

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

NO. 651,069

SECTION 22

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

VERSUS

CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED,
BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC,
WARNER L. THOMAS, IV, WILLIAM A. OLIVER, SCOTT POSECAI,
PAT QUINLAN, PETER NOVEMBER, MICHAEL HULEFEED, ALLIED WORLD
SPECIALTY INSURANCE COMPANY a/k/a DARWIN NATIONAL ASSURANCE
COMPANY, ATLANTIC SPECIALTY INSURANCE COMPANY,
EVANSTON INSURANCE COMPANY, RSUI INDEMNITY COMPANY
AND ZURICH AMERICAN INSURANCE COMPANY

FILED: _____
DEPUTY CLERK

**ALLIED WORLD SPECIALTY INSURANCE COMPANY'S
OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING "REGULATOR FAULT" DEFENSES**

Allied World Specialty Insurance Company ("Allied World") respectfully opposes Plaintiff's Motion for Partial Summary Judgment Regarding "Regulator Fault" Defenses. To the extent the defenses Plaintiff identifies in his motion are directed toward him, he has not established that they fit within the narrow prohibition against defenses based on pre-rehabilitation actions of regulatory authorities. Furthermore, any statutory immunity Plaintiff may claim as Receiver does not shield him from having his fault accounted for when the Court issues any judgment in this matter. Thus, Plaintiff has not met his burden of demonstrating that there is no material question of fact and that he is entitled to judgment as a matter of law. His motion should be denied.

PRELIMINARY STATEMENT

In the present motion, Plaintiff hopes to strip Allied World of five affirmative defenses, which generally address the fault of other parties, non-parties, and events that arguably contributed to any losses allegedly experienced by the Louisiana Health Cooperative, Inc. ("LAHC"), the collapse of which is the subject of this litigation. These defenses are grounded in a bedrock principle of Louisiana law, enshrined in Civil Code article 2323(A): no party shall be liable for more than its proportional share of fault.

In his bid to overcome this principle, Plaintiff relies on two provisions of the Revised Statutes, which respectively limit defenses based on actions of insurance regulatory authorities and provide a statutory immunity to the Department of Insurance against liability actions. *See* La. R.S. 22:2043.1(B) and (C). These authorities do not accomplish what Plaintiff hopes, however.

First, these statutory provisions say nothing regarding defenses based on the conduct of the Receiver (or any other party for that matter) rather than the insurance regulatory authorities. Based on the text of the statute—which itself distinguishes between the Receiver and the protected regulatory authorities—as well as the very cases Plaintiff cites, only defenses based on the pre-rehabilitation regulatory conduct of the Commissioner of Insurance are banned. Defenses based on the post-litigation conduct of the Receiver are unaffected. Plaintiff has produced no evidence that the defenses he identifies are limited to conduct falling within the ambit of these provisions.

Second, these provisions speak only to the Commissioner of Insurance’s *liability*, and do not address the accounting of his *fault* for purposes of comparative fault. The Civil Code does not equate the two, and the Louisiana Supreme Court has held that even parties protected from liability by a statutory immunity are subject to an accounting of their fault under the principles of comparative fault.

Plaintiff’s citations are not sufficient to overcome the Civil Code’s comparative fault regime. Plaintiff has not established that he is entitled to judgment as a matter of law on the defenses he identifies, and accordingly, the Court should deny his motion.

FACTUAL BACKGROUND

The Court is well acquainted with the factual background of this mature litigation, which is repeated here only briefly for the Court’s convenience. This is a case regarding the collapse of LAHC, a consumer operated and oriented health care plan program created under the Affordable Care Act (“ACA”). Plaintiff, the Commissioner of Insurance, appears as the Rehabilitator of LAHC. LAHC was created to offer health insurance plans on the exchange market under the ACA. LAHC stopped doing business by July 2015 and was placed in rehabilitation in September 2015 after allegedly losing over \$65 million.

