

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

STATE OF LOUISIANA

NO. 651,069

SECTION 22

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

VERSUS

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

FILED: \_\_\_\_\_  
DEPUTY CLERK

**ANSWER OF ZURICH AMERICAN INSURANCE COMPANY**

NOW INTO COURT, through undersigned counsel, comes defendant, Zurich American Insurance Company ("Zurich"), who, in answer to plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana, in his Capacity as Rehabilitator of Louisiana Health Cooperative, Inc.'s Second Supplemental, Amending and Restated Petition for Damages responds as follows:

1.

The first numbered paragraph is simply the caption of this matter and does not require an answer of Zurich. However, should an answer be necessary, Zurich denies paragraph 1 to the extent it implies liability on the part of Zurich, which is denied.

2.

The allegations of paragraph 2 are denied for lack of sufficient information to justify a belief.

3.

The allegations of paragraph 3 do not require an answer of this defendant with regard to the other named defendants; with regard to Zurich, the allegations of paragraph 3 are denied to the extent they allege that Zurich "has caused damages in Louisiana" or is in any way obligated to Healthcare Corp. Inc. in this lawsuit.



4.

The allegations of paragraph 4 are denied for lack of sufficient information to justify a belief therein.

5.

The allegations of paragraph 5 require no answer of this defendant. However, to the extent an answer be deemed necessary, those allegations are denied for lack of sufficient information to justify a belief therein.

6.

The allegations of paragraph 6 require no answer of this defendant. However, to the extent an answer be deemed necessary, those allegations are denied for lack of sufficient information to justify a belief therein.

7.

The allegations of paragraph 7 refer to a filing in the 19<sup>th</sup> JDC. The pleadings, orders, and documents filed in that matter are the best evidence of their contents, speak for themselves, and do not require an answer of this defendant. However, should an answer be deemed necessary, the allegations of paragraph 7 are denied for lack of sufficient information to justify a belief therein.

8.

The allegations of paragraph 8 are denied for lack of sufficient information to justify a belief therein.

9.

The allegations of paragraph 9 require no answer by this defendant.

10.

The allegations of paragraph 10 do not require an answer of this defendant. However, should an answer be deemed necessary, the allegations are denied for lack of sufficient information to justify a belief therein.

11.

The allegations of paragraph 11 do not require an answer of this defendant. However, should an answer be deemed necessary, the allegations are denied for lack of sufficient information to justify a belief therein.

12.

The allegations of paragraph 12 do not require an answer of this defendant. However, should an answer be deemed necessary, the allegations are denied for lack of sufficient information to justify a belief therein.

13.

The allegations of paragraph 13 do not require an answer of this defendant. However, should an answer be deemed necessary, the allegations are denied for lack of sufficient information to justify a belief therein.

14.

With respect to paragraphs A, B, C and D, Zurich responds that no answer is required of this defendant. However, should an answer be deemed necessary, the allegations are denied for lack of sufficient information to justify a belief therein. With regard to the allegations in paragraph 14E, the terms, dates and conditions of any policy issued by Zurich speak for themselves, are adopted herein, and are the best evidence of their own contents. To the extent any of the allegations conflict therewith, they are denied. Zurich specifically denies any allegations which tend to contradict, contravene or enlarge upon the terms, conditions, definitions, exclusions or limitations of any policy at issue. To the extent the allegations imply or infer any liability on the part of Zurich, they are denied. Further answering, to the extent the allegations in paragraph 14E allege that any policy issued by Zurich provides coverage in this matter, they are denied.

15.

The allegations of paragraph 15 do not require an answer of this defendant as the allegations simply define terms. Further answering, the allegations contained in the definition of “nominal defendants” are denied for lack of sufficient information to justify a belief therein concerning any underlying settlement agreement between plaintiff, Travelers Casualty and Surety Company of America and the nominal defendants, including the validity of any right to proceed against Zurich or any other insurer in this matter and including the effect of any settlement agreement. Further answering, to the extent an “Insurer Defendant” is defined as an insurer which provides coverage for the claims at issue, Zurich denies any such allegation.

