS WORKING AS A CONTRACTOR FOR THE L.D.I. IT IS POSSIBLE THAT THEY GOT THAT INFORMATION FROM THE L.D.I. AND THAT LOUIS AND ELLIS USED THAT INFORMATION IN HELPING IT TO REACH THE CONCLUSION THAT OUR RATES WERE REASONABLE AT THE TIME. SO, IT IS VERY POSSIBLE THAT LUSUS AND ELLIS HAS OTHER INFORMATION OR THAT REVIEW ITS MATERIAL COULD LEAD TO THAT INFORMATION IT WOULD FURTHER SUPPORT OUR POSITION THAT WE WERE NOT NEGLIGENT OR IT COULD HURT US. IT COULD BE THAT THERE IS INFORMATION IN LOUIS AND ELLIS FILES THAT MIGHT BE BAD FOR US. I DO NOT THINK THEY ULTIMATELY CONCLUDED AS WE ALL KNOW THAT OUR RATES WERE REASONABLE AT THE TIME THAT INFORMATION COULD LEAD TO ADMISSIBLE EVIDENCE ABOUT OTHER RATE MANUALS OTHER THAN THE ONE WE USED, THAT MAY BE LOUIS USED TO FURTHER CONFIRM WHAT WE WERE DIAGNOSE INFORMATION THEY MAY HAVE GOTTEN FROM L.D.I. FROM OTHER CARRIERS INCLUDING BLUE CROSS THAT HAVE BEEN PUT DIRECTLY IN THE ALLEGATION IN THIS CASE. YOUR HONOR, WE GET TO SEE ALL OF THAT. THAT IS WHAT DISCOVERY IS FOR. THE ISSUE OF WHAT IS ADMISSIBLE AND WHETHER OR NOT IT CAN ONLY POSSIBLY SUPPORT AN AFFIRMATIVE DEFENSE OF REGULATOR ACTION OR INACTION, THAT IS STEP ONE HUNDRED. THAT IS FOR A YEAR-AND-A-HALF FROM NOW THAT WE HAVE TO BASE WITH OUR MOTION IN LIMINE. WE GET TO SEE ALL OF THAT. THE PETITION PUTS ALL OF THAT IN PLAY. THESE ISSUES OF COMPARATIVE FAULT, THE CONDUCT OF THIRD-PARTY ADMINISTRATORS, DIRECTOR, OFFICER, DEFENDANTS IN A COMPARATIVE

FAULT REGIME ARE WE DO BELIEVE THE D.O.I. DOES NOT HAVE STUFF TO GO TO THAT ISSUE, WHETHER IT OVERSAW THIS COMPANY FROM THE BEGINNING TO THE END. YOUR HONOR, WE WERE NOT THERE AT THE TIME. L.D.I. WAS THERE FROM THE BEGINNING TO THE REHABILITATION OF THIS COMPANY. WE GET TO SEE WHAT THEY HAVE BECAUSE IT COULD VERY WELL AND PROBABLY WILL BEAR UPON ISSUES OF COMPARATIVE FAULT, COMPARATIVE CAUSATION. THIS LAWSUIT ACCUSES US OF CAUSING THE FINANCIAL PROBLEMS AND L.D.I. TO PUT THIS COMPANY IN REHAB. ARE WE TO BELIEVE THERE IS NOTHING IN THE L.D.I. FILES THAT REALLY CAUSE THE LOSSES, THE ACTIONS OF THE FEDERAL GOVERNMENT IN NOT MAKING THE RISK QUARTER PAYMENTS THAT WE NOW KNOW IT WAS OBLIGATED TO MAKE? WE ALREADY SEEN JIM DONELON TESTIMONY TO CONGRESS THAT THOSE PROBLEMS WERE PART OF CAUSE AND CONSUMER COMPLAINTS. ARE WE NOT ALLOWED TO THE EVIDENCE OF CONSUMER COMPLAINTS THAT WE KNOW WERE IN THE FILES BECAUSE DONELON SAID THEY WERE. MY CLIENT IS NOT RESPONSIBLE FOR CONSUMER COMPLAINTS. MY CLIENT IS NOT RESPONSIBLE FOR THE FAILURE. FEDERAL GOVERNMENT TO HONOR ITS RISK QUARTER OBLIGATION WHICH WERE ANTICIPATED AT THE TIME. THE WHOLE A.C.A. WAS, IS UP WITH THE IDEA THAT THOSE RISKS ADJUSTMENT PAYMENTS WERE GOING TO COME. IF THEY HAD COME, THIS COMPANY WOULD HAVE GOTTEN 65 MILLION DOLLARS IN THE DOOR OVER THAT PERIOD, THEN IT GOT. WE KNOW THE L.D.I. HAS MATERIAL THAT GOES DIRECTLY TO THOSE ISSUES. BUT THEY WILL NOT GIVE IT TO US. THEY WILL NOT PRODUCE THEM TO US. THEY SAY WE CANNOT HAVE THEM. YOUR HONOR, IF THAT STANDS, THAT IS GOING TO WORK

DENIAL OF DUE PROCESS. THE COMMISSIONER CANNOT BRING A LAWSUIT LIKE IN THAT MAKES ALL OF THAT STUFF POTENTIALLY RELEVANT AND DISCOVERABLE AND THEN SAY YOU CANNOT HAVE ANY OF IT.

**THE COURT:** COMMISSIONER IS NOT BRING.

**THE DEFENDANT:** THAT HAS JUST.

**THE COURT:** IT IS THE RECEIVER.

**MR. BROWN:** THAT WILL NOT WORK. I WOULD SUBMIT TO YOU THE LEWIS MATERIAL IS RELEVANT OR COULD LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE. THE L.D.I. MEETS THAT SAME STANDARDS TEN TIMES OVER. A HUNDRED TIMES OVER. SO, ALL WE ARE ASKING IS THAT THE DEPARTMENT OF INSURANCE AND LOUIS AND ELLIS COMPLY WITH THESE SUBPOENAS. THEY HAVE NOT OBJECTED TO THEY ARE UNDULY BURDENSOME. THEY HAVE NOT ASKED FOR THE COST OF PRODUCTION. SO, THERE SHOULD BE NO REASON WHY THEY SHOULD NOT BE ORDERED TO COMPLY WITH THEM.

**THE COURT:** OKAY. I DID NOT MEAN TO MISSPEAK THERE. CLEARLY THE COMMISSIONER IS BRINGING IT, BUT THERE NEEDS TO BE A DISTINGUISHING, OR A DISTINCTION I SHOULD SAY BETWEEN THE COMMISSIONER UNDER L.D.I. AND THE COMMISSIONER AS THE RECEIVER, AND I DID NOT WANT THERE TO BE -- BECAUSE THESE DOCUMENTS ARE NOT PART OF THE L.D.I. DOCUMENTATION, I DID NOT WANT THERE TO BE CONFUSION THAT THE COMMISSIONER MAY HAVE BROUGHT IT IN THAT, THE LAWSUIT IN THAT REGARDS. SO, THIS IS WHY I SAID IT WAS THE RECEIVER IN HIS CAPACITY AS RECEIVER JUST CLARIFYING THE RECORDS BECAUSE IT WAS UNCLEAR DURING THE COURSE OF YOUR ARGUMENT, YOU HAD BEEN TALKING ABOUT L.D.I. BUT NOT WITH

REGARD TO RECEIVER, AND THEN COMMISSIONER CANNOT BRING THIS LAWSUIT. IT IS HIM AS THE RECEIVER THAT BROUGHT IT. I WANT TO MAKE SURE THAT WAS CLEAR ON THE RECORD, THAT THERE WAS NO CONFUSION THERE BECAUSE PARTY VERSUS THIRD-PARTY BECOMES AN ISSUE IN THESE KINDS OF THINGS AS YOU KNOW.

