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

SUIT NO. 651069, SEC. 22

V.

19TH JUDICIAL DISTRICT COURT

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

STATE OF LOUISIANA

FILED ______________________ DEPUTY CLERK ______________________

EVANSTON INSURANCE COMPANY'S EXCEPTIONS AND ANSWERS TO PETITION FOR DAMAGES AND JURY DEMAND, FIRST SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL, AND SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL

Defendant EVANSTON INSURANCE COMPANY, through undersigned counsel, in response to the Petition for Damages and Jury Demand, First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial and Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial, Evanston Insurance Company (hereinafter "Evanston") responds as follows:

EXCEPTION OF NO CAUSE OF ACTION

Plaintiff fails to state a cause of action against Evanston on the face of the pleadings and Plaintiff's claims should be dismissed. Evanston issued Policy No. XM800966 (the "Evanston Excess Policy") to Ochsner Clinic Foundation (the "Insured") for the Period June 1, 2016 through June 1, 2017. Subject to its terms, conditions, limitations, and exclusions, the Evanston Excess Policy provides Excess Management Liability Insurance to the Insured. For coverage to be triggered under the Evanston Excess Policy, all underlying policies must have paid all underlying limits and the Insured must have paid the retention contained in those underlying policies. The listed underlying policy in the Evanston Excess Policy is Policy No. 0310-1583 (the "Underlying Allied Policy") issued by Allied World Specialty Insurance Company to Ochsner Clinic Foundation for the period June 1, 2016 through June 1, 2017. Plaintiff fails to allege any facts that would trigger coverage under either the Underlying Allied Policy or the Evanston Excess Policy. Based on this, Plaintiff's claims should be dismissed as a matter of law.

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Plaintiff also fails state a cause of action against Evanston based on the lack of an available cause of action under the Louisiana Direct Action Statute. The Evanston Excess Policy follows form to the Underlying Allied Policy and therefore is subject to all terms, conditions, and limitations in the Underlying Allied Policy. The Underlying Allied Policy is a policy of indemnity only and not a liability policy. As recognized by the Louisiana Supreme Court, the Direct Action Statute is limited where "the insurance policy unambiguously expresses the parties' intent that it is a contract of indemnity against loss rather than a policy of insurance against liability." *See Quinlan v. Liberty Bak and Trust*, 575 So. 2d 336, 347 (La. 1990). Here, the Underlying Allied Policy unambiguously expresses that exact intent of the parties—that it is a contract of indemnity rather than of liability insurance. This is shown by the nature of the coverage in the Underlying Allied Policy, the only applicable coverage part of which, namely, Coverage B, provides that it covers claims requiring Ochsner to pay the loss on behalf of any insured person only if the insured "pays such loss . . . as indemnification." As shown by the face of Plaintiff's pleadings, no such payment has been made nor is such payment alleged. Based on this, the Direct Action Statute is not applicable to the instant matter and Plaintiff has not stated a cause of action against Evanston.

EXCEPTION OF NO RIGHT OF ACTION

Plaintiff fails to state a right of action against Evanston under Louisiana law. As described above, the Louisiana Direct Action Statute does not provide a right of action directly against Evanston based on the fact that the Underlying Allied Policy is an indemnity policy and not a liability policy. Additionally, the Direct Action Statute is unavailable to Plaintiff against Evanston because there is no coverage under the Underlying Allied Policy, to which policy the Excess Evanston Policy follows form. *See Gorman v. City of Opelousas*, 13-1734 (La. 7/1/14); 148 So. 3d 888, 893 (recognizing that while the statute provides a direct right against an insurer where the policy provides coverage, that right does not extend coverage beyond that contractually covered under the policy). The nominal Defendants in the instant litigation have settled and no longer have any potential liability and therefore Evanston cannot be liable *in solido* with those Defendants, negating a direct right of action against Evanston. *See* La. R.S. 1269 (B)(1). Finally, as described above, Plaintiff has failed to state facts that would trigger coverage under the Excess Evanston Policy because he has not alleged that the underlying policy has been exhausted and has not alleged that the underlying retention has been paid by the

Insured. Based on this, there is no coverage under the Evanston Policy and Plaintiff's claims should be dismissed with prejudice.

AND NOW, answering all of the allegations contained in the *Petition for Damages and for Jury Trial*, Evanston answers as follows:

ANSWER TO PETITION FOR DAMAGES AND FOR JURY TRIAL

1.

The allegations contained in paragraph 1 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

2.

The allegations contained in paragraph 2 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

3.

The allegations contained in paragraph 3 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

4.

The allegations contained in paragraph 4 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

5.

Evanston admits, upon information and belief, that James J. Donelon is the Commissioner of Insurance for the State of Louisiana and has brought the instant lawsuit. Except as specifically admitted, the allegations contained in paragraph 5 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

6.

The allegations contained in paragraph 6 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

7

The allegations contained in paragraph 7 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

8.

The allegations contained in paragraph 8 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to name the listed defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

9.

The allegations contained in paragraph 9 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to name the listed defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

10.

The allegations contained in paragraph 10 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to name the listed defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

11.

The allegations contained in paragraph 11 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court

requires a response from Evanston, Evanston admits that Plaintiff seeks to name the listed defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

12.

The allegations contained in paragraph 12 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to name the listed defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

13.

The allegations contained in paragraph 13 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to define the listed terms. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

14.

The allegations contained in paragraph 14 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

15.

The allegations contained in paragraph 15 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

16.

The allegations contained in paragraph 16 of the Petition for Damages and Jury Demand are denied.

17.

The allegations contained in paragraph 17 of the Petition for Damages and Jury Demand are denied.

18.

The allegations contained in paragraph 18 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

19.

The allegations contained in paragraph 19 of the Petition for Damages and Jury Demand are denied.

20.

The allegations contained in paragraph 20 of the Petition for Damages and Jury Demand are denied.

21.

The allegations contained in paragraph 21 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to repeat and reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

22.

The allegations contained in paragraph 22 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

23.

The allegations contained in paragraph 23 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

24.

The allegations contained in paragraph 24 of the Petition for Damages and Jury Demand are denied.

25.

The allegations contained in paragraph 25 of the Petition for Damages and Jury Demand are denied.

26.

The allegations contained in paragraph 26 of the Petition for Damages and Jury Demand are denied.

27.

The allegations contained in paragraph 27 of the Petition for Damages and Jury Demand are denied.

28.

The allegations contained in paragraph 28 of the Petition for Damages and Jury Demand are denied.

29.

The allegations contained in paragraph 29 of the Petition for Damages and Jury Demand are denied.

30.

The allegations contained in paragraph 30 of the Petition for Damages and Jury Demand are denied.

31.

The allegations contained in paragraph 31 of the Petition for Damages and Jury Demand are denied.

32.

