

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

NO. 651,069

SECTION 22

VERSUS

TERRY S. SHILLING, ET AL.

**PATRICK C. POWERS' PEREMPTORY EXCEPTIONS OF NO RIGHT OF
ACTION AND NO CAUSE OF ACTION AND DILATORY EXCEPTION OF
VAGUENESS AND AMBIGUITY OF THE PETITION**

NOW COMES defendant, Patrick C. Powers, and excepts to the claims of petitioner on the following grounds:

1.

Petitioners have no right of action against defendant. Defendant, therefore, asserts a peremptory exception of no right of action pursuant to La. Code Civ. P. art. 927(A)(6).

2.

The facts alleged in the Petition and the First Supplemental, Amending and Re-Styled Petition for Damages fail to state a cause of action upon which relief can be granted. Defendant, therefore, asserts a peremptory exception of no cause of action pursuant to La. Code Civ. P. art. 927(A)(5).

3.

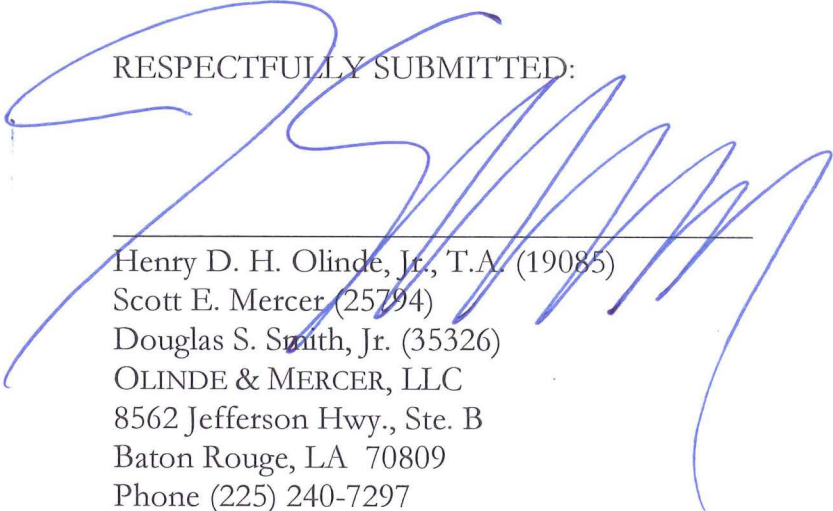
Alternatively, petitioner's Petition is vague and ambiguous with respect to the allegations against defendant. Defendant, therefore, asserts a dilatory exception of vagueness or ambiguity of the Petition pursuant to La. Code Civ. P. art. 926(A)(5).

4.

Pursuant to La. Code Civ. P. art. 853, defendant adopts by reference his memorandum in support of these exceptions.

WHEREFORE, Patrick C. Powers prays that after due proceedings are had, his exceptions be maintained/granted and that petitioner's claims be dismissed with prejudice or, alternatively, that he be granted such other relief as the Court may deem appropriate under the circumstances.

RESPECTFULLY SUBMITTED:



Henry D. H. Olinde, Jr., T.A. (19085)
Scott E. Mercer (25794)
Douglas S. Smith, Jr. (35326)
OLINDE & MERCER, LLC
8562 Jefferson Hwy., Ste. B
Baton Rouge, LA 70809
Phone (225) 240-7297
Fax (866) 454-8139

Attorneys for Defendant, Patrick C. Powers

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing pleading has been served upon all counsel of record by electronic means and/or by depositing same in the United States Mail, first class postage prepaid, and sent to their last known address as follows:

J. E. Cullens, Jr.
Edward J. Walters, Jr.
Darrel J. Papillion
David Abboud Thomas
Jennifer Wise Moroux
Walters, Papillion, Thomas,
Cullens, LLC
12345 Perkins Road, Bldg. 1
Baton Rouge, LA 70810

James A. Brown
Mirais M. Holden
A'Dair Flynt
Liskow & Lewis
P. O. Box 52008
Lafayette, LA 70505

Matt J. Farley
Richard E. Baudouin
Krebs Farley, P.L.L.C.
400 Poydras St., Ste. 2500
New Orleans, LA 70130

Harry J. Phillips, Jr.
Taylor, Porter, Brooks & Phillips, LLP
450 Laurel St. 8th Floor
Baton Rouge LA, 70801-1700

Robert B. Bieck, Jr.
Joseph J. Lowenthal, Jr.
Mark A. Mintz
Alexander N. Breckinridge, V
Jones Walker, LLP
201 St. Charles Ave., 49th Floor
New Orleans, LA 70170-5100

V. Thomas Clark, Jr.
J. Robert Wooley
Kellen J. Mathews
Grant J. Guillot
Adams and Reese, LLP
450 Laurel St., Ste. 1900
Baton Rouge, LA 70801

Robert J. David, Jr.
Alyse S. Richard
Sarah E. Stephens
Juneau David, APLC
P. O. Drawer 51268
Lafayette, LA 70505-1268

W. Brett Mason
Stone Pigman Walther Wittman
301 Main St., Ste. 1150
Baton Rouge, LA 70825

Baton Rouge, Louisiana, this 17th day of February, 2017.