**MR. MOORE:** AS A THIRD-PARTY, YOUR HONOR, THIS IS THE COMMISSIONER AND THE DEPARTMENT OF INSURANCE AS REGULATOR AS A TRUE THIRD-PARTY.

**THE COURT:** YES. THAT WAS THE DISTINCTION I WAS TRYING TO MAKE CLEAR ON THE RECORD, IS THAT I WAS TRYING TO MAKE SURE THAT IT WAS CLEAR THAT THE REGULATOR WAS NOT BRINGING THE SUIT; THAT THE RECEIVER WAS. EVEN THOUGH IT IS THE SAME HUMAN BEING, IT IS NOT THE SAME JURIDICAL ENTITY. JAMES ANYTHING ELSE REAL QUICK?

**MR. GODOFSKY:** YOUR HONOR, CAN I SPEAK FOR ONE MINUTE? JUST TO EMPHASIZE A POINT THAT MY COLLEAGUE JAMES MADE. THE QUESTION HERE IS NOT WHETHER THERE IS EVEN A SINGLE DOCUMENT IN THE POSSESSION OF L.D.I. OR LEWIS AND ELLIS THAT IS ADMISSIBLE. EVEN IF NONE OF THEIR DOCUMENTS ARE ADMISSIBLE, THAT DOES NOT MEAN THAT WE CANNOT SEE THE DOCUMENTS BECAUSE THEY COULD LEAD US TO OTHER DOCUMENTS NOT IN THEIR POSSESSION.

**THE COURT:** YES, I THINK THAT THAT POINT WAS MADE, BUT, DAVID, THANK YOU FOR POINTING IT OUT AND MAKING THE CLARIFICATION. THAT IS AN IMPORTANT THING TO KEEP IN MIND, ALL RIGHT. GUYS, I AM GOING TO TAKE A FIVE-MINUTE BREAK. I HAVE GOT A CALL I HAVE GOT TO TAKE.

(Off record).

**MR. MOORE:** ASHLEY MOORE. I REPRESENT LEWIS AND ELLIS AS WELL.

**THE COURT:** MR. MOORE, WE ARE GOING TO ALLOW YOU TO SAY FOUR WORDS, CHOOSE THEM CAREFULLY. GO AHEAD, MAKE YOUR ARGUMENT.

**MR. BROWN:** WE DENY THE MOTION IS FOUR WORDS.

**THE COURT:** GO AHEAD.

**MR. MOORE:** MAY IT PLEASE THE COURT, ASHLEY MOORE FOR THE LOUISIANA DEPARTMENT OF INSURANCE AS REGULATOR, AS WELL AS LEWIS AND ELLIS WHICH ACTED AS AN INDEPENDENT CONTRACTOR AND AGENT OF THE DEPARTMENT. I ATTACHED TO THE OPPOSITION MEMO THE PROFESSIONAL SERVICES CONTRACT BETWEEN L.D.I. AND LEWIS AND ELLIS; NOT BECAUSE L.A.H.C. PUBLIC RECORDS PRODUCTION WAS DEFICIENT IN ANY WAY, BUT SIMPLY TO DEMONSTRATE THAT, YES, LEWIS AND ELLIS WAS ACTING EXCLUSIVELY FOR L.D.I. AND NO OTHER CLIENT IN CONNECTION WITH L.A.H.C. TO BEGIN, LET'S TAKE UP THE BUCK MOTION FIRST BECAUSE I HAVE A COUPLE OF COMMENTS ABOUT THE BUCK MOTION THAT ARE NOT APPLICABLE TO THE MILLIMAN MOTION.

**THE COURT:** SURE.

**MR. MOORE:** BUCK HAS ARGUED THAT BECAUSE THE RESPONSE WAS NOT FILED WITHIN THE 15-DAY DELAY, THAT SOMEHOW, SOMEWAY ALL OBJECTIONS GO AWAY, HAVE BEEN WAIVED.

**THE COURT:** I DO NOT THINK JAMES MEANT THAT.

**MR. BROWN:** THAT IS RIGHT.

**THE COURT:** IT WAS THEN -- IT WAS TAKEN THAT WAY --

**MR. BROWN:** NO, YOUR HONOR. ALL RIGHT, BUT THAT IS NOT -- I DO NOT MEAN TO INTERRUPT HIM. ALL

RIGHT.

**MR. MOORE:** THAT IS EXACTLY WHAT THE MEMO SAYS, BUT IN RESPONSE TO THAT, I FELT LIKE IT WAS A FREE PLAY. A FREE PLAY, TO USE FOOTBALL PARLORS, BECAUSE THERE WAS IMPROPER SERVICE. PAGE 5, 6 AND 7 WERE MISSING FROM THE SUBPOENA THAT WAS SERVED ON THE DEPARTMENT. THAT WAS OCTOBER 22. WELL, COREY, IN HOUSE WITH THE DEPARTMENT OF INSURANCE, ASKS BUCK FOR THOSE PAGES MS. CRAWLEY'S E-MAILED THEM TO HIM ON OCTOBER 22. I HAVE THE E-MAIL CLEARLY DEFICIENT, SO WE ARE TALKING ABOUT -- SO, THE 15-DAY DELAY, THE FREE PLAY NEVER COMES INTO EFFECT. THAT IS POINT NUMBER 1. POINT NUMBER 2 IS APPLICABLE TO BOTH BUCK AS WELL MILLIMAN, AND THAT IS THAT THEY REPRESENT TO THE COURT THAT THEY FULLY AND COMPLETELY DEMONSTRATED. THEY HAVE NOT DEMONSTRATED ANYTHING. THERE HAS BEEN NO SHOWING WHATSOEVER. NOT A WITNESS. NOT AN AFFIDAVIT. THEY SIMPLY MAKE THESE ARGUMENTS AND SAY, SHAZAM, HERE IT IS. IT IS ALL RELEVANT. THEY HAVE TO PRODUCE. THERE HAS BEEN NO SHOWING WHATSOEVER. POINT 3 IS THAT THERE ARE A NUMBER OF THESE REQUESTS THAT ARE OVER THE TOP, OVERBROAD. WE CAN START WITH THE MILLIMAN SUBPOENA FIRST. BECAUSE SOME OF THEIR REQUESTS ASKS FOR DOCUMENTS REGARDING L.A.H.C., QUOTE, OR HEALTH INSURERS GENERALLY. WITHOUT IDENTIFYING THE HEALTH INSURERS, L.A.H.C. OR, QUOTE, ANY A.C.A. COMPLIANT PLAN, UNQUOTE WITHOUT IDENTIFYING WHO IN THE HECK WE ARE TALKING ABOUT. QUOTE, EVEN A.C.A. COMPLIANT PLAN IS SOLD IN LOUISIANA, UNQUOTE. QUOTED, BY ANY INSURER, UNQUOTE. THAT WAS NUMBER

