

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 651,069

SECTION 22

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

VERSUS

CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED, BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC., WARNER L. THOMAS, IV, WILLIAM A. OLIVER, SCOTT POSECAI, PAT QUINLAN, PETER NOVEMBER, MICHAEL HULEFEED, 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

FILED: _____

DEPUTY CLERK

**ALLIED WORLD SPECIALTY INSURANCE COMPANY'S
ANSWER, EXCEPTIONS, AND AFFIRMATIVE DEFENSES
TO SECOND SUPPLEMENTAL, AMENDING AND RESTATED
PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL**

Defendant Allied World Specialty Insurance Company (f/k/a Darwin National Assurance Company) ("Allied World"), through undersigned counsel, respectfully files its Answer, Exceptions, and Affirmative Defenses ("Answer") to the Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial ("Petition") filed by Plaintiff in this matter.

EXCEPTIONS

Allied World excepts to the Petition on the following grounds:

Exception of No Cause of Action

Allied World excepts to the Petition on the ground that Plaintiff has failed to state a cause of action against Allied World under the Louisiana Direct Action Statute, La. R.S. 22:1269.

First, the Petition fails to allege specific facts sufficient to possibly trigger coverage under an Allied World Policy.

Second, the indemnity coverage afforded by the Allied World Policy is not subject to the Louisiana Direct Action Statute, which only pertains to tort victims pursuing liability policies. *See First Nat. Bank of Louisville v. Lustig*, 975 F.2d 1165, 1166 (5th Cir. 1992) ("A tort victim suffering only incorporeal loss or damage does not have the benefit of a direct

action if ‘the parties to the insurance contract have agreed unambiguously that the contract shall be an indemnity contract only.’”) (quoting *Quinlan v. Liberty Bank & Tr. Co.*, 575 So. 2d 336, 353 (La. 1990), *on reh’g* (Mar. 11, 1991)); *State Through Dep’t of Transp. & Dev. v. Acadia Par. Police Jury*, 631 So. 2d 611, 614 (La. App. 3d Cir. 1994) (affirming trial court’s dismissal of direct action where policy provided only indemnity coverage).

Third, as alleged in the Petition, the alleged insureds – the D&O Defendants¹ – settled with Plaintiff before the filing of the Petition, and before Allied World was named as a defendant in this action. (See Pet. ¶39.) The settlement agreement between Plaintiff and the D&O Defendants expressly extinguishes any legal liability that the D&O Defendants may have had related to the acts alleged in the Petition, and the D&O Defendants are not legally obligated to ever pay Plaintiff any amount on the claims asserted in the Petition. The D&O Defendants were dismissed with prejudice and then subsequently named in the Petition adding Allied World solely as nominal defendants. (*Id.*) Allied World’s Forcefield Healthcare Organizations Directors and Officers Liability Policy No. 0310-1583 (the “Primary Policy”) expressly excludes from the term “Loss” those “amounts which an Insured is not legally obligated to pay.” (Primary Policy at page 9 of 23.) Therefore, there is no Loss alleged that is provided coverage under the Policies.

Fourth, the individual D&O Defendants are not insured under the Primary Policy for the claims asserted against them and, therefore, no direct action lies against Allied World. Plaintiff’s claims against the individual D&O Defendants are claims for which their employer may owe them indemnification. See La. R.S. 12:1-851, 1-852. Pursuant to the Primary Policy’s terms, Coverage A only covers non-indemnifiable claims. Coverage B, “Claims Against Insured Persons – Indemnifiable Loss Coverage,” covers the Company, Ochsner, for claims requiring or permitting Ochsner to pay the loss on behalf of any Insured Person, but only if Ochsner “pays such loss . . . as indemnification.” (Primary Policy at page 1 of 23.) Because Plaintiff’s claims are such indemnifiable claims, they only possibly trigger coverage under Coverage B providing coverage for the Company, Ochsner Clinic Foundation, “if the Company pays such Loss to or on behalf of the Insured Person as indemnification.” (Primary Policy at page 1 of 23.) Because no such payment of Loss has been or will be made, there is no coverage provided by Insuring Agreement B under the Primary Policy for the claims alleged in Plaintiff’s Petition.