16.

The allegations of paragraph 16 are denied for lack of sufficient information to justify a belief therein.

17.

The allegations of paragraph 17 are denied for lack of sufficient information to justify a belief therein.

18.

The allegations of paragraph 18 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 17 are denied for lack of sufficient information to justify a belief therein.

20.

The allegations of paragraph 20 are denied for lack of sufficient information to justify a belief therein.

21.

The allegations of paragraph 21 are denied for lack of sufficient information to justify a belief therein.

22.

The allegations of paragraph 22 are denied for lack of sufficient information to justify a belief therein.

23.

The allegations of paragraph 23 are denied for lack of sufficient information to justify a belief therein. To the extent the term "Defendants" in this paragraph is deemed to refer to Zurich or any other insurer, the allegations of paragraph 23 are denied.

24.

Zurich repeats and realleges each and every response to the foregoing paragraphs as if fully set forth herein.

25.

The allegations of paragraph 25 are denied for lack of sufficient information to justify a belief therein.

26.

The allegations of paragraph 26 are denied for lack of sufficient information to justify a belief therein.

27.

The allegations of paragraph 27 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 28 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 29 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 30 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 31 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 32 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 33 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 34 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 35 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 36 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 37 are denied for lack of sufficient information to justify a belief therein.

38.

The allegations of paragraph 38 are denied for lack of sufficient information to justify a belief therein.

39.

The allegations of paragraph 39 are denied as written. Further answering, any alleged "*Gasquet* settlement" is its own best evidence. Further answering, Zurich denies any claims regarding the validity of any reservation of rights against Zurich and whether plaintiff may pursue any claim against Zurich under the law. Zurich further denies that any insured may remain a named defendant and denies the effect of any purported *Gasquet* settlement. Further answering, the allegations of paragraph 39 are denied for lack of sufficient information to justify a belief therein.

40.

The allegations of paragraph 40 are denied with regard to the allegations that Zurich, or any policy of insurance to which Zurich follows form, provides coverage for the claims in this matter. Further answering, the terms, dates, conditions and limits of any policy issued by Zurich speak for themselves, are adopted herein, and are the best evidence of their contents. Zurich specifically denies any allegations which tend to contradict, contravene or enlarge upon the terms, conditions, limits or exclusions of any policies at issue.

41.

The allegations of paragraph 41 are denied.

42.

Zurich repeats and realleges each and every response to the foregoing paragraphs as if fully set forth herein.

43.

The allegations of paragraph 43 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 44 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 45 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 46 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 47 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 48 are denied for lack of sufficient information to justify a belief therein.

49.

The allegations of paragraph 49 are denied for lack of sufficient information to justify a belief therein.

50.

The allegations of paragraph 50 require no answer of this defendant.

51.

The allegations of paragraph 51 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 52 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 53 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 54 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 55 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 56 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 57 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 58 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 59 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 60 are denied for lack of sufficient information to justify a belief therein.



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The allegations of paragraph 61 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 62 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 63 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 64 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 65 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 66 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 67 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 68 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 69 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 70 are denied for lack of sufficient information to justify a belief therein.

71.

The allegations of paragraph 71 are denied for lack of sufficient information to justify a belief therein.

72.

Zurich repeats and realleges each and every response to the foregoing paragraphs as if fully set forth herein.

73.

The allegations of paragraph 73 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 74 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 75 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 76 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 77 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 78 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 79 are denied for lack of sufficient information to justify a belief therein.

80.

The allegations of paragraph 80 are denied for lack of sufficient information to justify a belief therein.

81.

Zurich repeats and realleges each and every response to the foregoing paragraphs as if fully set forth herein.

82.

The allegations of paragraph 82 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 83 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 84 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 85 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 86 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 87 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 88 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 89 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 90 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 91 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 92 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 93 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 94 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 95 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 96 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 97 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 98 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 99 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 100 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 101 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 102 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 103 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 104 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 105 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 106 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 107 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 108 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 109 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 110 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 111 are denied for lack of sufficient information to justify a belief therein.

112.