15. QUOTE, ANY OTHER PERSON OR ENTITY. WHO ARE WE TALKING ABOUT? ANY OTHER PERSON OR ENTITY, UNQUOTE. THEY ARE -- NOW ON THE BUCK SIDE THEY STARTED WITH, LET'S SEE HERE, ALL DOCUMENTS REFLECTING BUCK'S PROFESSIONAL SERVICE OR WORKS FOR L.A.H.C. NO SUBJECT DESIGNATION, NO TEMPORAL LIMITATION. TWO, ALL DOCUMENTS REFLECTING MILLIMAN PROFESSIONAL SERVICES AND WORK FOR L.A.H.C., NO SUBJECT DESIGNATION, NO TEMPORAL LIMITATION. ALL DOCUMENTS REFLECTING COMMUNICATIONS BETWEEN L.D.I. AND BUCK INCLUDING E-MAIL. THERE IS NOT EVEN LIMITED TO L.A.H.C. ALL EAR INSURERS ALL THE WAY BACK 30 YEARS WHEN THEY WERE FORMALLY KNOWN AS BIRK SOMETHING ELSE. ALL DOCUMENTS INCLUDING E-MAIL REFLECTING COMMUNICATIONS BETWEEN L.D.I. AND BUCK. FOUR, SAME THING, ALL DOCUMENTS INCLUDING E-MAIL REFLECTING COMMUNICATIONS BETWEEN L.D.I. AND MILLIMAN. ABOUT WHAT? L.A.H.C.? I DO NOT KNOW. ANOTHER INSURANCE COMPANY? MAYBE. ANOTHER A.C.A. EXCELLENT PLAN? MAYBE. ANOTHER MATTER ENTIRELY FIVE YEARS, TEN YEARS, 20 YEARS AGO? THERE ARE OTHER EXAMPLES FOR HEALTH INSURERS GENERALLY BY ANY INSURER. IT IS JUST OVER THE TOP, OVERBROAD. SO, IMPROPER SERVICE AS TO BUCK. NO SHOWING WHATSOEVER, NONE WHATSOEVER BY BUCK AND MILLIMAN, OVER. OVER THE TOP, OVERBREATHE, VAGUE. HOW DO YOU RESPOND TO THAT? L.D.I. DOES NOT HAVE TO WRITE THE REQUEST. WE DO NOT HAVE TO GUESS AS TO WHAT IT IS THEY THINK THEY WANT. NEXT POINT, THE OBJECTIONS WERE NOT BOILERPLATE. THEY WERE CERTAINLY REPETITIVE, BUT NOT BOILERPLATE. THERE

IS NOTHING BOILERPLATE ABOUT THIS CASE. SO, AS REGULATOR, TITLE 44, THE PUBLIC RECORDS OF L.D.I. HAVE BEEN PRODUCED. THE PUBLIC RECORDS ACT REQUEST IS NOT THE SUBJECT OF THIS HEARING. SO, PUBLIC RECORDS ACT, REQUEST FOR RELEVANT DOCUMENTS, DISCOVERY DOCUMENTS FROM L.A.H.C. IN RECEIVERSHIP PRODUCED, MOTION TO COMPEL OVERRULED AND DENIED, FIRST CIRCUIT DOES NOT DISAGREE. WRITTEN PRICK DENIED. SO, WE HAVE PUBLIC RECORDS ACT, WE HAVE L.A.H.C. AND RECEIVERSHIP. WE HAVE A JANUARY 12 RULING WITH REGARD TO INSURANCE CODE SECTION 2043 .1 AND PARTICULARLY SECTION B. JANUARY 12 RULING, ALL RIGHT. THIRD-PARTY REGULATOR AND CERTAINLY HAS NOT PARTICIPATED AND MAY NOT UNDER ALL OF THE NUANCES OF THE ARGUMENTS, BUT 2043.1 SAYS THAT THESE DOCUMENTS ARE NOT LEGALLY RELEVANT. IN THE PROPORTIONATE BALANCING REASONABLE CALCULATION, THEY CANNOT LOGICALLY LEAD TO ANYTHING HERE. SO, 2043.1 SAYS, WHAT IT SAYS, WELL, THE DEFENDANTS DO NOT LIKE THAT. THEY LIKE LOTS OF DOCUMENTS. LOTS AND LOTS OF DOCUMENTS. WAY BACK IN TIME INVOLVING ALL SORTS OF OTHER INSURERS THEY WANTED PAPERS. THEY WANT PAPER, AND WE WANT YOUR REGULATOR TO SHUT DOWN YOUR DEPARTMENT. WE ARE NOT EVEN GOING TO IDENTIFY WHO THE A.C.A. COMPLIANT PLANS ARE OR THE OTHER INSURERS ARE. WE WANT YOU TO HAVE TO RESEARCH AND FIGURE OUT WHO THOSE PLANS AND INSURERS WERE IN LOUISIANA DURING A PERIOD OF TIME THAT IS NOT DESIGNATED, AND WE WANT YOU TO SHUT DOWN YOUR DEPARTMENT AND GET AS TO THIS UNIVERSE OF PAPER AND PRODUCE ALL OF IT, AND ON YOU. YOU ARE TO

INVENT THE CERTAIN TERMS. YOU ARE TO EMPLOY THE FORENSIC EXAMINERS, AND YOU ARE TO THEN PRODUCE IT IN, I GUESS SOME FORMAT THAT WE WANTED YOU TO PRODUCE IT IN SOMEHOW SOME WAY. NOW, IT JUST DOES NOT MAKE ANY SENSE. IT JUST DOES NOT MAKE ANY SENSE WHATSOEVER. I THINK IT WAS BUCK ARGUED THAT SOMEHOW, SOMEWAY BY ATTACHING THE LEWIS AND ELLIS CONTRACT TO OUR OPPOSITION, THAT THAT MADE THE PUBLIC RECORDS ACT PRODUCTION INVOLVING L.A.H.C. SOMEHOW, SOMEWAY DEFICIENT; IT DOES NOT. YOU ANSWER PUBLIC RECORDS WITH REGARD TO L.A.H.C. YOU DO NOT GET THE PUBLIC RECORD CONTRACT OF L.D.I. -- BETWEEN L.D.I. AND LEWIS AND ELLIS, BUT YOU HAVE IT NOW, OKAY. AND THERE IS NO QUESTION WITH REGARD TO THAT. LACKING SUBJECT DESCRIPTION OR TEMPORAL LIMITATION. OVERBROAD PUBLIC RECORDS PRODUCED L.A.H.C. RECORDS IN RECEIVERSHIP PRODUCED. DEFENDANTS ARE INDIRECTLY ARGUING PREJUDICE. WE HAVE TO HAVE THESE DOCUMENTS, THEY ARE VERY IMPORTANT TO OUR DEFENSE. IT IS REALLY NOT MALREGULATION. IT IS NOT THE REGULATOR'S FAULT. WE ARE GOING TO CALL IT SOMETHING ELSE. IT REALLY RELATED TO STANDARD OF CARE OR CAUSATION. WE ARE GOING TO TAKE THIS ISSUE AND WE ARE GOING TO CALL IT A HORSE. WE ARE GOING TO CALL IT SOMETHING DIFFERENT SO THAT WE CAN GET AT THESE DOCUMENTS, BUT IF THEY DO NOT HAVE THESE DOCUMENTS, YOUR HONOR, THERE IS NO PREJUDICE TO ANY OF THESE DEFENDANTS. THEY HAVE, AS A START THEY HAVE THE DOCUMENT THAT THEY NEED IN ORDER TO MAKE THEIR INITIAL ARGUMENT. THEY HAVE IT. IT IS THE CERTIFICATE OF AUTHORITY. IT IS THE