Blaming, among others, certain of LAHC’s officers and directors for its failure, the Plaintiff originally sued six LAHC officers and directors: Terry Shilling, George Cromer, Warner Thomas, William Oliver, Charles Calvi, and Patrick Powers. (Petition for Damages & Jury Demand (“Initial Petition”), ¶9.) Of these six named director defendants, Thomas, the Chief

Executive Officer of Ochsner Clinic Foundation (“Ochsner”), and Oliver, a director of Ochsner, were outside LAHC directors who also were employed by or served on Ochsner’s board of directors. After settling with and dismissing with prejudice these directors and others, Plaintiff filed a revised petition that renamed Thomas and Oliver and added as “nominal defendants” four other outside LAHC directors from Ochsner: Scott Posecai, an officer of Ochsner; Patrick Quinlan, the CEO of Ochsner Health System; Peter November, the CAO of Ochsner Health System; and Michael Hulefeld, the COO of Ochsner Health System (with Thomas and Oliver, collectively, the “LAHC/Ochsner D&O Defendants”). (Second Supp., Am. & Restated Pet. for Damages & Request for Jury Trial (“Second Petition”), ¶10.) The Second Petition refers to the ten LAHC directors and outside directors named in the Initial Petition and Second Petition collectively as the “D&O Defendants.” (*Id.* at ¶15.)¹

In both petitions, Plaintiff alleges, through group pleading and conclusory statements, that “from the start,” the D&O Defendants’ gross mismanagement and negligence led to LAHC “failing miserably” and losing tens of millions of dollars, including over \$65 million of federal funds obtained from the United States. (*Id.* ¶18.) Plaintiff alleges that LAHC lost approximately \$8 million in 2013, \$20 million in 2014, and more than \$54 million by the end of 2015. (*Id.*) By July 2015, LAHC stopped doing business, and LAHC was placed into rehabilitation in September 2015 under the direction and control of Plaintiff. (*Id.* ¶¶7, 21.)

The Second Petition also named as defendants Allied World, Atlantic Specialty Insurance Company, Evanston Insurance Company, RSUI Indemnity Company, and Zurich American Insurance Company, collectively defined as the “Insurer Defendants.” According to the Plaintiff’s Petition, the Insurer Defendants issued insurance policies to Ochsner that allegedly provide coverage for the claims asserted against the released LAHC/Ochsner D&O Defendants. (*Id.* ¶¶14, 15(3).) Plaintiff alleges that:

[t]he Insurer Defendants provide coverage for the liability of executives or employees of Ochsner Clinic Foundation who act as directors or officers of any non-for-profit entity, such as LAHC, at the request of Ochsner. The Nominal Defendants, Thomas, Oliver, Posecai, Quinlan, November, and Hulefeld, were all Ochsner executives and/or employees who also served as directors and/or officers of LAHC at the request of Ochsner.

(*Id.* ¶41.).

¹ To the best of Allied World’s knowledge, Plaintiff has never provided an explanation for the failure to sue the remaining LAHC directors and officers.

In addition to the D&O Defendants and the Insurer Defendants, Plaintiff has also cast blame at various service providers hired by LAHC, including its actuaries (Buck Consultants, LLC and Milliman, Inc.) and its third-party administrators (CGI Technologies and Solutions, Inc. and Group Resources Incorporated). Plaintiff alleges that these service providers contributed to LAHC's downfall by, among other things, "grossly underestimat[ing] the level of expenses that LAHC would incur," "grossly misunderst[anding] or miscalculat[ing] how the risk adjustment component of the ACA would impact LAHC," and failing "to pay claims at the proper contract rates and amounts, thus resulting in an overpayment of claims." (Second Petition ¶¶19, 46.) Thus, by Plaintiff's own allegations, the downfall of LAHC was multifactorial, brought about by a constellation of events and parties.

More than two years following the filing of this lawsuit, the U.S. Supreme Court issued its decision in *Maine Community Health Options v. United States*, No. 18-1023 (April 27, 2020). In *Maine Community*, the U.S. Supreme Court held that the federal government is obligated to pay hundreds of millions of dollars in "Risk Corridor" payments wrongly withheld from health insurance companies like LAHC. The U.S. Supreme Court's decision conclusively determines that liability for failing to make the Risk Corridor payments rests of the federal government, and that the payments must be made. The government's wrongful withholding of such payments from LAHC undoubtedly contributed to its insolvency. To what extent remains a contested issue in this litigation.

