

JAMES J. DONELON, COMMISSIONER	:	SUIT NO. 651,069, SECTION. 22
OF INSURANCE FOR THE STATE OF	:	
OF LOUISIANA, IN HIS CAPACITY AS	:	
REHABILITATOR OF LOUISIANA	:	
HEALTH COOPERATIVE, INC.	:	
	:	
Versus	:	19 TH JUDICIAL DISTRICT COURT
	:	
TERRY S. SHILLING, GEORGE G.	:	
CROMER, WARNER L. THOMAS, IV,	:	
WILLIAM A. OLIVER, CHARLES D.	:	
CALVI, PATRICK C. POWERS, CGI	:	PARISH OF EAST BATON ROUGE
TECHNOLOGIES AND SOLUTIONS,	:	
INC., GROUP RESOURCES	:	
INCORPORATED, BEAM PARTNERS,	:	
LLC, AND TRAVELERS CASUALTY	:	
AND SURETY COMPANY OF	:	
AMERICA	:	STATE OF LOUISIANA

**TERRY SHILLING’S PEREMPTORY EXCEPTIONS OF
NO RIGHT OF ACTION AND NO CAUSE OF ACTION AND
DILATORY EXCEPTION OF VAGUENESS AND AMBIGUITY OF THE PETITION**

NOW COMES, through undersigned counsel, Defendant, Terry Shilling, who respectfully excepts to the claims of Petitioner on the following grounds:¹

1.

Petitioners have no right of action against Defendant, Mr. Shilling. 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 Restated 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).

¹ By separate pleading filed contemporaneously herewith, Defendant, Terry Shilling, also excepts to the Petition and the First Supplemental, Amending and Restated Petition on the grounds of Prescription.

4.

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

WHEREFORE, Terry Shilling 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 circumstance.

Respectfully submitted,



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Attorneys for Terry Shilling

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on all counsel of record by e-mail, this 22nd day of February, 2017.



THOMAS McEACHIN

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AND SURETY COMPANY OF	:	
AMERICA	:	STATE OF LOUISIANA

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, Terry Shilling;

IT IS ORDERED that Petitioner, James J. Donelon, show cause, if 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 February, 2017.

TIMOTHY E. KELLY, JUDGE

PLEASE SERVE:

James J. Donelon

Through his counsel of record:

J.E. Cullens, Jr.

Edward J. Walters, Jr.

Darrel J. Papillion

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AMERICA	:	STATE OF LOUISIANA

**TERRY SHILLING’S 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**

Defendant, Terry Shilling, through undersigned counsel, respectfully submits this 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.

BACKGROUND AND FACTS

This 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. Approximately one year later, on August 31, 2016, Donelon commenced this action against a number of defendants, including Terry Shilling.

Mr. Shilling was LAHC’s interim Chief Executive Officer from 2011 through July of 2013.¹ Mr. Shilling is only referenced individually in the First Amended Petition a

¹ *See* First Supplemental, Amending and Restated Petition for Damages (“First Amended Petition”), at ¶ 10(a); *see also* Shilling’s Memorandum in Support of Peremptory Exception of Prescription, filed contemporaneously herewith, which is incorporated by reference herein.

handful of times. Moreover, the only allegations in the First Amended Petition that specifically refer to any actions taken by Mr. Shilling are with regard to his limited actions in signing engagement letters for services performed by other defendants.² Specifically:

) “Warner Tomas, as Chair of the Board of Directors of LAHC, signed this Management and Development Agreement on October 8, 2012; Terry Shilling signed the Management and Development Agreement on behalf of Beam Partners, LLC, with an effective date of August 28, 2012. At this time, Terry Shilling was simultaneously the Interim CEO of LAHC and a member and owner of Beam Partners.”³

) “In or around August 2011, Milliman was engaged by Shilling on behalf of Beam Partners and/or LAHC to provide ‘actuarial support’ for LAHC, including the production of a ‘feasibility study and loan application as directed by the Funding Opportunity Announcement (Funding Opportunity Number: 00-COO-11-001, CFDA 93.545) released from the U.S. Department of Health Services (“HHS”) on July 28, 2011.”⁴

) “In or around November 2012, Milliman was engaged by Shilling on behalf of LAHC to ‘develop 2014 premium rates in Louisiana’ for LAHC.”⁵

LAW AND ARGUMENT

Pursuant to La. Code Civ. P. art 853, Mr. Shilling 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, Mr. Shilling adds the following:

2 See First Amended Petition, at ¶¶ 57, 76, 83.

3 See First Amended Petition, at ¶ 57. Beam Partners refers to Beam Partners, LLC, which is also a defendant in these proceedings.

4 See First Amended Petition, at ¶ 76. Milliman refers to Milliman, Inc., which is also a defendant in these proceedings.

5 See First Amended Petition, at ¶ 83.

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 & Runell*, 06-1414 (La. App. 3 Cir. 4/4/07), 955 So. 2d 263, 258, writ denied, 07-0854 (La. 6/22/07), 959 So. 2d 497. In addition to causation issues, there are obvious prescription issues in this case.⁶ Mr. Shilling cannot adequately prepare his defenses because the First Amended Petition does not identify his supposedly wrongful actions with any degree of particularity. Under *Smart*, Plaintiff should be required to allege the material facts relating to Mr. Shilling's supposedly wrongful acts, *i.e.*, what they were and when they occurred. Requiring that Plaintiff plead these material facts would allow Mr. Shilling and the other parties to eliminate clearly prescribed claims, effectively defend against the remaining claims – if any, and significantly narrow the issues for discovery and trial.

CONCLUSION

For the reasons set forth above, Defendant Terry Shilling's Exceptions should be granted.

Respectfully submitted,



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Attorneys for Terry Shilling

⁶ Plaintiff implicitly acknowledges the existences of his prescription problems by attempting to plead around them. See First Amended Petition, at ¶¶ 139-142; see also Shilling's Memorandum in Support of Peremptory Exception of Prescription, filed contemporaneously herewith, which is incorporated by reference herein

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I hereby certify that a copy of the above and foregoing has been served on all counsel of record by e-mail, this 22nd day of February, 2017.



THOMAS McEACHIN