CERTIFICATE OF AUTHORITY THAT ISSUED TO L.A.H.C. THIS IS WHAT SECTION IS THE LAST SENTENCE OF SECTION 66 OF THE INSURANCE CODE SAYS, YOUR HONOR, 65 REGARDS APPLICATION FOR CERTIFICATE OF SERVICE. A CERTIFICATE OF AUTHORITY. 66, LAST SENTENCE SAYS, IF IN THE OPINION OF THE COMMISSIONER OF INSURANCE THE EXAMINATION SHOWS THE CORPORATION TO BE DUAL ORGANIZED AND TO HAVE COMPLIED WITH ALL REQUIREMENTS OF LAW, HE SHOULD NOTIFY THE APPLICANTS AND ISSUE A CERTIFICATE OF AUTHORITY TO THE CORPORATION. A CERTIFICATE OF AUTHORITY ISSUED. THEIR ARGUMENTS WILL BE THAT IN THE OPINION OF THE COMMISSIONER, L.A.H.C. FULLY AND COMPLETELY COMPLIED WITH ALL REQUIREMENTS OF LAW AND WAS ISSUED A CERTIFICATE OF AUTHORITY. THAT IS THE ARGUMENT. AS TO LATER YEARS, YOUR HONOR WILL DECIDE IN ADVANCE OF OR AT TRIAL WHETHER THE Q AND A SHOULD GO SOMETHING LIKE THIS: AND YOU RECALCULATED THE RATES FOR L.A.H.C. AND YOU SUBMITTED THAT RATE APPLICATION TO THE L A DEPARTMENT OF INSURANCE, DID YOU NOT; YES. DID YOU RECEIVE ANY OBJECTION FROM THE LOUISIANA DEPARTMENT OF INSURANCE WITH REGARD TO THAT RATE REQUEST; NO. SO, IN YOUR VIEW L.D.I. BELIEVED THAT THESE RATES WERE SUFFICIENT UNDER THE CIRCUMSTANCES; THAT'S MY INTERPRETATION, YES SIR. THAT IS FOR A LATER DATE, AND THAT IS TO YOUR HONOR TO DECIDE WITH REGARD TO THIS, BUT YOU DO NOT NEED, YOU DO NOT NEED TO SHUT DOWN THE DEPARTMENT OF INSURANCE IN ORDER FOR THESE DEFENDANTS TO ASK THOSE QUESTIONS, WHETHER IN DEPOSITION OR AT TRIAL. THEY DO NOT NEED A ROOM

FULL OF THUMB DRIVES FILLED WITH THOUSANDS OR MORE, I AM SURE IT IS THOUSANDS, THOUSANDS OF DOCUMENT FILES; NOT PAGES. NOT PAGES. GOD KNOWS HOW MANY PAGES WE MAY BE TALKING ABOUT. THEY HAVE THE -- AND THEY CAN CERTAINLY ASK THOSE QUESTIONS WITHOUT REFERENCE TO L.D.I. DELIBERATIVE PROCESS INTERNAL DOCUMENTS WHICH 2043 SAYS STATUTORILY ARE LEGALLY IRRELEVANT.

**THE COURT:** MR. MOORE, CAN I ASK YOU A QUESTION?

**MR. MOORE:** YES, SIR.

**THE COURT:** BY PUTTING BEFORE THE TRIER-OF-FACT EVIDENCE THAT SHOWS THAT MILLIMAN AND/OR BUCK, GIVEN THE INFORMATION AVAILABLE AT THE TIME, DID NOT ACT UNREASONABLE, AND IN FACT, THEIR ACTIONS WERE REASONABLY PRUDENT, HOW IS THAT -- AND THAT IS THE INFORMATION THEY ARE LOOKING FOR, IS THE INFORMATION THAT EVERYBODY HAD AND WHAT THEY DID NOT HAVE, HOW DOES THAT FALL WITHIN AN ATTACK ON AN ACTION OR INACTION BY THE INSURANCE REGULATORY AUTHORIZATION SO AS TO CREATE A DEFENSE? AREN'T THEY JUST TRYING TO PUT BEFORE THE TRIER-OF-FACT THE REASONABLE-MAN STANDARD IN THERE, AND THEIR POSITION THAT THEY DID NOT VIOLATE IT --

**MR. MOORE:** WELL, ONE, YOUR HONOR, THE DEPARTMENT DOES NOT MAKE A DETERMINATION WITH REGARD TO STANDARD OF CARE. THAT IS NOT, THAT IS NOT THEIR ISSUE. SECTION 66 AS AN INITIAL MATTER, THE QUESTION IS WHETHER IN THE OPINION OF THE COMMISSIONER, THIS GROUP SHOULD BE ISSUED A CERTIFICATE OF AUTHORITY, AND CERTAINLY RATE AND OTHER ISSUES THAT ARE VESTED WITH THE PUBLIC INTEREST IN THE REGULATION OF INSURANCE COMPANIES,

BUT THE DEPARTMENT DOES NOT EVALUATE WHETHER AN ACTUARY DID OR DID NOT BREACH A STANDARD OF CARE, BUT EVERYTHING ONCE YOU PRODUCE PUBLIC RECORDS, ONCE YOU PRODUCE RECEIVERSHIPS, L.A.H.C. RECORDS, WHAT IS LEFT IS REGULATORY, AND THERE IS NOTHING, THERE IS NOTHING -- IT IS JUST LEGALLY IRRELEVANT. IT DOES NOT GO TO THE ISSUES THAT THEY ARE SUGGESTING IT ALL GOES TO. IF IN THE OPINION OF THE COMMISSIONER THEY SHOULD HAVE RECEIVED, YES, IN TRUTH AND FACT THEY DID, THEY RECEIVED A CERTIFICATE OF AUTHORITY, AND IN THE OPINION OF THE COMMISSIONER, THEY COMPLIED WITH ALL REQUIREMENTS OF THE LAW. CAN'T THEY STILL MAKE THAT ARGUMENT WITHOUT SHUTTING DOWN THE DEPARTMENT OF INSURANCE?

**THE COURT:** I DO NOT HAVE TO ANSWER QUESTIONS LUCKILY.

**MR. MOORE:** IT WAS MOST RHETORICAL, YOUR HONOR. THERE HAS BEEN --

**THE COURT:** I KNOW IT WAS, BUT THERE WAS A HEAVY SILENCE.

**THE OTHER:** THERE HAS BEEN A LACK OF SERVICE OF PROCESS. THE REQUEST FOR THE MOST PART ARE OVER-THE-TOP, OVERBROAD. THEY ARE NOT EITHER LOGICALLY OR LEGALLY RELEVANT. AFTER THE PUBLIC RECORDS ACT AND L.A.H.C. RECEIVERSHIP DOCUMENTS HAVE BEEN PRODUCED, IN LIGHT OF 2043.1, 2043, AND IT IS CLEAR FROM LEWIS AND ELLIS'S PERSPECTIVE, THAT NO ONE HAS JUMPED UP AND DOWN AND SUGGESTED THAT THEY WERE NOT ACTING EXCLUSIVELY ON BEHALF OF L.D.I. IN CONNECTION WITH THEIR ENGAGEMENT. SO, THEIR RECORDS FALL WITHIN THE SAME CATEGORY AS THE

L.D.I. REGULATORY DOCUMENTS. THEY WERE ACTING STRICTLY FOR THEIR CLIENT UNDER THE CIRCUMSTANCES. GIVEN THE LACK OF SERVICE OF PROCESS AND THE OVERBREADTH OF THE QUESTION AS WELL AS THE LOGICAL AND LEGAL IRRELEVANCE OF THE DOCUMENTS, WE WOULD ASK FOR A FEW HOURS OF -- NOT IN RESPONSE TO THE SUBPOENAS THEMSELVES, BUT IN RESPONSE TO THE COMPEL MOTION, WE WOULD ASK FOR OUR COSTS AND EXPENSES.

