

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

STATE OF LOUISIANA

SUIT NO. C-651069

SECTION 22

JAMES J. DONELON, COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA, et al

VERSUS

GROUP RESOURCES INCORPORATED, et al

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

\_\_\_\_\_  
DEPUTY CLERK

**IRONSHORE’S ANSWER TO FIFTH SUPPLEMENTAL, AMENDING AND  
RESTATED PETITION FOR DAMAGES AND REQUEST FOR JURY TRIAL**

Ironshore Specialty Insurance Company (“Ironshore”), Defendant, through its undersigned counsel of record, responds to the Fifth Supplemental, Amending and Restated Petition for Damages and Request for Jury Trial (“the Petition”) submitted on behalf of James J. Donelon, Commissioner of Insurance for the State of Louisiana in his Capacity as Rehabilitator of Louisiana Health Cooperative, Inc., through his duly appointed Receiver, Billy Bostick, Plaintiff, as follows:

**ANSWER TO FIFTH AMENDED PETITION**

1. Paragraph 1 of the Petition amending the caption of this proceeding requires no response from Ironshore.

2. In response to the allegations contained in Paragraphs 2 through 4 of the Petition, the allegations regarding jurisdiction and venue call for legal conclusions which require no response from Ironshore. However, out of an abundance of caution and to the extent a response is required, such allegations are denied for lack of information sufficient to justify a belief in the truth thereof. The remaining allegations of Paragraphs 2 through 4 are denied.

3. In response to the allegations contained in Paragraphs 5 through 8 of the Petition, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

3. There are no allegations contained in Paragraph 9 of the Petition and therefore no response is required. However, out of an abundance of caution and to the extent a response is required, those allegations are denied as written.

4. In response to the allegations contained in Paragraph 10(a) of the Petition directed toward Group Resources Incorporated (“GRI”), Ironshore admits that GRI is a foreign corporation

domiciled in the State of Georgia, with its principal place of business in the State of Georgia. The remaining allegations of Paragraph 10(a) are denied for lack of information sufficient to justify a belief in the truth thereof. In response to the allegations contained in Paragraph 10(b), Ironshore admits it is a foreign insurer, doing business in the State of Louisiana and further admits that it issued certain insurance coverage to GRI per the terms of any such triggered policy (hereinafter referred to as the “Ironshore Policy”). Ironshore denies that the Ironshore Policy provides any coverage for the claims asserted by Plaintiff. Further responding, the Ironshore Policy is the best evidence of its contents, and Ironshore specifically pleads the terms, conditions, endorsements, exclusions, limitations and provisions of the Ironshore Policy as if copied herein.

5. In response to the allegations contained in Paragraphs 11(a) and (b) of the Petition, those allegations are not directed at Ironshore and require no response from Ironshore. However, out of an abundance of caution and to the extent a response is required, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof..

6. Paragraph 12 of the Petition, including subparts (1) through (4), purport to set forth definitions used in the Petition rather than allegations and therefore require no response from Ironshore. However, out of an abundance of caution and to the extent Paragraph 12 and its subparts are directed at Ironshore and require a response, any such allegations are denied as written. Ironshore denies any other allegations as written for lack of information sufficient to justify a belief in the truth thereof.

7. In response to the allegations contained in Paragraphs 13 through 20 of the Petition and to the extent those allegations are directed toward Ironshore or GRI, those allegations are denied as written, and the remaining allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

8. In response to the allegations contained in Paragraph 21 of the Petition repeating and realleging Plaintiff’s prior allegations, Ironshore repeats and reiterates its prior responses to any such allegations as if copied herein.

9. In response to the allegations contained in Paragraphs 22 through 28, including any and all subparts, those allegations are denied as written.

10. In response to the allegations contained in Paragraph 29 of the Petition repeating and realleging Plaintiff's prior allegations, Ironshore repeats and reiterates its prior responses to any such allegations as if copied herein.

11. In response to paragraph contained in Paragraphs 30 through 32 of the Petition, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

12. In response to the allegations of Paragraphs 33 through 37 of the Petition, those allegations are denied written.

13. In response to the allegations contained in Paragraph 38 of the Petition repeating and realleging Plaintiff's prior allegations, Ironshore repeats and reiterates its prior responses to any such allegations as if copied herein.

14. In response to the allegations contained in Paragraphs 39 through 99 of the Petition, including any and all subparts, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

15. In response to the allegations contained in Paragraph 100 of the Petition repeating and realleging Plaintiff's prior allegations, Ironshore repeats and reiterates its prior responses to any such allegations as if copied herein.

16. In response to the allegations contained in Paragraphs 101 through 112 of the Petition, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

17. In response to the allegations contained in Paragraph 113 of the Petition repeating and realleging Plaintiff's prior allegations, Ironshore repeats and reiterates its prior responses to any such allegations as if copied herein.

