

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 QUIINLAN, 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

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

Defendant Atlantic World Specialty Insurance Company ("Atlantic Specialty") respectfully submits the instant Answer, Exceptions, and 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**

Atlantic Specialty excepts to the Petition on the following grounds:

**Exception of No Cause of Action**

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

First, the Petition fails to allege specific facts sufficient to possibly trigger coverage under the Atlantic Specialty Policy (defined *infra*).

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

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

Third, as alleged in the Petition, the alleged insureds – the D&O Defendants<sup>1</sup> – settled with Plaintiff before the filing of the Petition, and before Atlantic Specialty 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 as nominal defendants in the Petition also naming Atlantic Specialty (*Id.*)

Atlantic Specialty’s Management Liability – Excess No. MMX-00730-16 with a policy period of June 1, 2016 to June 1, 2017 (“Atlantic Specialty Policy”) is a Follow Form Policy, and Allied World Specialty Insurance Company’s Forcefield Healthcare Organizations Directors and Officers Liability Policy No. 0310-1583 with a policy period of June 1, 2016 to June 1, 2017 is the Followed Policy (the “Followed Policy”). Except as otherwise provided for in the Atlantic Specialty Policy, the Atlantic Specialty Policy “will apply in conformance with, and will follow the form of, the terms and conditions of the Followed Policy.” (Atlantic Specialty Policy at page 1 of 6).

The Followed Policy expressly excludes from the term “Loss” those “amounts which an Insured is not legally obligated to pay.” (Followed Policy at page 9 of 23.) Therefore, there is no Loss alleged that is provided coverage under the Atlantic Specialty Policy.

Fourth, the individual D&O Defendants are not insured under the Followed Policy, and therefore are not insured by the Atlantic Specialty Policy, for the claims asserted against them and, therefore, no direct action lies against Atlantic Specialty. 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 Followed Policy’s terms, Coverage A only covers non-indemnifiable claims. Coverage B, “Claims Against Insured Persons — Indemnifiable Loss

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<sup>1</sup> Except as otherwise defined in this Answer, capitalized terms herein are used as they are defined in the Petition or the policies.



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.” (Followed 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.” (Followed 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 Followed Policy or the Atlantic Specialty Policy for the claims alleged in Plaintiff’s Petition.

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

#### **Exception of No Right of Action**

Atlantic Specialty excepts to the Petition on the ground that Plaintiff has no right of direct action against Atlantic Specialty under La. R.S. 22:1269. The Direct Action Statute “applies only to ‘polic[ies] or contract[s] of liability insurance.’” *First Nat. Bank of Louisville v. Lustig*, 975 F.2d 1165, 1166 (5th Cir. 1992). *See also, Grubbs v. Gulf Int’l Marine, Inc.*, 625 So. 2d 495, 498 (La. 1993) (“By its literal terms, the Direct Action Statute applies to “all liability policies”) and *First Nat. Bank of Louisville v. Lustig*, 975 F.2d 1165, 1166 (5th Cir. 1992) (“the direct action statute applies only to ‘liability’ insurance”). Because the Atlantic Specialty Policy is an indemnity policy as opposed to a liability policy, Plaintiff has no right of action against Atlantic Specialty.

Additionally, 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 Atlantic Specialty Policy for several reasons, Plaintiff has no direct action against Atlantic Specialty Policy and his claims should be dismissed.

First, Plaintiff has no right of action against Atlantic Specialty 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 Atlantic Specialty 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 Atlantic Specialty as a defendant in this matter for the first time. Atlantic Specialty was served with the Petition on November 3, 2017. Accordingly, at the time Atlantic Specialty was joined to this lawsuit, the D&O Defendants were nominal parties without any potential liability, and Plaintiff has no right of direct action against Atlantic Specialty.