In defense of this litigation, Allied World asserted 35 affirmative defenses, including that the conduct of other parties and non-parties may have caused, contributed to, or amplified the loss Plaintiff alleges. Plaintiff now attempts to strip Allied World of certain of those defenses as a matter of law and to limit the Court's ability to fully account for potential fault of all parties and non-parties.

LIST OF MATERIAL FACTS GENUINELY IN DISPUTE

1. The facts supporting affirmative defenses 30, 31, 32, 33, and 35, asserted by Allied World in its Answer.

LAW AND ARGUMENT

Although favored in Louisiana, summary judgment should be granted only where the competent evidence shows "that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law." La. Code Civ. Proc. art. 966 (A)(3); *Board of Comm'rs*

of Port of New Orleans v. Pilko & Assocs., 2019-0624, p.5 (La. App. 4 Cir. 2/12/20), 292 So. 3d 956, 959. The burden of proof lies with the mover. La. Code Civ. Proc. art. 966(D)(1). In order for this burden to be satisfied, the mover must at least “point out to the court the absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense.” *Conhagen, Inc. of La. v. Ruhrpumpen, Inc.*, 2018-0414, pp. 3–4 (La. App. 4 Cir. 12/19/18), 262 So. 3d 306, 309 (citing La. Code Civ. Proc. art. 966(D)(1)).

Here, Plaintiff moves for partial summary judgment on an issue he has named “regulator fault.” In essence, Plaintiff argues that he is entitled to judgment as a matter of law on certain defenses asserted in Allied World’s answer as well as a determination that his fault cannot be accounted for purposes of comparative fault. Plaintiff provides no factual evidence in support of his motion other than the uncontested fact that Allied World asserted the identified defenses in its answer.

I. The Identified Defenses Are Viable Because, To The Extent They Are Directed To Plaintiff, They Address His Conduct As Receiver.

Plaintiff misconstrues the Allied World defenses he identifies in his motion. Rather than being exclusively defenses based on “regulator fault,” as Plaintiff contends, these defenses instead address a broader range of conduct not attributable exclusively to Plaintiff’s actions as regulator. Plaintiff therefore has not established an entitlement to judgment as a matter of law as to these defenses. Thus, summary judgment must be denied.

Plaintiff asks for judgment as a matter of law on five of Allied World’s affirmative defenses. One such defense—number 35—is a catch-all defense that does not identify any specific conduct of the Plaintiff as regulator. (See Answer of Allied World, attached hereto as Exh. A, at Defense 35 (“Allied World adopts and incorporates any defenses that have been or may be asserted by any of the D&O Defendants, as if fully set forth herein.”).)

The other four each provide a defense based on a broader set of conduct other than regulator fault:

- Affirmative Defense 30: “Neither Allied World nor its alleged insureds’ conduct was the cause in fact or proximate cause of any injury alleged by Plaintiff. Plaintiff’s recovery is barred, in whole or in part, to the extent there are numerous intervening and superseding causes of the injuries/damages sustained by Plaintiff.”
- Affirmative Defense 31: “Plaintiff’s claims may be barred or limited by its own comparative fault.”
- Affirmative Defense 32: “Plaintiff’s claims are barred to the extent he failed to mitigate his damages.”

- Affirmative Defense 33: “Plaintiff’s alleged injuries and damages, if any, were caused by the negligence or fault of other parties, for which Allied World and its alleged insureds are not liable.”

(*Id.*).

First, defenses 30 and 33 are not limited exclusively to the conduct of Plaintiff. Indeed, the conduct of any other party or non-party to the lawsuit could provide Allied World with a basis for defending against liability here due to “intervening and superseding causes” or “the negligence of fault of other parties.” Thus, Plaintiff’s claim that defenses based on “regulator fault” are prohibited, even if fully credited (which it should not be), cannot justify striking these defenses.

