

19<sup>th</sup> JUDICIAL DISTRICT COURT FOR EAST BATON ROUGE PARISH

STATE OF LOUISIANA

SUIT NO. C-651069

SECTION 22

JAMES J. DONELON, COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA, et al

VERSUS

CGI TECHNOLOGIES AND SOLUTIONS, INC., et al

FILED: \_\_\_\_\_

DEPUTY CLERK

**RSUI'S ANSWER TO SECOND SUPPLEMENTAL, AMENDING AND RESTATED  
PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL**

RSUI Indemnity Company ("RSUI"), Defendant, through its counsel of record, responds to the Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial ("Second Amended Petition") submitted on behalf of James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his Capacity as Rehabilitator of Louisiana Health Cooperative, Inc., Plaintiff, as follows:

**ANSWER TO SECOND AMENDED PETITION**

1. Paragraphs 1, 2, 3, 4 and 5 of the Second Amended Petition contain legal statements to which a response is not required. To the extent that a response may be required, RSUI denies paragraphs 1, 2, 3, 4 and 5 of the Second Amended Petition.

2. RSUI denies the allegations of paragraphs 6, 7, and 8 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.

3. Paragraph 9 of the Second Amended Petition contains a legal statement to which a response is not required. To the extent that a response may be required, RSUI denies paragraph 9 of the Second Amended Petition.

4. RSUI denies the allegations of paragraphs 10, 11, 12 and 13 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.

5. In response to paragraph 14(d) of the Second Amended Petition, RSUI admits that it is a foreign insurer. RSUI further admits that it issued a policy of insurance to Ochsner Clinic Foundation ("Ochsner"), bearing policy number HS667778 with effective dates of June 1, 2016 through June 1, 2017, and a policy bearing policy number HS672223 with effective dates of June 1, 2017 through June 1, 2018 (collectively the "RSUI Policies"), which Policies are the best

evidence of their contents and are subject to the terms and conditions described therein. RSUI specifically pleads the terms, conditions, endorsements, exclusions, limitations and provisions of the RSUI Policies as if copied herein. RSUI denies that the RSUI Policies provide any coverage for the claims alleged or described in the Second Amended Petition, and further denies any liability, obligation or responsibility in connection with the allegations and circumstances described in that pleadings. Except as expressly admitted, RSUI otherwise denies paragraph 14 of the Petition for lack of information sufficient to justify a belief in the truth thereof.

6. Paragraph 15 of the Second Amended Petition contains a legal statement to which a response is not required. To the extent that a response may be required, RSUI denies paragraph 15 of the Second Amended Petition.

7. RSUI denies the allegations of paragraphs 16, 17, 18, 19, 20, 21, and 22 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.

8. RSUI denies the allegations of paragraph 23 of the Second Amended Petition.

9. In response to paragraph 24, RSUI repeats its responses to paragraphs 1-23 as if set forth fully herein.

10. RSUI denies the allegations of paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.

11. RSUI denies the allegations of paragraph 40 and 41 of the Second Amended Petition.

12. In response to paragraph 42, RSUI repeats its responses to paragraphs 1-41 as if set forth fully herein.

13. RSUI denies the allegations of paragraphs 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.

14. In response to paragraph 72, RSUI repeats its responses to paragraphs 1-71 as if set forth fully herein.

15. RSUI denies the allegations of paragraphs 73, 74, 75, 76, 77, 78, 79 and 80 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.



16. In response to paragraph 81, RSUI repeats its responses to paragraphs 1-80 as if set forth fully herein.

17. RSUI denies the allegations of paragraphs 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133 and 134 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.

18. In response to paragraph 135, RSUI repeats its responses to paragraphs 1-134 as if set forth fully herein.

19. RSUI denies the allegations of paragraphs 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148 and 149 of the Second Amended Petition for lack of information sufficient to justify a belief in the truth thereof.

20. Paragraph 150 of the Second Amended Petition contains a legal statement to which a response is not required. To the extent that a response may be required, RSUI denies paragraph 150 of the Second Amended Petition.