The allegations contained in paragraph 32 of the Petition for Damages and Jury Demand are denied.

33.

The allegations contained in paragraph 33 of the Petition for Damages and Jury Demand are denied.

34.

The allegations contained in paragraph 34 of the Petition for Damages and Jury Demand are denied.

35.

The allegations contained in paragraph 35 of the Petition for Damages and Jury Demand are denied.

36.

The allegations contained in paragraph 36 of the Petition for Damages and Jury Demand are denied.

37.

The allegations contained in paragraph 37 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to repeat and reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

38.

The allegations contained in paragraph 38 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

39.

The allegations contained in paragraph 39 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

40.

The allegations contained in paragraph 40 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

41.

The allegations contained in paragraph 41 of the Petition for Damages and Jury Demand are denied.

42.

The allegations contained in paragraph 42 of the Petition for Damages and Jury Demand are denied.

43.

The allegations contained in paragraph 43 of the Petition for Damages and Jury Demand are denied.

44.

The allegations contained in paragraph 44 of the Petition for Damages and Jury Demand are denied.

45.

The allegations contained in paragraph 45 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

46.

The allegations contained in paragraph 46 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

47.

The allegations contained in paragraph 47 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

48

The allegations contained in paragraph 48 of the Petition for Damages and Jury Demand are denied.

49.

The allegations contained in paragraph 49 of the Petition for Damages and Jury Demand are denied.

50.

The allegations contained in paragraph 50 of the Petition for Damages and Jury Demand are denied.

51.

The allegations contained in paragraph 51 of the Petition for Damages and Jury Demand are denied.

52.

The allegations contained in paragraph 52 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

53.

The allegations contained in paragraph 53 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

54.

The allegations contained in paragraph 54 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

55.

The allegations contained in paragraph 55 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

56.

The allegations contained in paragraph 56 of the Petition for Damages and Jury Demand are denied.

57.

The allegations contained in paragraph 57 of the Petition for Damages and Jury Demand are denied.

58.

The allegations contained in paragraph 58 of the Petition for Damages and Jury Demand are denied.

59.

The allegations contained in paragraph 59 of the Petition for Damages and Jury Demand are denied.

60.

The allegations contained in paragraph 60 of the Petition for Damages and Jury Demand are denied.

61.

The allegations contained in paragraph 61 of the Petition for Damages and Jury Demand are denied.

62.

The allegations contained in paragraph 62 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to repeat and reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

63.

The allegations contained in paragraph 63 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

64.

The allegations contained in paragraph 64 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

65.

The allegations contained in paragraph 65 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

66.

The allegations contained in paragraph 66 of the Petition for Damages and Jury Demand are denied.

67.

The allegations contained in paragraph 67 of the Petition for Damages and Jury Demand are denied.

68.

The allegations contained in paragraph 68 of the Petition for Damages and Jury Demand are denied.

69.

The allegations contained in paragraph 69 of the Petition for Damages and Jury Demand are denied.

70.

The allegations contained in paragraph 70 of the Petition for Damages and Jury Demand do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response from Evanston, Evanston admits that Plaintiff seeks to request a jury trial. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

AND NOW, further answering, Evanston responds to Plaintiff's *First Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial* as follows:

ANSWER TO FIRST SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL

71.

The allegations contained in paragraph 1 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to amend the caption as listed. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

72.

The allegations contained in paragraph 2 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

73.

The allegations contained in paragraph 3 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

74.

The allegations contained in paragraph 4 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

75.

Evanston admits, upon information and belief, that James J. Donelon is the Commissioner of Insurance for the State of Louisiana and has brought the instant lawsuit. Except as specifically admitted, the allegations contained in paragraph 5 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

76.

The allegations contained in paragraph 6 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

77.

The allegations contained in paragraph 7 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

78.

The allegations contained in paragraph 8 of the First Supplement Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

79.

The allegations contained in paragraph 9 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

80.

The allegations contained in paragraph 10 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this

Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

81.

The allegations contained in paragraph 11 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

82.

The allegations contained in paragraph 12 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

83.

The allegations contained in paragraph 13 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

84.

The allegations contained in paragraph 14 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

85.

The allegations contained in paragraph 15 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to define the listed

terms. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

86.

The allegations contained in paragraph 16 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

87.

The allegations contained in paragraph 17 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

88.

The allegations contained in paragraph 18 of the First Supplemental Amending and Restated Petition are denied.

89.

The allegations contained in paragraph 19 of the First Supplemental Amending and Restated Petition are denied.

90.

The allegations contained in paragraph 20 of the First Supplemental Amending and Restated Petition are denied.

91.

The allegations contained in paragraph 21 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

92.

The allegations contained in paragraph 22 of the First Supplement Amending and Restated Petition are denied.

93.

The allegations contained in paragraph 23 of the First Supplement Amending and Restated Petition are denied.

94.

The allegations contained in paragraph 24 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

95.

The allegations contained in paragraph 25 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

96.

The allegations contained in paragraph 26 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

97.

The allegations contained in paragraph 27 of the First Supplemental Amending and Restated Petition are denied.

98.

The allegations contained in paragraph 28 of the First Supplemental Amending and Restated Petition are denied.

99.

The allegations contained in paragraph 29 of the First Supplemental Amending and Restated Petition are denied.

100.

The allegations contained in paragraph 30 of the First Supplemental Amending and Restated Petition are denied.

101.

The allegations contained in paragraph 31 of the First Supplemental Amending and Restated Petition are denied.

102.

The allegations contained in paragraph 32 of the First Supplemental Amending and Restated Petition are denied.

103.

The allegations contained in paragraph 33 of the First Supplemental Amending and Restated Petition are denied.

104.

The allegations contained in paragraph 34 of the First Supplemental Amending and Restated Petition are denied.

105.

The allegations contained in paragraph 35 of the First Supplemental Amending and Restated Petition are denied.

106.

The allegations contained in paragraph 36 of the First Supplemental Amending and Restated Petition are denied.

107.

The allegations contained in paragraph 37 of the First Supplemental Amending and Restated Petition are denied.

108.

The allegations contained in paragraph 38 of the First Supplemental Amending and Restated Petition are denied.

109.

The allegations contained in paragraph 39 of the First Supplemental Amending and Restated Petition are denied.

110.

The allegations contained in paragraph 40 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

111.

The allegations contained in paragraph 41 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

112.

The allegations contained in paragraph 42 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

113.

The allegations contained in paragraph 43 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

114.

The allegations contained in paragraph 44 of the First Supplemental Amending and Restated Petition are denied.

115.

The allegations contained in paragraph 45 of the First Supplemental Amending and Restated Petition are denied.

116.

The allegations contained in paragraph 46 of the First Supplemental Amending and Restated Petition are denied.

117.

The allegations contained in paragraph 47 of the First Supplemental Amending and Restated Petition are denied.

118.

