

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

STATE OF LOUISIANA

NO.: 651,069

SECTION 22

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

VERSUS

GROUP RESOURCES INCORPORATED, MILLIMAN, INC., BUCK GLOBAL,
LLC, AND IRONSHORE SPECIALTY COMPANY

FILED: _____
DEPUTY CLERK

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO EXTEND CASE
MANAGEMENT SCHEDULE**

The Receiver does not, and cannot, dispute the critical facts that necessitate a reasonable extension of the CMS. Specifically, the Receiver concedes that he produced approximately 360,000 documents (1.5 million pages) after the March 1, 2021 substantial completion deadline, including more than 70,000 documents in June 2021, and a 297-page privilege log on July 6, 2021, four months late (the Receiver's initial 102-page privilege log, produced on June 22, 2021, was unusable because of formatting and substantive problems). Even a cursory review of the

Receiver's privilege log reveals significant deficiencies, including many entries that lack adequate descriptions of the privilege asserted.

The Receiver likewise does not dispute that it will take several months for Defendants to review and analyze these late-produced documents, on top of the more than 5 million-page production the Receiver proffered on the March 1, 2021 deadline, or that there may be further documents produced once Defendants have had a full and fair opportunity to review the Receiver's productions and privilege log (or, at a minimum, there may be disputes over whether additional documents should be produced).

Defendants should not be prejudiced by the Receiver's delays, errors, and/or omissions that are beyond Defendants' control. Under the circumstances, it is surprising that the Receiver continues to resist Defendants' reasonable request. Defendants completed their productions months or years ago. The Receiver never told Defendants in advance he would be unable to meet the March 1 substantial completion deadline so that the parties could cooperatively discuss a different timeline for discovery. Equally significant, there are no problems with witness availability or loss of access to evidence that preclude the requested extension. The Receiver does not offer any specific reason why he needs fact discovery to be

completed in December 2021 as opposed to April 2022. Nor does the Receiver offer any reasoned basis why the Receiver's pre-trial discovery should be expedited in view of his delay in producing his documents to Defendants.

The Receiver's arguments in opposition to Defendants' motion are unavailing. *First*, the Receiver did not "substantially complete" his production by March 1. Although the Receiver produced a majority of his documents on March 1, no good faith interpretation of the CMS could contemplate that the parties expected either for the Receiver to produce hundreds of thousands of documents—*nearly 25%* of his production—after the deadline, or that he would not finish producing documents until late June.¹ Allowing a party to "substantially complete" its production by a certain date leaves room for small productions that could not have been made despite a party's best efforts. Here, the Receiver belatedly produced hundreds of thousands of non-privileged documents that were directly responsive to Defendants' requests, and the Receiver appears to have made no increased effort to try to meet the CMS deadline.

¹ The Receiver's assertion that Defendants brought this motion after the Receiver finished his productions is wrong, as the exhibits to the Receiver's opposition papers show. Defendants filed this motion on June 17, 2021. The Receiver did not finish producing documents and produce a privilege log until June 22, 2021. (Receiver's Brief at Ex. 1).

Defendants' initial review of the Receiver's late productions also indicates that they include highly relevant material. For example, nearly 20,000 of the post-March documents hit on 20 narrow search terms that were solely directed to Buck's personnel and its conduct at issue.

Second, adding deposition dates in September, October and November 2021 will not ameliorate the problems caused by the Receiver's late productions. The Receiver ignores that the parties' earlier agreement to add deposition dates was based on the Receiver's assurance that only a "small amount of additional data" remained to be produced, and those productions would be completed by mid-April, neither of which turned out to be true.² Moreover, adding dates within the current discovery period will not allow Defendants sufficient time to review and assess what has already been produced, follow up with the Receiver on the need for additional productions, raise potential disputes with the Court, including the scope of privilege asserted by the Receiver, and prepare for depositions. And since the Receiver is already using almost all of the dates the parties have set aside in September through November for depositions of defense witnesses, the current schedule will not allow

² Defendants' Motion at Ex. A, p.1, 3.

Defendants sufficient time to depose even a fraction of the more than 150 potential witnesses who are identified on the parties' witness lists.³

Third, Defendants did not cause the Receiver to miss the substantial completion deadline by several months. Defendants timely met their discovery obligations in 2018. By contrast, the Receiver produced an unusable data dump in 2018 that this Court held was not “a good faith effort to respond to specific discovery requests,” and required the Receiver to redo his production. If anything “stalled” the progress of discovery this year, it was the Receiver having to redo his improper production, not anything Defendants did.