¹ Except at otherwise defined in this Answer, capitalized terms herein are used as they are defined in the Petition or in the Policies.

For any one of these reasons, Plaintiff's Petition fails to state a cause of action against Allied World for coverage, no direct action lies, and Allied World should be dismissed with prejudice.

Exception of No Right of Action

Allied World excepts to the Petition on the ground that Plaintiff has no right of direct action against Allied World under La. R.S. 22:1269. The Direct Action Statute provides that an injured person "shall have a right of direct action against the insurer *within the terms and limits of the policy.*" La. R.S. 22:1269(B)(1) (emphasis added). While the statute affords a victim the right to sue the insurer directly when a liability policy provides coverage, it does not extend the protection of the liability policy to claims that were not covered or were excluded by the policy. *Gorman v. City of Opelousas*, 2013-1734, p.9 (La. 7/1/14), 148 So. 3d 888, 893-94. Accordingly, if there is no coverage under the policy – as here – the insurer must be dismissed. *See id.* at p.15, 148 So. 3d at 898. Because there is no coverage under the Primary Policy for several reasons, Plaintiff has no direct action against Allied World, and his claims should be dismissed.

First, Plaintiff has no right of action against Allied World because its alleged insureds were not true parties to this lawsuit, and were only nominal defendants after having settled all of their potential liability, at the time Allied World was joined as a defendant. The Direct Action Statute states that a direct action "may be brought . . . against both the insured and insurer jointly and in solido." La. R.S. 22:1269(B)(1). The statute only allows an injured party to bring an action against an insurer alone in certain situations not applicable here, as when the insured is bankrupt, deceased, or when service cannot be effected. *Id.* The D&O Defendants' settlement was fully executed on September 1, 2017, and they were dismissed by the court on October 26, 2017. By virtue of that settlement, which extinguished any liability they may have in this matter, the D&O Defendants became nominal defendants. *See Estate of Martineau v. ARCO Chem. Co.*, 203 F.3d 904, 910 (5th Cir. 2000) (a settling party is a nominal party who is "no longer effectively a party to the case"). The court granted Plaintiff leave to file the Petition on October 26, 2017, which named Allied World as a defendant in this matter for the first time. Allied World was served with the Petition on November 3, 2017. Accordingly, at the time Allied World was joined to this lawsuit, the D&O Defendants were nominal parties without any potential liability, and Plaintiff had no right of direct action against Allied World.

Second, the indemnity coverage afforded by the Allied World Policy is not subject to the Louisiana Direct Action Statute, which only pertains to tort victims pursuing liability policies. The Direct Action Statute does not provide a right of action to a tort victim who suffers incorporeal loss when the policy unambiguously provides indemnity coverage, as here. See *First Nat. Bank of Louisville v. Lustig*, 975 F.2d 1165, 1166 (5th Cir. 1992) (“A tort victim suffering only incorporeal loss or damage does not have the benefit of a direct action if ‘the parties to the insurance contract have agreed unambiguously that the contract shall be an indemnity contract only.’”) (quoting *Quinlan v. Liberty Bank & Tr. Co.*, 575 So. 2d 336, 353 (La. 1990), *on reh’g* (Mar. 11, 1991)); *State Through Dep’t of Transp. & Dev. v. Acadia Par. Police Jury*, 631 So. 2d 611, 614 (La. App. 3d Cir. 1994) (affirming trial court’s dismissal of direct action where policy provided only indemnity coverage).

Third, Plaintiff’s claims are indemnifiable claims, only possibly triggering coverage Insuring Agreement B and not Insuring Agreement A. Insuring Agreement B provides indemnity coverage only to Ochsner and only if it pays the loss as indemnification. Specifically, Insuring Agreement B only provides coverage for the Company, Ochsner Clinic Foundation, “if the Company pays such Loss to or on behalf of the Insured Person as indemnification.” (Primary Policy at page 1 of 23.) Because Ochsner has not and never will pay Loss on behalf of the individual D&O Defendants who have no personal liability, the indemnity coverage under Insuring Agreement B is not triggered.