The allegations contained in paragraph 48 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

119.

The allegations contained in paragraph 49 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

120.

The allegations contained in paragraph 50 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

121.

The allegations contained in paragraph 51 of the First Supplemental Amending and Restated Petition are denied.

122.

The allegations contained in paragraph 52 of the First Supplemental Amending and Restated Petition are denied.

123.

The allegations contained in paragraph 53 of the First Supplemental Amending and Restated Petition are denied.

124.

The allegations contained in paragraph 54 of the First Supplemental Amending and Restated Petition are denied.

125.

The allegations contained in paragraph 55 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

126.

The allegations contained in paragraph 56 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

127.

The allegations contained in paragraph 57 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

128.

The allegations contained in paragraph 58 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

129.

The allegations contained in paragraph 59 of the First Supplemental Amending and Restated Petition are denied.

130.

The allegations contained in paragraph 60 of the First Supplemental Amending and Restated Petition are denied.

131.

The allegations contained in paragraph 61 of the First Supplemental Amending and Restated Petition are denied.

132.

The allegations contained in paragraph 62 of the First Supplemental Amending and Restated Petition are denied.

133.

The allegations contained in paragraph 63 of the First Supplemental Amending and Restated Petition are denied.

134.

The allegations contained in paragraph 64 of the First Supplemental Amending and Restated Petition are denied.

135.

The allegations contained in paragraph 65 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain

allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

136.

The allegations contained in paragraph 66 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

137.

The allegations contained in paragraph 67 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

138.

The allegations contained in paragraph 68 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

139.

The allegations contained in paragraph 69 of the First Supplemental Amending and Restated Petition are denied.

140.

The allegations contained in paragraph 70 of the First Supplemental Amending and Restated Petition are denied.

141.

The allegations contained in paragraph 71 of the First Supplemental Amending and Restated Petition are denied.

142.

The allegations contained in paragraph 72 of the First Supplemental Amending and Restated Petition are denied.

143.

The allegations contained in paragraph 73 of the First Supplement Amending and Restated Petition are denied.

144.

The allegations contained in paragraph 74 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

145.

The allegations contained in paragraph 75 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

146.

The allegations contained in paragraph 76 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

147.

The allegations contained in paragraph 77 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

148.

The allegations contained in paragraph 78 of the First Supplemental Amending and Restated Petition are denied.

149.

The allegations contained in paragraph 79 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

150.

The allegations contained in paragraph 80 of the First Supplemental Amending and Restated Petition are denied.

151.

The allegations contained in paragraph 81 of the First Supplemental Amending and Restated Petition are denied.

152.

The allegations contained in paragraph 82 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

153.

The allegations contained in paragraph 83 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

154.

The allegations contained in paragraph 84 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

155.

The allegations contained in paragraph 85 of the First Supplemental Amending and Restated Petition are denied.

156.

The allegations contained in paragraph 86 of the First Supplemental Amending and Restated Petition are denied.

157.

The allegations contained in paragraph 87 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

158.

The allegations contained in paragraph 88 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

159.

The allegations contained in paragraph 89 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

160.

The allegations contained in paragraph 90 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

161.

The allegations contained in paragraph 91 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

162.

The allegations contained in paragraph 92 of the First Supplemental Amending and Restated Petition are denied.

163.

The allegations contained in paragraph 93 of the First Supplemental Amending and Restated Petition are denied.

164.

The allegations contained in paragraph 94 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

165.

The allegations contained in paragraph 95 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

166.

The allegations contained in paragraph 96 of the First Supplemental Amending and Restated Petition are denied.

167.

The allegations contained in paragraph 97 of the First Supplemental Amending and Restated Petition are denied.

168.

The allegations contained in paragraph 98 of the First Supplemental Amending and Restated Petition are denied.

169.

The allegations contained in paragraph 99 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

170.

The allegations contained in paragraph 100 of the First Supplemental Amending and Restated Petition are denied.

171.

The allegations contained in paragraph 101 of the First Supplemental Amending and Restated Petition are denied.

172.

The allegations contained in paragraph 102 of the First Supplemental Amending and Restated Petition are denied.

173.

The allegations contained in paragraph 103 of the First Supplemental Amending and Restated Petition are denied.

174

The allegations contained in paragraph 104 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

175.

The allegations contained in paragraph 105 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

176.

The allegations contained in paragraph 106 of the First Supplemental Amending and Restated Petition are denied.

177.

The allegations contained in paragraph 107 of the First Supplemental Amending and Restated Petition are denied.

178.

The allegations contained in paragraph 108 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

179.

The allegations contained in paragraph 109 of the First Supplemental Amending and Restated Petition are denied.

180.

The allegations contained in paragraph 110 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

181.

The allegations contained in paragraph 111 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

182.

The allegations contained in paragraph 112 of the First Supplemental Amending and Restated Petition are denied.

183.

The allegations contained in paragraph 113 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

184.

The allegations contained in paragraph 114 of the First Supplemental Amending and Restated Petition are denied.

185.

The allegations contained in paragraph 115 of the First Supplemental Amending and Restated Petition are denied.

186.

The allegations contained in paragraph 116 of the First Supplemental Amending and Restated Petition are denied.

187.

The allegations contained in paragraph 117 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

188.

The allegations contained in paragraph 118 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

189.

The allegations contained in paragraph 119 of the First Supplemental Amending and Restated Petition are denied.

190.

The allegations contained in paragraph 120 of the First Supplemental Amending and Restated Petition are denied.

191.

The allegations contained in paragraph 121 of the First Supplemental Amending and Restated Petition are denied.

192.

The allegations contained in paragraph 122 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

193.

The allegations contained in paragraph 123 of the First Supplemental Amending and Restated Petition are denied.

194.

The allegations contained in paragraph 124 of the First Supplemental Amending and Restated Petition are denied.

195.

The allegations contained in paragraph 125 of the First Supplemental Amending and Restated Petition are denied.

196.

The allegations contained in paragraph 126 of the First Supplemental Amending and Restated Petition are denied.

197.

The allegations contained in paragraph 127 of the First Supplemental Amending and Restated Petition are denied.

198.

The allegations contained in paragraph 128 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

199.

The allegations contained in paragraph 129 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

200.

The allegations contained in paragraph 130 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

201.

The allegations contained in paragraph 131of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

202.

The allegations contained in paragraph 132 of the First Supplemental Amending and Restated Petition are denied.

203.

The allegations contained in paragraph 133 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

204.

The allegations contained in paragraph 134 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

205.

The allegations contained in paragraph 135 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

206.

The allegations contained in paragraph 136 of the First Supplemental Amending and Restated Petition are denied.

207.

The allegations contained in paragraph 137 of the First Supplemental Amending and Restated Petition are denied.

208.

The allegations contained in paragraph 138 of the First Supplemental Amending and Restated Petition are denied.

