

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

STATE OF LOUISIANA

NO. 651,069

SECTION 22

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

VERSUS

TERRY S. SHILLING, et al

FILED: \_\_\_\_\_

DEPUTY CLERK

**GROUP RESOURCES, INC.'S EX PARTE MOTION TO JOIN AND ADOPT  
DEFENDANT BUCK GLOBAL, LLC'S CROSS MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON UNCONSTITUTIONALITY OF LA. R.S. 22:2043.1(A) AS APPLIED, OR  
IN THE ALTERNATIVE, NOTICE OF JOINDER AND COMBINED MEMORANDUM IN  
SUPPORT OF CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that Defendant Group Resources, Inc. ("GRI"), by and through its undersigned counsel, respectfully moves to adopt Defendant Buck Global, LLC's ("Buck's") Cross Motion for Partial Summary Judgment on Unconstitutionality of La. R.S. 22:2043.1(A) filed on or about June 2, 2021 (the "Cross Motion") or in the alternative, notifies this Court of its joinder of same, and further moves the Court for summary ruling that the application of La. R.S. 22:2043.1(A) to dismiss or strike GRI's defenses would deprive it of its fundamental due process rights and violation of the United States and Louisiana Constitutions.

**I. Plaintiff's Motion for Partial Summary Judgment Regarding Officer/Director/Employee/Etc. Fault Defenses Or, In The Alternative, Motion To Strike Defenses Precluded As A Matter Of Law (The "Motion") Seeks An Unconstitutional Application Of La. R.S. 22:2043.1(A)**

In the interest of judicial economy and efficiency, and to avoid multiple duplicate filings, GRI moves to join and adopt Buck's cross motion<sup>1</sup>. Plaintiff's Motion for Partial Summary

<sup>1</sup> Buck filed five exhibits with its motion: (A) Plaintiff's Second Supplemental and Amended Petition; (B) Buck's Opposition Memorandum and Incorporated Exhibits to Plaintiff's Motion for Partial Summary Judgment Regarding Officer/Director/Employee/Etc. Fault Defenses Or, In the Alternative, Motion to Strike Defenses Precluded as a Matter of Law; (C) Buck's Affirmative Defenses and Answer to Plaintiff's Fifth Amended Petition; (D) Service Return for Jeff Landry, Attorney General for the State of Louisiana; and (E) Plaintiff's Motion to File Fifth Supplemental Amending and Restated Petition and Plaintiff's Fifth Amended Petition. These five exhibits are incorporated herein as if copied in extenso. GRI also incorporates the Statement of Undisputed Material Facts and Memorandum filed by Buck as well as GRI's Answer which Plaintiff attached as Exhibit "C" to his Motion for Partial Summary Judgment.

Judgment Dismissing or Striking GRI's Third, Fourth, Eighth and Ninth Affirmative Defenses, "to the extent that they assert a defense for the alleged actions or inactions of any present or former officer, manager, director, trustee, owner, employee, or agent of LAHC" raises the exact same constitutional issues addressed by Buck's Cross Motion which has been set for hearing on August 6, 2021 at 9:30 a.m.

On April 1, 2021, Plaintiff moved for Partial Summary Judgment dismissing or striking certain of Milliman, Buck and GRI's Defenses, "to the extent they assert a defense for the alleged actions or inactions of any present or former officer, manager, director, trustee, owner, employee, or agent of LAHC." Motion at 5-7. On that same day, Plaintiff filed an *ex parte* Fifth Amended and Restated Petition (the "Fifth Petition") purporting to remove all allegations related to the wrongful and negligent actions of LAHC's Directors and Officers (the "D&O Defendants") and other co-defendants, CGI Technology and Solutions, Inc. ("CGI"), and Beam Partners, LLC ("Beam") that caused LAHC's insolvency and losses, because those Defendants have all settled out of the case. Only three Defendants and one of their insurers remain – Milliman, Buck, and GRI,<sup>2</sup> and Plaintiff seeks to hold these remaining Defendants responsible for all of LAHC's remaining losses.

Plaintiff's Motion seeks to preclude GRI from asserting comparative fault and other defenses based on the alleged fault or negligence of LAHC's "former officers, managers, directors, trustees, shareholders, employees or agents." Thus, Plaintiff's Motion attempts to deprive GRI of the right to litigate the very same claims of wrongful and/or negligent conduct that, until recently, were the heart of this action. Plaintiff's Motion fails because Plaintiff placed the wrongful and/or negligent conduct of LAHC's directors and officers (the "D&O Defendants"), among others, at issue in this case by naming them as defendants, and therefore he waived his ability to prevent GRI from asserting defenses pursuant to La. R.S. 22:2043.1(A).<sup>3</sup> Louisiana law makes clear Plaintiff cannot "undo" his waiver by amending his complaint to remove allegations concerning the D&O Defendants.

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<sup>2</sup> Ironshore, GRI's insurer, has been named as a direct Defendant pursuant to the La. Direct Action Statute.

<sup>3</sup> Plaintiff does not identify any specific people or entities covered by his motion. GRI reserves the right to challenge Plaintiff's inclusion of any specific person or entity as falling within the ambit of La. R.S. 22:2043.1(A).