**THE COURT:** THANK YOU. MR. CULLENS, I KNOW YOU FILED SOMETHING, BUT THERE IS NO DEMAND AGAINST YOU AT THIS TIME. ANY REASON YOU FEEL WHY COMPELLED TO SAY ANYTHING AT THIS TIME?

**MR. CULLENS:** I WOULD LIKE TO SAY A FEW WORDS IF YOUR HONOR WOULD LIKE TO HEAR THEM, BUT I WILL CONCEDE THAT THE PRECISE DISCOVERY ISSUE BEFORE THE COURT RIGHT NOW IS A MATTER BETWEEN THE DEPARTMENT OF INSURANCE --

**THE COURT:** I WILL GIVE YOU A FEW, BUT DO NOT GO CRAZY ON ME, OKAY, J?

**MR. CULLENS:** NO, THAT IS FINE. I WILL TRY AND HIT THE HIGHLIGHTS. YOUR HONOR ASKED THE QUESTION, AND I THINK IT IS TO THE CORE OF THIS, IS WHAT IF THE REGULATORS DID DO SOMETHING AND BASICALLY SAID WHAT MILLIMAN OR BUCK DID WAS OKAY, HOW DOES THAT NOT ADDRESS SOME RELEVANT ISSUES IN THIS CASE? AND I KNOW BEFORE I START TALKING PEOPLE ARE GOING TO SAY THAT IS NOT A DISCOVERABLE ISSUE, IT IS. AN ADMISSIBLE ISSUE, IT IS. I WILL RESPECTFULLY REQUEST TO YOUR HONOR RASHED LESS OF WHATEVER THE DEPARTMENT OF INSURANCE DID, WHETHER THEY THOUGHT MILLIMAN'S WORK PRODUCT WAS THE BEST

WORK PRODUCT THEY EVER SAW, WHETHER THEY THOUGHT IT WAS THE WORST WORK PRODUCT THEY EVER SAW, OR WHETHER THEY COMPLETELY IGNORED IT, NONE OF THAT IS ADMISSIBLE AT TRIAL. THAT IS A FACT.

MR. BROWN WANTS TO SAY, HEY, WE ARE PUTTING THE CART BEFORE THE HORSE. IT IS DISCOVERY, NOT ADMISSIBLE. THAT IGNORES REALITY QUESTIONS OF ADMISSIBLE CERTAINLY INFORM YOUR HONOR'S DISCOVERY TASK OF TRYING TO FIGURE OUT WHAT IS RELEVANT EVIDENCE SUBJECT TO DISCOVERY. AND ALL OF THOSE TYPES OF WHAT THE DEPARTMENT DOES OR DOES NOT DO, IT CANNOT BE ANY ACTION OR INACTION OF THE REGULATOR CANNOT BE THE BASIS OF THE DEFENSE HOWEVER THEY SPIN IT. SO, TO THE EXTENT THAT THESE SUBPOENAS ARE GEARED TOWARDS REGULATORY DOCUMENTS, I HAVE NOT SEEN THE REGULATORY DOCUMENTS. I DO NOT KNOW THEIR SCOPE. I DO NOT KNOW WHAT IS THERE. I CANNOT SAY CATEGORICALLY THAT THERE IS NOT POSSIBLY ANY DATA IN THOSE RECORDS THAT MIGHT LEAD TO DISCOVERY OF ADMISSIBLE EVIDENCE, BUT I THINK AS A MATTER OF COMMON SENSE, AND THE WAY LOUISIANA LEGISLATURE HAS SET OUT THE DISTINCT ROLES OF THE RECEIVER AND REGULATOR, IT IS A FAIR BET THIS IS GOING TO BE A MUCH TO-DO ABOUT NOTHING AS FAR AS THEIR SUBPOENA IS TRYING TO GET REGULATORY DOCUMENTS. IT IS GOING TO REQUIRE PROBABLY ASHLEY OR IN-HOUSE COUNSEL TO REVIEW ALL OF THESE RECORDS TO SEE IF THEY FIT WITHIN J, TO SEE IF THEY ARE PRIVILEGED OR ATTORNEY/CLIENT IF THEY PLEA THE DELIBERATIVE PROCESS A MAJOR UNDERTAKING. I GUESS THAT IS GOING TO LEAD TO ADMISSIBLE EVIDENCE, BUT PROBABLY

NOT, AND THAT I WOULD ECHO MR. MOORE SUGGESTS IF BUCK AND MILLIMAN BELIEVES THIS EFFORT IS WORTH TIME, MONEY AND EFFORTS IT IS GOING TO REQUIRE TO UNDERSTAND, TAKE IT IS A WORTHWHILE EFFORT IN THEIR OPINION, THEY SHOULD BEAR THE EXPENSES. IT IS PROBABLY GOING TO BE CONSIDERABLE TO UNDERTAKE IT. THAT IS OUR MAIN CONCERN, THE RECEIVER'S MAIN CONCERN AND THEIR INTEREST IN THIS IS THEY ARE -- THIS IS WE ARE CHASING THESE NON-MATERIAL, IRRELEVANT DOCUMENTS AND IT IS GOING TO SLOW DOWN THE LITIGATION THAT HAS ALREADY BEEN SLOWED DOWN CONSIDERABLY. AND I WILL ADD IN CLOSING TO THE EXTENT I AGREE WITH MR. MOORE THEIR SUBPOENA WAS EXTREMELY BROAD AND KIND OF CAST A VERY WIDE NET. TO THE EXTENT THAT THE NET WAS JUST ON THE FOUR CATEGORIES THAT MS. KATTAN OUTLINED AT THE BEGINNING OF HIS ARGUMENT, THE RATE INFO OF OTHER DOCUMENTS, ASSUMING THAT THAT IS NOT PROTECTED BY REGULATORY STUFF, COMMUNICATIONS WITH C.M.S., THE GOVERNMENT, HEALTHCARE, REPUBLIC FINANCIAL CONDITION OF L.H.C., TO THE EXTENT THAT IS NOT REGULATORY, I THINK BUCK AND MILLIMAN HAS A BETTER ARGUMENT AS TO THE REASONABLENESS OF DISCOVERABLE INFORMATION. BUT AS TO GETTING INTO WHAT IS PROBABLY GOING TO BE THE BULK OF THE THOUSANDS OF DOCUMENTS THAT MR. MOORE SUGGESTED THAT L.D.I. WOULD HAVE TO REVIEW, THOSE ARE REGULATORY IN NATURE. OUR LEGISLATURE CONSIDERS THEM CONFIDENTIAL, AND IT IS NOT GOING TO AS A COMMON SENSE PRACTICAL MATTER LEAD TO ANY ADMISSIBLE EVIDENCE IN THIS CASE.