Second, contrary to Plaintiff’s contention, none of Allied World’s defenses—including defenses 31 and 32—seek to blame “the Commissioner of Insurance in his capacity as regulator.” (MSJ at 11). Instead, these defenses can be established through the post-rehabilitation conduct of Plaintiff as Receiver, including any failure of Plaintiff to fully and competently prosecute LAHC’s entitlement to Risk Corridor payments. Plaintiff’s motion, however, fails to account for Allied World’s defenses based on the post-rehabilitation conduct of Plaintiff as Receiver. Indeed, as the Plaintiff himself recognizes, the authorities he cites address only “whether actions of the Insurance Commissioner *prior to the order of rehabilitation of an insurance company* can be asserted as a defense in an action by the Receiver.” (MSJ at 11) (emphasis supplied); *see, e.g., Foster v. Monsour Med. Found.*, 667 A.2d 18, 19 (Pa. Commw. 1995) (“The sole issue presently before this Court is whether actions of the Insurance Commissioner prior to the order of liquidation of an insurance company can be asserted as affirmative defenses in an action commenced by the Statutory Liquidator.”); *Wooley v. Lucksinger*, 2009-0571, pp.132–33 (La. 4/1/11), 61 So.3d 507, 606 (noting that an insurance company cannot delegate responsibility over its own conduct to a state agency charged with monitoring its conduct) (applying Texas law); *Corcoran v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 143 A.D.2d 309, 311 (N.Y. App. Div. 1988) (noting that because a liquidator “is subject only to defenses that could be raised against [the insurer]” defenses based on his conduct as a regulator cannot be asserted). In other words, these authorities stand for the point that in defending an action brought by the Receiver, a defendant cannot argue that the regulator did a bad job of monitoring the insurer’s conduct prior to insolvency. They say nothing about the Receiver’s post-rehabilitation conduct.

The *Foster* case, which Plaintiff relies upon considerably, is a prime example. There, in asserting affirmative defenses against the Receiver, defendants “averred that, at all relevant times,

the Insurance Commissioner and the Insurance Department had been aware of [the insurer's allegedly fraudulent] manner of operation, and by their supervision thereof, had ratified the actions undertaken by [the insurer]." 667 A.2d at 19. Thus, it was clear that defendants were asserting defenses against the Insurance Commissioner "based upon her actions in the regulation of insurance companies." *Id.* Allied World has made no such averment here. And Plaintiff has not alleged, much less provided evidence, that his pre-litigation regulatory conduct is the basis of these defenses.

This limitation is further supported by the statutory language itself. Louisiana Revised Statute 22:2043.1(B) by its terms only restricts the use of actions "by the insurance regulatory authorities" as a defense. La. R.S. 22:2043.1(B) ("No action by the insurance regulatory authorities may be asserted as a defense to a claim by the receiver."). In doing so, it is noteworthy that the legislature separately refers to "insurance regulatory authorities" and "the receiver" using distinct terms. Indeed, when the legislature uses different words to discuss concepts in a statute, that choice is presumed to be deliberate. *See Hall v. Brookshire Bros., Ltd.*, 2002-2402, p.19 (La. 6/27/03), 848 So.2d 559, 571 ("[The party's argument] would ignore the different language employed by the legislature in the two provisions, a choice we must presume to have been deliberate."). If the legislature had intended "insurance regulatory authorities" and "the receiver" to mean the same thing, then it would not have chosen different words to describe them.

In sum, the five defenses Plaintiff has identified are based on a broad range of conduct committed by a number of parties. These defenses are not limited exclusively to the insurance regulator's pre-rehabilitation conduct, as they would must be in order to be struck under Plaintiff's authorities. Plaintiff has failed to carry his burden for summary judgment and the Court should deny his motion.²

II. Allied World May Assert Comparative Fault As A Defense, Notwithstanding The Receiver's Statutory Immunity.

Plaintiff also cites the language of La. R.S. 22:2043.1(C) in support of his position that the Receiver cannot be listed on the jury verdict form. But the Plaintiff's argument confuses the distinct concepts of liability and fault.

² Alternatively, should the Court find any merit in Plaintiff's arguments (which it should not), because Allied World's affirmative defenses 30 and 33 may relate also to the conduct of parties other than Plaintiff, any ruling in Plaintiff's favor should not wholesale strike these defenses.

Subsection (C) of Section 2043.1 provides that “[t]here shall be no liability on the part of, and no cause of action of any nature shall arise against,” the Commissioner of Insurance. The Commissioner’s immunity from *liability*, however, does not preclude the Commissioner’s *fault* from being accounted for in a comparative fault analysis. As stated explicitly by Civil Code article 2323(A), “In any action for damages . . . the degree or percentage of fault of all persons causing or contributing to the . . . loss shall be determined . . . **regardless of the person’s . . . immunity by statute.**” (emphasis added). The broad application of this article is emphasized in subsection (B), which instructs that it “shall apply to any claim for recovery of damages for . . . loss asserted under any law or legal doctrine or theory of liability, regardless of the basis of liability.” La. Civ. Code art. 2323(B).