The allegations of paragraph 112 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 113 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 114 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 115 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 116 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 117 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 118 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 119 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 120 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 121 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 122 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 123 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 124 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 125 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 126 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 127 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 128 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 129 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 130 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 131 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 132 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 133 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 134 are denied for lack of sufficient information to justify a belief therein.

135.

The allegations of paragraph 135 are denied for lack of sufficient information to justify a belief therein.

136.

Zurich repeats and realleges each and every response to the foregoing paragraphs as if fully set forth herein.

137.

The allegations of paragraph 137 are denied for lack of sufficient information to justify a belief therein.

138.

The allegations of paragraph 138 are denied for lack of sufficient information to justify a belief therein.

139.

The allegations of paragraph 139 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 140 are denied for lack of sufficient information to justify a belief therein.



141.

The allegations of paragraph 141 are denied for lack of sufficient information to justify a belief therein.

142.

The allegations of paragraph 142 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 143 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 144 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 145 are denied for lack of sufficient information to justify a belief therein.

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The allegations of paragraph 146 are denied for lack of sufficient information to justify a belief therein.

147.

The allegations of paragraph 147 are denied for lack of sufficient information to justify a belief therein.

148.

The allegations of paragraph 148 are denied for lack of sufficient information to justify a belief therein.

149.

The allegations of paragraph 149 are denied for lack of sufficient information to justify a belief therein.

150.

The allegations of paragraph 150 require no answer of this defendant.

AND NOW, for further answer, Zurich asserts the following affirmative defenses in response to the Second Amended, Supplemental and Restated Petition for Damages:

### **FIRST DEFENSE**

The plaintiff's Second Amended, Supplemental and Restated Petition for Damages fails to state a claim or right of action against Zurich upon which relief can be granted.

### **SECOND DEFENSE**

Plaintiff's claims against Zurich are barred, in whole or in part, to the extent that plaintiff possesses no right of action against Zurich.

### **THIRD DEFENSE**

Plaintiff's claims against Zurich are barred, in whole or in part, to the extent they are excluded, limited and/or barred by the provisions, conditions, obligations, endorsements, exclusions, deductibles, retentions, definitions and limits of liability under any applicable Zurich policy, the terms of which are adopted and incorporated herein.

### **FOURTH DEFENSE**

Zurich specifically and affirmatively pleads the language of any policy it may have issued as an affirmative defense, as well as the language of all underlying policies to which it follows form.

### **FIFTH DEFENSE**

In the alternative, Zurich pleads the affirmative defense of comparative fault, assumption of the risk, and/or contributory negligence.

### **SIXTH DEFENSE**

Plaintiff's claims against Zurich are barred, in whole or in part, to the extent the incidents giving rise to this lawsuit were caused by a party or parties over whom Zurich had no responsibility or legal liability.

### **SEVENTH DEFENSE**

Coverage is barred to the extent the Claim was not first made against each alleged insured during the policy period and timely reported in writing pursuant to the terms of any applicable policies. To the extent an alleged insured became aware of any circumstances which may reasonably be expected to give rise to a Claim and failed to timely give the requisite notice in accordance with the terms of any applicable policy, coverage may be barred. To the extent a claim was first made during the policy period and the insured failed to give the requisite written notice within 90 days after the policy period ended, then coverage may be barred.

### **EIGHTH DEFENSE**

Plaintiff's claims against Zurich are barred, in whole or in part, by the terms, conditions, provisions, limitations, exclusions and endorsements of Zurich Excess Select Insurance Policy, Policy No. MPL 0116583-01, with a policy period of 06/01/2016 to 06/01/2017 (the "Zurich Policy"). Zurich expressly and affirmatively pleads the entirety of the Zurich Policy, including but not limited to all terms, conditions, provisions, limitations, exclusions and endorsements, including all policy limits, sub-limits, aggregates, deductibles, retentions, and provisions as fully set forth herein *in extenso*. Zurich denies any allegations that seek to enlarge, vary, or modify the terms, conditions, provisions, limitations, exclusions and endorsements contained within the Zurich Policy.