**THE COURT:** ALL RIGHT. THANK YOU. ANY RESPONSE?

**MS. KATTAN:** YES, YOUR HONOR. THE FIRST IS, THIS IS IN TERMS OF A SHOWING, MAKING A SHOWING AS SOON AS L.D.I. BUFFERED THEIR BURDEN IS TO SHOW THAT DEFER WE HAVE REQUESTED IS NOT REASONABLE. OUR PAPERS MAKE CLEAR WHY OUR REQUESTS ARE FOR RELEVANT INFORMATION. IF THEY WANTED TO SUPPLY AFFIDAVITS SHOWING WHY THERE WAS SOME UNDUE BURDEN HERE OR SOMETHING LIKE THAT, THAT IS THEIR BURDEN TO DO THAT AND THEY DID NOT DO IT. JUST TO TALK ABOUT --

**THE COURT:** MR. MOORE, YOU DO NOT NEED TO JUMP IN. THIS IS MR. KATTAN'S ARGUMENT, BUT WHEN YOU BRING A MOTION, IT IS YOUR BURDEN TO PUT FORTH THE BASIS FOR IT AND THE SUBSTANCE OF IT, AND THEY DID NOT HAVE TO ANTICIPATE WHAT YOUR ARGUMENTS WITH REGARD TO YOUR BURDEN MIGHT BE AND TRY TO REBUT THEM. THEY HAVE TO FACE THE ARGUMENTS YOU HAVE MADE. SO, I AM NOT SURE I EXACTLY AGREE WITH YOUR LAST STATEMENT, BUT GO AHEAD.

**MS. KATTAN:** UNDERSTOOD, BUT OUR PAPERS DO ESTABLISH THE RELEVANCE, THE SIGNIFICANCE AND THE DISCOVERABILITY OF THIS INFORMATION, AND WE HAVE MADE, WE HAVE MET OUR BURDEN. WE HAVE MET OUR BURDEN. IN TERMS OF THE OVERBREADTH, THIS REALLY SORT OF COMES OUT OF LEFT FIELD, AND AGAIN, AS I MENTIONED BOTH IN OUR PAPERS AND IN MY ARGUMENTS BEFORE, WE ASKED WHEN WE HAD A MEETING TO CONFER BACK IN EARLY SCOTTS WE ASKED L.D.I. AND SAID, LISTEN, IS THERE A POINT, SHOULD WE NEGOTIATE OVER THE SCOPE OF ANY OF THESE REQUESTS ANTICIPATING THAT THERE WOULD BE ISSUES WITH SCOPE AND WHATNOT, AND THE RESPONSE WE GOT WAS NO DO NOT BOTHER, WE

ARE RESTING ON OUR WHOLESALE STATUTORY OBJECTIONS, THE REGULATOR CONDUCT STATUTE AND THE CONFIDENTIALITY STATUTE. SO, HERE TWO MONTHS, TWO-PLUS MONTHS LATER TO BRING UP OVERBREADTH AGAIN, THIS IS WHAT A MEET AND CONFER IS FOR, AND THE MEET AND CONFER PROCESS GOT SHORT CIRCUITED. SO, IS IT REALLY IMPROPER AND IT IS UNDUE DAILY TO TRY AND BRING UP THE OVERBREADTH AGAIN WHEN THEY, WHEN THAT NEEDS TO BE DEALT WITH --

**MR. MOORE:** I HATE TO INTERRUPT. I THINK ARE YOU -- THAT WAS ASHLEY.

**THE COURT:** MR. MOORE, THIS IS MS. KATTAN'S ARGUMENT AND YOU HAVE HAD A BITE AT THE APPLE AS FAR AS HOW ARGUMENTS GO.

**MR. MOORE:** I APOLOGIZE, YOUR HONOR.

**THE COURT:** IT IS QUITE ALL RIGHT, SIR. NO OFFENSE TAKEN BY ANYONE. I WANT TO MAKE SURE WE ALL PLAY BY THE SAME RULES.

**MR. MOORE:** ZOOM IS TOUGH. ZOOM IS TOUGH SOMETIMES, I APOLOGIZE.

**THE COURT:** GO AHEAD, MS. KATTAN.

**MS. KATTAN:** THANK YOU, YOUR HONOR -- WE WILL HAVE TO SHUT DOWN THE DEPARTMENT OF INSURANCE. AT THIS POINT THEY HAVE NOT GOTTEN AND LOOKED AT THE DOCUMENTS. WE DO NOT KNOW THE SCOPE OF DOCUMENTS THAT ARE RESPONSIVE TO THEIR REQUEST. WE DO NOT KNOW WHETHER THINGS ARE GOING TO BE PRIVILEGED OR NOT. THIS IS REALLY ALL A HYPOTHETICAL, THIS OVERBREADTH ARGUMENT. THE REALLY HYPOTHETICAL AT THIS POINT AND TO THE EXTENT THAT THERE ARE WAYS THAT WE COULD HAVE, EASY HAD THE BURDEN, WE WERE WILLING TO DO SO, AND OUR REQUESTS GOT REJECTED.

SO, REALLY WHAT I WOULD SAY IS, WE ARE BEING SUED FOR OVER 30 MILLION DOLLARS HERE. WOULD HE HAVE ESTABLISHED WHY THE DOCUMENTS THAT WE ARE LOOKING FOR ARE RELEVANT. MAYBE THERE IS A BURDEN ON THE DEPARTMENT OF INSURANCE, MAYBE THERE IS NOT. I DO NOT KNOW BECAUSE THERE HAS NOT BEEN ANY SHOWING OF BURDEN, BUT CERTAINLY THE REQUEST THAT WE HAVE MADE ARE PROPORTIONAL, THEY ARE PROPORTIONAL TO THE NEEDS OF THE CASE, NUMBER 1, AND NUMBER 2, WE CERTAINLY TRY TO TIE THEM TO THE ALLEGATION IN THE COMPLAINT, AND AS I MENTIONED IN MY EARLIER ARGUMENT AND IN OUR PAPERS, YOU CAN TIE EVERY ONE OF OUR REQUESTS TO AN ALLEGATION MADE IN THE COMPLAINT. AND FINALLY, I JUST WANTED TO TALK ABOUT BOTH MR. CULLENS AND MR. MOORE FOCUSED ON AS THOUGH ALL WE ARE LOOKING FOR ARE DOCUMENTS CONCERNING THE OPINION OF THE COMMISSIONER. DID THE COMMISSIONER ULTIMATELY WEIGH IN AND BLESS THE RATES, AND WHILE THAT CERTAINLY IS ENCOMPASSED BY THE DOCUMENT REQUEST THAT WE HAVE MADE, AGAIN THERE IS DATA, THERE IS ANALYSIS CONCERNING ASSUMPTIONS AND OTHER RATE INFORMATION FROM OTHER CARRIERS THAT WE HAVE ASKED FOR THAT HAS NOTHING TO DO WITH THE ULTIMATE OPINION OF THE COMMISSIONER OR NOT. SO, WE CAN DECIDE LATER ON DOWN THE ROAD AS MR. BROWN SAID WHETHER DOCUMENTS CONCERNING THE OPINION OF THE COMMISSIONER ARE ADMISSIBLE OR NOT, BUT ULTIMATELY THAT REALLY, THAT VERY, VERY NARROW SET IS A SLIVER OF WHAT WE ARE LOOKING FOR, AND WHEN YOU TAKE THE BROADER LOOK AT THE DATA, THE ANALYSIS REAR LOOKING FORWARD, THAT IS WHEN YOU GO BEYOND ADMISSIBILITY

