

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**HEALTHBRIDGE MANAGEMENT, LLC;
CARE REALTY, LLC; CAREONE, LLC;
107 OSBORNE STREET OPERATING
COMPANY II, LLC d/b/a DANBURY HCC;
710 LONG RIDGE ROAD OPERATING COMPANY II, LLC
d/b/a LONG RIDGE OF STAMFORD;
240 CHURCH STREET OPERATING COMPANY II, LLC
d/b/a NEWINGTON HEALTH CARE CENTER;
1 BURR ROAD OPERATING COMPANY II, LLC
d/b/a WESTPORT HEALTH CARE CENTER;
245 ORANGE AVENUE OPERATING COMPANY II, LLC
d/b/a WEST RIVER HEALTH CARE CENTER;
341 JORDAN LANE OPERATING COMPANY II, LLC d/b/a
WETHERSFIELD HEALTH CARE
CENTER**

and

**Cases 34-CA-070823
34-CA-072875
34-CA-075226
34-CA-083335
34-CA-084717**

**NEW ENGLAND HEALTH CARE EMPLOYEES
UNION, DISTRICT 1199, SEIU, AFL-CIO**

MOTION TO POSTPONE HEARING

Pursuant to Section 102.24 of the National Labor Relations Board's Rules and Regulations, Counsel for the General Counsel ("CGC") file this Motion to Postpone the continuance of the hearing in this matter, currently scheduled to begin on June 9, 2020, until it is safe to do so in person and because CGC objects to cross examining Jonathan Kaplan via video technology. The Charging Party joins in this Motion. CGC consulted with counsel for the Respondents, and the Respondents do not oppose this Motion.¹

¹ CGC consulted with counsel for Care One, LLC as well as Counsel for the other Respondents.

1. *The resumption of the hearing should be postponed indefinitely until such time as it is safe to proceed in person.*

This case is currently scheduled to resume on June 9 for an in-person conference and thereafter on June 10 and 30, July 1, 2, 14 and 15, 2020. It was anticipated that the cross examination and redirect testimony of Respondent's witness, Jonathan Kaplan, followed by the presentation of any remaining witnesses or evidence relating to the bargaining allegations in the complaint, would be conducted during some or all of these dates. As we are all unfortunately aware, since at least March 2020, the United States has been dealing with the COVID-19 global pandemic. New York, especially New York City, and surrounding states, including Connecticut, have been particularly adversely affected by the pandemic. Given the ease of spread of COVID-19, many states have issued stay-at-home and/or shelter-in-place orders, and health officials have advised social distancing and limiting the size of gatherings, among other things, to slow the spread of the virus. Given the current state of the pandemic, and with the tri-state area cautiously beginning phased re-openings—subject to strict guidelines and restrictions-- CGC submits that it is not safe or appropriate to hold an in-person hearing at this time. Conducting the hearing in person means that the no less than 12 individuals² that are regularly present during the hearing will have to travel from various locations to Hartford, CT. Travel, of course, increases possible contacts with those infected with the virus. In Connecticut, there are still restrictions on numbers of individuals that may gather in one place and the proximity that those individuals may be to one another in order to further

² There are three attorneys representing Respondents' (not including the two that solely represent Care One, LLC who do not regularly attend the hearing), CGC now has appearances from two attorneys from the Region and three from the Contempt, Compliance and Special Litigation Branch. The Charging Party is also represented by counsel, plus its hearing representative. The court reporter, witness and, of course, Your Honor add another three.

reduce the risk of spread of infection.³ Further, while CGC understands Your Honor's hope that we may be able to travel and gather in person on the dates scheduled for late June and July, CGC submits that even if personal protective equipment ("PPE") might be available, this is also unfeasible to plan. There is considerable uncertainty about whether individuals involved in this case will be able to travel in late June and July. Even if travel is a possibility, gathering 12 individuals in the Region's hearing rooms, to spend 6 or more hours together talking, even with PPE, seems a significant risk at this time when COVID-19 is hopefully at the nascent stage of regressing. Additionally, it is not certain whether appropriate PPE can be available for everyone in time for this hearing to resume as presently scheduled. The uncertainty surrounding what may or may not happen during this pandemic and the more recent move to reopen the economy and loosen restrictions, supports postponing the trial until a time when we can be certain it can be held safely and in person.

2. This hearing is not well-suited to be conducted by video and fairness dictates that resumption of the hearing should be postponed until Jonathan Kaplan can be cross examined in person.