18. In response to the allegations contained in Paragraphs 114 through 116 of the Petition, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

19. In response to the allegations contained in Paragraphs 117 through 118 of the Petition, those allegations are denied as written.

20. In response to the allegations contained in Paragraph 119 of the Petition repeating and realleging Plaintiff's prior allegations, Ironshore repeats and reiterates its prior responses to any such allegations as if copied herein.

21. In response to the allegations contained in Paragraphs 120 through 127, including any and all subpart, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

22. In response to the allegations contained in Paragraph 128 of the Petition repeating and realleging Plaintiff's prior allegations, Ironshore repeats and reiterates its prior responses to any such allegations as if copied herein.

23. In response to the allegations contained in Paragraphs 129 through 132, including any and all subpart, those allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

24. In response to the allegations contained in Paragraph 133, Ironshore admits that it issued certain insurance coverage to GRI per the terms of any such triggered policy (the "Ironshore Policy"). Ironshore denies that the Ironshore Policy provides any coverage for the claims asserted by Plaintiff. Further responding, the Ironshore Policy is the best evidence of its contents, and Ironshore specifically pleads the terms, conditions, endorsements, exclusions, limitations and provisions of the Ironshore Policy as if copied herein. Ironshore denies that it or GRI are liable to Plaintiff for any claims asserted by Plaintiff.

25. In response to the allegations contained in Paragraphs 134 through 139, including any and all subparts, those allegations are denied as written insofar as they are directed toward Ironshore or GRI. The remaining allegations are denied as written for lack of information sufficient to justify a belief in the truth thereof.

26. Plaintiff's jury demand requires no response from Ironshore.

27. Ironshore further denies the allegations of any and all other numbered, unnumbered, or misnumbered paragraphs, and denies that Plaintiff is entitled to the relief sought in his prayer for relief.

#### **AFFIRMATIVE DEFENSES AND OTHER RESPONSES**

Ironshore asserts the following affirmative defenses and additional responses to Plaintiff's Petition.

### **FIRST DEFENSE**

Ironshore's obligations (if any) are subject to the terms, conditions, endorsements, exclusions, limitations and other provisions of the Ironshore Policy, which are adopted and referenced as if copied herein, and/or applicable law.

### **SECOND DEFENSE**

Plaintiff's claims are not covered by the Ironshore Policy to the extent they were not first made against an Insured and reported to Ironshore in accordance with the applicable provisions of the Ironshore Policy. Furthermore, Plaintiff's claims are not covered by the Ironshore Policy to the extent any insured failed to comply with the reporting of claims and circumstances requirements as required under the Landmark Policy.

### **THIRD DEFENSE**

The Petition fails to state a claim upon which relief can be granted against Ironshore.

### **FOURTH DEFENSE**

Plaintiff's claims against Ironshore or any alleged insured are prescribed and/or preempted in whole or alternatively in part.

### **FIFTH DEFENSE**

Any claims and demands asserted against Ironshore are alternatively subject to the limits of liability set forth in the Declarations of the Ironshore Policy.

### **SIXTH DEFENSE**

Any claims and demands asserted against Ironshore are alternatively subject to the retention requirements of the Ironshore Policy.

### **SEVENTH DEFENSE**

To the extent any insured failed to accurately disclose and/or omitted disclosing any information submitted or requested in connection with any application submitted to Ironshore for the Ironshore Policy, Ironshore alternatively reserves its right to assert further defenses and responses in the event that any such non-disclosures or omissions would have materially affected Ironshore's consideration of any such application and request for coverage in connection with the Ironshore Policy.

#### **EIGHTH DEFENSE**

To the extent any insured breached or failed to comply with or perform any obligations or duties set forth or included in the Ironshore Policy, Ironshore denies any liability under the Ironshore Policy.

#### **NINTH DEFENSE**

The Ironshore Policy does not provide coverage for Plaintiff's claims to the extent any alleged liable defendant is not an "insured" under the Ironshore Policy.

#### **TENTH DEFENSE**

There is no coverage under the Ironshore Policy because Plaintiffs' claims fall outside the scope of the Insuring Agreements of the Landmark Policy.

#### **ELEVENTH DEFENSE**

To the extent that there is or may be other insurance that was issued to any alleged insured that provides primary or other coverage for any claims set forth in the Petition or any insured is entitled to indemnification from any entity other than an insured, Ironshore denies any coverage under the Ironshore Policy.

#### **TWELFTH DEFENSE**

There is no coverage under the Ironshore Policy to the extent Plaintiff's claims are barred by Exclusion (A) of the Ironshore Policy which provides Ironshore shall not pay Loss from any Claim brought about or contributed to by:

- (1) any willful misconduct or willfully dishonest, fraudulent, criminal or malicious act, error or omission by any Insured;
- (2) any willful violation by any Insured of any law, statute, ordinance, rule or regulation; or
- (3) any Insured gaining any profit, remuneration or advantage to which such Insured was not legally entitled.