### **NINTH DEFENSE**

Coverage under the Zurich Policy is in conformance with and subject to the warranties, limitations, conditions, provisions, exclusion, definitions, endorsements, deductibles, retentions, and other terms of the "Followed Policy" which is the Allied World National Assurance Company (and/or any successor) primary policy, No. 0310-1583, policy period June 1, 2016 to June 1, 2017, with a limit of liability of \$5,000,000 (also known as the Forcefield Healthcare organizations Directors and Officers Liability Policy), together with the warranties and limitations of any of the other underlying insurance (including all successor insurers) which include the Markel policy, No. XM800966, with a limit of liability of \$5,000,000; RSUI Group Inc, Policy No. NHS667778, with a limit of liability of \$10,000,000; and OneBeacon, Policy No. MMM-00730-16, with a limit of liability of \$10,000,000 (collectively the "Other Underlying Insurance") (the Followed Policy and the Other Underlying Insurance are collectively referred to as "Underlying Insurance").

### **TENTH DEFENSE**

In no event shall coverage under the Zurich Policy be broader than the coverage under any Underlying Insurance. In the event of reduction or exhaustion of the Limits of Liability of the Underlying Insurance solely as a result of the payment of covered loss(es) then the Zurich Policy shall (1) in the event of reduction, pay excess of the reduced Limit(s) of Liability of the Underlying Insurance; or (2) in the event of exhaustion, continue in force as primary or governing insurance excess of the applicable deductible(s) or retention amount(s) in the Followed Policy, which

deductible(s) or retention(s) shall be applied to any subsequent covered loss as specified in the Followed Policy.

#### **ELEVENTH DEFENSE**

The Zurich Policy provides the Policy Holder with insurance coverage, subject to the Zurich Policy's terms, conditions, and exclusions, during the Policy Period excess of the Underlying Insurance. Coverage under the Zurich Policy shall attach only after: (1) all limits of liability of the Underlying Insurance is exhausted solely as a result of the actual payment of covered losses; or (2) the Policyholder and/or any other insurer(s), entity or individual on behalf of the Policyholder has paid up to the full limits of liability for such loss, and satisfy any deductible(s) or retention amount(s) of the Underlying Insurance on behalf of the insurer(s) of the Underlying Insurance, including coverage provided pursuant to a difference in conditions policy.

#### **THIRTEENTH DEFENSE**

Any coverage provided by the Zurich Policy is subject to the Declarations, Insuring Agreement and the definitions, limitations, conditions, provisions, exclusions and other terms of the Zurich Policy and any endorsements thereto.

#### **FOURTEENTH DEFENSE**

The aggregate limit of liability in the Declarations of the Zurich policy shall be Zurich's maximum aggregate liability with respect to all claims. Defense costs and/or claimed expenses, as applicable, are part of and not in addition to the Limit of Liability, and the payment by Zurich of such defense costs and/or claimed expenses, if applicable, reduce the limit of liability.

#### **FIFTEENTH DEFENSE**

Any coverage under the Followed Policy that provides for a maximum limit of liability that is less than the Limit of Liability stated in Item 3 of the Declarations of such Underlying Insurance ("Sublimit of Liability") shall not be provided by the Zurich Policy.

#### **SIXTEENTH DEFENSE**

Reporting and Notice – As a condition precedent to exercising any rights under the Zurich Policy, the Policyholder shall give Zurich written notice of any claim or any potential claim under the Zurich policy or any Underlying Insurance in the same manner required by the terms and conditions of the Followed Policy. Notwithstanding the foregoing, notice to the insurer(s) of the Followed Policy or Other Underlying Insurance does not constitute notice to Zurich. Written

notice of any claim or potential claims must be provided to Zurich at the address set forth in the Declarations.

#### **SEVENTEENTH DEFENSE**

Zurich shall be given notice in writing to the address set forth in the Declarations as soon as practicable in the event of (1) termination of Underlying Insurance, (2) any additional or returned premiums charged or allowed in connection with any Underlying Insurance, or (3) any change to any of the Underlying Insurance.

