

CAUSE NO. D-1-GN-23-008361

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| THE TEXAS DEPARTMENT OF | § | IN THE DISTRICT COURT OF |
| INSURANCE, | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | TRAVIS COUNTY, TEXAS |
| | § | |
| BRIGHT HEALTHCARE INSURANCE | § | |
| COMPANY OF TEXAS | § | |
| <i>Defendant.</i> | § | 455th JUDICIAL DISTRICT |

**SPECIAL DEPUTY RECEIVER’S REPLY TO BHM’S RESPONSE TO MOTION
TO STRIKE THE TESTIMONY OF ANGELA O’NEAL**

TO THE HONORABLE JUDGE OF THIS COURT:

CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Bright Healthcare Insurance Company of Texas (the “SDR” and “BHICOT,” respectively), files its Reply to BHM’s Response to the SDR’s Motion to Strike the Testimony of Angela O’Neal (the “SDR Reply”).

The SDR renews its motion to strike the testimony of Maynard Nexus attorney Angela O’Neal (“Ms. O’Neal”), and to strike from the record the testimony she provided on September 30, 2024. Respondent BHM’s Response fails to refute the mandate that an attorney should not be allowed to testify.

BHM’s Response, in summary, contends that the SDR’s motion is for disqualification, rather than striking, Ms. O’Neal’s testimony; that Ms. O’Neal was not “an advocate;” and that each of four exceptions to DR 3.08’s prohibition applies. None of BHM’s arguments are correct.

BHM incredibly claims that the SDR has not suffered prejudice due to Ms. O’Neal’s dual roles here. The record is replete with evidence of the prejudice. Here, a lawyer from BHICOT’s pre-receivership law firm is testifying about her review of BHICOT’s books and records. None of these books and records have been produced to the SDR. In fact, BHICOT’s pre-receivership counsel is in possession of some of the very BHICOT’s books and records that are the subject of

the SDR's motion to enforce. Tr. at pp. 278 – 281. “It's the 776,369 documents. The four officers and directors. We've [Maynard Nexsen] been hosting them since January of 2024.” *Id.* at 278. This conduct alone is a violation of the Permanent Injunction's express instruction to Maynard Nexsen PC that it turn over BHICOT's books and records. See SDR Exhibit 1, p. 5 – 9. The SDR testified at length on the prejudice suffered by the estate. Tr. at pp. 61 – 62.

The Motion to Strike is not a disqualification motion. BHM's Response ignores the cases cited in the SDR's motion striking attorney testimony. *See, e.g., Mauze v. Curry*, 861 S.W.2d 869, 870 (Tex.1993); *Estes v. Leifeste*, 2024 WL 3679556 at p. 3 (Tex. App.-San Antonio, Aug. 7, 2024, no writ hist), *Southtex 66 Pipeline Co., Ltd. v. Spoor*, 238 S.W.3d 538, 543-544 (Tex. App.-Houston [14th Dist.], 2007, review den'd), *Reliance Capital, Inc. v. G.R. Hmaidan, Inc.*, 2006 WL 1389539 at p. 3-4 (Tex. App.-Houston [14th Dist.], May 28, 2006, no writ). There is a different legal analysis applied to a motion to disqualify counsel. Courts, as noted above, have avoided the issue entirely by striking the offending evidence.

Ms. O'Neal is an advocate. “Angela O'Neal is an attorney at Maynard Nexsen, one of the law firms representing BHM in this matter.” See SDR Attachment 2 - Bright Health Management's Response to Objections to Declaration of Angela O'Neal (“BHM O'Neal Response”) at p. 1. The corporate gymnastics she described regarding her employment by the law firm but that her “client” was the law firm illustrates that BHM's description of her as an allegedly independent witness is a sham. Notwithstanding the fact that her testimony was based on 1.8 hours of work over eight months, she clearly testified on contested matters. The SDR explored this issue in paragraph 9 of the SDR's Motion to Strike and incorporates the section by reference.

Her testimony on BHM's ability and alleged cost to “un-commingle” BHICOT's books and records are neither “uncontested,” nor a “formality” [DR 3.08 (a)(1), (2) exceptions] as alleged in BHM's Response. The SDR contends that all of BHICOT's books and records should be turned

over. BHM flouts the Receivership Court's Permanent Injunction with its argument that compliance is too expensive and time consuming. The reference in BHM's Response to the SDR's witness Mr. Falligant's testimony is telling. Both sides introduced evidence on the subject. Ms. O'Neal argued that it would cost "millions" of dollars to separate the records. Mr. Falligant testified that the work could be done with off-the-shelf software.