On about May 15, 2020, the Division of Judges announced that video hearings may be conducted in lieu of in-person hearings beginning on June 1, 2020. CGC and the Charging Party object to conducting this hearing via video, as this hearing has been conducted entirely in person and the nature of this particular case does not lend itself to transitioning to video presentation. Initially, it bears noting that no one can seriously

³ Currently, Subregion 34 is closed to the public and staff are directed to telework and access to the office is prohibited absent authorization from Operations. No date to reopen the office has been set. The U.S. Court for District of Connecticut has recently ordered that all civil and criminal jury trials scheduled to commence on or before September 1, 2020 are continued.
http://www.ctd.uscourts.gov/sites/default/files/20-17_-_COVID-19-General-Order-Re-Jury-Trials.pdf

dispute that conducting a hearing via video conference technology is less optimal than conducting hearings in person, with the physical presence of the parties, witnesses, and judge. Taking video testimony of witnesses, with the involved attorneys and parties in many different locations, presents challenges and raises concerns about fairness to the parties involved. Video technology simply does not provide parties the same opportunity to observe witness demeanor, cross examine witnesses, and ensure that witnesses are not being improperly influenced by someone or something off-camera. Between the dozens of different pieces of hardware involved, as well as software compatibility and network issues, technical issues can—and will—delay proceedings, interrupt the flow of questioning/testimony, and confuse the record. Handling documentary evidence to be referenced during video testimony can become unnecessarily cumbersome even in simple cases. That is why the standard practice of the NLRB, as well as most state and federal courts, is to conduct trials in person, frequently requiring witnesses, attorneys, and judges to travel hundreds or even thousands of miles to do so.

This hearing has already spanned 39 trial dates, completing testimony of three witnesses and accumulating nearly 300 exhibits. Transitioning this record and continuing this hearing via a video platform will present logistical hurdles far in excess of other hearings of narrower scope and more limited records. Moreover, transitioning to video at this point raises fundamental questions of fairness. Jonathan Kaplan is Respondents' key witness, upon whom Respondents are relying to establish their defense to this case. Mr. Kaplan testified in person on direct examination for nine days about his conduct representing Respondents at the bargaining table. Assessing Mr.

Kaplan's credibility, or weighing the relative credibility of all the witnesses and testimony involved, is an important consideration in this case. Given that Respondents have had the opportunity to present Mr. Kaplan's direct testimony in person, it would be prejudicial to force CGC and the Charging Party to conduct their cross examination of Mr. Kaplan by video. The unfairness would only be compounded by the fact that Respondents have already had the opportunity to cross examine CGC's main witnesses, Ms. Clark and Mr. Pickus, for several days of in-person hearing. Thus, this is not a situation where both sides will be equally impacted by the limitations of video testimony—where all witnesses, all direct and cross examination, are conducted under the same circumstances.

Cross examination is also not as straightforward as direct examination; it is hard to predict where the testimony may turn at any given point. Because of the dynamic nature of cross examination and the need for flexibility as to subject matter and exhibits, video cross examination presents a significant disadvantage to CGC that was not shared equally by Respondents. Indeed, Respondents had the advantage of cross examining the CGC's witnesses in person. Again, proceeding with video testimony at this time in the hearing, when all parties will not bear the inherent difficulties of video testimony equally, presents a significant prejudice to the CGC and Charging Party.

CGC respectfully requests that the hearing in this matter be postponed indefinitely until such time as all involved can be reasonably certain that it can be safely conducted in person. In this regard, it may be possible that travel and gathering in person will be more possible later this summer or in the fall. The uncertainties of the current situation will hopefully be clarified over the coming months, as more of the

country reopens, and we may be in a better position to make a decision on how to proceed with this hearing in a way that protects the health and safety of everyone involved while also protecting the fairness and efficiency of these proceedings. In this regard, Respondents' counsel has arranged for Mr. Kaplan to be available to complete his testimony on October 21 and 22; October 26 (in the afternoon) through October 29; and Mr. Kaplan can make himself available the second week of November 2020 if his testimony has not concluded in October (with the exception of Veterans Day). CGC and the Charging Party will also hold these dates for resumption of in person testimony. If Your Honor desires, a conference date can be set in advance of October so that the parties' can discuss whether and how to move forward on these October and November dates.

Dated: May 20, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Motion to Postpone Hearing were caused to be served on May 20, 2020, in the manner set forth below:

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