#### **EIGHTEENTH DEFENSE**

Alteration: No change in, modification of or assignment of interest under the Zurich Policy or Underlying Insurance shall be effective except when made by a written agreement or endorsement to the Zurich Policy by an authorized representative of Zurich. To the extent such Underlying Insurance is modified or altered, Zurich shall not recognize any new modified coverage to which it has not consented.

#### **NINETEENTH DEFENSE**

Maintenance of Underlying Insurance: As a condition precedent to coverage under the Zurich Policy, the Policyholder agrees to maintain the Underlying Insurance provided during the policy period in full effect with solvent insurers. To the extent such Underlying Insurance is not maintained, then the Policyholder shall be deemed self-insured of the amount of the Limit(s) of Liability of any such Underlying Insurance.

#### **TWENTIETH DEFENSE**

Specific Matter Exclusion Endorsement: The Zurich Policy is not liable for loss for any claim made against any insured based upon, arising out of or attributable to the *Anderson v. Ochsner Health System* and related matters.

#### **TWENTY-FIRST DEFENSE**

Solely with respect to the Limit of Liability of \$10,000,000 in excess of \$50,000,000, Zurich shall not be liable for loss or on account of, based upon, arising out of, or attributable to any written demand, suit or proceeding pending, or order, decree or judgment entered against any insured on or prior to 5/01/2015 or the same or substantially the same wrongful act or inter-related wrongful acts, fact, circumstance or situation underlying or alleged therein.

#### **TWENTY-SECOND DEFENSE**

Solely with respect to the Limit of Liability of \$5,000,000 in excess of \$25,000,000, Zurich shall not be liable for a loss on account of, based upon, arising out of, or attributable to any written demand, suit or proceeding pending, or order, decree or judgment entered against any insured on or prior to 5/01/2015 or the same or substantially the same wrongful act or interrelated wrongful acts, fact, circumstance or situation underlying or alleged therein.

#### **TWENTY-THIRD DEFENSE**

The Zurich Policy does not provide coverage nor will Zurich make any payments or provide any service or benefit to any insured, beneficiary or third party who may have any rights under the Zurich Policy to the extent that such payment, service, benefit or any business or activity of insured would violate any applicable trade or economic sanctions, law or regulation.

#### **TWENTY-FOURTH DEFENSE**

Zurich expressly adopts by reference as if incorporated herein all of the terms, conditions, provisions, definitions, limitations, exclusions, deductibles, retentions, and endorsements of the Followed Policy issued by Allied World National Assurance Company, Policy NO. 03101-1583 (also known as the Forcefield Healthcare Organizations Directors and Officers Liability Policy).

#### **TWENTY-FIFTH DEFENSE**

Zurich expressly adopts the Declarations in the Followed Policy including, but not limited to, Item 4. Retention: \$500,000 for each and every claim.

#### **TWENTY-SIXTH DEFENSE**

Zurich adopts the Endorsement No. 2 of the Followed Policy entitled "Indemnity Only Coverage" including, but not limited to, the provision that "the insurer did not assume any duty to defend any claim under this policy"; and that "the insured(s) shall defend and contest any claim made against them."

#### **TWENTY-SEVENTH DEFENSE**

Pursuant to the provisions of the Followed Policy, the insured(s) shall not admit or assume any liability, incur any defense costs, make any settlement offer, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the insured. Any loss incurred by the insureds and/or any settlements for judgments agreed to by the insureds without such consent will not be covered by the Zurich policy.

### **TWENTY-EIGHTH DEFENSE**

The insurer shall not be obligated to pay or reimburse defense costs after the applicable Limits of Liability have been exhausted.