21. RSUI further denies the allegations of any and all other numbered, unnumbered, or misnumbered paragraphs, and denies that Plaintiff is entitled to any of the relief sought in his prayer for relief.

#### **AFFIRMATIVE DEFENSES AND OTHER RESPONSES**

RSUI asserts the following affirmative defenses and additional responses to the Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial filed by Plaintiff.

#### **FIRST DEFENSE**

RSUI's obligations (if any) are subject to the terms, conditions, endorsements, exclusions, limitations and other provisions of the RSUI Policies, which are adopted and referenced as if copied herein, and/or applicable law.

#### **SECOND DEFENSE**

The Second Amended Petition is not covered because it was not first made against an Insured and reported to RSUI in accordance with the applicable provisions of the RSUI Policies.

### **THIRD DEFENSE**

The Second Amended Petition fails to state a claim upon which relief can be granted against RSUI.

### **FOURTH DEFENSE**

The claims asserted in the Second Amended Petition against RSUI are prescribed and/or preempted in whole or alternatively in part.

### **FIFTH DEFENSE**

To the extent that they are applicable to any claims asserted by Plaintiff (which RSUI denies based upon information and belief), the RSUI Policies are excess to policies of insurance issued by Darwin National Assurance Company / Allied World Specialty Insurance Company (“Allied World”) to Ochsner (the “Allied World Policies”) and policies of insurance issued by Evanston Insurance Company (“Evanston”) to Ochsner (the “Evanston Policies”).

### **SIXTH DEFENSE**

RSUI alternatively avers that the limits and coverage provided by the Allied World Policies, the Evanston Policies, and any other primary coverage or other insurance available to the insureds under the RSUI Policies, must be first exhausted and paid before any coverage under the RSUI Policies may be applicable or available.

### **SEVENTH DEFENSE**

Alternatively, any coverage that may be available under the RSUI Policies is subject to the terms, conditions, endorsements, exclusions, limitations and other provisions of the RSUI Policies, and/or to any applicable law.

### **EIGHTH DEFENSE**

Alternatively, any coverage that may be available under the RSUI Policies is subject to the terms, conditions, endorsements, exclusions, limitations and other provisions of the Allied World Policies, and any other primary coverage or other insurance available to the insureds under the RSUI Policies, which policies are adopted and referenced as if copied herein, and/or to applicable law.

### **NINTH DEFENSE**

Plaintiff's claims are barred, or alternatively reduced, by the doctrine of avoidable consequences.



#### **TENTH DEFENSE**

To the extent that Ochsner or any other insured breached or failed to comply with or perform any obligations or duties set forth or included in the RSUI Policies, RSUI denies any liability under the RSUI Policies.

#### **ELEVENTH DEFENSE**

RSUI alternatively avers upon information and belief that the claims, damages and other relief requested or set forth in the Second Amended Petition arose from the negligence, fault and/or want of due care on the part of parties other than any insured under the RSUI Policies, and/or other natural and juridical persons and/or other circumstances, that bar or alternatively reduce any right of recovery against RSUI.

#### **TWELFTH DEFENSE**

Plaintiff's claims against RSUI are barred by the doctrines of res judicata and/or collateral estoppel.

#### **THIRTEENTH DEFENSE**

Upon information and belief, any damage(s), losses or other relief described in the Second Amended Complaint, if any, were caused by parties or non-parties for whose actions, conduct, fault, negligence or omissions RSUI is not responsible or liable.

#### **FOURTEENTH DEFENSE**

Alternatively, any party who suffered any damages as alleged in the Second Amended Complaint failed to take reasonable or appropriate conduct in order to mitigate damages, if any.

#### **FIFTEENTH DEFENSE**

Plaintiff's claims against RSUI are barred, in whole or in part, by the principles of acquiescence, consent, amendment, modification, merger, estoppel, waiver, legal justification, license, excuse and/or privilege, transaction and compromise, payment, set off, failure or lack of consideration, and by its own particular acts and omissions.

#### **SIXTEENTH DEFENSE**

Plaintiff has no right of direct action against RSUI.

#### **SEVENTEENTH DEFENSE**

RSUI hereby adopts and incorporates, as if set forth herein, any and all defenses asserted or to be asserted by Allied World in response to the Second Amended Complaint.