Fourth, regardless of which Insuring Agreement applies, the Claims are not covered because the Primary Policy only covers “Loss,” which expressly does not include “amounts which an Insured is not legally obligated to pay.” (Primary Policy at page 9 of 23.) Because the purported Insureds are not and never will be legally obligated to pay anything, the amounts Plaintiff seeks do not constitute a loss.

Further, the Primary Policy provides that the “Insurer shall only be liable for the amount of Loss arising from a Claim, which is in excess of the applicable Retention amount set forth in Item 4. of the Declaration for this [Primary] Policy.” (Primary Policy at page 15 of 23.) Item 4 provides a retention of \$500,000 for “each and every claim” under Insuring Agreement B, the only Insuring Agreement possibly applicable. Because the applicable \$500,000 retention has not yet been borne by the Insureds or Ochsner, the Primary Policy has not attached and coverage is not possibly triggered.

Accordingly, Plaintiff has no right of direct action against Allied World, and Allied World should be dismissed with prejudice.

AFFIRMATIVE DEFENSES

Allied World asserts the following affirmative defenses to the Petition. By pleading these affirmative defenses, Allied World does not intend to alter the burden of proof and/or burden of persuasion that otherwise exists in this lawsuit.

First Affirmative Defense

Allied World pleads all terms, provisions, conditions, and exclusions of its Primary Policy, the Forcefield Healthcare Organizations Directors and Officers Liability Policy No. 0310-1583 with policy period June 1, 2016 to June 1, 2017, as if copied herein in its entirety.

Second Affirmative Defense

Allied World pleads all terms, provisions, conditions, and exclusions of its Excess Insurance Policy No. 0310-1703 with policy period June 1, 2016 to June 1, 2017 (the "Excess Policy," and collectively with the Primary Policy, the "Policies"), as if copied herein in its entirety.

Third Affirmative Defense

Plaintiff's claims are barred or alternatively reduced to the extent that the claims exceed the applicable limitations of liability and/or aggregates contained in Allied World's Policies. The Policies' applicable Limits of Liability and/or aggregates specify the most Allied World is obligated to pay on a claim and are incorporated herein as if copied *in extenso*.

Fourth Affirmative Defense

Coverage is barred to the extent the Claim was not first made against each alleged insured during the policy period and timely reported in writing pursuant to the terms of the Policies.

Fifth Affirmative Defense

To the extent that an alleged insured became aware of any circumstances which may reasonably be expected to give rise to a Claim and failed to timely give the requisite notice to Allied World in accordance with the terms of the Policies, coverage is barred.

Sixth Affirmative Defense

To the extent a Claim was first made against an alleged Insured during the policy period for the Primary Policy – June 1, 2016 to June 1, 2017 – that alleged insured was required,

as a condition to coverage, to give written notice as soon as practicable but in no event later than 90 days after the end of the policy period on June 1, 2017. To the extent an alleged insured failed to provide timely notice, coverage is barred for that alleged insured.

Seventh Affirmative Defense

To the extent Claims asserted against the nominal D&O Defendants Scott Posecai, Patrick Quinlan, Peter November, or Michael Hulefeld are deemed Related Claims to the Claims against the initial D&O Defendants, Wayne Thomas and William Oliver first made on August 31, 2016, all of the Claims should be treated as a single Claim first made on August 31, 2016, and therefore, coverage may be barred for the reasons set forth in the foregoing Fifth and Sixth Affirmative Defenses.

Eighth Affirmative Defense

Coverage has not attached under the Primary Policy's Insuring Agreement B ("Claims Against Insured Persons – Indemnifiable Loss Coverage") to the extent that Allied World's alleged insureds have not borne the Primary Policy's self-insured \$500,000 retention amount applicable to each claim under Insuring Coverage B.