BHM argues that Ms. O'Neal is an expert on attorney fees [DR 3.08(a)(3) exception]. First, the rule expressly refers to "legal services **rendered**." She testified about what Nextra Solutions (Maynard Nexsen) was going to charge its "client" (whoever that is). She agreed with her fellow Maynard Nexsen attorney, Ms. Alcantar, that somebody was going to be paid "\$2.4 million" to review BHICOT's books and records. Tr. at pp. 250-253. There was nothing about fees rendered for legal services in her testimony. It was entirely prospective and whether or not the alleged expenses are "legal services" is both questionable and unproven. Ms. O'Neal is definitely not an attorney proving up reasonable and necessary attorney fees to which that exception refers.

BHM contends that there was "informed consent" [DR 3.08 (b) exception] to the dual role. However, there is no evidence of such alleged consent. The mere presence of a BHM employee, Mr. Craig, is no evidence of such "informed consent." Presumably, he or a duly authorized representative of BHM could have submitted an affidavit to BHM's Response attesting that BHM gave the consent. None was submitted in the Response; none was proffered at the hearing on September 30, 2024. Tellingly, BHM's Response is unverified.

Finally, BHM is not entitled to a "do over" by substituting another witness who presumably is not employed by BHM's counsel as a witness. Nothing in TIRA authorizes a party in interest who is flouting the Receivership Court's Permanent Injunction to "try again." None of the cases cited by the SDR in the Motion to Strike discuss allowing a party to find another witness to support the contested ruling.

To repeat the original conclusion to the SDR's Motion to Strike: hiring your law partner to testify as an expert witness that your firm needs to be paid "millions" of dollars to review your former client's commingled fiduciary books and records is barred by DR 3.08. Ms. O'Neal's testimony should be stricken.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Special Deputy Receiver renews fully its request that this Court:

1. sustain the SDR's objection to the testimony of Angela O'Neal;
2. strike the testimony of Angela O'Neal; and
3. grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Greg Pierce
Gregory A. Pierce
State Bar No. 15994250
P.O. Box 40
Austin, Texas 78767
Tel: (512) 474-2154
gpierce@gpiercelaw.com

-and-

Christopher Fuller
State Bar No. 07515500
FULLER LAW GROUP
4612 Ridge Oak Drive
Austin, Texas 78731
Telephone: (512) 470-9544
cfuller@fullerlaw.org

**Attorneys for CANTILO & BENNETT, L.L.P.,
Special Deputy Receiver of
Bright Healthcare Insurance Company of Texas**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the *Special Deputy Receiver's Reply to BHM's Response to Motion to Strike the Testimony of Angela O'Neal* was served pursuant to the Order of Reference to Master, the Texas Rules of Civil Procedure and TEX. INS. CODE 443.007(d) on the following by email, except as specifically otherwise noted.

Via Email: specialmasterclerk@tdi.texas.gov
Tom Collins, Receivership Master
c/o Special Master's Clerk
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Edwin.Hartsfield@tdi.texas.gov
Edwin Hartsfield
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: John.Walker@tdi.texas.gov
John Walker
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Vane.Hugo@tdi.texas.gov
Vane Hugo
TEXAS DEPARTMENT OF INSURANCE
RLO MC-FRD
PO Box 12030
Austin, TX 78711-2030

Via Email: Sandra.Salazar@tdi.texas.gov
Sandra Salazar
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Shawn.Martin@tdi.texas.gov
Shawn Martin
General Counsel Division
Office of Financial Counsel
TEXAS DEPARTMENT OF INSURANCE
PO Box 12030
Austin, TX 78711-2030

Via e-Service: Zachary.Rhines@oag.texas.gov
Zachary L. Rhines
Assistant Attorney General
General Litigation Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548, Mail Stop 01901
Austin, Texas 78711-2548
Counsel for Texas Department of Insurance

Via e-Service: jrixen@rixenlaw.com
Jacqueline Rixen
RIXENLAW
8500 North Mopac Expy, Suite 605
Austin, Texas 78759
*Counsel for the Texas Life and Health
Insurance Guaranty Association*

Via e-Service: sstrickland@mwlaw.com
Stanton Strickland
MITCHELL, WILLIAMS, SELIG, GATES &
WOODYARD, P.L.L.C.
500 W. 5th Street, Ste. 1150
Austin, Texas 78701
Counsel for Bright Health Management, Inc.