Indeed, the Louisiana Supreme Court agrees that the comparative fault of parties that are statutorily immune from liability remains relevant, and that affirmative defenses raising this issue are permissible. In *Keith v. U.S. Fidelity & Guaranty Co.*, 96-2075 (La. 5/9/97), 694 So. 2d 180, the plaintiff brought an action to recover damages for injuries suffered in an oilfield accident, suing the owner of the rental equipment involved in the accident and its liability insurer. *Id.* at p.1, 694 So. 2d at 181. The defendants included an affirmative defense in their answer pleading the fault of Keith’s employer, which the plaintiff moved to strike, contending that employer fault was excluded by the worker’s compensation regime. *Id.* The Court reversed the trial court’s decision granting the motion to strike, ruling that the defendants could plead the employer’s fault as an affirmative defense. *Id.* at p.8, 694 So. 2d at 184. In its ruling, the Court assessed the Legislature’s amendments to article 2323 in light of an employer’s immunity from tort liability in the worker’s compensation context, writing that “the Legislature added more specific language to Art. 2323 making it mandatory for the determination of the percentage of fault of all persons contributing to an injury, whether those persons are unidentified non-parties, statutorily immune employers, or others.” *Id.* at p.4, 694 So. 2d at 182.

The Supreme Court reiterated this holding in *Foley v. Entergy Louisiana, Inc.*, 2006-0983, pp.27–28 (La. 11/29/06), 946 So. 2d 144, 163, citing *Keith* and ruling that the trial court was wrong to have excluded evidence of third party fault “as [article] 2323 clearly requires that the fault of every person responsible for a plaintiff’s injury be compared, whether or not such person is a party, and regardless of the theory of liability asserted against such person.” (citations omitted). And appellate court have ruled similarly. *See, e.g., Zimko v. Am. Cyanamid*, 2003-0658, p.41 (La. App.

4 Cir. 6/8/05), 905 So. 2d 465, 493, *writ denied*, 2005-2102 (La. 3/17/06), 925 So. 2d 538 (“In allocating fault under La. C.C. art. 2323, a court is required to consider the fault of all responsible parties, including parties immune by statute from tort liability . . .”).

Accordingly, pursuant to the Louisiana Supreme Court’s decision in *Keith*, Allied World may assert an affirmative defense that raises the Commissioner’s comparative fault, regardless of whether the Commissioner has any liability for his acts as a Receiver for LAHC, and the Commissioner’s fault should be considered when rendering any judgment in this matter.

CONCLUSION

Allied World has validly asserted defenses grounded in Louisiana’s comparative fault regime. Plaintiff’s attempt to side-step this bedrock doctrine is not supported by law. Plaintiff’s motion misconstrues the very defenses he asks to strike and conflates the distinct concepts of liability and fault. He has failed to establish he is entitled to judgment as a matter of law on the defenses he identifies. The Court should deny Plaintiff’s motion. Alternatively, should Court grant Plaintiff’s motion, it should preserve Allied World’s defenses 30 and 33, which may relate to parties other than Plaintiff.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all counsel of record by e-mail, this 5th day of November, 2020.



EXHIBIT A

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

STATE OF LOUISIANA

NO. 651,069

SECTION 22

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

VERSUS

CGI TECHNOLOGIES AND SOLUTIONS, INC., GROUP RESOURCES INCORPORATED,
BEAM PARTNERS, LLC, MILLIMAN, INC., BUCK CONSULTANTS, LLC., WARNER L.
THOMAS, IV, WILLIAM A. OLIVER, SCOTT POSECAI, PAT QUINLAN, PETER
NOVEMBER, MICHAEL HULEFEED, ALLIED WORLD SPECIALTY INSURANCE
COMPANY a/k/a DARWIN NATIONAL ASSURANCE COMPANY, ATLANTIC
SPECIALTY INSURANCE COMPANY, EVANSTON INSURANCE COMPANY, RSUI
INDEMNITY COMPANY AND ZURICH AMERICAN INSURANCE COMPANY