**EIGHTEENTH DEFENSE**

RSUI hereby adopts and incorporates, as if set forth herein, any and all defenses asserted or to be asserted by Evanston in response to the Second Amended Complaint.

**NINETEENTH DEFENSE**

Plaintiff's claims are alternatively barred, in whole or in part, by the fortuity, known risk, known loss and loss-in-progress doctrines. RSUI avers upon information and belief that the acts, conduct, errors and omissions described and alleged in the Second Amended Petition concern or relate to claims, circumstances and occurrences of which were known to Ochsner prior to the commencement of the term of one or more of the RSUI Policies.

**TWENTIETH DEFENSE**

Any claims and demands asserted against RSUI are alternatively subject to the deductible or retention requirements of the RSUI Policies.

**TWENTY-FIRST DEFENSE**

To the extent that the Insured(s) failed to accurately disclose and/or omitted disclosing any information submitted or requested in connection with any application submitted to RSUI for the RSUI Policies, RSUI alternatively reserves its right to assert further defenses and responses in the event that any such non-disclosures or omissions would have materially affected RSUI's consideration of any such application and request for coverage in connection with the RSUI Policies.

**TWENTY-SECOND DEFENSE**

To the extent any Insured breached or failed to comply with or perform any obligations or duties set forth or included in the RSUI Policies, RSUI denies any liability under the RSUI Policies.

**TWENTY-THIRD DEFENSE**

RSUI is entitled to an offset or credit for any and all sums which have been or may hereafter be paid by any RSUI Insured(s) or any other person to the Plaintiff in connection with any of the transactions or occurrences described in the Second Amended Petition. Plaintiff is not entitled to receive "double-recovery" from RSUI for any damages or losses for which it already has been or hereafter may be, reimbursed by any third party in connection with any of the transactions or occurrences described in the Second Amended Petition.

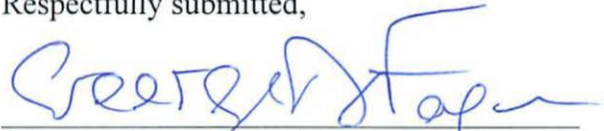


**TWENTY-FOURTH DEFENSE**

RSUI reserves its right to seek leave to amend and/or supplement its answer in order to assert any affirmative defense, response or other matter that may arise or become relevant during the course of these proceedings, whether through discovery or otherwise.

**WHEREFORE**, RSUI Indemnity Company, defendant, through its counsel of record, prays that its Answer be deemed good and sufficient, and after due proceedings that judgment be granted in its favor, dismissing the Petition for Damages filed on behalf of James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his Capacity as Rehabilitator of Louisiana Health Cooperative, Inc., Plaintiff, and any other claims and demands that have been or could have been asserted against RSUI, with prejudice and at Plaintiff's cost. RSUI Indemnity Company further requests that the Court grant any general, equitable or other relief.

Respectfully submitted,



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*Attorneys for Defendant,  
RSUI Indemnity, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been delivered to all counsel of record, by depositing a copy of same in the United States mail, first class postage prepaid at their last known address of record, or by electronic mail, or by facsimile transmission or by hand delivery today, **December 18, 2017**.



19<sup>th</sup> JUDICIAL DISTRICT COURT FOR EAST BATON ROUGE PARISH

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**REQUEST FOR NOTICE**

Pursuant to Articles 1572, 1913 and 1914 of the Louisiana Code of Civil Procedure, Leake & Andersson, LLP as the undersigned counsel for Defendant, RSUI Indemnity, Inc., requests that the Clerk of Court and/or the Court provide them with written notice of all trial dates, dates of argument, the signing of any final judgment or rendition of any interlocutory order of judgment in the above entitled and numbered cause, and any other matters as required by law and rule.

Respectfully submitted,



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RSUI Indemnity, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been delivered to all counsel of record, by depositing a copy of same in the United States mail, first class postage prepaid at their last known address of record, or by electronic mail, or by facsimile transmission or by hand delivery today, **December 18, 2017**.