### **TWENTY-NINTH DEFENSE**

To the extent not specifically referenced above, Zurich avers as an affirmative defense all endorsements to the Zurich policy, to any policy of Other Underlying Insurance, and to the Followed Policy including, but not limited to, endorsements for “Specific Matter Exclusion Endorsement”; “Separate Pending or Prior Date for Increased Limits of Liability Endorsement”; “Louisiana Amendatory Endorsement”; “Sanctions Exclusion Endorsement”; “Indemnity Only Coverage”; “Pre-Approved Crisis Management Firm”; “Amended Retention Provision”; “Shared Limits of Liability”; “Bordereau Claims Reporting”; “Newly Acquired Entities Asset/Revenue Threshold”; “Antitrust Coverage Subject to Co-Insurance”; “Amend HIPPA Coverage”; “Specific Claim Exclusion”; “Specific Entity Exclusion Claims Brought by or Against”; “Additional Insured”; Prior Knowledge and Pending or Prior Litigation Exclusions”; “Allocation of Loss”; “Regulatory Claims Coverage Subject to Co-Insurance”; “Additional Insureds – Separate Retroactive Date and Pending or Prior Date”; as well as all insuring agreements, definitions, exclusions, limits of liability, retentions, SIR’s, defense and settlement of a claim, notice of claim requirements, discovery period, other insurance, coverage extensions, assignment and changes to the policy, subrogation, action against the insurer, conformity to statute provisions, cooperation, and bankruptcy or insolvency provisions contained in the Zurich Policy, in any Other Underlying Insurance, and in the Followed Policy.

### **THIRTIETH DEFENSE**

Zurich specifically and affirmatively pleads as an affirmative defense and adopts by reference as if incorporated herein all affirmative defenses set forth by the insurer defendant who issued the Followed Policy (including but not limited to express adoption of Affirmative Defenses nos. 1 through 35 contained in Allied World Specialty Insurance Company’s Answer, Exceptions, and Affirmative Defenses To Second Supplemental, Amending and Restated Petition for Damages dated Dec. 18, 2017), and the Other Underlying Insurance, including all affirmative defenses set forth by Allied World Specialty Insurance Company a/k/a Darwin National Assurance Company;

Atlantic Specialty Insurance Company; Evanston Insurance Company; and RSUI Indemnity Company including all successors to those entities.

#### **THIRTY-FIRST DEFENSE**

In addition to adopting and incorporating herein all affirmative defenses of those insurers, Zurich also adopts and incorporates herein all of their policy provisions, and specifically and affirmatively pleads the language of any policy that has been issued by Zurich or any of the Underlying Insurers including the insurer issuing the Followed Policy as an affirmative defense.

#### **THIRTY-SECOND DEFENSE**

Plaintiff's claims against Zurich are expressly subject to all conditions precedent of coverage under the Zurich policy and the Underlying Insurance and the Followed Policy, including provisions regarding timely notice and tender.

#### **THIRTY-THIRD DEFENSE**

Zurich affirmatively avers that plaintiff's claims are barred to the extent that any activity of the insureds do not satisfy the requirements in any insuring agreement as required to trigger coverage under the Zurich Policy or the Underlying Insurance, including as contained in the insuring clause of the Zurich Policy. Zurich additionally incorporates herein the Limits of Liability of its policy and the conditions in its policy.

#### **THIRTY-FOURTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent plaintiff has failed to pay any applicable deductibles or retentions.

#### **THIRTY-FIFTH DEFENSE**

Coverage is barred to the extent plaintiff seeks coverage for amounts that do not constitute a "loss" from a claim that any insurer is obligated to pay. The Followed Policy expressly excluded from the term "Loss" those "amounts which an Insured is not legally obligated to pay."

#### **THIRTY-SIXTH DEFENSE**

The Plaintiff's claims are barred, in whole or in part, to the extent they arise out of or are based upon or are attributable to the gaining of any profit or financial advantage or improper or legal remuneration by an insured, if a final judgment or adjudication establishes that such an insured was not legally entitled to such a profit or advantage or that such remuneration was improper or legal.



#### **THIRTY-SEVENTH DEFENSE**

The Plaintiff's claims are barred, in whole or in part, to the extent they are arising out of, based upon or attributable to any deliberate or fraudulent act or any willful violation of law by an insured, if a final judgment or adjudication establishes that such act or violation occurred.

#### **THIRTY-EIGHTH DEFENSE**

Plaintiff's claims against Zurich are barred, in whole or in part, to the extent they are based upon or arise from or are in consequence of any actual or alleged liability of any insured under any express contract or agreement.

