

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

versus

MILLIMAN, INC.

SUIT NO.: 651,069 SECTION: 22

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NOTICE OF ARTICLE 1442 VIDEO DEPOSITION

TO: Louisiana Health Cooperative, Inc.
Through J. E. Cullens, Jr.
Walters, Papillon, Thomas, Cullens, LLC
12345 Perkins Road, Building One
Baton Rouge, LA 70810

PLEASE TAKE NOTICE that Milliman, Inc. (“Milliman”) will take the video deposition of Louisiana Health Cooperative, Inc. (“LAHC”) pursuant to Louisiana Code of Civil Procedure Article 1442, at the offices of Walters, Papillon, Thomas, Cullens, 12345 Perkins Road, Building 1, Baton Rouge, Louisiana, 70810 on February 17, 2022 at 9:00 a.m. CT and continuing on February 18, 2022 at 9:00 a.m. CT, and thereafter from day to day as the taking of the deposition may be adjourned. The deposition will be taken before an officer authorized to administer oaths and will be taken for all purposes, addressing the categories listed in Exhibit A to this Notice.

La. Code Civ. Proc. Art. 1442 requires that LAHC “shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.”

Deponent, LAHC, through its representative(s), is requested to bring all documents that the representative(s) expect they will need to fully answer questions posed in the categories set forth in Exhibit A.

New York, New York, this 5th day of November, 2021.

Respectfully submitted,

/s/ Justin N. Kattan

DENTONS US LLP

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Counsel for Defendant Milliman, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon all counsel of record as follows by electronic mail this 5th day of November, 2021.

WALTERS, PAPILLION, THOMAS, CULLENS, LLC
12345 Perkins Road, Building One
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Phone: (225)236-3636
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/s/ Justin N. Kattan

EXHIBIT A
LIST OF CATEGORIES OF INFORMATION
TO BE PROVIDED BY LAHC
DURING ITS DEPOSITION

DEFINITIONS

As used in this Exhibit A, the following words shall have the following meanings:

1. “ACA” refers to the Affordable Care Act, which was enacted in two parts, The Patient Protection and Affordable Care Act signed into law on March 23, 2010, amended by the Health Care and Education Reconciliation Act signed into law on March 30, 2010.
2. “CMS” refers to the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services.
3. “CO-OP” refers to a qualified nonprofit health insurance issuer as defined in Section 1332(c) the ACA, operating or intended to operate under the Consumer Operated and Oriented Plan Program, or CO-OP Program, established by the ACA.
4. “Beam” refers to Beam Partners, LLC, its employees, directors, officers, members, agents and/or representatives.
5. “Buck” refers to Buck Consultants, LLC (n/k/a Buck Global, LLC) its employees, directors, officers, members, agents, and/or representatives.
6. “CGI” refers to CGI Technologies and Solutions, Inc., its employees, directors, officers, members, agents, and/or representatives.
7. “GRI” refers to Group Resources Incorporated, its employees, directors, officers, members, agents, and/or representatives.
8. “*Health Republic*” refers to the action styled as *Health Republic Ins. Co. v. United States*, No. 1:16-cv-00259-MMS, (Ct. Fed. Cl.).

9. “LDI” refers to the Louisiana Department of Insurance, its employees, directors, officers, members, agents, and/or representatives.

10. “LAHC” refers to Louisiana Health Cooperative, Inc., a CO-OP created pursuant to the ACA, its predecessors, successors, representatives, agents, and all other persons presently or previously acting or purporting to act on its behalf, including, but not limited to, any rehabilitator, deputy rehabilitator or receiver.

11. “November 5, 2015 Testimony” refers to the Testimony of the Louisiana Commissioner of Insurance, Before the Subcommittee on Oversight and Investigations Committee on Energy and Commerce before the United States House of Representatives regarding: “Examining the Costly Failures of Obamacare’s CO-OP Insurance Loans” dated November 5, 2015 and available at <https://docs.house.gov/meetings/IF/IF02/20151105/104146/HHRG-114-IF02-Wstate-DonelonJ-20151105.pdf>.

12. “The Commissioner” and “James J. Donelon” refer to James J. Donelon in his capacity as Rehabilitator for LAHC.

CATEGORIES

1. LAHC’s CO-OP Applications and Licensure. With respect to LAHC’s CO-OP

applications and licensure, discuss in full:

- a. LAHC’s CO-OP Program applications (including any loan applications, feasibility studies, and/or business plans); and
- b. LAHC’s efforts to secure licensure from the LDI, including but not limited to LAHC’s HMO licensure.