Via First Class Mail
INTERNAL REVENUE SERVICE
Special Procedures Branch
300 East 8th Street, Suite 352
Mail Stop 5026AUS
Austin, Texas 78701

Via Email: Milan.Shah@cms.hhs.gov
Via Email: Kelly.Drury@cms.hhs.gov
Milan Shah
Kelly Drury
Centers for Medicare & Medicaid Services
Center for Consumer Information and
Insurance Oversight
7501 Wisconsin Ave
Bethesda, MD 21814

Via Email: ASimon@fmdlegal.com
Via Email: Bgould@fmdlegal.com
Adrienne J. Simon
Blake Gould
Fultz Maddox Dickens PLC
101 South Fifth Street, 27th Floor
Louisville, KY 40202
*Counsel for THC Houston, LLC d/b/a Kindred
Hospital Houston Northwest*

Via e-Service: csoltero@maynardnexsen.com
Via e-Service: lalcantar@maynardnexsen.com
Carlos R. Soltero
Lisa Poole Alcantar
Maynard Nexsen
2500 Bee Caves Road
Building 1, Ste 150
Austin, Texas 78746
Counsel for Bright Health Management, Inc

/s/ Greg Pierce

Gregory A. Pierce

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Greg Pierce on behalf of Greg Pierce

Bar No. 15994250

gpierce@gpiercelaw.com

Envelope ID: 93659298

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Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|---------------------------------|-----------------------|--------|
| Christopher Fuller | 7515500 | cfuller@fullerlaw.org | 10/28/2024 4:53:46 PM | SENT |
| Gregory Pierce | 15994250 | gpierce@gpiercelaw.com | 10/28/2024 4:53:46 PM | SENT |
| Patricia Muniz | | pmuniz@inquestresources.com | 10/28/2024 4:53:46 PM | SENT |
| Brian Falligant | | bfalligant@inquestresources.com | 10/28/2024 4:53:46 PM | SENT |
| Milan Shah | | Milan.Shah@cms.hhs.gov | 10/28/2024 4:53:46 PM | SENT |
| Kelly Drury | | Kelly.Drury@cms.hhs.gov | 10/28/2024 4:53:46 PM | SENT |
| Adrienne Simon | | ASimon@fmdlegal.com | 10/28/2024 4:53:46 PM | SENT |
| Blake Gould | | Bgould@fmdlegal.com | 10/28/2024 4:53:46 PM | SENT |

Associated Case Party: BRIGHT HEALTH MANAGEMENT, INC.

| Name | BarNumber | Email | TimestampSubmitted | Status |
|-----------------|-----------|-----------------------------|-----------------------|--------|
| Rachael Padgett | 24065861 | rpadgett@maynardnexsen.com | 10/28/2024 4:53:46 PM | SENT |
| Lisa Alcantar | 24069284 | lalcantar@maynardnexsen.com | 10/28/2024 4:53:46 PM | SENT |
| Carlos Soltero | 791702 | csoltero@maynardnexsen.com | 10/28/2024 4:53:46 PM | SENT |

Associated Case Party: BRIGHT HEALTHCARE INSURANCE COMPANY OF TEXAS

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|-----------------------|-----------------------|--------|
| Stanton Strickland | 786392 | sstrickland@mwlaw.com | 10/28/2024 4:53:46 PM | SENT |

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Greg Pierce on behalf of Greg Pierce

Bar No. 15994250

gpierce@gpiercelaw.com

Envelope ID: 93659298

Filing Code Description: RESPONSE

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Associated Case Party: Texas Life & Health Insurance Guaranty Association

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|---------------------|-----------------------|--------|
| Jacqueline Rixen | 16962550 | jrixen@rixenlaw.com | 10/28/2024 4:53:46 PM | SENT |

Associated Case Party: TEXAS DEPARTMENT OF INSURANCE

| Name | BarNumber | Email | TimestampSubmitted | Status |
|----------------------|-----------|----------------------------------|-----------------------|--------|
| Shawn Martin | | Shawn.Martin@tdi.texas.gov | 10/28/2024 4:53:46 PM | SENT |
| Zachary Rhines | 24116957 | zachary.rhines@oag.texas.gov | 10/28/2024 4:53:46 PM | SENT |
| Special Master Clerk | | specialmasterclerk@tdi.texas.gov | 10/28/2024 4:53:46 PM | SENT |