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DEPUTY CLERK

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

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

EXCEPTIONS

Allied World excepts to the Petition on the following grounds:

Exception of No Cause of Action

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

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

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

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EXHIBIT A

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

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

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

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

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

Exception of No Right of Action

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

First Affirmative Defense

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

Second Affirmative Defense

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

Third Affirmative Defense

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

Fourth Affirmative Defense

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

Fifth Affirmative Defense

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

Sixth Affirmative Defense

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

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

Seventh Affirmative Defense

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

Eighth Affirmative Defense

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

Ninth Affirmative Defense

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

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

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

Tenth Affirmative Defense

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

Eleventh Affirmative Defense

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

Twelfth Affirmative Defense

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

Thirteenth Affirmative Defense

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

Fourteenth Affirmative Defense

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

Fifteenth Affirmative Defense

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

Sixteenth Affirmative Defense

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

Seventeenth Affirmative Defense

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

Eighteenth Affirmative Defense

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

Nineteenth Affirmative Defense

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

Twentieth Affirmative Defense

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

Twenty-First Affirmative Defense

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

Twenty-Second Affirmative Defense

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

Twenty-Third Affirmative Defense

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

Twenty-Fourth Affirmative Defense

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

Twenty-Fifth Affirmative Defense

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

Twenty-Sixth Affirmative Defense

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

Twenty-Seventh Affirmative Defense

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

Twenty-Eighth Affirmative Defense

The Petition should be dismissed as impermissibly vague and ambiguous.

Twenty-Ninth Affirmative Defense

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

Thirtieth Affirmative Defense

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

Thirty-First Affirmative Defense

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

Thirty-Second Affirmative Defense

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

Thirty-Third Affirmative Defense

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

Thirty-Fourth Affirmative Defense

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

Thirty-Fifth Affirmative Defense

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

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

ANSWER TO PETITION

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

Allied World denies the allegations in the introductory paragraph.

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

JURISDICTION AND VENUE²

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

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

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

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

PARTIES

Plaintiff

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

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

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

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

Defendants

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

D&O Defendants

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

TPA Defendants

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

Beam Partners, LLC

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

Actuary Defendants

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

Insurer Defendants

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

DEFINED TERMS

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

FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

CAUSES OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. The allegations in Paragraph 39 contain legal conclusions to which no response is necessary. To the extent a response is required, Allied World lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same, and specifically denies that “the D&O Defendants and Other Insured Persons . . . may be named as nominal defendants to the extent Plaintiff elects to pursue his rights against any excess insurer of the D&O Defendants or Other Insured Persons by naming such insurers in this suit.”

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

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

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

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

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

CGI

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

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

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

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

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

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

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

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

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

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

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

GRI

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

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

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

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

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

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

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

Beam Partners

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Milliman

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Buck

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Milliman

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

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

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

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

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

Buck

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

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

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

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

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

PRESCRIPTION AND DISCOVERY OF TORTIOUS CONDUCT

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

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

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

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

JURY DEMAND

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

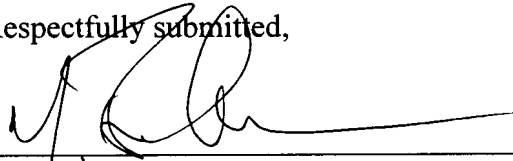
Allied World further denies the allegations in the paragraph beginning WHEREFORE, and denies that Plaintiff is entitled to any relief whatsoever.

REQUEST FOR JURY TRIAL

Allied World respectfully requests a trial by jury.

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

Respectfully submitted,

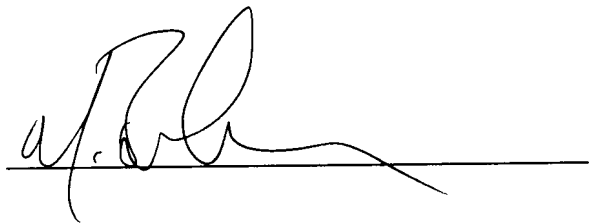


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Company)*

CERTIFICATE OF SERVICE

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



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Shirley Woodard