2. LAHC’s Enrollment. With respect to LAHC’s enrollment, discuss in full:

- a. LAHC's enrollment strategy, enrollment projections, enrollment of previously uninsured persons, or actual or expected enrollment of insureds for the 2014 or 2015 plan years;
- b. The effect of LAHC's commission incentives on LAHC's enrollment, if any;
- c. The effect of LAHC's marketing strategy and efforts on LAHC's enrollment, if any;
- d. The reasons why LAHC failed to meet its target enrollment; and
- e. The effect of pent-up demand for health insurance on LAHC's enrollment for the 2014 or 2015 plan years.

3. LAHC's 2014 and 2015 Rates. With respect to LAHC's 2014 and 2015 rates, discuss in full:

- a. Data and information provided by LAHC to its actuaries in support of its 2014 and 2015 rates;
- b. Actuarial analyses prepared by or on behalf of LAHC in support of LAHC's 2014 or 2015 rate filings;
- c. LAHC's understanding of the LDI's and/or CMS's assessment, review, findings, conclusions, and/or approval of LAHC's 2014 or 2015 rates and rate filings;
- d. Any requests to lower or raise LAHC's 2014 or 2015 rates after LAHC's initial rate filing for that year; and
- e. The effect of pent-up demand for health insurance on LAHC's claims costs and pricing for the 2014 or 2015 plan years.

4. The Affordable Care Act. With respect to the Affordable Care Act, discuss in full:

- a. The role and impact of Risk Corridor payments on LAHC's operations and financial condition, including but not limited to the impact of the failure to make Risk Corridor payments to LAHC;

- b. The impact on LAHC's operations and financial condition of the June 30, 2015 CMS announcement that LAHC's risk adjustment and reinsurance receivables would result in an unexpected requirement for LAHC to pay \$5.3 million to CMS as a risk adjustment transfer payor;
- c. The effect of any changes to the implementation or enforcement of the ACA on LAHC, including but not limited to the effect of transitional policies, the individual mandate, and problems with the federal exchanges for the 2014 enrollment period; and
- d. The LAHC's understanding of and views concerning the ACA, including but not limited to the views of LAHC management and LAHC's directors and officers ("D&Os").

5. LAHC's Operations. With regard to LAHC's operations, discuss in full:

- a. The process for identifying, selecting, and retaining qualified third-party administrators (including but not limited to CGI and/or GRI), D&Os, and employees for LAHC;
- b. The process of supervising and training LAHC's third-party administrators, D&Os, and employees;
- c. The development of LAHC's provider networks;
- d. LAHC's understanding of and involvement in the process of creating adequate and/or functioning processes, systems, and forms for the operations and administration of LAHC, including but not limited to systems for tracking enrollment and handling claims intake and payments;
- e. The disclosure of any conflicts of interests involving LAHC founders, directors, officers, or employees to any regulatory authority;
- f. Compensation of LAHC's directors and officers;
- g. The setting of executive salaries and bonuses for LAHC's management;

- h. Providing notice to LAHC's enrollees that many existing 2014 health plans would not be renewed for the 2015 plan year in violation of state and federal "guaranteed renewability" laws;
- i. The impact, if any, of LAHC's instruction to providers to submit claims on paper forms;
- j. Any misalignment of data between CMS and LAHC;
- k. LAHC's Board of Directors and management meetings;
- l. LAHC's systems for protection of personal health information of subscribers;
- m. LAHC's systems for tracking enrollment and issuance of member ID cards;
- n. LAHC's billing and collection of premiums;
- o. LAHC's payment of claims; and
- p. LAHC's decision to switch provider networks from Verity Healthnet, LLC to Primary Healthcare Systems; and
- q. Any actions by LAHC's directors, officers and/or employees that led to LAHC's financial losses and/or insolvency.

6. Third-Party Administrators CGI and GRI. With regard to CGI and GRI's work for LAHC, discuss in full LAHC's knowledge of CGI and GRI's:

- a. Tracking of enrollment or disenrollment;
- b. Processing and tracking of claims, including overpayment of claims;
- c. Management of call centers;
- d. Billing system operations;
- e. Practices in training, licensing, and certifying competent personnel;
- f. Practices in terminating coverage for subscribers;

- g. Practices in providing notice to providers regarding member terminations and lapses due to non-payment of premiums;
- h. Practices in submitting data to CMS; and
- i. The basis for Plaintiff's now-settled claims that CGI and/or GRI failed to meet the performance standards set out under LAHC's respective agreements with them. Fifth Amending Petition (the "Petition") ¶ 26(a).