Second, the indemnity coverage afforded by the Atlantic Specialty 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 of the Followed Policy. 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.” (Followed 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 Followed Policy only covers “Loss,” which expressly does not include “amounts which an Insured is not legally obligated to pay” (Followed Policy at page 9 of 23), and/or because the Atlantic Specialty Policy only covers that “which an Insured is legally obligated to pay.” (Atlantic Specialty Policy at page 1 of 6.) Because the purported Insureds are not and never will be legally obligated to pay anything, the amounts Plaintiff seeks do not constitute a loss or are otherwise not covered.

Further, the Followed 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 [Followed] Policy.” (Followed 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 Followed Policy has not attached and coverage is not possibly triggered.

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

### **DEFENSES**

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

#### **First Defense**

Atlantic Specialty pleads all terms, provisions, conditions, and exclusions of the Atlantic Specialty Policy as if copied herein *in extenso*.

#### **Second Defense**

Atlantic Specialty pleads all terms, provisions, conditions, and exclusions of the Followed Policy as if copied herein *in extenso*.

#### **Third 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 the Atlantic Specialty Policy.

The Policy's applicable Limits of Liability and/or aggregates specify the most Atlantic Specialty is obligated to pay on a claim and are incorporated herein as if copied *in extenso*.

#### **Fourth 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 Policy.

#### **Fifth 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 Atlantic Specialty in accordance with the terms of the Policy, coverage is barred.

#### **Sixth Defense**

To the extent a Claim was first made against an alleged Insured during the policy period — 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 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 Defenses.

#### **Eighth Defense**

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

#### **Ninth 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 Followed 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 [Followed] 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.

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

#### **Tenth Defense**

Coverage under the Atlantic Specialty Policy has not attached because the Underlying Insurance has not been exhausted. The Atlantic Specialty Policy provides that coverage under that policy will only attach once “such **Underlying Insurance** also applies and has been exhausted by actual payment thereunder, or would apply but for the exhaustion of the total limits of liability thereunder,” “the applicable limits of liability of such **Underlying Insurance** shall be deemed to be reduced or exhausted solely as a result of payments for loss, damages, judgments, settlements or defense expenses that are covered under” the Atlantic Specialty Policy, and Atlantic Specialty “will not have any obligation to make any payment hereunder unless and until the full amount of the total limits of liability of such **Underlying Insurance** has been paid by the issuer or issuers of such **Underlying Insurance** or by the **Insured.**” (Atlantic Specialty Policy at 1 of 6.)

#### **Eleventh Defense**

Coverage is barred to the extent any particulars, statements, and/or representations contained in any application submitted in connection with the Atlantic Specialty Policy, the Followed Policy, or any other Underlying Insurance are not true, accurate, and/or complete. In particular, coverage is barred to the extent the terms of the Reliance on Other Application Endorsement in the Atlantic Specialty Policy have not been satisfied and/or an Insured Person knew, as of the Inception Date, of facts that were not accurately and completely disclosed in the Application. (Followed Policy at page 22 of 23.)

#### **Twelfth 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.

### **Thirteenth 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 Followed 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. (Followed Policy at page 10 of 23.)

### **Fourteenth Defense**

Coverage is barred to the extent the Petition seeks coverage for amounts for which an Insured is not “legally obligated to pay” (Atlantic Specialty Policy at page 1 of 6) or that do not constitute “Loss” under the Followed Policy. The Followed Policy’s definition of the term “Loss” does not include “amounts which an Insured is not legally obligated to pay.” (Followed Policy at page 9 of 23.) Upon information and belief, the alleged insureds have settled with Plaintiff, and therefore no Insured under the Atlantic Specialty Policy is legally obligated to ever pay any amount in connection with this matter.

### **Fifteenth Defense**

Coverage under the Followed Policy’s Insuring Agreement A is barred because Plaintiff’s claims against the D&O Defendants are indemnifiable claims. 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. (Followed Policy at page 1 of 23.) Because Plaintiff’s claims against the D&O Defendants are indemnifiable by the Company, there is no coverage provided by the Followed Policy’s Insuring Agreement A.