HENRY D. H. OLINDE, JR.

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

NO. 651,069

SECTION 22

VERSUS

TERRY S. SHILLING, ET AL.

RULE TO SHOW CAUSE

Considering the Peremptory Exceptions of No Right of Action and No Cause of Action and Dilatory Exception of Vagueness and Ambiguity of the Petition filed by defendant, Patrick C. Powers;

IT IS HEREBY ORDERED that Petitioner, James J. Donelon, show cause, if any he can, on the _____ day of _____, 2017 at ___:___ o'clock __.m. why defendant's exceptions should not be granted/maintained and petitioner's claims be dismissed with prejudice at petitioner's cost and/or defendant be granted all other appropriate relief.

Baton Rouge, Louisiana, this _____ day of _____, 2017.

TIMOTHY E. KELLY, JUDGE
19TH JUDICIAL DISTRICT COURT

SHERIFF PLEASE SERVE:

James J. Donelon

Through his counsel of record:

J. E. Cullens, Jr.

Edward J. Walters, Jr.

Darrel J. Papillion

David Abboud Thomas

Jennifer Wise Moroux

Walters, Papillion, Thomas, Cullens, LLC

12345 Perkins Road, Bldg. 1

Baton Rouge, LA 70810

CLERK PLEASE SEND NOTICE TO :

Henry D. H. Olinde, Jr.
Olinde & Mercer, LLC
8562 Jefferson Hwy., Ste. B
Baton Rouge, LA 70809

Matt J. Farley
Richard E. Baudouin
Krebs Farley, P.L.L.C.
400 Poydras St., Ste. 2500
New Orleans, LA 70130

James A. Brown
Mirais M. Holden
A'Dair Flynt
Lislow & Lewis
One Shell Square
701 Poydras St., Ste. 5000
New Orleans, LA 70139-5099

Robert B. Bieck, Jr.
Joseph J. Lowenthal, Jr.
Mark A. Mintz
Alexander N. Breckinridge, V
Jones Walker, LLP
201 St. Charles Ave., 49th Floor
New Orleans, LA 70170-5100

V. Thomas Clark, Jr.
J. Robert Wooley
Kellen J. Mathews
Grant J. Guillot
Adams and Reese, LLP
450 Laurel St., Ste. 1900
Baton Rouge, LA 70801

Robert J. David, Jr.
Alyse S. Richard
Sarah E. Stephens
Juneau David, APLC
P. O. Drawer 51268
Lafayette, LA 70505-1268

W. Brett Mason
Stone Pigman Walther Wittman
301 Main St., Ste. 1150
Baton Rouge, LA 70825

Harry J. Phillips, Jr.
Taylor, Porter, Brooks & Phillips, LLP
450 Laurel St. 8th Floor
Baton Rouge LA, 70801-1700

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

JAMES J. DONELON, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA, IN HIS CAPACITY AS
REHABILITATOR OF LOUISIANA
HEALTH COOPERATIVE, INC.

NO. 651,069

SECTION 22

VERSUS

TERRY S. SHILLING, ET AL.

**PATRICK C. POWERS' MEMORANDUM IN SUPPORT OF HIS PEREMPTORY
EXCEPTIONS OF NO RIGHT OF ACTION AND NO CAUSE OF ACTION
AND DILATORY EXCEPTION OF VAGUENESS AND
AMBIGUITY OF THE PETITION**

MAY IT PLEASE THE COURT:

I. BACKGROUND AND FACTS

The matter arises out of the failure of Louisiana Health Cooperative, Inc. ("LAHC"). LAHC was a "consumer operated and oriented plan" ("Co-Op") established pursuant to the Patient Affordable Care Act of 2010 ("the ACA") a/k/a "Obamacare." See, 42 U.S.C. § 18042; 45 C.F.R. § 156.500 *et seq.* There were originally twenty-three Co-Ops serving various states in the nation. To date, at least seventeen of those Co-Ops have failed. LAHC, one of those failures, was placed into rehabilitation in September 2015 by Louisiana Insurance Commissioner Jim Donelon ("Donelon"). Approximately one year later, on August 31, 2016, Donelon commenced this action against numerous defendants, including Patrick C. Powers ("Powers").

Powers was LAHC's Chief Financial Officer from January 31, 2014 through April 06, 2015.¹ The only allegation in the FSARP that specifically refers to an action taken by Powers is as follows: "Buck's engagement letter was signed by Powers on behalf of LAHC on April 4, 2014, and had an effective date of April 1, 2014."²

¹ First Supplemental, Amending and Restated Petition for Damages ("FSARP") at ¶10(f).

² FSARP at ¶105. Buck refers to Buck Consultants, LLC, an actuary firm that contracted with LAHC. Buck is also a defendant in these proceedings.

