

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

versus

TERRY S. SHILLING, GEORGE G.
CROMER, WARNER L. THOMAS, IV,
WILLIAM A. OLIVER, CHARLES D.
CALVI, PATRICK C. POWERS, CGI
TECHNOLOGIES AND SOLUTIONS,
INC., GROUP RESOURCES
INCORPORATED, BEAM PARTNERS,
LLC, AND TRAVELERS CASUALTY
AND SURETY COMPANY OF
AMERICA

SUIT NO.: 651,069 SECTION: 22

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**MOTION FOR LEAVE TO FILE PLAINTIFF'S SECOND SUPPLEMENTAL,
AMENDING AND RESTATED PETITION FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. ("LAHC"), through his duly appointed Receiver, Billy Bostick ("Plaintiff" or the "Commissioner"), who respectfully moves this Honorable Court for leave to file the attached Second Supplemental, Amending and Restated Petition for Damages ("Second Amended Petition"), pursuant to Louisiana Code of Civil Procedure article 1151 and Local Rule 9.9(g)(4), for the reasons set forth below:

Plaintiff filed his Original Petition for Damages on August 31, 2016, naming as defendants Terry S. Shilling; George G. Cromer; Warner L. Thomas, IV; William A. Oliver; Charles D. Calvi; Patrick C. Powers (collectively the "D&O Defendants"); as well as CGI Technologies and Solutions, Inc. ("CGI"); Group Resources Incorporated ("GRI"); Beam Partners, LLC ("Beam"); and Travelers Casualty and Surety Company of America ("Travelers"). Prior to any defendant filing responsive pleadings, Plaintiff filed his First Supplemental, Amending and Restated Petition for Damages on November 29, 2016, adding two defendants: Milliman, Inc. ("Milliman"); and Buck Consultants, LLC ("Buck").

In response, the D&O Defendants (joined by Travelers) filed various exceptions, as did GRI, Beam, Milliman, and Buck. CGI filed a Motion for Summary Judgment.¹ All of the

¹ As of this filing, only GRI and CGI have answered the original and First Amended Petitions.

defendants' exceptions and dispositive motions have been denied or rendered moot by settlement.

Plaintiff now seeks leave to file his Second Amended Petition, a copy of which is attached hereto as Exhibit "A," to add certain excess insurers and related nominal defendants. Specifically, Plaintiff has reached a *Gasquet* settlement with the D&O Defendants. Pursuant to the terms of the parties' settlement agreement, the D&O Defendants and Other Insured Persons² may be named as nominal defendants to the extent Plaintiff elects to pursue his rights against any excess insurer of the D&O Defendants or Other Insured Persons by naming such insurers in this suit (other than Travelers). In accordance with this settlement agreement, Plaintiff now seeks leave to amend his petition to name the following excess insurers: Allied World Specialty Insurance Company a/k/a Darwin National Assurance Company; Atlantic Specialty Insurance Company; Evanston Insurance Company; RSUI Indemnity Company; and Zurich American Insurance Company. Likewise, Plaintiff seeks leave to amend his petition and name the following as nominal defendants: Michael Hulefeld; Peter November; Pat Quinlan; Scott Posecai; William Oliver (previously named but now specifically named as a nominal defendant); and Warner Thomas (same).

In addition, Plaintiff seeks leave to file a Second Amended Petition incorporating additional factual details and clarification regarding CGI's work. The Second Amended Petition clarifies the obligations assumed by CGI in the Letter Agreement dated June 19, 2014, wherein LAHC and CGI purportedly terminated the original CGI Agreement; the work performed by CGI during the transitional period after the alleged termination date of April 30, 2014; and the various ways in which CGI failed to perform and breached its warranties and obligations in both the Original Agreement and the subsequent Letter Agreement.

Finally, the Second Amended Petition adds the newly discovered allegation that GRI failed to submit correct Taxpayer Identification Numbers associated with 1099s, resulting in IRS penalties and fines of at least \$37,700. Notice of the penalty proposed for the infractions associated with LAHC's 2015 returns was provided to Plaintiff in August 2017.

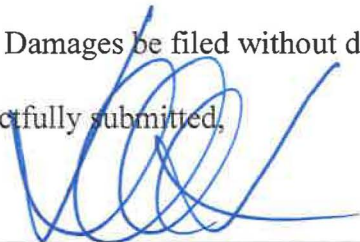
The filing of this Second Amended Petition will not delay this case or cause any undue hardship on the defendants. Discovery is in the initial stages. Plaintiff recently filed a Motion to

² As used in the parties' Settlement Agreement, the term "Other Insured Persons" shall mean all persons, other than the D&O Defendants, who qualify as an Insured Person, as that term is defined in either of the applicable Travelers Policies. The definition of "Insured Person" in the Travelers policies includes an employee or member of the board of directors of LAHC.

Adopt a Case Management Schedule, which is currently pending. The proposed deadlines and scheduling dates set forth the Case Management Schedule are all in 2018, including the deadline to amend pleadings (April 16, 2018). No trial date has been set, and the Case Management Schedule submitted by the Plaintiff proposes that trial be set in the late summer or fall of 2019.

WHEREFORE, Plaintiff prays that this Motion for Leave be granted, and that his Second Supplemental, Amending and Restated Petition for Damages be filed without delay.

Respectfully submitted,



J. E. Cullens, Jr., T.A., La. Bar #23011
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished via U.S. Mail, postage prepaid, and via e-mail to all counsel of record as follows:

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Baton Rouge, Louisiana this 25th day of October, 2017.



J. E. Cullens, Jr.

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INCORPORATED, BEAM PARTNERS,	:	
LLC, AND TRAVELERS CASUALTY	:	
AND SURETY COMPANY OF	:	
AMERICA	:	STATE OF LOUISIANA

ORDER

Considering Plaintiff’s Motion for Leave to File Second Supplemental, Amending and Restated Petition for Damages (with Incorporated Memorandum):

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Leave is **GRANTED**, and the Plaintiff’s Second Supplemental, Amending and Restated Petition for Damages be deemed filed.

SIGNED this ____ day of _____, 2017, at Baton Rouge, Louisiana.

HON. JUDGE TIMOTHY KELLEY, 19th JDC

PLEASE PROVIDE NOTICE
PURSUANT TO LSA-CCP ART. 1913