### **Sixteenth Defense**

Coverage under the Followed Policy’s Insuring Agreement B is barred because the Company has not paid and/or will not pay indemnification to the D&O Defendants for Plaintiff’s 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.” (Followed 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 Followed Policy’s Insuring Agreement B.



### **Seventeenth Defense**

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

### **Eighteenth Defense**

Coverage is or may be barred to the extent that any Insured fails to comply with the cooperation requirements in Paragraph XXII of the Followed Policy (Followed Policy at page 23 of 23) and/or Paragraph VI of the Atlantic Specialty Policy. (Atlantic Specialty Policy at page 4 of 6.)

### **Nineteenth Defense**

Coverage is barred to the extent that the alleged insureds failed to comply with the Followed 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 the Insurer" (Followed Policy, Endorsement No. 2 at page 1 of 2) and/or the Atlantic Specialty Policy's requirement that "[w]ith respect to any Claim that is reasonably likely to involve the coverage afforded by this Policy, the Insured shall not settle such Claim, or incur any expense, make any payment, admit any liability, or assume any obligation with respect to such Claim, without the Underwriter's prior written consent, which consent shall not be unreasonably withheld." (Atlantic Specialty Policy at page 4 of 6.)

### **Twentieth 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." (Followed Policy at page 12 of 23.)

### **Twenty-First 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." (Followed Policy at page 13 of 23.)

### **Twenty-Second 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.” (Followed Policy at page 13 of 23.)

### **Twenty-Third 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 Followed Policy. (Followed Policy at page 13 of 23.)

### **Twenty-Fourth Defense**

Coverage is barred to the extent the Petition seeks relief for a matter barred by Exclusion N in the Followed Policy, 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 Defense**

Coverage is barred to the extent the Petition seeks relief for a matter barred by Endorsement No. 10 of the Followed Policy, 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 Defense**

Coverage is barred to the extent Exclusion C of the Followed Policy applies which precludes coverage for any **Loss** in connection with any **Claim**:

- C. based upon, arising from, or in consequence of any actual or alleged liability of any **Insured** under any express contract or agreement; provided however, that this Exclusion shall not apply: (1) to the extent that such



**Insured** would have been liable in the absence of such contract or agreement; or (2) to the payment of **Defense Costs** for that portion of such a **Claim** against an **Insured Person**.

#### **Twenty-Seventh Defense**

Coverage is barred to the extent Exclusion F of the Followed Policy applies which precludes coverage for any **Loss** in connection with any **Claim**:

- F. alleging, arising out of, based upon or attributable to any actual or alleged act or omission of any **Insured Person** serving in any capacity other than as an **Executive** or an **Employee** or as an **Outside Entity Insured Person**;

#### **Twenty-Eighth Defense**

Coverage is barred to the extent Exclusion K of the Followed Policy applies which precludes coverage for any **Loss** in connection with any **Claim**:

- K. alleging, arising out of, based upon or attributable to any actual or alleged performance of or failure to perform **Medical Services**;

#### **Twenty-Ninth Defense**

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

#### **Thirtieth 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.

#### **Thirty-First Defense**

The Petition should be dismissed as impermissibly vague and ambiguous.

#### **Thirty-Second Defense**

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

#### **Thirty-Third Defense**

Neither Atlantic Specialty 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-Fourth Defense**

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

#### Thirty-Fifth Defense

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

#### Thirty-Sixth Defense

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

#### Thirty-Seventh Defense

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

#### Thirty-Eighth Defense

Plaintiff's claims are barred to the extent that the Plaintiff's settlement with the nominal defendants failed to preserve the rights of Plaintiff to pursue Atlantic Specialty in its capacity as an insurer for some or all of its alleged insureds.