Ninth Affirmative Defense

Coverage is barred and/or does not attach to the extent that there is any indemnification and other insurance available for the claims alleged. The Primary Policy provides that:

In connection with any covered Claim made against an Outside Entity Insured Person, a leased employee, or an Independent Contractor, and subject to all other terms and conditions herein, this [Primary] Policy shall apply specifically excess of any indemnification and any other insurance coverage available to the Outside Entity Insured Person, leased employee or Independent Contractor.

(Primary Policy at page 19 of 23.) To the extent indemnification is owed to an Outside Entity Insured Person, the Primary Policy is excess over such indemnification and any other available insurance coverage.

Tenth Affirmative Defense

Coverage under the Excess Policy has not attached because the Underlying Insurance has not been exhausted. The Excess Policy provides that coverage under that policy will only attach "after all Underlying Insurance has been exhausted by the actual payment of loss by the Underlying Insurers," as those terms are defined in the Excess Policy. (Excess Policy at 1.)

Eleventh Affirmative Defense

Coverage is barred to the extent any statements and representations contained in the Application are not accurate and complete. In particular, coverage is barred to the extent an Insured Person knew, as of the Inception Date, of facts that were not accurately and completely disclosed in the Application. (Primary Policy at page 22 of 23.)

Twelfth Affirmative Defense

Coverage is barred to the extent that any officer, director, or manager of Ochsner or the Louisiana Health Cooperative, Inc. ("LAHC") knew or had reason to believe, as of May 26, 2016, that a Claim concerning the management of LAHC would be filed against the D&O Defendants. Ochsner's May 30, 2016 Known Loss Warranty Statement, which warrants that, "as of May 26, 2016, all claims or suits, or circumstances likely to give rise to a claim have been reported to our previous insurance carrier, and/or disclosed to Allied World Assurance Company, Ltd. in connection with our application dated March 4, 2016," did not disclose the circumstances regarding Plaintiff's lawsuit.

Thirteenth Affirmative Defense

Coverage is barred for any individual to the extent that person is not an Executive, Employee or Outside Entity Insured Person so as to be an Insured Person under the Primary Policy. To the extent any D&O Defendant seeks coverage as an Outside Entity Insured Person, coverage is barred to the extent that person was not acting in a capacity as a director, officer, trustee, trustee emeritus, governor, management committee member or member of the board of managers or the equivalent thereof at the specific request of the Company. (Primary Policy at page 10 of 23.)

Fourteenth Affirmative Defense

Coverage is barred to the extent the Petition seeks coverage for amounts that do not constitute "Loss" from a Claim that Allied World is obligated to pay. The Primary Policy expressly excludes from the term "Loss" those "amounts which an Insured is not legally obligated to pay." (Primary Policy at page 9 of 23.) Upon information and belief, Allied World's alleged insureds have settled with Plaintiff and are not legally obligated to ever pay Plaintiff any amount.

Fifteenth Affirmative Defense

Coverage under the Primary Policy's Insuring Agreement A is barred because Plaintiff's claims against the D&O Defendants are "Indemnifiable Claims." *See* La. R.S. 12:1-851, 1-852. Insuring Agreement A provides coverage for Loss arising from a Claim against an Insured Person "unless the Company is required or permitted to pay such Loss to or on behalf of the Insured Person as indemnification," among other requirements. (Primary Policy at page 1 of 23.) Because Plaintiff's claims against the D&O Defendants are "Indemnifiable Claims," there is no coverage provided by the Primary Policy's Insuring Agreement A.

Sixteenth Affirmative Defense

Coverage under the Primary Policy's Insuring Agreement B is barred because Plaintiff's claims against the D&O Defendants are under the Policy's terms "Indemnifiable Claims." Insuring Agreement B only provides coverage for Indemnifiable Claims, for the Company, Ochsner Clinic Foundation, "if the Company pays such Loss to or on behalf of the Insured Person as indemnification." (Primary Policy at page 1 of 23.) Because no such payment of Loss as indemnification has been or will be made, there is no coverage provided by the Primary Policy's Insuring Agreement B.