209.

The allegations contained in paragraph 139 of the First Supplemental Amending and Restated Petition are denied.

210.

The allegations contained in paragraph 140 of the First Supplemental Amending and Restated Petition are denied.

211.

The allegations contained in paragraph 141 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

212.

The allegations contained in paragraph 142 of the First Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

213.

The allegations contained in paragraph 143 of the First Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks a jury trial. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

AND NOW, further answering, Evanston responds to Plaintiff's *Second Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial* as follows:

ANSWER TO SECOND SUPPLEMENTAL, AMENDING AND RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL

214.

The allegations contained in paragraph 1 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to amend the caption as

written. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

215.

The allegations contained in paragraph 2 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

216.

The allegations contained in paragraph 3 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

217.

The allegations contained in paragraph 4 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

218.

Evanston admits, upon information and belief, that James J. Donelon is the Commissioner of Insurance for the State of Louisiana and has brought the instant lawsuit. Except as specifically admitted, the allegations contained in paragraph 5 of the Petition for Damages and Jury Demand are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

219.

The allegations contained in paragraph 6 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

220.

The allegations contained in paragraph 7 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

221.

The allegations contained in paragraph 8 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

222.

The allegations contained in paragraph 9 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

223.

The allegations contained in paragraph 10 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

224.

The allegations contained in paragraph 11 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

225.

The allegations contained in paragraph 12 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

226.

The allegations contained in paragraph 13 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to name the listed Defendants. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

227.

In response to the allegations contained in paragraph 14 of the Second Supplemental Amending and Restated Petition, Evanston admits that it is a licensed surplus lines insurer doing business in Louisiana. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

228.

The allegations contained in paragraph 15 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to define the listed terms. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

229.

The allegations contained in paragraph 16 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

230.

The allegations contained in paragraph 17 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

231.

The allegations contained in paragraph 18 of the Second Supplemental Amending and Restated Petition are denied.

232.

The allegations contained in paragraph 19 of the Second Supplemental Amending and Restated Petition are denied.

233.

The allegations contained in paragraph 20 of the Second Supplemental Amending and Restated Petition are denied.

234.

The allegations contained in paragraph 21 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

235.

The allegations contained in paragraph 22 of the Second Supplemental Amending and Restated Petition are denied.

236.

The allegations contained in paragraph 23 of the Second Supplemental Amending and Restated Petition are denied.

237.

The allegations contained in paragraph 24 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

238.

The allegations contained in paragraph 25 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

239.

The allegations contained in paragraph 26 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

240.

The allegations contained in paragraph 27 of the Second Supplemental Amending and Restated Petition are denied.

241.

The allegations contained in paragraph 28 of the Second Supplemental Amending and Restated Petition are denied.

242.

The allegations contained in paragraph 29 of the Second Supplemental Amending and Restated Petition are denied.

243.

The allegations contained in paragraph 30 of the Second Supplemental Amending and Restated Petition are denied.

244.

The allegations contained in paragraph 31 of the Second Supplemental Amending and Restated Petition are denied.

245.

The allegations contained in paragraph 32 of the Second Supplemental Amending and Restated Petition are denied.

246.

The allegations contained in paragraph 33 of the Second Supplemental Amending and Restated Petition are denied.

247.

The allegations contained in paragraph 34 of the Second Supplemental Amending and Restated Petition are denied.

248.

The allegations contained in paragraph 35 of the Second Supplemental Amending and Restated Petition are denied.

249.

The allegations contained in paragraph 36 of the Second Supplemental Amending and Restated Petition are denied.

250.

The allegations contained in paragraph 37 of the Second Supplemental Amending and Restated Petition are denied.

251.

The allegations contained in paragraph 38 of the Second Supplemental Amending and Restated Petition are denied.

252.

Evanston admits, upon information and belief, that Plaintiff reached some agreement with the listed parties, which agreement, as a written document would be the best evidence of its terms and conditions. Except as specifically admitted, the allegations contained in paragraph 39 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

253.

The allegations contained in paragraph 40 of the Second Supplemental Amending and Restated Petition are denied.

254.

The allegations contained in paragraph 41 of the Second Supplemental Amending and Restated Petition are denied.

255.

The allegations contained in paragraph 42 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof

256.

The allegations contained in paragraph 43 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

257.

The allegations contained in paragraph 44 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

258.

The allegations contained in paragraph 45 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

259.

The allegations contained in paragraph 46 of the Second Supplemental Amending and Restated Petition are denied.

260.

The allegations contained in paragraph 47 of the Second Supplemental Amending and Restated Petition are denied.

261.

The allegations contained in paragraph 48 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

262.

The allegations contained in paragraph 49 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

263.

The allegations contained in paragraph 50 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

264.

The allegations contained in paragraph 51 of the Second Supplemental Amending and Restated Petition are denied.

265.

The allegations contained in paragraph 52 of the Second Supplemental Amending and Restated Petition are denied.

266.

The allegations contained in paragraph 53 of the Second Supplemental Amending and Restated Petition are denied.

267.

The allegations contained in paragraph 54 of the Second Supplemental Amending and Restated Petition are denied.

268.

The allegations contained in paragraph 55 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

269.

The allegations contained in paragraph 56 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

270.

The allegations contained in paragraph 57 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

271.

The allegations contained in paragraph 58 of the Second Supplemental Amending and Restated Petition are denied.

272.

The allegations contained in paragraph 59 of the Second Supplemental Amending and Restated Petition are denied.

273.

The allegations contained in paragraph 60 of the Second Supplemental Amending and Restated Petition are denied.

274.

The allegations contained in paragraph 61 of the Second Supplemental Amending and Restated Petition are denied.

275.

The allegations contained in paragraph 62 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

276.

The allegations contained in paragraph 63 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

277.

The allegations contained in paragraph 64 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

278.

The allegations contained in paragraph 65 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

279.

The allegations contained in paragraph 66 of the Second Supplemental Amending and Restated Petition are denied.

280.

The allegations contained in paragraph 67 of the Second Supplemental Amending and Restated Petition are denied.

281.

The allegations contained in paragraph 68 of the Second Supplemental Amending and Restated Petition are denied.

282.

The allegations contained in paragraph 69 of the Second Supplemental Amending and Restated Petition are denied.

283.

The allegations contained in paragraph 70 of the Second Supplemental Amending and Restated Petition are denied.

284.

The allegations contained in paragraph 71 of the Second Supplemental Amending and Restated Petition are denied.

285.

The allegations contained in paragraph 72 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

286.

The allegations contained in paragraph 73 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

287.

The allegations contained in paragraph 74 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

288.

The allegations contained in paragraph 75 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

289.

The allegations contained in paragraph 76 of the Second Supplemental Amending and Restated Petition are denied.

290.

The allegations contained in paragraph 77 of the Second Supplemental Amending and Restated Petition are denied.

