

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

**IN RE:
LOUISIANA SAFETY ASSOCIATION
OF TIMBERMEN - SELF INSURED FUND
DEBTOR**

**CASE NO. 15-81004
CHAPTER 7**

**T. BRETT BRUNSON AS TRUSTEE FOR
LOUISIANA SAFETY ASSOCIATION OF
TIMBERMEN – SELF INSURED FUND**

**ADVERSARY PROCEEDING
No. 17-08003**

Versus

**COMPLAINT
CLASS ACTION**

**ASCENSION READY MIX, INC.,
O'NEALGAS, INC.,
E.A. HINTON WELL SERVICING INC., and
ALFORD MOTORS, INC.
(On behalf of themselves
and others similarly situated)**

THIRD AMENDED AND RESTATED CLASS ACTION COMPLAINT

COMES NOW T. BRETT BRUNSON IN HIS CAPACITY AS TRUSTEE OF LOUISIANA SAFETY ASSOCIATION OF TIMBERMEN – SELF INSURED FUND (“**Debtor**”), through undersigned counsel, and files this Third Amended and Restated Class Action Complaint as follows:

Jurisdiction and Venue

1.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is not a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), but is a matter arising in a case under Title 11 or otherwise related to a case under Title 11 in accordance with 28 U.S.C. § 157(c); and is referred to the bankruptcy judge under the

authority of 28 U.S.C. § 157 in Local Rule 83.4.1 as a proceeding arising in or related to a case under Title 11.

2.

Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Defendant Class

3.

The defendants herein are a putative class of defendants comprised of all fund members of Debtor who held such fund membership at any time between January 1, 1998 through September 11, 2015, except those members with whom the Trustee has settled and granted a release of liability, (“**Putative Class**”) to be represented by O’NEALGAS, INC. (“**O’Nealgas**”), E.A. HINTON WELL SERVICING INC. (“**Hinton**”), ALFORD MOTORS, INC. (“**Alford**”), CARDIOVASCULAR SURGERY OF ALEXANDRIA, LLC (“**Cardiovascular**”), COASTAL PIPE OF LOUISIANA, INC. (“**Coastal**”), JONESBORO STATE BANK (“**Jonesboro**”), RELIABLE AMUSEMENT COMPANY, INC. (“**Reliable**”), and THE BANK (“**The Bank**”), as class representatives (O’Nealgas, Hinton, Alford, Cardiovascular, Coastal, Jonesboro, Reliable, and The Bank collectively are “**Putative Class Representatives**”).

Background

4.

The Debtor is a self-insurance fund for workers’ compensation formed pursuant to La. R.S. 23:1191, *et seq.*

5.

On September 11, 2015, the Debtor commenced this case by filing a voluntary petition for relief (“**Petition**”) under Chapter 7 of the United States Bankruptcy Code.

6.

At the time of the filing of the Petition, the Debtor had unpaid liabilities for workers’ compensation benefits in excess of \$40,000,000.

7.

Solidary liability is and was imposed upon fund members of self-insurance funds under Louisiana Revised Statutes Section 23:1192(B) (1979) (Repealed by Acts 1995, No. 703, § 2), regulations of the Department of Insurance, and Louisiana Revised Statutes Section 1196(F) (1995). Section 1196(F) provides, “[a] fund member shall be liable in solido for liabilities of the fund incurred by the fund after the inception of the fund year in which the employer becomes a member of the fund.”

8.

In addition, solidary liability is imposed upon Putative Class members through indemnity agreements, of which only a finite number of forms exist.

The Class

9.

During the years relevant to this action, the number of fund members of the Debtor ranged from 669 fund members in its fund year with the lowest number of fund members to 2,119 fund members in its fund year with the highest number of members. During the full period, Debtor had an estimated 4,982 distinct fund members, most of which are domiciled in the State of Louisiana, but all of whom did business and had workers within the State of Louisiana. Clearly, the joinder of all members of the class is impracticable.

10.

There are questions of law and fact common to the Putative Class. All members of the class are or were members of the Debtor. Each member of the Putative Class has the same basic liability as each other member of the class as derived from statutory solidary liability in addition to contractual solidary liability through indemnity agreements, including indemnity agreements with Debtor.

11.

The claims against and any defenses of O’Nealgas, Hinton, Alford, Cardiovascular, Coastal, Jonesboro, Reliable, and The Bank are typical of, if not identical to, the claims and any defenses of the class.

12.

O'Nealgas, Hinton, Alford, Cardiovascular, Coastal, Jonesboro, Reliable, and The Bank are substantial parties who, as class representatives, will fairly and adequately protect the interests of the class.

13.

The Putative Class Representatives are adequate representatives of the class in that their incentives to defend the action align with those of the other solidarily liable Putative Class members; thus, in defending their own interest, they also will adequately defend those of the other Putative Class Members. The Putative Class Representatives are competent to promote the interests of the Putative Class members.

14.

This action is properly maintainable as a class action because the nature of the claims, the class members, and other circumstances make it an appropriate class action pursuant to Bankruptcy Rule 7023 and Rule 23, and particularly Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure; the questions of law or fact common to the class members mentioned above predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy, which likely would involve the filing of thousands of separate adversary proceedings against solidary obligors.

Claim Against Class

15.

As members of the Debtor, each Putative Class member of the class is solidarily liable for the liabilities of the Debtor, or such portion of such liabilities as might be determined with respect to particular categories of class members.

Prayer for Relief

WHEREFORE, the Debtor prays for relief and judgment as follows:

A. Determining that this action is a proper class-action;

- B. Certifying the defendant class consisting of all fund members of Debtor who held such fund membership between January 1, 1998 through September 11, 2015, except those members with whom the Trustee has settled and granted a release of liability;
- C. Designating O'Nealgas, Hinton, Alford, Cardiovascular, Coastal, Jonesboro, Reliable, and The Bank as class representatives and designating class counsel for the class;
- D. For a money judgment against the class and each member of the class in the full amount of all of the liabilities of the Debtor as of the date the Petition was filed, or such portion of such liabilities as might be determined with respect to particular categories of class members;
- E. Including in the judgment against the class and each class member of the reasonable costs and expenses incurred in this action, including any counsel fees and expert witness fees, all at the cost of the class; and
- F. For such other and further relief as the court may deem just and proper.

Respectfully submitted,

BLANCHARD, WALKER, O'QUIN & ROBERTS
(A Professional Law Corporation)

By: /s/ M. Thomas Arceneaux

M. Thomas Arceneaux, La. Bar #02527

Rebecca S. L. Radford, La. Bar #34651

333 Texas Street, Suite 700 (71101)

P.O. Drawer 1126 (71163)

Shreveport, Louisiana

Telephone: 318-221-6858

Facsimile: 318-227-2967

E-mail: tarceneaux@bwor.com

rradford@bwor.com

McCOY ROBERTS & BEGNAUD, LTD.
(A Law Corporation)

Mark A. Begnaud

Louisiana Bar Roll #22197

Mark L. Roberts

Louisiana Bar Roll #21056

Erika F. Cedars

Louisiana Bar Roll #28905

300 Saint Denis Street

P.O. Box 1369

Natchitoches, Louisiana 71458-1369

Phone: 318-352-6495

E-mail: mbegnaud@mrbfirm.com

mroberts@mrbfirm.com

ecedars@mrbfirm.com