

JAMES J. DONELON, COMMISSIONER	:	SUIT NO.: 651,069 SECTION: 22
OF INSURANCE FOR THE STATE OF	:	
LOUISIANA, IN HIS CAPACITY AS	:	
REHABILITATOR OF LOUISIANA	:	19 TH JUDICIAL DISTRICT COURT
HEALTH COOPERATIVE, INC.	:	
	:	
versus	:	PARISH OF EAST BATON ROUGE
	:	
CGI TECHNOLOGIES AND	:	
SOLUTIONS, INC., <i>ET AL.</i>	:	STATE OF LOUISIANA

**EMERGENCY EX PARTE MOTION TO LIFT STAY
AND INCORPORATED MEMORANUM IN SUPPORT**

Plaintiff, the Receiver for LAHC, respectfully requests that the *ex parte* ORDER staying this proceeding in its entirety be vacated and the stay be lifted. The ORDER signed by this Honorable Court on March 24, 2021, refers to a “Joint Motion” to stay this proceeding. Typically, parties characterize a “Joint Motion” as one where all parties—both plaintiff and defendants—join together and request that the Court grant the relief sought by all of the parties. By characterizing their motion as a “Joint Motion,” Buck and Milliman may have inadvertently given the Court the erroneous impression that Plaintiff and the other Defendants in this proceeding jointly requested this stay. This is categorically not the case. Plaintiff strongly opposes Buck and Milliman’s attempt to stay this proceeding, as it is without merit and will cause the Receiver and the interests he represents extreme prejudice. GRI, the third remaining defendant, did not join Buck and Milliman’s motion. Indeed, none of the six (6) excess insurers who remain defendants in this proceeding (although the parties are close to finalizing their settlements) joined Buck and Milliman’s motion to stay.

Buck and Milliman’s *ex parte* motion to stay was filed on March 22, 2021. No hearing was requested. Your Honor signed the proposed ORDER on March 24, 2021, and notice was mailed by the clerk’s office on March 26, 2021. Undersigned counsel has not yet received a paper copy of this signed ORDER in the mail; a .pdf copy of this ORDER was emailed to him by defense counsel yesterday (March 30th) afternoon.

Under the circumstances, Plaintiff respectfully suggests that Buck and Milliman’s motion seeking a stay of this proceeding should not have been submitted as an *ex parte* motion. Pursuant to La.C.C.P. art. 963, only uncontested matters or matters to “which mover is clearly entitled” should be considered and decided without a contradictory hearing. Because Buck and Milliman are clearly NOT entitled to a complete stay of this proceeding while they pursue an appeal of Your Honor’s prior ruling on a discovery issue involving a third party to this proceeding (the Louisiana

Department of Insurance, “LDI”), Plaintiff respectfully suggests that their motion to stay should have either been summarily denied or, at least, set for contradictory hearing so that Plaintiff could be heard regarding this important matter. Indeed, Local Rule 9.8(d) regarding “Ex Parte motions” does not contemplate such an important matter being decided without an opportunity to be heard.

Plaintiff has not found a single Louisiana case or authority—and Defendants do not cite any such case—supporting a Motion to Stay all proceedings based upon a writ and/or appeal regarding a discovery issue involving a third party, much less one where such a motion was granted *ex parte*. Indeed, while *ex parte* Motions to Stay are not strictly prohibited, they seem to be rarely granted in Louisiana, and then only in truly exceptional situations where the issue being appealed or taken up on writs is dispositive of the case, or continuance of the case pending an appellate decision would be grossly unfair to one of the litigants. Indeed, this very case was stayed by the first circuit for more than two (2) years while Milliman unsuccessfully litigated the issue of arbitration. Simply stated, there are no exceptional circumstances at play here that warrant another stay of this proceeding while Buck and Milliman seek relief from the first circuit on their third-party discovery requests.

After extensive briefing and a full contradictory hearing, this Honorable Court correctly denied Buck and Milliman’s Motion to Compel LDI to produce voluminous, irrelevant, and inadmissible documents. Your Honor’s prior ruling was correct and will almost certainly be upheld by the appellate courts. While Buck and Milliman have the right to appeal this ruling, they should not be given the ability to derail the applicable Case Scheduling Order (“CSO”), force Plaintiff and the other defendants to waste money on ESI discovery and other pre-litigation matters, and in effect, sit around for many months (if not longer), while the busy first circuit decides whether to reconsider Your Honor’s discovery ruling on a third-party subpoena. Even in the very unlikely event that the first circuit alters Your Honor’s discovery ruling on appeal, if and when that happens, appropriate steps can be taken at that time to reopen or extend discovery if necessary. Obviously, however, because this contingency is unlikely to occur, it is completely unjustified to stay this proceeding in its entirety while we all wait for a discovery ruling from the appellate courts.

If this proceeding is stayed at this time, Plaintiff will sustain serious prejudice that includes:

- (a) extensive, productive, and expensive ESI efforts will be halted at great expense to all parties;
- (b) the current CSO, which provides for an orderly discovery and expert report schedule that leads

to a jury trial in 2022, will be lost; (c) the Receiver will incur additional, unnecessary litigation expenses because of this delay; (d) material witnesses will lose memory and/or be more difficult to find and depose; and (e) any delay caused by such a stay will cause experts, attorneys, witnesses, litigants, and even this Honorable Court, to lose the efficiency and quality of work that is generated by continuity. Defendants have repeatedly tried to upset the proverbial apple cart by seeking delay and multiple stays at every juncture of this litigation; with the exception of the first circuit's stay pending Milliman's arbitration appeal, all of defendants' requests for stay have been appropriately denied. So should Buck and Milliman's latest attempt to stay this matter pursuant to their "Joint Motion."

For all of these compelling reasons, the Receiver respectfully requests: (1) that this Honorable Court issue the attached, proposed *Ex Parte* Order lifting the stay so that the Parties may file their amended pleadings on April 1, 2021 (tomorrow) as mandated by the current CSO; or, in the alternative, (2) that this Honorable Court set the Receiver's Motion for New Trial, etc. (filed simultaneously herewith) for hearing on an expedited basis so that both sides can be heard regarding this important ruling is made; or, in the further alternative, (3) that this Honorable Court both issue the attached, proposed *Ex Parte* Order lifting the stay AND set the Receiver's Motion for New Trial, etc. for hearing as soon as possible.

On behalf of all concerned, we respect and appreciate Your Honor's expedited consideration of this important issue and will follow whatever ORDER that is ultimately entered herein.

Respectfully submitted,

/s/ J. E. Cullens, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via e-mail to all counsel of record as follows, this 31st day of March, 2021, in Baton Rouge, Louisiana.

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EX PARTE ORDER LIFTING STAY

Considering the Emergency *Ex Parte* Motion to Lift Stay and Incorporated Memorandum in Support filed by Plaintiff, the Receiver for LAHC:

IT IS HEREBY ORDERED that the Emergency *Ex Parte* Motion to Lift Stay is **GRANTED**; the prior ORDER signed on March 24, 2021, which stayed all proceedings in the above-captioned matter is hereby vacated in its entirety; the Case Management Schedule remains in effect and the parties are to proceed with discovery, expert work, and all pre-trial work without delay.

THUS DONE AND SIGNED this ____ day of _____, 2021, at Baton Rouge, Louisiana.

HONORABLE JUDGE TIMOTHY KELLEY
19TH JUDICIAL DISTRICT COURT

Respectfully submitted,

/s/ J. E. Cullens, Jr.

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PLEASE GIVE NOTICE TO ALL COUNSEL

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