#### **THIRTY-NINTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent they are based upon or are attributable to any prior litigation or administrative proceeding to which the insured had notice.

#### **FORTIETH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent they arise out of or are based upon essentially the same facts or wrongful acts contained in any claim which has been previously reported before the inception date of the Zurich Policy.

#### **FORTH-FIRST DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent they arise out of, or are based upon or are attributable to any actual or alleged act or omission of the insured person serving in any capacity other than as an executive or an employee or as an outside entity insured person. An outside entity is any not-for-profit entity or any other entity listed as such by endorsement for which an executive or employee acts 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 insured. Any such person shall be referred to as an "outside entity insured person" but only while that person is acting in the capacity as a director, officer, trustee, trustee emeritus, or governor or the equivalent thereof of an outside entity.

#### **FORTY-SECOND DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent they are brought by an outside entity, 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 or insured person serving for such outside entity.

#### **FORTY-THIRD DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent brought by or on behalf of any insured.

#### **FORTY-FOURTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent they arise out of or are based upon or are attributable to the actual or alleged performance or failure to perform medical services.

#### **FORTY-FIFTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent they arise out of or are based upon any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law.

#### **FORTY-SIXTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent they arise out of any actual or alleged act, error or omission in the performance of or failure to perform or manage the activities by any insured or by any individual or entity whose acts, errors or omissions an insured is legally responsible.

#### **FORTY-SEVENTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that the "other insurance" provisions of the Zurich Policy or the Followed Policy or the Other Underlying Insurance are applicable.

#### **FORTY-EIGHTH DEFENSE**

Plaintiff's claims against Zurich are barred, in whole or in part, to the extent they are based upon any misrepresentations or warranties.

#### **FORTY-NINTH DEFENSE**

Plaintiff's claims against Zurich are barred, in whole or in part, to the extent that Zurich did not receive timely notice in the event of an occurrence, offense, claim or suit or that its insured did not comply with all of its duties in the event of an occurrence, offense or suit.

#### **FIFTIETH DEFENSE**

Zurich has no obligation with respect to any claim or suit that has been settled without its consent or with regard to any rights under any policy that has been assigned without its consent.

#### **FIFTY-FIRST DEFENSE**

In the event it is proven at the trial of this matter that Zurich is in any way liable for any amounts of damages, which is at all times denied, then Zurich is entitled to all appropriate credits or offsets, as well as to all appropriate allocation of costs and indemnity as provided by law, including appropriate credits, offsets and allocations to all other appropriate insurers, including Zurich's recovery of any monies paid, if any, in excess of its allocated/apportioned responsibility; awarding appropriate contribution and allocation from the insured and all of the insurers and declaring Zurich's policies to be excess of the other policies at issue.

#### **FIFTY-SECOND DEFENSE**

This action along with any relief sought by plaintiff may be barred, in whole or in part, on the basis of the doctrine of equitable estoppel, judicial estoppel, waiver, laches, and/or unclean hands.

#### **FIFTY-THIRD DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that an insured has failed to cooperate as required by any applicable policy.

#### **FIFTY-FOURTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that an insured has impaired or prejudiced any right to subrogation, indemnification or contribution Zurich has or has had.

#### **FIFTY-FIFTH DEFENSE**

In the alternative, the obligation of Zurich, if any, is subject to the offsets for recoveries by plaintiff and/or any insureds from any other persons or entities.

#### **FIFTY-SIXTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that any liability of any policy at issue should be reduced to the extent that any insured or plaintiff has failed to mitigate, minimize, avoid or otherwise abate any damages already sustained.

#### **FIFTY-SEVENTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that any purported acts or failure to act at issue are in violation of the public policy or law.

#### **FIFTY-EIGHTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that the \$500,000 retention in the Followed Policy or in any of the Other Underlying Insurance has not been paid by the insured.

#### **FIFTY-NINTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent that the insureds have not become legally obligated to pay any amount and nor has the insured become obligated to indemnify any directors or officers who became legally obligated to pay any amount.