291.

The allegations contained in paragraph 78 of the Second Supplemental Amending and Restated Petition are denied.

292.

The allegations contained in paragraph 79 of the Second Supplemental Amending and Restated Petition are denied.

293.

The allegations contained in paragraph 80 of the Second Supplemental Amending and Restated Petition are denied.

294.

The allegations contained in paragraph 81 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable Court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations contained therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

295.

The allegations contained in paragraph 82 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

296.

The allegations contained in paragraph 83 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

297.

The allegations contained in paragraph 84 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

298.

The allegations contained in paragraph 85 of the Second Supplemental Amending and Restated Petition are denied.

299.

The allegations contained in paragraph 86 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

300.

The allegations contained in paragraph 87 of the Second Supplemental Amending and Restated Petition are denied.

301.

The allegations contained in paragraph 88 of the Second Supplemental Amending and Restated Petition are denied. are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

302.

The allegations contained in paragraph 89 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

303.

The allegations contained in paragraph 90 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

304.

The allegations contained in paragraph 91 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

305.

The allegations contained in paragraph 92 of the Second Supplemental Amending and Restated Petition are denied.

306.

The allegations contained in paragraph 93 of the Second Supplemental Amending and Restated Petition are denied.

307.

The allegations contained in paragraph 94 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

308.

The allegations contained in paragraph 95 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

309.

The allegations contained in paragraph 96 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

310.

The allegations contained in paragraph 97 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

311.

The allegations contained in paragraph 98 of the Second Supplemental Amending and Restated Petition are denied.

312.

The allegations contained in paragraph 99 of the Second Supplemental Amending and Restated Petition are denied.

313.

The allegations contained in paragraph 100 of the Second Supplemental Amending and Restated Petition are denied.

314.

The allegations contained in paragraph 101 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

315.

The allegations contained in paragraph 102 of the Second Supplemental Amending and Restated Petition are denied.

316.

The allegations contained in paragraph 103 of the Second Supplemental Amending and Restated Petition are denied.

317.

The allegations contained in paragraph 104 of the Second Supplemental Amending and Restated Petition are denied.

318.

The allegations contained in paragraph 105 of the Second Supplemental Amending and Restated Petition are denied.

319.

The allegations contained in paragraph 106 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

320.

The allegations contained in paragraph 107 of the Second Supplemental Amending and Restated Petition are denied.

321.

The allegations contained in paragraph 108 of the Second Supplemental Amending and Restated Petition are denied.

322.

The allegations contained in paragraph 109 of the Second Supplemental Amending and Restated Petition are denied.

323.

The allegations contained in paragraph 110 of the Second Supplemental Amending and Restated Petition are denied.

324.

The allegations contained in paragraph 111 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

325.

The allegations contained in paragraph 112 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

326.

The allegations contained in paragraph 113 of the Second Supplemental Amending and Restated Petition are denied.

327.

The allegations contained in paragraph 114 of the Second Supplemental Amending and Restated Petition are denied.

328.

The allegations contained in paragraph 115 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

329.

The allegations contained in paragraph 116 of the Second Supplemental Amending and Restated Petition are denied.

330.

The allegations contained in paragraph 117 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

331.

The allegations contained in paragraph 118 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

332.

The allegations contained in paragraph 119 of the Second Supplemental Amending and Restated Petition are denied.

333.

The allegations contained in paragraph 120 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

334.

The allegations contained in paragraph 121 of the Second Supplemental Amending and Restated Petition are denied.

335.

The allegations contained in paragraph 122 of the Second Supplemental Amending and Restated Petition are denied.

336.

The allegations contained in paragraph 123 of the Second Supplemental Amending and Restated Petition are denied.

337.

The allegations contained in paragraph 124 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

338.

The allegations contained in paragraph 125 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

339.

The allegations contained in paragraph 126 of the Second Supplemental Amending and Restated Petition are denied.

340.

The allegations contained in paragraph 127 of the Second Supplemental Amending and Restated Petition are denied.

341.

The allegations contained in paragraph 128 of the Second Supplemental Amending and Restated Petition are denied.

342.

The allegations contained in paragraph 129 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

343.

The allegations contained in paragraph 130 of the Second Supplemental Amending and Restated Petition are denied.

344.

The allegations contained in paragraph 131 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

345.

The allegations contained in paragraph 132 of the Second Supplemental Amending and Restated Petition are denied.

346.

The allegations contained in paragraph 133 of the Second Supplemental Amending and Restated Petition are denied.

347.

The allegations contained in paragraph 134 of the Second Supplemental Amending and Restated Petition are denied.

348.

The allegations contained in paragraph 135 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent this Honorable Court requires a response, Evanston admits that Plaintiff seeks to reallege certain allegations. Except as specifically admitted, the allegations contained therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

349.

The allegations contained in paragraph 136 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

350.

The allegations contained in paragraph 137 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

351.

The allegations contained in paragraph 138 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

352.

The allegations contained in paragraph 139 of the Second Supplemental Amending and Restated Petition are denied.

353.

The allegations contained in paragraph 140 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

354.

The allegations contained in paragraph 141 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

355.

The allegations contained in paragraph 142 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

356.

The allegations contained in paragraph 143 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

357.

The allegations contained in paragraph 144 of the Second Supplemental Amending and Restated Petition are denied.

358.

The allegations contained in paragraph 145 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

359.

The allegations contained in paragraph 146 of the Second Supplemental Amending and Restated Petition are denied.

360.

The allegations contained in paragraph 147 of the Second Supplemental Amending and Restated Petition are denied.

361.

The allegations contained in paragraph 148 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

362.

The allegations contained in paragraph 149 of the Second Supplemental Amending and Restated Petition are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

363.

The allegations contained in paragraph 150 of the Second Supplemental Amending and Restated Petition do not appear to require a response from Evanston. To the extent that this Honorable Court requires a response, Evanston admits that Plaintiff seeks a jury trial. Except as specifically admitted, the allegations contained therein are denied based on the lack of knowledge or information sufficient to justify a belief in the truth thereof.

AND NOW, after answering all of the allegations contained in the *Petition for Damages and for Jury Trial*, First *Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial,* and *Second Supplemental, Amending and Restated Petition for Damages*

and Request for Jury Trial, Evanston pleads all of the below listed Affirmative Defenses as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a right of action or cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages were caused by his own fault and/or negligence, which should reduce or bar recovery under any policy issued by Evanston, the entitlement to which is expressly denied.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's injuries and damages were caused by the fault and/or negligence of a third party for whom Evanston is not responsible, and that fault and/or negligence should reduce or bar recovery under any policy issued by Evanston, the entitlement to which is expressly denied.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of intervening and/or superseding cause.