And while the Receiver accuses Defendants' counsel of engaging in “hyper-technical demands” as “delay tactics,” the correspondence the Receiver submits (and dozens of additional emails and phone calls not included) shows that Defendants' counsel was working to *assist* the Receiver's counsel in ensuring that the Receiver's production complied with applicable discovery rules, and in navigating a complex

³ Dates for Defendants' witnesses' depositions were only set within the last month, and were contingent upon this Court's ruling on the instant motion to extend the CMS. Receiver's counsel agreed that in the event the motion was granted, the parties could move the deposition dates pursuant to any revised CMS.

discovery landscape that the Receiver's counsel could not navigate on their own.

Among other things, Defendants' counsel:

- Identified and segregated hundreds of thousands of unreviewable file types in large structured databases from the review universe
- Reviewed and segregated LAHC's 300,000 line SharePoint Drive into a streamlined index of categories for production and hosting
- Identified and segregated out nearly 200,000 bulk CGI files from the searchable data
- Identified a processing error that resulted in 148,000 duplicate records in the review universe. Investigated the issue with the vendor to identify the source of the problem and negotiated with the vendor to redo the processing at no cost to correct the problem.⁴

It is telling that the Receiver believes asking basic questions about whose email is in the email archive and for what date ranges is a "hyper-technical" delay tactic. These are basic questions asked every day in the course of e-discovery that are foundational to developing a sound discovery plan. Without knowing what is in the database, one cannot devise a logical plan to search and review it. Likewise, the 69 pages of emails the Receiver attaches to his opposition are the opposite of delay tactics. This correspondence represents a mere fraction of the work Defendants did to help the Receiver transform a 7.8 million document unusable block into a useable

⁴ See Receiver's Brief at Ex. E, p. 7

production set. The Receiver’s groundless attack on defense counsel is disingenuous and offensive.

The Receiver does not, and cannot, credibly contend that Milliman’s and Buck’s March 2021 motion to stay—which was filed weeks after the substantial completion deadline had already passed—affected the Receiver’s ability to review and produce documents.⁵ That stay was lifted less than a week after it was put in place. Similarly, the fact that the First Circuit Court of Appeal—on its own—stayed this matter while Defendants litigated their arbitration and forum selection rights is not a reason to deny Defendants a fair opportunity to conduct discovery now.

Finally, the notion that a brief extension of the CMS schedule will impact the cost of administering LAHC’s estate is dubious at best. The Receiver has not shown how or why administrative costs will rise, nor should his costs rise—Defendants are not asking for more discovery, only sufficient time in which to conduct the discovery that is already contemplated. The Receiver’s documents indicate that the estate

⁵ The Receiver appears to raise the motion to stay, titled “Defendants’, Buck Global, LLC and Milliman, Inc., Joint Motion and Incorporated Memorandum for Stay of Proceedings Pending Appeal,” solely to impugn Defendants’ counsel. As we discussed with the Court in March, Buck and Milliman had no intention to mislead the Court with the title of the Motion, which was intended to reference that it was a “joint” filing made by the two Defendants identified in the title. The Receiver’s counsel incorrectly asserts that Defendants’ counsel “walked through” the motion to deceive the Receiver. Rather, Defendants’ counsel electronically filed the motion and contemporaneously served it via e-mail on Ms. Dennis and counsel for all parties.

received sufficient funds through its settlement of its claims against the federal government to pay nearly all outstanding provider claims. (See “Notice of Receipt of Risk Corridor Funds from the U.S. and Revised LAHC Forms for Payment of LAHC Settling Provider Claims”).

Defendants respectfully request an order extending the Case Management Schedule by four months, and for any other relief to which Defendants may be entitled consistent with fairness and due process.

Dated: July 7, 2021
New Orleans, Louisiana

Respectfully submitted,

/s/ Harry Rosenberg

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record via facsimile, e-mail and/or by placing same in the U.S. Mail, postage pre-paid and properly addressed, and by the additional means of service upon the Receiver's counsel by certified mail, return receipt requested.

New Orleans, Louisiana, this 7th day of July, 2021.

/s/ Harry Rosenberg _____