Seventeenth Affirmative Defense

Coverage is or may be barred to the extent the Insureds fail to comply with the Primary Policy's Endorsement No. 2 Indemnity Only Coverage Defense Requirements.

Eighteenth Affirmative Defense

Coverage is or may be barred to the extent that any Insured fails to comply with the Primary Policy's Paragraph XXII's Cooperation requirements. (Primary Policy at page 23 of 23.)

Nineteenth Affirmative Defense

Coverage is barred to the extent that Allied World's alleged insureds failed to comply with the Primary Policy's requirement that the "Insured(s) shall not admit or assume any liability, incur any Defense Costs, make any settlement offer, enter into any settlement agreement or stipulate to any judgment without the prior written consent" of Allied World. (Primary Policy, Endorsement No. 2 at page 1 of 2.)

Twentieth Affirmative Defense

Coverage is barred to the extent the Petition seeks relief for a matter barred by Exclusion A, which excludes “any Loss in connection with any Claim . . . arising out of, based upon or attributable to the gaining of any profit or financial advantage or improper or illegal remuneration by an Insured, if a final judgment or adjudication establishes that such Insured was not legally entitled to such profit or advantage or that such remuneration was improper or illegal.” (Primary Policy at page 12 of 23.)

Twenty-First Affirmative Defense

Coverage is barred to the extent the Petition seeks relief for a matter barred by Exclusion B, which excludes “any Loss in connection with any Claim . . . arising out of, based upon or attributable to any deliberate criminal or deliberate fraudulent act or any willful violation of law by an Insured, if a final judgment or adjudication establishes that such act or violation occurred.” (Primary Policy at page 13 of 23.)

Twenty-Second Affirmative Defense

Coverage is barred to the extent the Petition seeks relief for a matter barred by Exclusion D, which excludes “any Loss in connection with any Claim . . . alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in . . . the Declarations with respect to this Policy, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation, of which an Insured had notice, including any Claim alleging or derived from the same or essentially the same facts, or the same or related Wrongful Acts, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation.” (Primary Policy at page 13 of 23.)

Twenty-Third Affirmative Defense

Coverage is barred to the extent the Petition seeks relief for a matter barred by Exclusion G, which excludes “any Loss in connection with any Claim” brought by an Outside Entity or by any director, officer, trustee or governor thereof, or which is brought by a security holder of the Outside Entity, whether directly or derivatively, against an Outside Entity Insured Person serving for such Outside Entity, as those terms are defined in the Primary Policy. (Primary Policy at page 13 of 23.)

Twenty-Fourth Affirmative Defense

Coverage is barred to the extent the Petition seeks relief for a matter barred by Exclusion N, which excludes “any Loss in connection with any Claim . . . alleging, arising out of, based upon, or attributable to, any actual or alleged act, error or omission in the performance of, or failure to perform, Managed Care Activities,” defined to include “Claims Services” and “establishing health care provider networks.”

Twenty-Fifth Affirmative Defense

Coverage is barred to the extent the Petition seeks relief for a matter barred by Endorsement No. 10, which excludes coverage “for Loss from any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving . . . claims reported on the 2014-2015 bordereau.”

Twenty-Sixth Affirmative Defense

The Petition should be dismissed to the extent Plaintiff has no right of direct action against Allied World under La. R.S. 22:1269 or is otherwise barred by the defenses available under that statute.

Twenty-Seventh Affirmative Defense

The Petition should be dismissed to the extent that the alleged decisions by the D&O Defendants were reasonably believed to be in the best interests of the Company, were free of conflicts, and were the result of reasonable attention, oversight, good faith, and fair dealing.

Twenty-Eighth Affirmative Defense

The Petition should be dismissed as impermissibly vague and ambiguous.

Twenty-Ninth Affirmative Defense

Plaintiff’s claims may be barred by settlement, release, and/or payment.