AND YOU GO TO COULD THESE REQUESTS LEAD TO ADMISSIBLE EVIDENCE, AND THAT IS WHAT WE ARE FOCUSING ON, NOT THE NARROW OPINION OF THE COMMISSIONER THAT BOTH MR. CULLENS AND MR. MOORE SAYS IS LEGALLY IRRELEVANT. SO, YOUR HONOR, IF THERE IS ANY OTHER POINTS THAT MR. MOORE MADE OR MR. CULLENS MADE THAT I HAVE NOT ADDRESSED, I AM HAPPY TO DO SO, BUT I BELIEVE THAT ALL THE OTHER POINTS THAT I MADE IN MY OPENING STATEMENT ADDRESSED BOTH OF THEIR ARGUMENTS, BUT I AM HAPPY TO ADD OR ADDRESS ANYTHING ELSE YOU WOULD LIKE ME TO.

**THE COURT:** NO, THANK YOU VERY MUCH. MR. BROWN, YOU HAD SOME THINGS YOU WOULD LIKE TO BRING UP?

**MR. BROWN:** ONE OR TWO ISSUES. I THINK I MAY HAVE JUMPED IN ON ASHLEY THERE EARLY ON. I DO APOLOGIZE FOR THAT, BUT THE REASON I DID THAT WAS BECAUSE WE DID NOT OBJECT TO THE DEPARTMENT'S FAILURE TO PROVIDE WRITTEN OBJECTIONS WITHIN 15 DAYS. WE MADE THAT CLEAR IN A FOOTNOTE. MR. MOORE MAY NOT HAVE SEEN THE FOOTNOTE, OR MAYBE HE DOES NOT RECALL IT. NOW, THE SHERIFF, WE GAVE THE SHERIFF THE SUBPOENA WITH THE DOCUMENT REQUEST ATTACHED TO IT. ARTICLING WILL I THEN SAID LATER THAT THE SHERIFF DOES NOT SERVE THE DOCUMENT LIST ON THAT FRIDAY WE E-MAILED HIM THE EXHIBIT, WHICH WAS THE DOCUMENT REQUEST. HE SERVED HIS OBJECTIONS THE FOLLOWING MONDAY. WE MADE CLEAR IN THE FOOTNOTE THAT WE ARE NOT HOLDING THAT 17 DAY AGAINST HIM, SO I DO NOT UNDERSTAND WHY HE KIND OF TOOK THAT SHOT AT US THERE BECAUSE WE MADE THAT CLEAR IN A FOOTNOTE, AND HIS OBJECTIONS DO NOT

RAISE IMPROPER SERVICE. HIS OBJECTIONS DO NOT OBJECT THAT THE SUBPOENA IS INVALID BECAUSE OF IMPROPER SERVICE. NOW, THE TITLE SAYS SUBPOENA IMPROPERLY SERVED AND THAT IS OKAY, BUT YOU HAVE TO MAKE AN OBJECTION IN YOUR OBJECTIONS, AND IN HIS WRITTEN OBJECTION IS, THAT HE WAS REQUIRED TO GIVE US UNDER THE CODE THEY DO NOT OBJECT THE SERVICE WAS NOT VALID. SO, THAT IS NOT AN ISSUE BEFORE THE COURT. WE WOULD SUBMIT, YOUR HONOR, AS TO THE SUBPOENA ON L.D.I. NOW, MR. MOORE ALSO MAY BE FORGETTING ABOUT A LETTER THAT WE SENT. AFTER WE GOT HIS OBJECTIONS, WE SENT HIM A LETTER TO ADDRESS HIS SUBJECT AND TEMPORAL SCOPE CONCERNS, AND WE MADE CLEAR IN THE LETTER, AND BY THE WAY, WE ATTACHED OUR LETTER TO ONE OF OUR EXHIBITS I THINK TO OUR MOTION TO COMPEL AGAINST LEWIS AND ELLIS, WE MADE IT CLEAR THAT WE WERE TALKING ABOUT OBVIOUSLY WERE DOCUMENTS RELATED TO GO L.A.H.C., NOT ANY OTHER CARRIER, AND THE SCOPE WAS THE VERY LIMITED PERIOD OF TIME THAT BUCK WORKED FOR THIS COMPANY, AND THAT WAS ONE-AND-A-HALF YEARS. SO, FOR MR. MOORE TO SAY THAT THERE IS NO TEMPORAL LIMIT TO THE SUBPOENA, WELL, EVERYBODY KNOWS THAT THE WORK BUCK DID, IT DID IN 2014 AND '15, AND THAT MILLIMAN'S WORK WAS FROM 2011 TO '14, WE MADE THAT CLEAR IN A LETTER TO HIM FOR HIM TO SAY THERE IS NO SUBJECT LIMITATION, WHETHER WE SAID IT WAS L.A.H.C. OR ANY TEMPORAL LIMITATION WHEN OUR TWO RESPECTIVE CLIENTS ONLY WORKED FOR THIS COMPANY FOR A LITTLE WHILE. THAT JUST DOES NOT MAKE ANY SENSE. WE WROTE A LETTER TO THEM ABOUT ALL OF THAT, AND I AM A LITTLE DISAPPOINTED THAT HE IS

NOW SAYING THAT THERE IS NO TEMPORAL OR SUBJECT SCOPE WHEN WE MADE THAT CLEAR TO HIM, AND YOU KNOW, HE SAYS HE IS A THIRD-PARTY, WELL, -- AND HE GOT THESE SUBPOENAS. WELL, THAT IS BECAUSE YOUR HONOR PREVIOUSLY RULED THAT THAT WAS THE WAY WE SHOULD GO WAS BY SUBPOENA. A WRIT APPLICATION TO THE COURT OF APPEALS SOUGHT TO CHALLENGE THAT AND IT WAS TENDER MY GUESS IS THEY DENIED IT BECAUSE THEY KNEW WE COULD GET THE RELIEF BY SUBPOENA AND YOUR HONOR MR. CULLENS CORRECTED US. THEY SHOULD, WE SHOULD PROCEED BY SUBPOENA TO THE L.D.I. IN ITS REGULATORY CAPACITY IT IS A DIFFERENT ENTITY. THERE SHOULD BE NO SURPRISE TO THAT. THAT IS WHAT WE WERE SORT OF TOLD WE HAVE TO DO. NOW, THE OBJECTION IS DO NOT MAKE ANY UNDUE BURDEN ARGUMENT. YOU LOOK AT THE OBJECTIONS THAT THEY FILED AS PER THE CODE, BOTH AS TO LEWIS AND ELLIS AND L.D.I. THERE IS NO UNDUE BURDEN OBJECTION. THIS IS THE FIRST I AM HEARING ABOUT US SHUTTING DOWN THE DEPARTMENT OR THERE BEING THOUSANDS OF THOUSAND OF DOCUMENTS THAT IS THE T.R.O. I AM HEARING ABOUT THAT. THAT IS WAY TOO LATE TO BE ASSERTING THOSE KINDS OF OBJECTIONS. THOSE WERE SUPPOSED TO BE SET FORTH IN THE OBJECTION THAT ARE SUPPOSED TO BE SERVED, 13, 14 DAYS AFTER THE SUBPOENAS ARE ISSUED, AND I JUST DON'T THINK THE GOVERNMENT SHOULD GIVE A PASS ON THAT. ALL OF US MERE MORTALS HAVE TO MAKE OUR OBJECTION WITHIN THAT TIME FRAME AND I WOULD SUBMIT TO YOU THAT THE GOVERNMENT SHOULD HAVE TO DO THE SAME. THERE IS NO UNDUE BURDEN OBJECTION IN THE OBJECTIONS THAT WERE SERVED ON US I WOULD SUBMIT FOR THEM TO NOW