Furthermore, allowing Plaintiff to assert claims against the D&O Defendants, on the one hand, and then denying GRI's ability to assert comparative fault defenses against them would lead to an absurd and unjust result. GRI would be unable to apportion fault to those defendants at trial, and could be barred by the "settlement bar rule" from seeking contribution from them after trial. See *Cole v. Celotex*, 599 So. 2d 1058, 1073 (La. 1992). GRI and the other remaining defendants therefore could be left liable for wrongful actions that Plaintiff himself alleges were caused by others. Plaintiff also seeks to preclude GRI from arguing or presenting evidence demonstrating that LAHC's damages were not caused by GRI's work. Plaintiff thus essentially seeks to relieve himself of his burden of proving relivence, even before discovery is complete. These absurd results defeat any presumption that the later enacted statute (La. R.S. 22:2043.1(A)) controls over Louisiana's, or any other state's, generally applicable comparative fault statutes. E.g., *Ferrara v. Sec'y, Dept. of Revenue and Tax'n, State of La.*, 96-806 (La. App. 5th Cir. 1/28/97), 688 So. 2d 147, 148, writ denied, 97-0411 (La. 4/4/97), 692 So. 2d 418.

Finally, Plaintiff's motion must be denied as a matter of fundamental due process. A litigant's "right to litigate the issues raised" in a complaint against the litigant is "guaranteed by the Due Process Clause" *U.S. v. Armour & Co.*, 402 U.S. 673, 682, 91 S.Ct. 1752, 1757 (1971). And fundamental to that due process right is "the right to present a defense." *State v. Wilson*, 2017-0908 (La. 12/5/18), 2018 WL 6382169, at \*3; *Lindsey v. Normet*, 405 U.S. 56, 66, 92 S.Ct. 862, 870 (1972) (quoting *Am. Surety Co. v. Baldwin*, 287 U.S. 156, 168, 53 S.Ct. 98, 102 (1932)). To that end, Louisiana's comparative fault statute mandates "*the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a non-party. . .*" La. Civ. Code Article 2323 (a) (emphasis added). Depriving GRI of defenses based on the wrongful acts of the D&O Defendants would violate GRI's right to litigate the issues raised by Plaintiff's claims, a right guaranteed by the Louisiana and U.S. Constitutions and also by Louisiana's comparative fault statute.

Wherefore, GRI prays that this Court issue an Order permitting GRI to adopt Buck's Cross Motion as its own. GRI further prays that an Order be issued commanding Plaintiff James J. Donelon, Commissioner of Insurance for the State of Louisiana, and the Honorable Jeff Landry, Attorney General for the State of Louisiana, to appear and show cause why the relief requested in

Buck's Cross Motion should not be granted as prayed for, granting the same relief in GRI's additional favor consistent with GRI's joinder and adoption of Buck's Cross Motion. For the reasons set forth in this Memorandum, as well as in 1) GRI's Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment regarding Officer/Director/Employee/Etc. Fault Defenses or, in the alternative, Motion to Strike; and 2) Buck's Memorandum in Support of the Cross Motion, both of which GRI adopts and incorporates by reference herein, GRI respectfully moves this Court for partial summary judgment and for any additional relief to which it may be entitled under the premises.

Respectfully submitted,



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Douglas J. Cochran, #20751

Justin P. Lemaire, #29948

Of

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*Attorneys for Group Resources, Inc.*

**CERTIFICATE**

I hereby certify that a copy of the above and foregoing *Ex Parte* Motion to Join And Adopt Defendant Buck Global, LLC's Cross Motion For Partial Summary Judgment On Unconstitutionality of La. R.S. 22:2043.1(A) As Applied, or In The Alternative, Notice Of Joinder and Combined Memorandum In Support of Cross Motion For Partial Summary Judgment has been served upon all counsel of record by email this 15<sup>th</sup> day of June, 2021.



W. BRETT MASON

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

STATE OF LOUISIANA

NO. 651,069

SECTION 22

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**RULE TO SHOW CAUSE**

Considering the foregoing *Ex Parte* Motion to Join and Adopt Defendant Buck Global, LLC's Motion For Partial Summary Judgment On Unconstitutionality of La. R.S. 22:2043.1(A) As Applied, or In the Alternative, Notice Of Joinder and Combined Memorandum In Support of Cross Motion For Partial Summary Judgment,

**IT IS HEREBY ORDERED** that Group Resources, Inc. ("GRI") be and is hereby permitted to join and adopt Defendant Buck Global, LLC's Motion for Partial Summary Judgment on Unconstitutionality of La. R.S. 22:2043.1(A) As Applied ("Buck's Cross Motion"), along with its Exhibits A-E, List of Essential Elements, Statements of Undisputed Material Facts, Memorandum in Support, as well as GRI's Answer which Plaintiff attached as Exhibit "C" to his Motion.

**IT IS FURTHER ORDERED** that Plaintiff James J. Donelon, Commissioner of Insurance for the State of Louisiana and the Honorable Jeff Landry, Attorney General for the State of Louisiana, appear and show cause on the \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_ o'clock \_\_.m. as to why Defendant's Motion should not be granted.

ORDERED AND SIGNED in Baton Rouge, this \_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
JUDGE, 19th JUDICIAL DISTRICT COURT

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**PLEASE NOTIFY ALL COUNSEL.**

**SHERIFF - PLEASE SERVE:**

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