

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

**DEFENDANT MILLIMAN, INC.’S MOTION TO COMPEL CGI TECHNOLOGIES
AND SOLUTIONS, INC.S’ COMPLIANCE WITH *SUBPOENA DUCES TECUM***

Defendant Milliman, Inc. (“Milliman”), by and through its attorneys of record, moves this Court for an Order compelling CGI Technologies and Solutions to comply with Milliman’s subpoena duces tecum.

As grounds for this motion, Milliman shows that:

1. There is a valid and enforceable subpoena for documents relevant to this action;
2. CGI has refused to produce any documents in response.

Additional grounds in support of this motion are set forth in the accompanying memorandum.

CONCLUSION

WHEREFORE, Milliman prays that this Court issue an Order compelling CGI to comply with the Subpoena by producing all responsive documents, based on the search terms set forth in **Exhibit A**, 30 days from entry of an Order, and further prays for such other relief as may be just and equitable under the circumstances.

{signature appears on following page}

Respectfully submitted,

/s/ Keith C. Armstrong

CHAFFE MCCALL LLP

Keith Armstrong (Bar #20679)

Zachary S. Miller (Bar #38839)

103 Two United Plaza

8550 United Plaza Boulevard

Baton Rouge, LA 70809

Telephone: 225-922-4670

Facsimile: 225-922-4304

Email: armstrong@chaffe.com

zachary.miller@chaffe.com

-and-

DENTONS US LLP

Reid L. Ashinoff (admitted *pro hac vice*)

Justin N. Kattan (admitted *pro hac vice*)

Justine N. Margolis (admitted *pro hac vice*)

Catharine Luo (admitted *pro hac vice*)

1221 Avenue of the Americas

New York, NY 10020

Tel: (212) 768-6700

Fax: (212) 768-6800

E-mail: reid.ashinoff@dentons.com

justin.kattan@dentons.com

justine.margolis@dentons.com

catharine.luo@dentons.com

Counsel for Defendant Milliman, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by e-mail, and, additionally, upon counsel of record for CGI by certified mail, return receipt requested, this 9th day of December, 2021.

Baton Rouge, Louisiana this 9th day of December 2021.

/s/ Keith C. Armstrong

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ORDER

CONSIDERING the above and foregoing Motion to Compel filed by Milliman, Inc.
(“Milliman”), against CGI Technologies and Solutions, Inc. (“CGI”);

IT IS ORDERED, that CGI appear and show cause, if any they may, on the _____
day of _____, 2022 at _____ o’clock __.m., why an order should not be
entered granting the relief prayed for by Milliman.

Baton Rouge, Louisiana this _____ day of _____, 2021.

Judge Timothy E. Kelley

PLEASE SERVE:

CGI Technologies and Solutions, Inc.
Through Harry J. Philips
Taylor, Porter, Brooks & Phillips
450 Laurel Street, 8th Floor
Baton Rouge, Louisiana 70801

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**DEFENDANT MILLIMAN, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO
COMPEL CGI TECHNOLOGIES AND SOLUTIONS, INC.S' COMPLIANCE
WITH SUBPOENA DUCES TECUM**

Milliman, Inc. ("Milliman") respectfully submits this memorandum in support of its Motion to Compel CGI Technologies and Solutions, Inc. ("CGI") to comply with Milliman's *subpoena duces tecum* (the "Subpoena"), and produce responsive documents. CGI does not dispute that it possesses documents and information that are discoverable and highly relevant to this case. Nonetheless, ***CGI has not produced a single responsive document.*** Over the past few months, Milliman repeatedly tried to negotiate the scope and timing of CGI's production of documents with CGI's counsel. However, CGI refused even to propose alternative search terms or possible custodians to facilitate its search, and is no longer willing to discuss the Subpoena with Milliman.

Because there is no basis for CGI's wholesale refusal to produce documents responsive to the Subpoena, Milliman respectfully requests that this Court compel CGI to produce all responsive information, based on search terms set forth in **Exhibit A**, within 30 days of entry of an Order. Milliman will be separately moving for an expedited hearing on this matter. The expedited time frame is necessary as depositions in this action are starting in mid-January, and Milliman needs to be able to review CGI's documents as quickly as possible.

RELEVANT FACTS AND PROCEDURAL BACKGROUND

CGI served as LAHC's third party administrator ("TPA") from February 2013 until mid to late 2014, and is a former defendant in this action. CGI settled before discovery commenced, and never produced documents in this case.

As Plaintiff states in his Second Supplemental, Amending and Restated Petition for Damages Request for Jury Trial ("Petition"), CGI was responsible for processing and paying claims for covered health services provided to LAHC's insureds. (Petition at ¶ 45.) By March 2013, only a few months after LAHC went into effect, "the system designed and implemented by CGI to process enrollment, eligibility, and claims handling, [was] a 'broken' process. . . .almost

every facet of the system designed and implemented by CGI as a third party administrator of LAHC was a failure.” (Pet. ¶ 47.) Among CGI’s alleged failures, it failed to properly pay claims at the contracted amounts, causing LAHC to overpay claims and incur “substantial, compensatory damages.” (Pet. ¶ 53.) LAHC terminated CGI in or around November of 2014. CGI’s documents and information are therefore likely to lead to relevant evidence concerning, *inter alia*, causation, loss causation, and damages.