FIFTH AFFIRMATIVE DEFENSE

Evanston issued Policy No. XM800966 (the "Evanston Excess Policy") to Ochsner Clinic Foundation for the period June 1, 2016 through June 1, 2017. As a written document, the Excess Evanston Policy is the best evidence of its terms, conditions, limitations and exclusions, all of which are pled as if copied herein *in extenso*.

SIXTH AFFIRMATIVE DEFENSE

Allied World Specialty Insurance Company ("Allied") issued Policy No. 0310-1583[1] (the "Underlying Allied Policy") to Ochsner Clinic Foundation for the period June 1, 2016 through June 1, 2017. The Excess Evanston Policy follows the form of the Underlying Allied Policy. As a written document, the Underlying Allied Policy is the best evidence of its terms, conditions, limitations and exclusions, all of which are pled as if copied herein *in extenso*.

[1] Evanston has requested and is awaiting a certified copy of the Underlying Allied Policy and will supplement the record with that copy when available.

SEVENTH AFFIRMATIVE DEFENSE

No coverage is afforded, and no recovery from Evanston is available, to the extent that the claimed damages are outside of the Evanston Excess Policy's Policy Period as listed in the Declarations Item 2.

EIGHTH AFFIRMATIVE DEFENSE

No coverage is afforded, and no recovery from Evanston is available, to the extent that the claimed damages are outside of the Evanston Excess Policy's Limits of Liability as listed in the Declarations Item 3.

NINTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

> FOLLOWING FORM
>
> This Policy, except as stated herein, is subject to all terms, conditions, representations and limitations as contained in the **Followed Policy** as of inception of this Policy, and to the extent coverage is further limited or restricted thereby, in any other **Underlying Policy(ies).** In the event of any conflict between the terms, conditions, and limitations of this Policy and any **Underlying Policy,** the terms, conditions and limitations of this Policy shall control.

Based on these provisions, Evanston hereby avers that the Evanston Excess Policy follows the form of the terms, conditions, limitations and exceptions of the Underlying Allied Policy, which is listed in Item 5 of the Evanston Excess Policy as an underlying policy.

TENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

> **INSURING CLAUSE**
>
> Subject to the terms and conditions of this Policy, the Insurer shall provide to the **Insureds** excess coverage for claims first made during the **Policy Period.** Liability for any covered loss resulting from covered claims shall attach to the Insurer only after (i) the insurers of the **Underlying Policy(ies)**, the **Insureds**, and/or any other party shall have paid in legal currency loss covered under the respective **Underlying Policy(ies)** equal to the full amount of the **Underlying Limit(s)**, and (ii) the **Insureds** shall have paid the retention or deductible, if any, applicable under the **Primary Policy**. The Insurer shall then be liable to pay only covered loss in excess of such **Underlying Limit(s)** up to its **Limit of Liability** as set forth in Item 3 of the Declarations, which shall be the maximum aggregate liability of the Insurer under this Policy with respect to all claims first made in the **Policy Period** against all **Insureds** irrespective of the time payment by the Insurer.

No coverage is afforded, and no recovery from Evanston is available, to the extent that Plaintiff fails to satisfy the insuring agreement and the requirement that Plaintiff prove that

coverage under the Evanston Excess Policy has attached based on the payment in legal currency loss covered under the **Underlying Policy(ies)** as defined by the Policy and equal to the full amount of the **Underlying Limits** as defined by the Policy and that the Insureds have paid the retention under the **Primary Policy**.

ELEVENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

UNDERLYING POLICIES

1. Notwithstanding any of the terms of this Policy which might be construed otherwise, this Policy shall drop down to the extent the **Underlying Limit** is paid as described above, and shall not drop down for any other reason including, but not limited to, uncollectability (in whole or in part) of any **Underlying Policy(ies)**. The risk of uncollectability of the **Underlying Policy(ies)** (in whole or in part) whether because of financial impairment or insolvency of an underlying surer or for any other reason, is expressly retained by the **Insureds** and is not in any way or under any circumstances insured or assumed by the insurer.

2. If any **Underlying Policy(ies)** contains a specific grant of coverage that is subject to a sublimit of liability then coverage under this Policy shall not apply to any claim which is otherwise subject to such grant of coverage. However, any loss which is paid under the **Underlying Policy(ies)** and which is subject to such sublimit of liability shall erode or exhaust the **Underlying Limit(s)** for purposes of this Policy.

3. If any **Underlying Policy(ies)** is canceled or terminated during the **Policy Period**, the Insurer shall not be liable under this Policy to a greater extent that it would have been had such **Underlying Policy(ies)** been maintained. To the extent the terms, conditions or limitations of any of the **Underlying Policy(ies)** are changed during the **Policy Period**, this Policy shall automatically become subject to any such changes which limit or restrict coverage, and this Policy shall become subject to any such changes which expand or broaden coverage only if and to the extent the Insurer agrees to such changes in writing.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's section II. B. regarding Underlying Policies have not been satisfied.

TWELFTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

C. Notice
All notices under this Policy shall be in writing and properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address shown in Item 1. of the Declarations. Notice to the Insurer shall be given at the respective address shown in the attached notice schedule.

Any notice to the insurer of an **Underlying Policy(ies)** shall not constitute notice to the Insurer unless also given to the Insurer as provided above.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's section II. C. regarding notice have not been satisfied.

THIRTEENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

CLAIMS PROVISIONS

1. The insurer may, at its sole discretion, fully and effectively associate with the **Insureds** in the investigation defense or settlement of any claim or potential claim reported to the Insurer under this Policy even if the **Underlying Limit** has not been exhausted.

2. No action by any other insurer shall bind the Insurer under this Policy. The Insurer shall not be liable under this Policy for any settlements, stipulated judgments or defense costs to which the Insurer has not consented which consent shall not be unreasonably withheld.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's section II. D. regarding claims provisions have not been satisfied.

FOURTEENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

DISCOVERY PERIOD

The **Insureds** shall have the right to elect a discovery period under this Policy as described in, and subject to the terms of, the **Followed Policy**. The additional premium for the discovery period shall be the same percentage of this Policy's annual premium as the percentage stated in the **Followed Polity** for calculating the discovery period premium thereunder. The discovery period shall not be available unless the **Insured** has elected the discovery period in all unexhausted **Underlying Policy** and has provided proof thereof to the Insurer.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's section II. E. regarding the discovery period have not been satisfied.

FIFTEENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

> RECOVERIES
>
> Any amount recovered by or on behalf of the **Insureds** after payment under this Policy, less the cost of obtaining the recovery, shall be distributed in the following order: (i) first to the **Insureds** and the insurer of any other policy specifically excess of this Policy until they are reimbursed for covered loss that they pay excess of this Policy, (ii) then to the Insurer until the Insurer is reimbursed for payments under this Policy, and (iii) then to the **Insureds** and the insurer of any **Underlying Policy** until they are reimbursed for covered loss that they pay.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's section II. F. regarding recoveries have not been satisfied.

SIXTEENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

> DEFINITIONS
>
> Terms defined in the Followed Policy are used in this Policy with the meaning assigned to them in the Followed Policy, unless otherwise stated herein.
>
> 1. Followed Policy, Underlying Policy(ies) and Limit of Liability have the meanings attributed to them in the Declarations.
> 2. Insured(s) means all natural persons and entities insured by the Followed Policy.
> 3. Parent Company means the entity named in Item 1. of the Declarations.
> 4. Primary Policy means the first listed policy in Item 5 of the Declarations.
> 5. Policy Period means the period of time specified in Item 2 of the Declarations subject to prior termination in accordance with the Followed Policy, plus the discovery period if exercised.
> 6. Underlying Limit means an amount equal to the aggregate of all applicable limits of liability, as set forth in item 5. of the Declarations, for all Underlying Policies, plus the retention or deductible, if any, applicable under the Primary Policy.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the definitions contained in the Evanston Excess Policy's section II. G. have not been satisfied.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

> This endorsement modifies all insurance provided under the following:

EXCESS MANAGEMENT LIABILITY INSURANCE POLICY

SCHEDULE

Followed Policy Forms

Healthcare Organizations Employment Practices Liability Policy
Healthcare Organizations Directors and Officers Policy

In consideration of the premium paid, it is understood and agreed that as respects excess coverage afforded by this Policy, the Insurer's Aggregate Limit of Liability set forth in Item 3. of the Declarations shall apply excess of the **Followed Policy Forms** in the Schedules above and all endorsement attached to such **Followed Policy Forms** and shall be the maximum aggregate liability of the Insurer's under this Policy resulting from covered claims first made during the **Policy Period.**

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's Aggregate – Followed Policy Forms endorsement have not been satisfied.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

NON-FOLLOWING ENDORSEMENT
(CO-INSURANCE)

This endorsement modifies insurance provided under the following:

EXCESS MANAGEMENT LIABILITY INSURANCE POLICY

In consideration of the premium paid, it is understood an agreed that Coverage under this Policy shall not be subject to or follow Endorsement No. 8, Antitrust Coverage Subject Co-Insurance, on the Underlying Policy, Policy No. 0310-1583.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's Non-Following Endorsement (Co-Insurance) endorsement have not been satisfied.

NINETEENTH AFFIRMATIVE DEFENSE

The Evanston Excess Policy contains the following provisions:

In consideration of the premium charged, it is understood and agreed that the Insurer has relied upon the statements in the following application(s):
Chubb Group Health Care Portfolio Renewal Application signed on 3/4/2016 including materials attached thereto, completed by the **Parent Company** designated in Item 1. of the Declarations and such application(s) is/are made a part of this policy and operates as the Insurer's own application.

No coverage is afforded, and no recovery from Evanston is available, to the extent that the requirements of the Evanston Excess Policy's Reliance Upon Other Insurer's Application endorsement have not been satisfied. Moreover, Evanston pleads all of the terms of the referenced application as if copied herein *in extenso*.

TWENTIETH AFFIRMATIVE DEFENSE

The claims against Evanston are barred, in whole or in part, and/or should be proportionately reduced to the extent plaintiff and/or any other party failed to mitigate, minimize, and/or reduce damages and to the extent to any of the damages claimed by plaintiff are or were pre-existing.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Underlying Allied Policy's insuring agreement provides as follows:

> The **Insurer** shall pay on behalf of the **Company**, subject to the Limit of Liability set forth in Item 3.A. of the Declarations, the **Loss** arising from a **Claim**, first made during the **Policy Period** (or Discovery Period, if applicable) against any **Insured Person** for a **Wrongful Act**, and reported to the **Insurer** in accordance with Section VII. of this Policy, if the **Company** pays such **Loss** to or on behalf of the **Insured Person** as indemnification.

No coverage is afforded, and no recovery from Evanston is available, to the extent that Plaintiff's claims fail to satisfy the insuring agreement and the requirement that Plaintiff prove a "**Loss**" as defined by the Policy, which arising from a "**Claim**" as defined by the Policy, and it first made during the "Policy Period" as defined by the Policy, which is against any "**Insured Person**" as defined by the Policy for a "**Wrongful Act**" as defined by the Policy, if the insurer pays such "**Loss**" on behalf of the "**Insured Person**" specifically as indemnification.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following exclusionary provision:

> This Policy shall not cover any **Loss** in connection with any **Claim**:
>
> A. 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;

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following exclusionary provision:

This Policy shall not cover any **Loss** in connection with any **Claim**

* * * *

B. 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;

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following exclusionary provision:

This Policy shall not cover **Loss** in connection with any **Claim**:

C. based upon, arising from, or in consequence of any actual or alleged liability of any **Insured** under any express contract or agreement; provided however, that this Exclusion shall not apply: (1) to the extent that such **Insured** would have been liable in the absence of such contract or agreement; or (2) to the payment of **Defense Costs** for that portion of such a **Claim** against an **Insured Person.**

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following exclusionary provision:

This Policy shall not cover **Loss** in connection with any **Claim**:

D. Alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6. of 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;

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following exclusionary provision:

This Policy shall not cover **Loss** in connection with any **Claim**:

G. brought by an Outside Entity or by any director, officer, trustee or governor thereof, or which is brought by any security holder of the Outside Entity, whether directly or derivatively, against an Outside Entity Insured Person;

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following exclusionary provision:

H. brought by or on behalf of any **Insured**, provided however, that this Exclusion shall not apply to:

(1) any **Claim** brought by an **Insured Person** that is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** which is not otherwise excluded under the terms of this Policy;

(2) a shareholder derivative action, but only if such action is brought and maintained without the solicitation, approval, assistance, active participate or intervention of any **Insured** or any **Affiliate** thereof.

(3) any **Claim** brought by any **Executive** who has not served in such capacity, nor has acted as a consultant to the **Company,** for at least three (3) years prior to the **Claim** being first made.

(4) any **Claim** brought by or on behalf of an **Insured Person** arising out of or based upon the violation of any foreign, federal, state or local law providing protection for whistleblowers;

(5) any **Claim** brought by any **Executive** or a **Company** formed and operating in a foreign jurisdiction, against such **Company** or any **Insured Person** thereof, provided that such **Claim** is brought and maintained outside the United States, Canada or any other common law country (including any territories thereof);

(6) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver or similar official for the **company** or any assignee of such trustee, examiner, receiver or similar official; or

(7) any **Claim** brought by an **Insured Person** for any actual or alleged act error or omission by an **Insured** in connection with the performance of or failure to perform **Provider Selection Practices**;

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following exclusionary language:

This Policy shall not cover **Loss** in connection with any **Claim:**

N. 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** by any **Insured** or by any individual or entity for whose acts, errors or omissions an **Insured** is legally responsible,

> except that this Exclusion shall not apply to that portion of an otherwise covered **Claim** for **Provider Selection Practices;**

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains an endorsement style "Endorsement 10. Specific Claim Exclusion, which contains the following exclusionary provisions:

> No Coverage will be available for Loss from any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
>
> Ochsner Bayou Chubb Policy No. 6804-4523 claim involving Regina Gray; Ochsner Hospital Chubb Policy No. 8207-3888 claim involving Bahram Zamanian and claims reported on the 2014-2015 bordereau.