#### **SIXTIETH DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent the alleged "*Gasquet*" settlement is not a true or valid *Gasquet* settlement with regard to the policies at issue in this lawsuit.

#### **SIXTY-FIRST DEFENSE**

To the extent not inconsistent with the affirmative defenses set forth above, in the alternative, Zurich adopts by reference the affirmative defenses of all other insurer defendants, and to the extent appropriate, all nominal defendants.

#### **SIXTY-SECOND DEFENSE**

Zurich adopts by reference as if incorporated herein the defenses and exceptions set forth in the Answer of Allied World National Assurance Company including: the exception of no right of action under the Direct Action Statute because: 1) at the time Zurich was joined to this lawsuit, the nominal defendants were parties without any potential liability and therefore plaintiff has no right of action under the Direct Action Statute; 2) All of the policies at issue are indemnity policies not liability policies; 3) Because Ochsner has not and will not pay a Loss on behalf of the nominal defendants who have no personal liability, the indemnity coverage in the policies is not triggered; and 4) any applicable policies only cover "Loss" which expressly does not include "amounts which an insured is not legally obligated to pay."

Zurich furthermore adopts by reference as if incorporated herein the defenses and exceptions set forth in the Answer of Allied World National Assurance Company including: the exception of no cause of action under the Direct Action Statute because: 1) the Petition fails to allege facts sufficient to possibly trigger coverage under any policy at issue; 2) the indemnity

coverage provided by the policies at issue is not subject to the Direct Action Statute; 3) any applicable policies only cover "Loss" which expressly does not include "amounts which an insured is not legally obligated to pay."; and 4) Because Ochsner has not and will not pay a Loss on behalf of the nominal defendants who have no personal liability, the indemnity coverage in the policies is not triggered.

WHEREFORE, Zurich American Insurance Company prays that its Answer to the Second Supplemental, Amending and Restated Petition for Damages of James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc., be deemed good and sufficient, and that after all due proceedings are had herein, there be judgment in favor of Zurich American Insurance Company, dismissing with prejudice plaintiff's Supplemental, Amending and Restated Petition for Damages. Zurich American Insurance Company further prays for all costs of these proceedings, and for all general and equitable relief as allowed by law.

**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 22 day of December 2017, served a copy of the foregoing pleading on counsel for all parties to this proceeding via e-mail.

Respectfully submitted,

Salley, Hite, Rivera & Mercer, LLC  
JOHN W. HITE III (T.A. 17611)  
JAMES G. ALBERTINE, JR. (35023)  
One Canal Place  
365 Canal Street, Suite 1710  
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Facsimile: 504/566-8828

BY: 

JOHN W. HITE III  
ATTORNEYS FOR DEFENDANT,  
ZURICH AMERICAN INSURANCE  
COMPANY

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

STATE OF LOUISIANA

NO. 651,069

SECTION 22

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

VERSUS

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

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

DEPUTY CLERK

REQUEST FOR NOTICE

Pursuant to Louisiana Code of Civil Procedure article 1572, the undersigned hereby requests written notice of the date set for trial of the above numbered and entitled cause, or of the date set for trial of any pleadings or motions therein, at least ten (10) days before any trial date.

The undersigned further requests notice of the signing of any final judgment or of the rendition of any interlocutory order or judgment in said cause as provided by Louisiana Code of Civil Procedure articles 1913 and 1914.

Respectfully submitted,

Salley, Hite, Rivera & Mercer, LLC  
JOHN W. HITE III (T.A. 17611)  
JAMES G. ALBERTINE, JR. (35023)  
One Canal Place  
365 Canal Street, Suite 1710  
New Orleans, LA 70130  
Telephone: 504/566-8800  
Facsimile: 504/566-8828

BY: \_\_\_\_\_

JOHN W. HITE III  
ATTORNEYS FOR DEFENDANT,  
ZURICH AMERICAN INSURANCE  
COMPANY

CERTIFICATE OF SERVICE

25<sup>th</sup> I do hereby certify that I have on this  
day of December, 2017,  
served a copy of the foregoing pleading on counsel for  
all parties to this proceeding via e-mail.