7. Milliman. With regard to Milliman's work for LAHC, discuss in full:

- a. The basis for Plaintiff's claims that the fee arrangement between Milliman and LAHC "compromised Milliman's objectivity and independence in certifying the feasibility study and business plan." Petition ¶¶ 47-49.
- b. Milliman's work on LAHC's Feasibility Studies, including but not limited to the bases for Plaintiff's allegations that:
 - i. Milliman used "unrealistic assumption sets" to prepare the feasibility study. *Id.* ¶ 42.
 - ii. Milliman's assumptions in the feasibility study "disregarded the very real possibility that there would be significant volatility in enrollment and/or the medical loss ratio." *Id.* ¶¶ 42, 44.
 - iii. Milliman "provided a pro forma, cookie-cutter analysis of each CO-OP's financial condition and viability, as opposed to undertaking a detailed, market / state specific analysis for each and every individual CO-OP like LAHC." *Id.* ¶ 52.
- c. Milliman's work on LAHC's 2014 rates, including but not limited to the bases for Plaintiff's allegations that:

- i. “[I]t was not reasonable for Milliman to assume that a start-up insurance entity with zero enrollment would be in a position to negotiate provider discounts as large as BCBSLA.” *Id.* ¶ 59.
 - ii. “[I]f Milliman assumed a lower level of provider discounts, the calculated [2014] premium rates [for LAHC] would have been higher.” *Id.* ¶ 61.
 - iii. “Milliman grossly underestimated the level of non-claim expenses in 2014.” *Id.* ¶ 62.
 - iv. “[I]t was unreasonable for Milliman to assume that LAHC, as an unknown entity in the Louisiana health insurance market, would be able to enroll 28,000 members (20,000 individual and 8,000 small group) in the first year of operations.” *Id.* ¶ 65.
 - v. Milliman’s assumption that “there would be no difference in coding intensity between LAHC and the other insurance carriers in the State of Louisiana...was not reasonable.” *Id.* ¶ 67.
- d. Reviews, assessments, findings, and/or conclusions relating to Milliman’s actuarial analyses, reports, and other work for LAHC. This includes but is not limited to: (i) The feasibility study dated March 30, 2012, prepared by Milliman for LAHC to use in support of its loan application to CMS, including but not limited to the assumption sets used by Milliman in preparation of the feasibility study; (ii) the Three Year Pro Forma Reports dated August 15, 2013, prepared by Milliman that were relied upon by LAHC; and (iii) The actuarial memoranda prepared as part of the 2014 rate filings for the individual and small group lines of business.

8. Buck. With regard to Buck’s work for LAHC, discuss in full:

- a. The basis for Plaintiff’s allegation that “Buck may have been unqualified” to serve as LAHC’s actuary “given its limited experience with insurers like LAHC.” Petition ¶ 78.

- b. Buck's Development of LAHC's 2015 rates, including but not limited to the bases for Plaintiff's allegations that:
 - i. Buck "essentially disregarded the claim experience that had emerged from the start of LAHC operations on January 1, 2014 until the filing was finalized in August 2014" in developing the individual and small group premium rates for 2015. *Id.* ¶ 80.
 - ii. Buck "underestimated the level of non-claim expenses in 2015." *Id.* ¶ 87.
 - iii. Buck's risk adjustment transfer payment assumptions were incorrect or unreasonable because Buck failed to incorporate "known demographic information" or reasonable claim coding intensity assumptions. *Id.* ¶ 96.
- c. Reviews, assessments, findings, and/or conclusions relating to Buck's actuarial analyses, reports and other work for LAHC, including but not limited to (i) the actuarial memoranda prepared as part of LAHC's 2015 rate filings for individual and small group lines of business; and (ii) the Statement of Actuarial Opinion Buck issued to LAHC on April 2, 2015, which LAHC relied upon and used to support its ACA reporting requirements to the federal government.