No coverage is afforded, and no recovery from Evanston is available, to the extent that any damages that may be awarded fall within this exclusion.

THIRTIETH AFFIRMATIVE DEFENSE

No coverage is afforded, and no recovery from Evanston is available to the extent that any damages that may be awarded exceed the applicable limitations of liability and/or aggregates contained in the Underlying Allied World Policy or the Evanston Excess Policy, which limitations of liability are pled as if copied herein *in extenso*.

THIRTY-FIRST AFFIRMATIVE DEFENSE

No coverage is afforded, and no recovery from Evanston is available to the extent that any Claim was not first made against each alleged insured during the relevant policy period and timely reported in writing according to the terms of the Underlying Allied World Policy and the Evanston Excess Policy.

THIRTY-SECOND AFFIRMATIVE DEFENSE

No coverage is afforded, and no recovery from Evanston is available to the extent that any alleged insured became aware of circumstances that would reasonably be expected to give rise to a Claim and failed to provide timely notice according to the terms of the Underlying Allied Policy or the Evanston Excess Policy.

THIRTY-THIRD AFFIRMATIVE DEFENSE

No coverage is afforded, and no recovery from Evanston is available to the extent that the self-insured retention required under the Underlying Allied Policy has not been exhausted as required by the Underlying Allied Policy and the Evanston Policy.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

The Underlying Allied Policy contains the following provisions:

> 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 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.

No coverage is afforded, and no recovery from Evanston is available to the extent that these provisions have not been satisfied.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that the Insured has not satisfied the requirement that all representations in the relevant Applications in connection with the Underlying Allied Policy or the Evanston Excess Policy are accurate and complete.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any person seeking coverage is not an Executive Employee or Outside Entity Insured Person as defined by the Underlying Allied Policy.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any person seeking coverage as an Outside Entity Insured Person does not satisfy the Underlying Allied Policy's requirement that such entity be acting in their 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.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any damages that may be awarded do not satisfy the definition of "Loss" contained in the Underlying

Allied Policy, which definition expressly excludes "amounts which an Insured is not legally obligated to pay."

THIRTY-NINTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any damages that may be awarded do not satisfy the requirements of Coverage Part A of the Underlying Allied Policy.

FORTIETH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any damages that may be awarded do not satisfy the requirements of Coverage Part B of the Underlying Allied Policy.

FORTY-FIRST AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any damages that may be awarded do not satisfy the requirements of Endorsement 2 of the Underlying Allied Policy.

FORTY-SECOND AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any damages that may be awarded do not satisfy the cooperation requirements of the Underlying Allied Policy or the Evanston Excess Policy.

FORTY-THIRD AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that Plaintiff has no right of direct action against Evanston under La. R.S. 22:1269.

FORTY-FOURTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that any decisions by the Defendants were reasonably believed to be in the best interests of the Company and were the result of good faith and fair dealing.

FORTY-FIFTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that the Petition is vague and ambiguous.

FORTY-SIXTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that Plaintiff's claims are barred by settlement, release, and/or payment.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

No coverage is afforded and no recovery from Evanston is available to the extent that Plaintiff's claims are barred by prescription.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

Evanston adopts and incorporates any defenses that have been or may be asserted by any of the Insurer Defendants that have been or may be asserted as if fully set forth herein.

FIFTIETH AFFIRMATIVE DEFENSE

Evanston avers that it is entitled to credit and/or setoff of any amounts owed, offered, paid to, or on behalf of, plaintiff regardless of the source of any such payments.

FIFTY-FIRST AFFIRMATIVE DEFENSE

Evanston pleads and incorporates herein by reference, as though copied *in extenso*, any and all defenses, affirmative or otherwise, pled by any other defendant in this matter that are not inconsistent with Evanston's position and/or affirmative defenses as described in this pleading.

FIFTY-SECOND AFFIRMATIVE DEFENSE

Evanston reserves the right to invoke any other defenses that may become available during the ongoing proceeding of the instant litigation and reserves its right to amend its responsive pleadings to assert those defenses.

WHEREFORE, Evanston Insurance Company, prays that this, its Answer to the Petition for Damages and Jury Demand be deemed good and sufficient and after due proceedings be had, there be judgment rendered herein in its favor, dismissing the Plaintiff's lawsuit, and awarding costs, attorney's fees and interest to defendant, and for all such other equitable relief as the justice of this cause may require and permit.

Respectfully submitted,
DEGAN, BLANCHARD & NASH

Sidney W. Degan, III (#4804)
Karl H. Schmid (#25241)
Simone M. Almon (#30611)
400 Poydras St., Suite 2600
New Orleans, LA 70130
Telephone: 504-529-3333
Facsimile: 504-529-3337
sdegan@degan.com
kschmid@degan.com
salmon@degan.com
Attorneys for Defendant, Evanston Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answers has been served upon all counsel of record by email, facsimile and/or by placing same in the U.S. mail, properly addressed and postage prepaid, this 3rd day of January, 2018.

Simone M. Almon

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

SUIT NO. 651069, SEC. 22

V.

19TH JUDICIAL DISTRICT COURT

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

STATE OF LOUISIANA

FILED _____ DEPUTY CLERK _____

REQUEST FOR NOTICE

Pursuant to the Louisiana Code of Civil Procedure, the undersigned counsel for Evanston Insurance Company, defendant herein, requests written notice by mail at least ten (10) days in advance of all trial dates, dates of arguments or hearings (whether on merits or otherwise), signing of any final judgment, rendition of any interlocutory orders, judgments, or decrees and any and all formal steps taken by the parties, the Judge, or any member of the Court in the above-entitled and numbered cause.

Respectfully submitted,
DEGAN, BLANCHARD & NASH

Sidney W. Degan, III (#4804)
Karl H. Schmid (#25241)
Simone M. Almon (#30611)
400 Poydras St., Suite 2600
New Orleans, LA 70130
Telephone: 504-529-3333
Facsimile: 504-529-3337
sdegan@degan.com
kschmid@degan.com
salmon@degan.com
Attorneys for Defendant, Evanston Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Request for Notice has been served upon all counsel of record by email, facsimile and/or by placing same in the U.S. mail, properly addressed and postage prepaid, this 3rd day of January, 2018.

Simone M. Almon