

**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**

**JOINT RESPONSE TO ORDER TO SHOW CAUSE**

On September 3, 2020, Your Honor issued an Order to Show Cause soliciting the parties' positions either for or in opposition to conducting the hearing scheduled to resume on October 21, 2020 by Zoom video conference. Your Honor previously instructed the parties to discuss whether 1) an in-person hearing is possible for the October scheduled dates and 2) the appropriateness of a video hearing in lieu of an in-person proceeding. Counsels for the General Counsel (CGC), Charging Party and Respondents have conferred and jointly file this response requesting that the hearing

not resume via Zoom Video conference and that instead it be rescheduled to dates in 2021 to a time when resuming the hearing in person will be possible. The parties agree that 1) resuming the hearing in person in October remains both unsafe and unfeasible in Connecticut at this time; and 2) that this case is inappropriate for video hearing.

***1. Resuming the hearing in person in October remains unsafe and unfeasible***

While there have been improvements in COVID-19 infection rates in New England, the pandemic continues to surge in various locations across the United States. Connecticut remains “paused” in Phase 2 of its reopening plan, as Governor Lamont postponed the move to Phase 3 indefinitely based on his concern that locations that reopened too quickly (or that did not initially put in place protective measures) were experiencing increasing positive rates of COVID-19. Thus, there are still restrictions on the number of individuals that may gather in one place and the proximity that those individuals may be to one another in order to further reduce the risk of spread of infection. Further, Connecticut has placed travel restrictions on individuals traveling to Connecticut from States with a 10% or higher test positivity rate. Specifically, Connecticut currently requires a mandatory quarantine period of 14 days for those individuals traveling from 29 States, including at least two states from which Respondents’ witness and Respondents’ counsel will be traveling (Tennessee and South Carolina).<sup>1</sup> Gathering together in person for resumption of the hearing remains

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<sup>1</sup> <https://portal.ct.gov/Coronavirus/Travel>; Currently, Subregion 34 is closed to the public and almost all staff are teleworking. If staff wish to access the office, they must provide advance notification. No date to reopen the office has been set. The U.S. Court for District of Connecticut has extended its order that all criminal jury trials scheduled to commence on or before November 1, 2020 are continued. Civil jury trials may commence after September 1, 2020 at the judges’ discretion after considering interests

unsafe and, given the quarantine requirements currently in place, unfeasible for necessary parties.

**2. This hearing is not well-suited to be conducted by video hearing**

CGC and the Charging Party's position, to which Respondents consent, is that resuming this hearing via Zoom video conference is inappropriate. This position is based on the fact that all aspects of this case render it ill-suited to continue by Zoom. The issues in this case are complex, and the hearing has spanned 39 in-person hearing dates so far; the transcripts are voluminous, and the record includes hundreds of exhibits, which will be cumbersome and inefficient (at best) to handle in a virtual hearing. Jonathan Kaplan's direct testimony exceeded nine days of in-person testimony and referenced well over a hundred exhibits. In light of the document-intensive nature of Mr. Kaplan's testimony, CGC's and the Charging Party's position, to which Respondents consent, is that his cross examination should take place when all of the parties can be present in the same room, with the ability to freely exchange and discuss exhibits without the additional complexities and instabilities of an electronic intermediary.<sup>2</sup>

The Board's recent rulings do not *require* Your Honor to order the hearing to continue via Zoom. Rather, the Board has left discretion to the trial judge to determine

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of justice and risks to public health in each case.

[http://ctd.uscourts.gov/sites/default/files/20-24\\_COVID-19-General-Order-Re-Jury-Selections-Trials.pdf](http://ctd.uscourts.gov/sites/default/files/20-24_COVID-19-General-Order-Re-Jury-Selections-Trials.pdf)

<sup>2</sup> Counsel for the General Counsel and Counsel for Charging Party also maintain their position, as previously detailed in CGC's May 20, 2020 Motion to Reschedule the Hearing, that because Mr. Kaplan's direct testimony was conducted in-person, it would be unduly prejudicial to now conduct his cross examination virtually. Although Respondents do not agree with that position, the parties agree, for the reasons detailed above, that the hearing should not be conducted virtually.

whether a particular hearing is not appropriate for video hearing, taking into account the factors that exist here: complexity, cumbersomeness, and a document- and fact-heavy record. While the Board has recently upheld administrative law judges' decisions to conduct hearings via Zoom, those cases, unlike the instant case, will proceed entirely via video from the outset, building a record electronically from the start and with all parties involved having to cope with the challenges of video testimony on equal footing. Here, the parties respectfully submit that the complexity of the issues presented in this case, the voluminous hearing record, and the fact that the hearing has so far been conducted in person render this hearing particularly inappropriate for proceeding via Zoom.<sup>3</sup>

Respectfully submitted on behalf of  
Counsel for the General Counsel and  
Counsel for the Charging Party and  
Respondents,

*/s/ Jennifer F. Dease*

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Dated at Hartford, Connecticut, this 14th day of September, 2020.

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<sup>3</sup> The parties are available to resume the hearing in person on the following dates: March 2-4, March 8-11, and March 15-16, 2021.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Joint Response were caused to be served on September 14, 2020, in the manner set forth below:

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