Thirtieth Affirmative Defense

Neither Allied World nor its alleged insureds’ conduct was the cause in fact or proximate cause of any injury alleged by Plaintiff. Plaintiff’s recovery is barred, in whole or in part, to the extent there are numerous intervening and superseding causes of the injuries/damages allegedly sustained by Plaintiff.

Thirty-First Affirmative Defense

Plaintiff’s claims may be barred or limited by its own comparative fault.

Thirty-Second Affirmative Defense

Plaintiff's claims are barred to the extent he failed to mitigate his damages.

Thirty-Third Affirmative Defense

Plaintiff's alleged injuries and damages, if any, were caused by the negligence or fault of other parties, for which Allied World and its alleged insureds are not liable.

Thirty-Fourth Affirmative Defense

Plaintiff's claims are barred to the extent they are prescribed.

Thirty-Fifth Affirmative Defense

Allied World adopts and incorporates any defenses that have been or may be asserted by any of the D&O Defendants, as if fully set forth herein.

Allied World reserves the right to further invoke any other defense that may become available or appear during the subsequent proceedings in this case and hereby reserves its right to amend this response to assert any such defense.

ANSWER TO PETITION

And now, with full reservation of the foregoing affirmative defenses, answering the specific allegations of Plaintiff's Petition, Allied World responds as follows:

Allied World denies the allegations in the introductory paragraph.

1. The allegations in Paragraph 1 relate to the Plaintiff's request to amend the caption of this matter, and require no response. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

JURISDICTION AND VENUE²

2. The allegations in Paragraph 2 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

3. The allegations in Paragraph 3 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

² The headings in the Petition are reproduced in this Answer.

4. The allegations in Paragraph 4 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

PARTIES

Plaintiff

5. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5, and therefore denies the same.

6. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies the same.

7. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7, and therefore denies the same.

8. The allegations in Paragraph 8 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Defendants

9. The allegations in Paragraph 9 require no response. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 9, and therefore denies the same.

D&O Defendants

10. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 10, including all of its subparts (a) through (f), and therefore denies the same.

TPA Defendants

11. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 11, including all of its subparts (a) and (b), and therefore denies the same.

Beam Partners, LLC

12. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies the same.

Actuary Defendants

13. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 13, including all of its subparts (a) and (b), and therefore denies the same.

Insurer Defendants

14. Except as expressly admitted herein, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 14, including all of its subparts (a) through (e), and therefore denies the same. Allied World admits it is an insurer admitted in the State of Louisiana and that it may be served through the Louisiana Secretary of State.

DEFINED TERMS

15. The allegations in Paragraph 15, including its subparts (1) through (7), require no response. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15 and its subparts, and therefore denies the same.

FACTUAL BACKGROUND

16. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 16, and therefore denies the same.

17. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17, and therefore denies the same.

18. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 18, and therefore denies the same.

19. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 19, and therefore denies the same.

20. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 20, and therefore denies the same.

21. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 21, and therefore denies the same.

22. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 22, and therefore denies the same.

23. The allegations in Paragraph 23 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

CAUSES OF ACTION

Count One: Breach of Fiduciary Duty (Against the D&O Defendants and Insurer Defendants)

24. The allegations in Paragraph 24 require no response. Allied World repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.

25. The allegations in Paragraph 25 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

26. The allegations in Paragraph 26 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

27. The allegations in Paragraph 27 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

28. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 28, and therefore denies the same.

29. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 29, and therefore denies the same.

30. The allegations in Paragraph 30 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

31. The allegations in Paragraph 31, including all of its subparts (a) through (ss), contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

32. The allegations in Paragraph 32 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

33. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 33, and therefore denies the same.

34. Allied World denies the allegations in paragraph 34 for lack of sufficient information to justify a belief therein.

35. The allegations in Paragraph 35 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

36. The allegations in Paragraph 36 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

37. The allegations in Paragraph 37 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

38. The allegations in Paragraph 38, including all of its subparts (a) through (h), contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

39. The allegations in Paragraph 39 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same, and specifically denies that “the D&O Defendants and Other Insured Persons . . . 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.”