#### Thirty-Ninth Defense

Plaintiff's claims are barred to the extent that Plaintiff's claims fail to satisfy the provisions of the Atlantic Specialty Policy's Paragraph I. Insuring Agreement which provides:

#### **I. INSURING AGREEMENT**

The Underwriter will pay on behalf of the **Insured**, up to the applicable Limit of Liability shown in ITEM 3 of the Declarations, any loss, damages, judgments, settlements, and defense expenses in excess of the total limits of liability for all applicable **Underlying Insurance** which an **Insured** is legally obligated to pay as a result of a covered **Claim**; provided that:

- (A) such **Underlying Insurance** also applies and has been exhausted by actual payment thereunder, or would apply but for the exhaustion of the total limits of liability thereunder
- (B) this Policy will apply in conformance with, and will follow the form of, the terms and conditions of the **Followed Policy** (including all endorsements thereto), except:
  - (1) with respect to any provision to the contrary contained in the Policy;
  - (2) the applicable limits of liability of such **Underlying Insurance** shall be deemed to be reduced or exhausted solely as a result of payments for loss, damages, judgments, settlements, or defense expenses that are covered under this Policy; and
  - (3) the coverage provided by this Policy shall not be broader than the **Followed Policy** unless expressly provided in this Policy;
- (C) the Underwriter will not have any obligation to make any payment hereunder unless and until the full amount of the total limits of liability of such **Underlying Insurance** has been paid by the issuer or issuers of such **Underlying Insurance** or by the **Insured**; and
- (D) The Underwriter's obligation to pay loss, damages, judgments, settlements, and defense expenses as a result of a covered **Claim** after the date of exhaustion of the full amount of the total limits of liability of such



**Underlying Insurance** shall be excess of any applicable deductible or retention under the **Underlying Insurance**.

#### **Fortieth Defense**

Plaintiff's claims may be barred or otherwise reduced by the Atlantic Specialty Policy's

Paragraph III. Limits of Liability and Exhaustion of Limits, which provides:

### **III. LIMITS OF LIABILITY AND EXHAUSTION OF LIMITS**

- (A) **Each Claim Limit of Liability.** The amount stated in ITEM 3(A) of the Declarations shall be the maximum Limit of Liability of the Underwriter for all loss, damages, judgments, settlements, and defense expenses from each **Claim** for which this Policy provides coverage. This Limit of Liability shall be part of, and not in addition to, the Policy Aggregate Limit of Liability stated in ITEM 3(B) of the Declarations.
- (B) **Policy Aggregate Limit of Liability.** The amount stated in ITEM 3(B) of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter for all loss, damages, judgments, settlements, and defense expenses from all **Claims** for which this Policy provides coverage.
- (C) Defense expenses are part of, and not in addition to, the Underwriter's applicable Limits of Liability, and payment of defense expenses by the Underwriter will reduce, and may exhaust, this Policy's applicable Limits of Liability.
- (D) The Underwriter will have no obligation to pay any loss, damages, judgments, settlements, or defense expenses after the Policy Aggregate Limit of Liability stated in Item 3(B) of the Declarations has been exhausted by payments under this Policy. If the Policy Aggregate Limit of Liability is exhausted by payments under this Policy, the premium will be fully earned, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, and the Underwriter will have no further obligations of any type, nature, or kind under this Policy.

#### **Forty-First Defense**

Plaintiff's claims may be barred by the provisions of the Atlantic Specialty Policy's

Paragraph IV. Underlying Insurance as amended by Endorsement No. 1 Louisiana Amendatory

Endorsement and Endorsement No. 6 Not Follow Form of Sub-Limited Coverages Endorsement

(With Recognition of Erosion) which provides:

### **IV. UNDERLYING INSURANCE**

- (A) As long as the Policy is in effect, all **Underlying Insurance** must continuously:
  - (1) be kept in full force and effect;
  - (2) provide no less coverage than provided by all of the insurance policies, bonds, self-insurance programs, trust agreements, or other risk transfer arrangements scheduled in ITEM 4 of the Declarations;
  - (3) provide no lower limits of liability than those scheduled in ITEM 4 of the Declarations, except to the extent such limits are reduced or

exhausted due to the payment of covered **Claims** under such **Underlying Insurance**; and

(4) be available and collectible.