II. LAW AND ARGUMENT

Pursuant to La. Code Civ. P. art 853, Powers adopts by reference the legal arguments set forth in the “Defendant’s Memorandum in Support of Exceptions” filed by defendants, Warner L. Thomas, IV and William A. Oliver on February 17, 2017.

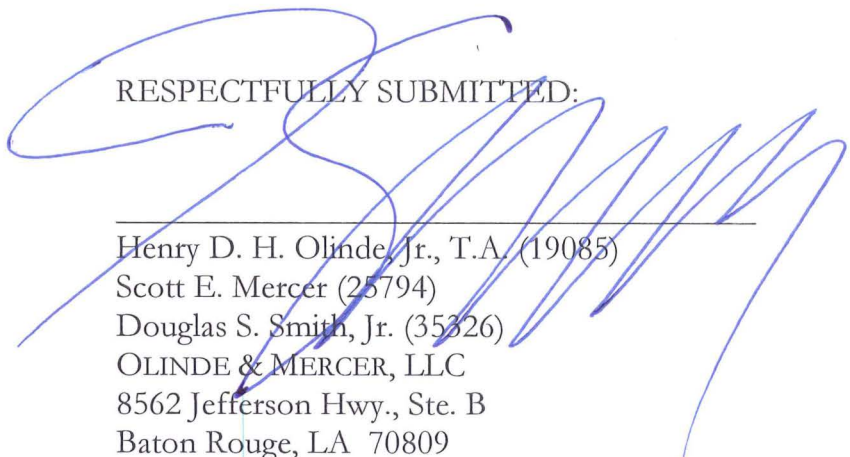
In support of the vagueness and ambiguity exception, Powers would add the following:

A petition must contain material facts and sufficient substantial particulars which would permit defendants to appropriately prepare their defense. *Smart v. Gold, Weems, Bruser, Sues & Rundell*, 2006-1414 (La. App. 3rd Cir. 4/4/07), 955 So. 2d 263, 268, *writ denied*, 2007-0854 (La. 6/22/07), 959 So. 2d 497. In addition to causation issues, there are obvious prescription issues in play in this case.³ Powers, however, cannot adequately prepare his prescription defense because the FSARP does not identify his supposedly wrongful actions and/or when they occurred. Under *Smart*, Donelon should be required to allege the material facts relating to Powers’ supposedly wrongful acts, i.e. what they were and *when they occurred*. Requiring that Donelon plead these material facts would, *inter alia*, allow Powers and the other parties to eliminate clearly prescribed claims and significantly narrow the issues for discovery and trial.

III. CONCLUSION

For the reasons set forth above, Powers’ exceptions should be granted.

RESPECTFULLY SUBMITTED:



Henry D. H. Olinde, Jr., T.A. (19085)
Scott E. Mercer (25794)
Douglas S. Smith, Jr. (35326)
OLINDE & MERCER, LLC
8562 Jefferson Hwy., Ste. B
Baton Rouge, LA 70809
Phone (225) 240-7297
Fax (866) 454-8139

Attorneys for Defendant, Patrick C. Powers

³ Donelon implicitly acknowledges the existence of his prescription problems by attempting to plead around them. See, FSARP at ¶¶ 139-142.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing pleading has been served upon all counsel of record by electronic means and/or by depositing same in the United States Mail, first class postage prepaid, and sent to their last known address as follows:

J. E. Cullens, Jr.
Edward J. Walters, Jr.
Darrel J. Papillion
David Abboud Thomas
Jennifer Wise Moroux
Walters, Papillion, Thomas,
Cullens, LLC
12345 Perkins Road, Bldg. 1
Baton Rouge, LA 70810

Matt J. Farley
Richard E. Baudouin
Krebs Farley, P.L.L.C.
400 Poydras St., Ste. 2500
New Orleans, LA 70130

James A. Brown
Mirais M. Holden
A'Dair Flynt
Liskow & Lewis
One Shell Square
701 Poydras St., Ste. 5000
New Orleans, LA 70139-5099

Harry J. Philips, Jr.
Taylor, Porter, Brooks & Phillips, LLP
450 Laurel St. 8th Floor
Baton Rouge LA, 70801-1700

Robert B. Bieck, Jr.
Joseph J. Lowenthal, Jr.
Mark A. Mintz
Alexander N. Breckinridge, V
Jones Walker, LLP
201 St. Charles Ave., 49th Floor
New Orleans, LA 70170-5100

V. Thomas Clark, Jr.
J. Robert Wooley
Kellen J. Mathews
Grant J. Guillot
Adams and Reese, LLP
450 Laurel St., Ste. 1900
Baton Rouge, LA 70801

Robert J. David, Jr.
Alyse S. Richard
Sarah E. Stephens
Juneau David, APLC
P. O. Drawer 51268
Lafayette, LA 70505-1268

Baton Rouge, Louisiana, this 17th day of February, 2017.



HENRY D. H. OLINDE, JR.