Milliman sent the Subpoena to CGI’s counsel on June 4, 2021 (**Exhibit B.**) On July 13, 2021, CGI’s counsel agreed to accept service of the Subpoena. (**Exhibit C.**) Milliman understood that service of the Subpoena was not in dispute and the parties were negotiating in good faith regarding CGI’s response. Over the next number of months, Milliman attempted to negotiate with CGI to agree on a reasonable scope of production and search parameters that would avoid imposing any undue burden. At CGI’s request, Milliman provided a list of known CGI email addresses to assist with agreeing on a set of document custodians. (**Exhibit D**, attachment omitted.) Also at CGI’s request, Milliman provided a list of proposed search terms for identifying a document review universe. (**Exhibit E**, p. 9-11.) CGI did not respond to either proposal. In order to facilitate further discussions with CGI, Milliman subsequently reviewed the CGI-related documents it received from Plaintiff’s document production, in order to identify the key CGI personnel whose documents should be searched.

On October 12, 2021, CGI’s counsel agreed to schedule a call with both Milliman’s counsel and his client to discuss custodians and search terms. Milliman’s counsel followed up at least three times to schedule that call to no avail. (**Exhibit E.**) On November 8, counsel for CGI wrote: “Justine, Got your email and not ignoring you. I simply do not have any authority from client or guidance yet about how to proceed. I will let you know as soon as I can.” CGI did not respond further. (*Id.*) On November 17 and 19, 2021, Milliman wrote to CGI’s counsel regarding scheduling a Rule 10.1 discovery conference. (*Id.*) CGI’s counsel wrote in response: “After conferring with my client, and based on our past discussions, we do not think another conference would be productive. So there is no need to have the call Monday that you suggested.” (*Id.*) To avoid any possible dispute over service of the Subpoena, Milliman formally re-served the Subpoena on December 2, 2021. (**Exhibit F.**) Following re-service of the subpoena, CGI continued to employ the same stall tactics it had used for months, proposing discussion on the Subpoena it then never agrees to schedule. (**Exhibit G.**) Milliman followed up at least two more

times with CGI's counsel to discuss the Subpoena. (*Id.*) On December 9, 2021, CGI made clear it would not agree to hold further discussions or produce any responsive documents, making this motion necessary. (*Id.*).

ARGUMENT

There is no dispute that CGI must produce documents responsive to the Subpoena. The topics in the Subpoena are directed to the allegations about CGI in the litigation. CGI never objected to the Subpoena. La. C.C.P. art. 1354(B). Nonetheless, CGI has improperly refused to produce even a single responsive document.

“A person who, without reasonable excuse, fails to obey a subpoena may be adjudged in contempt of the court which issued the subpoena.” La. C.C.P. art. 1357; *see also Seaward v. City of Hammond*, 01-0770 (La. App. 1 Cir. 6/21/02), 822 So.2d 38 (where entity who failed to comply with subpoena duces tecum violated La. C.C.P. art. 1357). So long as service is properly made, the party must obey the subpoena so as to avoid punishment for contempt. *Id.*

CGI has had ample time to comply with the Subpoena and has not done so, despite Milliman's repeated inquiries and efforts. And CGI has made clear it has no intention of producing any documents. Milliman's subpoena complies with La. C.C.P. art. 1354 by providing a reasonably accurate description of the documents to be produced, and the documents requested are necessary and highly relevant. La. C.C.P. art. 1354(A). Milliman was willing to work cooperatively with CGI to agree on a scope of production and avoid Court involvement, but CGI was unwilling to engage in that process. *See Peyton Place, Condo. Assocs. v. Guastella*, (La. App. 5 Cir. 5/29/09), 18 So. 3d 132, 151; *Self v. Employers Mut. Liability Ins. Co. of Wis.*, 90 So.2d 547 (La. Ct. App. 1956). Depositions are beginning in January and these documents are needed in advance of those depositions to prepare.

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CONCLUSION

Milliman respectfully requests that this Honorable Court grant Milliman's Motion to Compel, and order CGI to comply with Milliman's Subpoena by producing all responsive documents, based on search terms set forth in Exhibit A, within 30 days from entry of an Order.

Respectfully submitted,

/s/ Keith C. Armstrong

CHAFFE McCALL LLP

Keith Armstrong (Bar #20679)

Zachary S. Miller (Bar #38839)

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8550 United Plaza Boulevard

Baton Rouge, LA 70809

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Facsimile: 225-922-4304

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RULE 10.1 CERTIFICATE OF CONFERENCE

I, the undersigned party or attorney, certify to the Court as follows:

Counsel for Milliman requested a 10.1 conference which CGI waived.

Certified this 9th day of December, 2021.

/s/ Keith C. Armstrong

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