SAY IT IS GOING TO SHUT DOWN THE DEPARTMENT DOES NOT MAKE ANY SENSE, PARTICULARLY WHEN AS JUSTIN SAID WE ALSO HAVE TO MEET AND CONFER WITH THEM AND ASK THEM IF THERE WOULD BE ANY WAY THAT WE SHOULD NEGOTIATE A NARROWING OF THE SUBPOENAS. IF THEY HAD ANY SUCH CONCERN THEY DID NOT -- MR. MOORE DID NOT EXPRESS ANY CONCERN LIKE THAT. ON JUST SAID WE ARE NOT GOING TO GIVE YOU ANYTHING. WE ARE NOT GOING TO GIVE YOU ANYTHING BECAUSE WE DO NOT THINK ANY OF IT IS RELEVANT, AND HE WANTS US TO TAKE HIS WORD FOR IT. AGAIN, THE POSITION IS, IF IT IS IN THE L.D.I. FILES, IF IT IS IN THE LEWIS AND ELLIS FILES, BY DEFINITION, IT IS NOT ADMISSIBLE; THEREFORE, IT IS NOT DISCOVERABLE, AND YOU JUST HAVE TO TAKE OUR WORDS FOR IT. YOUR HONOR, THAT IS JUST NOT THE WAY DISCOVERY WORKS. WE GET TO SEE IT WHEN WE CAN -- AND THEN WE CAN FIGHT OVER ADMISSIBILITY LATER. NOW HE IS, MR. CULLENS MENTIONED SOME PRIVILEGES. THE L.D.I. DID NOT ASSERT ANY OF THOSE PRIVILEGES IN ITS OBJECTION, EVEN IF THEY EXISTED. LEWIS AND ELLIS DID NOT ASSERT THOSE PRIVILEGES, IF ANY. SO, IT IS TOO LATE TO BE RAISING THEM. THE PLACE TO RAISE THOSE WERE IN THE OBJECTIONS THAT L.D.I. AND LEWIS AND ELLIS SERVED AND THERE ARE NO SUCH PRIVILEGES ASSERTED. THE ONE STATUTE THAT THEY ASSERTED AS JUSTIN POINTED OUT IS A POST-RECEIVERSHIP STATUTE. IT WOULD GOVERN DOCUMENTS THAT WERE GENERATED AFTER RECEIVERSHIP. OF COURSE, WE ARE SEEKING DOCUMENTS THAT WERE GENERATED BEFORE RECEIVERSHIP, PRE-RECEIVERSHIP DOCUMENTS FROM THE L.D.I. AND LEWIS AND ELLIS THAT GO TO THE ISSUES THAT THE

COMMISSIONER HAS ASSERTED IN HIS PETITION AS JUSTIN HAS POINTED OUT, AND THOSE ARE JUST DISCOVERABLE. WE GET TO SEE --

**THE COURT:** YOU ALL SET?

**MR. BROWN:** THANK YOU, YOUR HONOR.

**MR. MOORE:** BRIEF RESPONSE, YOUR HONOR.

**THE COURT:** LOOK --

**MR. MOORE:** A BRIEF RESPONSE.

**THE COURT:** NO, I DON'T NEED ONE. THANK YOU, MR. MOORE.

**THE COURT:** WE ARE NOT DEALING WITH YOUR RUN-OF-THE-MILL CASE WITH REGARD TO DISCOVERY. THERE HAS TO BE AN INQUIRY INTO WHAT COULD THAT DISCOVERY LEAD TO -- DISCOVERY LEAD TO. WHEN I LOOK AT 2403.1, AND 2045, I UNDERSTAND WHY THEY WANT THE INFORMATION AND WHAT THEY WOULD LIKE TO TRY TO DO WITH IT; HOWEVER, I DO NOT THINK THAT THEY ARE GOING TO BE ALLOWED AT THE END OF THE DAY TO UTILIZE IT, AND THEREFORE, THERE IS NOT A REASON TO DISCOVER IT QUITE FRANKLY, BECAUSE IT CAN NEVER BE USED UNDER THE LAW, UNDER THE INSURANCE CODE. SO I AM GOING TO -- LOOK, THAT IS NOT WITHSTANDING THAT FACIALLY THE DISCOVERY REQUESTS OR THE SUBPOENA APPEARS TO BE OVERBROAD AND WOULD OTHERWISE NEED TO BE REFINED AS TO THE RELEVANT TIME CONSTRAINT SUBJECT MATTER AND INFORMATION OF ENTITIES BEING INQUIRED INTO, BUT EVEN WITHOUT THAT, WHEN I LOOK AT 2403.1 AND 2045, WHILE THE INFORMATION THEY WANT IT, I KNOW WHY THEY WOULD WANT TO USE IT, BUT IT CANNOT BE USED THAT WAY UNDER OUR LAW, AND SINCE IT CANNOT BE USED IT WILL NEVER BE ADMISSIBLE. JUST LEGALLY IT

COULD NOT BE ASSERTED, AND THEREFORE, I AM GOING TO DENY THE MOTION TO COMPEL AT MOVER'S COST. AND MR. MOORE, WOULD YOU DO TWO SEPARATE ORDERS FOR ME, DEPENDING UPON WHETHER EITHER ONE WOULD LIKE TO ASK THE FIRST CIRCUIT TO REVIEW THIS. I ASSUME THEY BOTH WILL. MR. KATTAN AND MR. BROWN, YOUR TIME CLOCK STARTS FOR THE REQUEST FOR WRITS ON THIS ON THE DAY AFTER THE CLERK OF COURT PLACES THE SIGNED JUDGMENT OR SIGNED ORDER ON EACH OF THESE INTO THE MAIL. THAT IS DESIGNATED BY A CERTIFICATE SIGNED BY THE CLERK OF COURT OR DEPUTY CLERK OF COURT ON THE FACE OF THE ORDER ITSELF. DO NOT LOOK TO POSTMARKS, OKAY. ALL RIGHT. THANK Y'ALL VERY MUCH.

# Reporter's Certificate

I, Melissa David, Official Court Reporter, 19th Judicial District Court, Parish of East Baton Rouge, State of Louisiana, do hereby certify that the foregoing pages constitute a true and accurate copy of the previously transcribed and filed original transcript of this matter reported and transcribed by Kristine Ferachi.

Witness my hand this 29th day of April, 2021

Melissa David
Official Court Reporter
19th Judicial District Court
CCR# 2020005