40. Regarding the allegations as to Allied World in Paragraph 40, including subparts (a) and (b), Allied World admits that it issued the Policies to Ochsner Clinic Foundation, denies the remainder of those allegations, and refers the Court to the Policies for a true and correct statement of their terms, endorsements, and exclusions. Regarding the remaining allegations in Paragraph 40, including subparts (c) through (f), Allied World lacks sufficient knowledge or information to form a belief as to the truth of those allegations, and therefore denies the same.

41. Regarding the allegations as to Allied World in Paragraph 41, Allied World admits that it issued the Policies to Ochsner Clinic Foundation, denies the remainder of those

allegations, and refers the Court to the Policies for a true and correct statement of their terms, endorsements, and exclusions. Regarding the remaining allegations in Paragraph 41, Allied World lacks sufficient knowledge or information to form a belief as to the truth of those allegations, and therefore denies the same.

**Count Two: Breach of Contract
(Against the TPA Defendants and Beam Partners)**

42. The allegations in Paragraph 42 require no response. Allied World repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.

CGI

43. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 43, and therefore denies the same.

44. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 44, and therefore denies the same.

45. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 45, and therefore denies the same.

46. The allegations in Paragraph 46 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

47. The allegations in Paragraph 47 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

48. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48, and therefore denies the same.

49. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49, and therefore denies the same.

50. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50, and therefore denies the same.

51. The allegations in Paragraph 51 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

52. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 52, and therefore denies the same.

53. The allegations in Paragraph 53 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

GRI

54. The allegations in Paragraph 54 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

55. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55, and therefore denies the same.

56. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56, and therefore denies the same.

57. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 57, and therefore denies the same.

58. The allegations in Paragraph 58, including all of its subparts (a) through (qq), contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

59. The allegations in Paragraph 59 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

60. The allegations in Paragraph 60 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Beam Partners

61. The allegations in Paragraph 61 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

62. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 62, and therefore denies the same.

63. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63, and therefore denies the same.

64. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 64, and therefore denies the same.

65. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 65, and therefore denies the same.

66. The allegations in Paragraph 66, including all of its subparts (a) through (j), contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

67. The allegations in Paragraph 67 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

68. The allegations in Paragraph 68 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

69. The allegations in Paragraph 69 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

70. The allegations in Paragraph 70 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

71. The allegations in Paragraph 71 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

**Count Three: Gross Negligence and Negligence
(Against the TPA Defendants and Beam Partners)**

72. The allegations in Paragraph 72 require no response. Allied World repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.

73. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 73, and therefore denies the same.

74. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 74, and therefore denies the same.

75. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 75, and therefore denies the same.

76. The allegations in Paragraph 76 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

77. The allegations in Paragraph 77 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

78. The allegations in Paragraph 78 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

79. The allegations in Paragraph 79 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

80. The allegations in Paragraph 80 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

**Count Four: Professional Negligence
And Breach of Contract
(Against the Actuary Defendants)**

81. The allegations in Paragraph 81 require no response. Allied World repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.

Milliman

82. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 82, and therefore denies the same.

83. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 83, and therefore denies the same.

84. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 84, and therefore denies the same.

85. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 85, and therefore denies the same.

86. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 86, and therefore denies the same.

87. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 87, and therefore denies the same.

88. The allegations in Paragraph 88 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

89. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 89, and therefore denies the same.

90. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 90, and therefore denies the same.

91. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 91, and therefore denies the same.

92. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 92, and therefore denies the same.

93. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 93, and therefore denies the same.

94. The allegations in Paragraph 94 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

95. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 95, and therefore denies the same.

96. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 96, and therefore denies the same.

97. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 97, and therefore denies the same.

98. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 98, and therefore denies the same.

99. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 99, and therefore denies the same.

100. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 100, and therefore denies the same.

101. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 101, and therefore denies the same.

102. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 102, and therefore denies the same.

103. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 103, and therefore denies the same.

104. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 104, and therefore denies the same.

105. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 105, and therefore denies the same.

106. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 106, and therefore denies the same.

107. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 107, and therefore denies the same.

108. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 108, and therefore denies the same.

109. The allegations in Paragraph 109 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

110. The allegations in Paragraph 110 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

Buck

111. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 111, and therefore denies the same.

112. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 112, and therefore denies the same.

113. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 113, and therefore denies the same.

114. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 114, and therefore denies the same.

115. The allegations in Paragraph 115 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

116. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 116, and therefore denies the same.

117. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 117, and therefore denies the same.

118. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 118, and therefore denies the same.

119. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 119, and therefore denies the same.

120. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 120, and therefore denies the same.

121. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 121, and therefore denies the same.

122. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 122, and therefore denies the same.

123. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 123, and therefore denies the same.

124. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 124, and therefore denies the same.

125. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 125, and therefore denies the same.

126. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 126, and therefore denies the same.

127. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 127, and therefore denies the same.

128. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 128, and therefore denies the same.

129. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 129, and therefore denies the same.

130. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 130, and therefore denies the same.

131. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 131, and therefore denies the same.

132. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 132, and therefore denies the same.

133. The allegations in Paragraph 133 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

134. The allegations in Paragraph 134 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

**Count Five: Negligent Misrepresentation
(Against the Actuary Defendants)**

135. The allegations in Paragraph 135 require no response. Allied World repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.

Milliman

136. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 136, and therefore denies the same.

137. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 137, and therefore denies the same.

138. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 138, and therefore denies the same.

139. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 139, and therefore denies the same.

140. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 140, and therefore denies the same.

Buck

141. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 141, and therefore denies the same.

142. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 142, and therefore denies the same.

143. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 143, and therefore denies the same.

144. The allegations in Paragraph 144 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

145. The allegations in Paragraph 145 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

PRESCRIPTION AND DISCOVERY OF TORTIOUS CONDUCT

146. Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 146, and therefore denies the same.

147. The allegations in Paragraph 147 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

148. The allegations in Paragraph 148 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

149. The allegations in Paragraph 149 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

JURY DEMAND

150. Paragraph 150 of Plaintiff's Petition does not require an answer from Allied World.

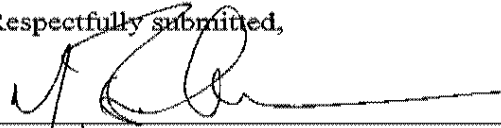
Allied World further denies the allegations in the paragraph beginning WHEREFORE, and denies that Plaintiff is entitled to any relief whatsoever.

REQUEST FOR JURY TRIAL

Allied World respectfully requests a trial by jury.

WHEREFORE, Defendant Allied World Specialty Insurance Company (f/k/a Darwin National Assurance Company) prays that its Answer, Exceptions, and Affirmative Defenses be deemed good and sufficient, and that after due proceedings had herein, this Court render judgment in its favor, with all costs and fees assessed against Plaintiff.

Respectfully submitted,

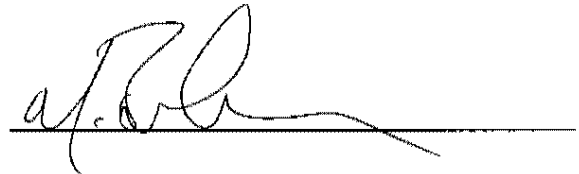


Judy Y. Barrasso, La. Bar Roll No. 2814,
Michael A. Balascio, La. Bar Roll No 33715
Catherine F. Giarrusso, La. Bar Roll No. 29875
BARRASSO USDIN KUPPERMAN
FREEMAN & SARVER, L.L.C.
909 Poydras Street, 24th Floor
New Orleans, LA 70112
Telephone: (504) 589-9700
Facsimile: (504) 589-9701

*Attorneys for Allied World Specialty Insurance
Company (f/k/a Darwin National Assurance
Company)*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by facsimile, electronic mail, and/or by placing same in the United States mail, postage prepaid, this 18th day of December, 2017.



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