

Insurance Committee Meeting

May 11, 2020

1:30 PM

Burdette Courtroom

In Attendance: Chairman Justice Bill Nelson. Committee Members Justice Alvin Clay, Justice Howard Norvell, and Justice Molly Jackson. Committee Member NOT PRESENT: Justice Sylvester Belcher. Other JP's present: Justice Neil Burge and Justice Michael White. Others in attendance: Joseph Fondren – NEA Town Courier, Kelli Jones – Finance, Steven Savage – Public Affairs Director, Leslie Lawrence – PR/HR/Insurance, Jeremy Thomas – County Attorney, County Judge John Nelson, County Treasurer Peggy Meatte and County Clerk Janice Currie.

Chairman Nelson called the meeting to order. Justice Nelson turned the meeting over to County Attorney, Jeremy Thomas, to give an update on the Gerber situation. Jeremy explained that the mediation hearing that was held last week did not go well. Gerber did not offer enough money to help get the claims paid. Jeremy believes that the offer was somewhere around \$115,000. Jeremy did not have the amount that was offered by Performance Health. Since there wasn't enough money offered, the hearing came to an end and there was a follow up call with the Federal Judge who is presiding over the case on Thursday and Friday. The Judge said that if you can't settle on an amount the case will be set for arbitration. Arbitration is like a court procedure where the final decision cannot be appealed. Both sides will try to find unbiased Judges to be the arbitrators. The Federal Judge in Ohio recommended to Dave Nichol, Attorney for Performance Health, that he encourage all of the groups to join together to participate in the arbitration. Since the call with the Federal Judge, Gerber has offered to pay 40% of the unpaid claims as long as someone else will match the 40%. Gerber would then try to negotiate with the providers to accept the 80%. Jeremy said that he felt like Performance would chip in on the 40% match and that the county would have to pay the rest. Jeremy said he would not even want to consider this offer since Gerber actually owes 100% of the unpaid claims. Jeremy said the question for today is do we want to join in the arbitration? Dave Nichol had calls scheduled today with other county attorneys and is trying to get as many counties on board as possible. It is possible that the arbitration hearing would be scheduled out 6 months. The Arkansas counties involved are Mississippi, Crittenden, Lawrence, Jefferson, Cross and possibly one more. There are possibly 3 counties in Mississippi that are involved. Judge Nelson called some of the other County Judges and they are supposed to be reviewing the facts and allowing Jeremy to speak to their county attorneys. It is unknown what amount is owed for the claims in Mississippi county as well as the other counties involved. Jeremy Thomas said for Mississippi County that it was somewhere around \$800k and that the amount is going up. He also said he did not know where the arbitration would take place but, it would not be in Arkansas. They usually get retired Judges to be arbitrators. And you would want to find three arbitrators that are experienced in insurance law. The expense of the arbitration will be paid by Performance Health. Jeremy said he didn't know if that would include travel expenses. Jeremy said that they are hoping to have an arbitration hearing scheduled within 6 months and if we filed

a federal law suit it would probably be at least a year to actually get a court date. The outcome of the arbitration will be binding and there is not a guarantee of what the outcome will be. Justice Jackson asked about the possibility of Performance Health having any responsibility in this situation. Jeremy said he wasn't sure about that and that he thought it all fell on Gerber. Justice White asked Jeremy to talk to Dave Nichol about a previous arbitration case against Gerber involving a similar situation. Justice Norvell asked if Jeremy could draft a letter that employees could use to give to their providers and/or collection agencies to explain the situation and hopefully give the employees more time before seeking action. Jeremy said he would draft something. When asked, he explained that the letter could possibly help the employees but, it was up to the different agencies on what they would do with the letters. Justice Nelson asked Justice White if he had any comments from the Finance Committee regarding this situation? Justice White said he did not but, that he was deeply concerned for the employees and he didn't know what to do for them. He also asked Jeremy if the county paid claims for the employees would that hurt us in an arbitration hearing. Jeremy had previously checked and said that if the county paid it shouldn't damage our case and we could ask for reimbursement from Gerber. Dave Nichol wanted to know an amount that the county would be willing to pay. Justice Nelson said that threw up a flag because we would not want them to use that against us in an arbitration case. Justice Burge asked about our options. Jeremy said that we either join the group in the arbitration hearing held somewhere else, we enter into an arbitration case individually in Arkansas or we sue individually and it will be thrown out because of the arbitration clause in the contract. There was consensus that our case may be stronger as a group. Justice Nelson entertained a motion to join the group or arbitrate singularly. Justice Norvell made the motion that we join the group in arbitration. Justice Jackson 2nd the motion. No further discussion. All were in favor. None opposed.

Justice White asked Justice Nelson where we go from here for the employees? Justice Nelson deferred to Jeremy Thomas. Jeremy said that would be the county's decision whether to pay claims. It would be legal but, the question would be how to go about it. Who's claims do you pay? How much of each claim do you pay? Justice Norvell agreed with Justice White and said this could take a year or more if we end up in a law suit and if there is some kind of way to figure out how to help employees and if the county could afford it. Justice White said maybe the employees could give us a dollar amount so we could get an idea of how much. Justice Norvell said it would be hard to figure out what people actually owe. Justice Jackson suggested just starting with the letters from Jeremy and see if that will help the employees first. Justice Burge suggested sending out a memo to all employees about the availability of a letter. Employees could go to Kelli Jones to pick up a letter and Kelli could document the dollar amount so that there can be a running total of the amounts owed. County Treasurer, Peggy Meatte, explained to the committee that she had a large claim service date back in September and that she is just now receiving bills related to the service date so the total amount owed on claims is probably going to continue to grow. Judge Nelson asked if we knew how many employees were affected and asked if maybe Performance could give us that information and a dollar amount. Judge Nelson said he would like to know how many employees have been affected. Jeremy said maybe Performance could give us

some numbers but, the total number of employees and a total dollar amount is not known at this time.

Justice Nelson asked for any other comments or business before adjourning. There were none. Justice Nelson adjourned the meeting.

Minutes submitted by Kelli Jones