(B) If at any time any **Underlying Insurance**:

(1) is not kept in full force and effect;

(2) provides less coverage or otherwise contains provisions with changes from the provisions originally applicable to such **Underlying Insurance** as scheduled in ITEM 4 of the Declarations;

(3) has limits of liability of a lesser amount than those scheduled in ITEM 4 of the Declarations;

(4) is unavailable or uncollectible due to the bankruptcy, insolvency, liquidation, trusteeship, or receivership of any **Insured** or any issuer of such **Underlying Insurance**; or

(5) is unavailable or uncollectible due to any other reason, including but not limited to any **Insured's** failure to comply with any provision of such **Underlying Insurance**,

then the Underwriter will not be liable under this Policy earlier or to any greater extent than it would have been if such **Underlying Insurance** was still in full force and effect, contained its original provisions, had the original scheduled limits of liability, and was fully available and collectible.

(C) If any **Underlying Insurance** contains an insuring agreement or a grant of coverage with a limit of liability of a lesser amount than that scheduled in ITEM 4 of the Declarations, then this Policy shall not apply to such insuring agreement or grant of coverage; provided, that for the purposes of determining when the coverage afforded under this Policy shall attach, the applicable limits of liability of such **Underlying Insurance** will be deemed to have been eroded (or exhausted) by payment of loss, damages, judgments, settlements or defense expenses under such insuring agreement or grant of coverage.

(D) The **Insured** will provide the Underwriter with prompt notice of:

(1) any payment of any **Claim** under any **Underlying Insurance**;

(2) any cancellation, termination, or non-renewal of any Underlying Insurance; or

(3) any change in or modification of any Underlying Insurance by endorsement or otherwise.

(D) In the event any **Underlying Insurance** is rescinded, the Underwriter may cancel this Policy in accordance with the provision of Section VIII(B), as amended by this endorsement.

#### **Forty-Second Defense**

Plaintiff's claims may be barred by the provisions of the Atlantic Specialty Policy's Paragraph V. Reporting of Claims and Circumstances as amended by Endorsement No. 1 Louisiana Amendatory Endorsement, which provides:



## V. REPORTING OF CLAIMS AND CIRCUMSTANCES

As a condition to any right to coverage under this Policy, the **Insured** must comply with the following:

- (A) the **Insured** must provide the Underwriter with written notice of any **Claim** as soon as practicable, and in any event within the time period set forth by the **Followed Policy** with respect to notice of **Claims**;
- (B) the **Insured** must provide the Underwriter with written notice of any **Claim**, loss, act, error, omission, circumstance, or other matter with respect to which notice has been provided under any **Underlying Insurance**; and
- (C) if, during the **Policy Period**, the **Insured** first becomes aware of any act, error, omission, or other circumstance that might subsequently give rise to a **Claim** and the **Insured** exercises any right under the **Underlying Insurance** to report such act, error, omission, or other circumstance, then the **Insured** must also report such act, error, omission, or other circumstance to the Underwriter as soon as practicable but in any event before the Expiration Date or earlier cancellation or termination of this Policy. Any covered **Claim** subsequently made against the **Insured** arising out of such act, error, omission, or other circumstance and for which written notice is given to the Underwriter as soon as practicable thereafter shall be treated as if it had first been made and reported to the Underwriter during the **Policy Period**, provided that the applicable **Underlying Insurance** is also treating such **Claim** as if it had been first made and reported during the **Policy Period**.