For the purposes of determining the applicability of this EXCLUSION (A), no Wrongful Act of any Insured shall be imputed to any other Insured. Determination of the applicability of this EXCLUSION (A) may be made by an admission or by a final adjudication in a proceeding constituting the Claim, or in a proceeding separate from or collateral to any proceeding constituting the Claim.

#### **THIRTEENTH DEFENSE**

There is no coverage under the Ironshore Policy to the extent Plaintiff's claims are barred by Exclusion (C)(3) of the Ironshore Policy which provides Ironshore shall not pay Loss from any Claim:

(3) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event, **Wrongful Act** or series of facts, circumstances, situations, transactions, events or **Wrongful Acts**:

- (a) underlying or alleged in any litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date stated in ITEM 2(a) of the Declarations:
  - (i) to which any Insured is or was a party; or
  - (ii) with respect to which any Insured, as of the Inception Date, knew or should reasonably have known (based on a “reasonable person” standard) that an Insured might be made a party hereto; or
- (b) which was the subject of any notice given prior to the Inception Date under any other policy of insurance or plan or program of self-insurance.

If, however, this Policy is a renewal of one or more policies previously issued by the Underwriter to the Insured Entity, and the coverage provided by the Underwriter to the Insured Entity was in effect, without interruption, for the entire time between the Inception Date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (C)(3) to the Inception Date will be deemed to refer instead to the Inception Date of the first policy under which the Underwriter began to provide the Insured Entity with the continuous and uninterrupted coverage of which this Policy is a renewal.

#### **FOURTEENTH DEFENSE**

Ironshore alternatively avers upon information and belief that the claims, damages and other relief requested or set forth in the Petition arose from the negligence, fault and/or want of due care on the part of parties other than any alleged insured, and/or other natural and juridical persons and/or other circumstances, that bar or alternatively reduce any right of recovery against Ironshore.

#### **FIFTEENTH DEFENSE**

There is no coverage under the Ironshore Policy for any amounts which do not constitute “Loss” under the Ironshore Policy.

#### **SIXTEENTH DEFENSE**

Any party who suffered any damages as alleged in the Petition failed to take reasonable or appropriate conduct in order to mitigate damages, if any.

#### **SEVENTEETH DEFENSE**

Plaintiff’s claims against Ironshore are barred, in whole or in part, by the principles of acquiescence, consent, amendment, modification, merger, estoppel, waiver, legal justification, license, excuse and/or privilege, transaction and compromise, payment, set off, failure or lack of consideration, and by its own particular acts and omissions.

**EIGHTEENTH DEFENSE**

Plaintiff has no right of action or cause of action against Ironshore.

**NINTEETH DEFENSE**

Any damage(s), losses or other relief described in the Petition, if any, were caused by parties or non-parties for whose actions, conduct, fault, negligence or omissions Ironshore is not responsible or liable.

**TWENTIETH DEFENSE**

Ironshore is entitled to an offset or credit for any and all sums which have been or may hereafter be paid by any alleged insured or any other person to the Plaintiff in connection with any of the events described in the Petition. Plaintiff is not entitled to receive “double-recovery” from Ironshore for any damages or losses for which it already has been or hereafter may be reimbursed by any alleged insured or any third party in connection with any of the events described in the Petition.

**TWENTY-FIRST DEFENSE**

Plaintiff’s claims are barred, or alternatively reduced, by the doctrine of avoidable consequences

**TWENTY-SECOND DEFENSE**

Ironshore hereby adopts and incorporates, as if set forth herein, any and all defenses asserted or to be asserted by Allied World in response to the Second Amended Complaint.

**TWENTY-THIRD DEFENSE**

Plaintiff’s claims against Ironshore are barred by the doctrines of res judicata and/or collateral estoppel.

**TWENTY-FOURTH DEFENSE**

Ironshore adopts the Affirmative Defenses set forth by GRI in its “Answer to Plaintiffs’ Third, Fourth and Fifth Amending and Restated Petitions for Damages and Request for Jury Trial.”

**TWENTY-FIFTH DEFENSE**

Ironshore reserves its right to seek leave to amend and/or supplement its answer in order to assert any affirmative defense, response or other matter that may arise or become relevant during the course of these proceedings, whether through discovery or otherwise.



**WHEREFORE**, Ironshore Specialty Insurance Company, Defendant, through its counsel of record, prays that its Answer be deemed good and sufficient, and after due proceedings that judgment be granted in its favor, dismissing Plaintiff's Petition, and any other claims and demands that have been or could have been asserted against Ironshore, with prejudice and at Plaintiff's cost. Ironshore further requests that the Court grant any general, equitable or other relief.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing pleading has been delivered to all counsel of record, by depositing a copy of same in the United States mail, first class postage prepaid at their last known address of record, or by electronic mail, or by facsimile transmission or by hand delivery today, **June 25, 2021.**



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Adam D. Whitworth