

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

STATE OF LOUISIANA

NO. C651069

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, ET AL

FILED: _____

DEPUTY CLERK

**TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA'S RULE TO SHOW CAUSE**

Considering Travelers Casualty and Surety Company of America's ("Travelers")
Peremptory Exception Joining the Peremptory Exceptions filed by the Former Directors
and Officers of Louisiana Health Cooperative, Inc.;

IT IS ORDERED that James J. Donelon, Commissioner of Insurance for the State
of Louisiana, in his Capacity as Rehabilitator of Louisiana Health Cooperative, Inc. show
cause on the ____ day of _____, 2017 at ____ o'clock ____m. why Travelers'
Exception should not be granted.

Baton Rouge, Louisiana this ____ day of March, 2017.

JUDGE

Please Serve:

James J. Donelon
Commissioner of Insurance for the State of Louisiana
in his Capacity as Rehabilitator of Louisiana Health Cooperative, Inc.
by and through his counsel of record
J. E. Cullens, Jr.
Walters, Papillion, Thomas, Cullens, LLC
12345 Perkins Road, Building 1
Baton Rouge, LA 70810

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**TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA'S
PEREMPTORY EXCEPTION JOINING THE PEREMPTORY EXCEPTIONS
FILED BY FORMER DIRECTORS AND OFFICERS OF LOUISIANA HEALTH
COOPERATIVE, INC.**

Defendant, Travelers Casualty and Surety Company of America ("Travelers"), files this Peremptory Exception Joining the Peremptory Exceptions filed by the Former Directors and Officers of Louisiana Health Cooperative, Inc. Travelers' exception responds to the First Supplemental, Amending and Restated Petition for Damages ("First Supplemental Petition") filed by Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc. For the reasons stated in the accompanying Memorandum, if the Court grants the peremptory exceptions filed by the Former Directors and Officers, the Plaintiff would have no cause of action against Travelers, entitling Travelers to a dismissal with prejudice.

Travelers requests that the Court grant the exceptions filed by the former Directors and Officers and grant Travelers a dismissal with prejudice or, alternatively, that it be granted such other relief as the Court may deem appropriate under the circumstances..

FAX COPY FILED
ORIGINAL FILED

2/17/17

2/24/17

Respectfully submitted,

KREBS | FARLEY, P.L.L.C.



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RICHARD E. BAUDOUIN (La. Bar #31032)
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rbaudouin@kfplaw.com

ATTORNEYS FOR TRAVELERS
CASUALTY AND SURETY COMPANY OF
AMERICA

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2017, I served a copy of the above and foregoing pleading by electronic mail or U.S. Mail, properly addressed and first-class postage prepaid, on the following:

J.E. Cullens, Jr.
Edward J. Walters, Jr.
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**TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA'S
MEMORANDUM IN SUPPORT OF ITS PEREMPTORY EXCEPTION JOINING
THE PEREMPTORY EXCEPTIONS FILED BY FORMER DIRECTORS AND
OFFICERS OF LOUISIANA HEALTH COOPERATIVE, INC.**

Defendant, Travelers Casualty and Surety Company of America ("Travelers"), files this Memorandum in Support of its Peremptory Exception Joining the Peremptory Exceptions filed by the Former Directors and Officers of Louisiana Health Cooperative, Inc. Travelers' Exception responds to the First Supplemental, Amending and Restated Petition for Damages ("First Supplemental Petition") filed by Plaintiff, James J. Donelon, Commissioner of Insurance for the State of Louisiana in his capacity as Rehabilitator of Louisiana Health Cooperative, Inc.

The former directors and officers of Louisiana Health Cooperative, Inc. ("D&O Defendants") are filing peremptory exceptions in response to the First Supplemental Petition. As explained further below, if the Plaintiff has no cause of action against the D&O Defendants, it has not cause of action against Travelers. Thus, for the limited purpose of preserving Travelers' right to be dismissed from this matter in the event the Court grants the D&O Defendants' peremptory exceptions, Travelers adopts the arguments stated in the peremptory exceptions. Should Travelers be required to file an Answer, Travelers does not concede any factual allegations that contradict Travelers

rights and defenses under the policies at issue.

Plaintiff named Travelers as a defendant in this lawsuit along with the D&O Defendants pursuant to the Louisiana Direct Action Statute, LA. R.S. § 22:1269. Travelers issued certain insurance policies to Louisiana Health Cooperative, Inc. The Direct Action Statute does not grant an independent right of action to a claimant, but merely a procedural right of action limited to the terms and limits of the insurance policy. *Hood v. Cotter*, 08-C-0215 c/w 08-C-0237, p. 17 (La. 12/2/08); 5 So. 3d 819, 830. If the claimant has no cause of action against the insured, it has no independent substantive cause of action against the insurer. *Buckley v. Ace Am. Ins. Co.*, 2013-1167, 2013 WL 12122538 (La. App. 1 Cir. 10/28/13), *writ denied*, 2013-2749 (La. 2/7/14), 131 So. 3d 869. If the peremptory exceptions filed by the D&O Defendants are granted, Travelers would be entitled to a dismissal.

Accordingly, for the limited purposes stated in this pleading, Travelers adopts the requests for dismissal in the peremptory exceptions filed by the D&O Defendants and requests that those peremptory exceptions be granted sustained and Travelers be dismissed from this matter with prejudice or, alternatively, that it be granted such other relief as the Court may deem appropriate under the circumstances..

Respectfully submitted,

KREBS | FARLEY, P.L.L.C.



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