### Forty-Third Defense

Plaintiff's claims may be barred by the provisions of the Atlantic Specialty Policy's Paragraph VI.(A) Settlement and Association which provides:

## VI. SETTLEMENT AND ASSOCIATION

- (A) With respect to any **Claim** that is reasonably likely to involve the coverage afforded by this Policy, the **Insured** shall not settle such **Claim**, or incur any expense, make any payment, admit any liability, or assume any obligation with respect to such **Claim**, without the Underwriter's prior written consent, which consent shall not be unreasonably withheld.

### Forty-Fourth Defense

Plaintiff's claims may be barred by the provisions of the Atlantic Specialty Policy's Paragraph X. Representations, which provides:

## X. REPRESENTATIONS

The **Insured** represents that the particulars and statements contained in any application submitted in connection with this Policy or with any **Underlying Insurance** are true, accurate and complete, and agree that:

- (A) this Policy is issued and continued in force by the Underwriter in reliance on the truth of that representation;
- (B) those particular and statements are the basis of this Policy; and
- (C) such application and those particular and statements are incorporated into and form a part of this Policy.

#### **Forty-Fifth Defense**

Plaintiff's claims may be barred by the terms of the Reliance on Other Application Endorsement in the Atlantic Specialty Policy which provides:

In consideration of the premium charged, it is understood and agreed that the Underwriter will accept the particulars and statements contained in the application(s) referenced below. It is further understood and agreed that the **Insured** represents that the particulars and statements contained in such application(s) or other materials submitted with such application(s) are true, accurate, and complete and agree that:

- (1) this Policy is issued and continued in force by the Underwriter in reliance upon the truth of such representation;
- (2) those particulars and statements are the basis of this Policy; and
- (3) such application(s) and those particulars and statements are incorporated in and form a part of this Policy.

<u>POLICY APPLICATION</u>	<u>DATE OF APPLICATION</u>
Chubb Health Care Portfolio Renewal Application	March 4, 2016

#### **Forty-Sixth Defense**

Plaintiff's claims may be barred by the terms of the Prior or Pending Litigation Exclusion in Endorsement No. 4 of the Atlantic Specialty Policy which provides:

In consideration of the premium charged, no coverage will be available under this Policy for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any prior or pending demand, litigation, or alternative dispute resolution, administrative, regulatory, investigation, or arbitration proceeding as of May 1, 2015, or the same or substantially similar fact, circumstance, situation, transaction, event, act, error or omission underlying or alleged therein.

#### **Forty-Seventh Defense**

To the extent that any insurance underlying the Atlantic Specialty Policy was issued by any insurance carrier that is now or in the future becomes insolvent, the Atlantic Specialty Policy does not "drop down" to provide coverage at a lower level than stated in the Atlantic Specialty Policy.

#### **Forty-Eighth Defense**

Plaintiff's claims against Atlantic Specialty are barred, in whole or in part, to the extent that the damages alleged were caused by the contributory or comparative fault of other parties besides Atlantic Specialty's alleged insureds.

#### **Forty-Ninth Defense**

Atlantic Specialty pleads superseding and/or intervening causes as a defense and a bar to recovery.



#### **Fiftieth Defense**

Plaintiff's claims against Atlantic Specialty are barred, in whole or in part, to the extent that the damages alleged were caused by conditions over which neither Atlantic Specialty nor its alleged insureds had control.

#### **Fifty-First Defense**

Atlantic Specialty avers that, in accordance with La. C.C. art. 2323, the percentage of fault of all persons causing or contributing to the damages must be determined, and that the amount of damages recoverable, if any, must be reduced in proportion to the percentage of fault attributable to other parties, including Plaintiff, parties that are insolvent, and parties that are not named as defendants.

#### **Fifty-Second Defense**

Plaintiff's claims against Atlantic Specialty are barred to the extent that the claims are for equitable relief and/or are founded upon equitable remedies.

#### **Fifty-Third Defense**

The obligations of Atlantic Specialty, if any, are subject to offsets for recoveries received by the Plaintiff and/or insured from other persons or entities.