9. LAHC's Financial Condition. With respect to LAHC's financial condition, discuss in full:

- a. Communications with CMS to discuss the financial and operational condition of LAHC;
- b. LAHC's understanding of any review, monitoring, and analysis of LAHC's financial condition from 2011 to present, including but not limited to: (i) LAHC's pro forma submissions to the LDI and CMS; (ii) LAHC's year-end statutory financial statements; (iii) LAHC's GAAP financial statements; and (iv) LAHC's requests for additional federal funding; and

- c. Information concerning LAHC's understanding, if any, of how the \$9,250,000 in solvency loans that were committed to LAHC by CMS were ultimately not disbursed in September 2015.

10. Complaints Against LAHC. With respect to complaints against LAHC, discuss in full:

- a. Complaints against LAHC, including but not limited to: (i) complaints by health care providers that claims for payment have not been made or not been made timely; (ii) complaints by enrollees of LAHC that the enrollees received termination notices for failure to remit premiums despite enrollees having remitted premiums and those premiums having been deposited into LAHC accounts; (iii) complaints by enrollees or their health care providers that prior authorization requests are not adjudicated timely; (iv) complaints by enrollees that they did not receive insurance cards and other enrollment materials following enrollment; and (v) enrollees' complaints that health care providers have refused to continue treatment of enrollees after the placement of LAHC into receivership.

11. The Decision to Place LAHC into Receivership. With respect to the events leading to the decision to wind down LAHC, discuss in full:

- a. The events that led to the LDI's decision to request a market conduct examination of LAHC in early 2015;
- b. LAHC's involvement in and understanding of the LDI's financial and market conduct examination of LAHC commencing in or around March 2015;
- c. LAHC's understanding of the LDI's determination that LAHC had triggered several provisions of the state's Hazardous Financial Condition Regulation in or around March 30, 2015;

- d. LAHC's understanding of the LDI's review of LAHC's financial statements requested by the LDI Examiner in Charge ("EIC") on or about April 28, 2015;
- e. Information concerning a May 11, 2015 meeting with LDI to review and discuss LAHC's preliminary 1Q2015 financials;
- f. LAHC's understanding of the LDI Life & Health actuary, Chief Examiner, and the EIC's review and analysis of LAHC's paid claims data from January 1, 2015 to May 31, 2015;
- g. The LAHC's Board decision to voluntarily wind-down LAHC's operations and to not participate on the Federally Facilitated Marketplace for 2016 on or about July 7, 2015;
- h. The LAHC's Board of Directors' resolution to voluntary wind-down and dissolve LAHC on or about July 18, 2015;
- i. Information concerning the July 21, 2015 meeting between LAHC management and LDI to discuss LAHC's voluntary wind-down plan;
- j. LAHC's understanding of the LDI's issuance of an Administrative Supervision Order on or about July 29, 2015;
- k. Information concerning the LAHC wind-down plan and budget which was provided to the LDI Office of Financial Solvency on or about August 3, 2015, including the follow up requests made by the LDI EIC, the LDI Administrative Supervisors, and Deloitte Consultants representing CMS;
- l. LAHC's involvement with and understanding of, if any, the LDI's on-site visit to GRI's locations in Duluth, Georgia to review its operations related to claims handling and member services on or about August 10, 2015;
- m. Information concerning LAHC's revised wind-down plan provided to the LDI Office of Financial Insolvency on or about August 28, 2015; and

- n. LAHC's involvement with the LDI in the development of LAHC's wind-down plan and LAHC's understanding of LDI's review of the plan, including but not limited to the meetings held between LAHC management, LDI personnel, and CMS representatives related to LAHC's wind-down in August 2015.

12. The Receivership and Rehabilitation of LAHC. With regard to the handling of the receivership and rehabilitation of LAHC, discuss in full:

- a. LAHC's understanding of and involvement with the decision to place LAHC into receivership;
- b. LAHC's understanding of the operational and functional issues that the LDI discovered upon taking over operations of LAHC, including but not limited to the backlog of approximately 50,000 claims that had not been processed as of September 1, 2015;
- c. LAHC's involvement with the LDI as the LDI took over LAHC's operations;
- d. The settlement of LAHC's claims against the federal government in *Health Republic Ins. Co. v. United States*, No. 1:16-cv-00259-MMS, (Ct. Fed. Cl.), including but not limited to the parties' agreement to set off monies owed by LAHC to the federal government against the federal government's settlement payment to LAHC; and
- e. LAHC's alleged damages being sought in the above-captioned action against Milliman.