#### **Fifty-Fourth Defense**

The aggregate limit of liability in the Declarations of the Atlantic Specialty policy shall be Atlantic Specialty's maximum aggregate liability with respect to all claims. Defense expenses, as applicable, are part of and not in addition to the Limits of Liability, and the payment by Atlantic Specialty of such defense expenses, if applicable, will reduce and may exhaust completely the limit of liability.

#### **Fifty-Fifth Defense**

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

#### **Fifty-Sixth Defense**

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

#### **Fifty-Seventh Defense**

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

#### **Fifty-Eighth Defense**

Atlantic Specialty 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 prior written consent.

#### **Fifty-Ninth 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 Atlantic Specialty has or has had.

#### **Sixtieth 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 public policy or law.

#### **Sixty-First Defense**

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

#### **Sixty-Second Defense**

Plaintiff's claims are barred, in whole or in part, to the extent any amount sought is uninsurable or against public policy to insure.

#### **Sixty-Third Defense**

Atlantic Specialty adopts and incorporates any defenses that have been or may be asserted by any of the D&O Defendants, Allied World Specialty Insurance Company (f/k/a Darwin National Assurance Company), RSUI Indemnity Company, Evanston Insurance, and Zurich American Insurance Company as if fully set forth herein.

Atlantic Specialty 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 defenses, answering the specific allegations of Plaintiff's Petition, Atlantic Specialty responds as follows:

Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

### **JURISDICTION AND VENUE<sup>2</sup>**

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

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

### **PARTIES**

#### **Plaintiff**

5. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

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<sup>2</sup> The headings in the Petition are reproduced in this Answer.

### **Defendants**

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

28. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

33. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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. The allegations of Paragraph 40 are denied with regard to the allegations that Atlantic Specialty or any insurers of policies to which Atlantic Specialty follows form provides coverage for the claims in this matter. Atlantic Specialty admits that it issued the Atlantic Specialty Policy to Ochsner Clinic Foundation, said policy being a written document and the best evidence of its terms, conditions, exclusions, and limitations therein. Regarding the remaining allegations in Paragraph 40, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of those allegations, and therefore denies the same.

41. The allegations in Paragraph 41 are denied.

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

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

**CGI**

43. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

48. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

52. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

55. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

62. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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. Atlantic Specialty repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.

73. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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. Atlantic Specialty repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.

**Milliman**

82. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

89. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

95. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

**Buck**

111. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

116. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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. Atlantic Specialty repeats and re-alleges each and every response and defense set forth in the prior paragraphs as if fully set forth herein.



**Milliman**

136. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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. Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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, Atlantic Specialty 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 Atlantic Specialty.

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

### **REQUEST FOR JURY TRIAL**

Atlantic Specialty respectfully requests a trial by jury.

**WHEREFORE**, Atlantic Specialty Insurance Company prays that its Answer, Exceptions, and 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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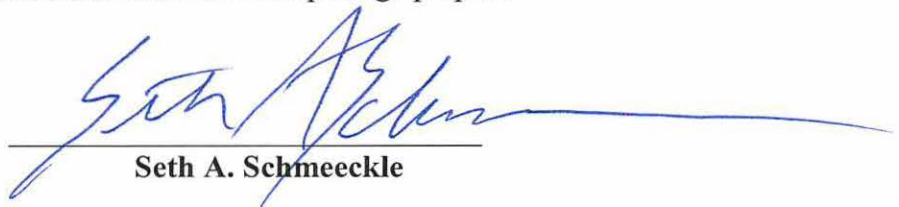
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**Counsel for Atlantic Specialty Insurance Company**

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of December, 2017, a copy of this pleading has been served upon all counsel to this action by facsimile, e-mail and/or by depositing same in the United States mail, properly addressed and first class postage prepaid.



**Seth A. Schmeeckle**