

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

**IN RE:**

**LOUISIANA SAFETY ASSOCIATION  
OF TIMBERMEN – SELF INSURED  
FUND**

**CASE NO. 15-81004**

**CHAPTER 7**

**Debtor**

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**T. BRETT BRUNSON, as Trustee for  
Louisiana Safety Association of  
Timbermen – Self Insured Fund,**

**ADVERSARY PROCEEDING  
NO. 17-08003**

**v.**

**ASCENSION READY MIX, INC.;;  
O’NEAL GAS, INC.;;  
E. A. HINTON WELL SERVICING, INC.;;  
and ALFORD MOTORS, INC. (on behalf  
of themselves and others similarly  
situated).**

**COMPLAINT CLASS ACTION**

**ANSWER TO THIRD AMENDED AND RESTATED CLASS ACTION COMPLAINT**

COMES NOW Coastal Pipe of Louisiana, Inc. (“Coastal”), and for its Answer to Third Amended and Restated Class Action Complaint filed by the Trustee (the “Trustee”) for the Louisiana Safety Association of Timbermen—Self-Insured Fund (the “Fund”) avers as follows:

**Jurisdiction and Venue**

1. Coastal admits the averments of paragraph 1 and, accordingly, any findings of fact or legal conclusions by the Bankruptcy Court must be submitted as a Report and Recommendation to the District Court.

2. Admitted.

### **Defendant Class and Affirmative Defense**

3. Coastal has not consented to be a Class Representative nor has it consented that this class action protocol is appropriate in this case. Coastal is without sufficient information to adequately determine whether a class would be appropriate and, therefore, denies same. Further answering, Coastal shows that the members of the putative class hold divergent positions and defenses vis a vis the Plaintiff and each other, there are different questions of law and fact regarding the putative class members, the affirmative defenses and defenses in general available to putative class members are not uniform throughout the putative class, and the parties sought to be made representatives of the putative class cannot all adequately protect the interests of other members of the class because the claims of the Plaintiff against each member-representative, and also the various members of the putative class, are varied and different. Additionally, there may or may not be rights of contribution and indemnity as between the members of the putative class which would or could cause the various class members to make claims one against the other.

### **Background**

4. Admitted.
5. Admitted.
6. Denied.
7. Coastal denies that it has solidary liability under the recited statutes or otherwise.
8. Coastal denies that it has solidary liability under an indemnity agreement or otherwise.

### The Class

9. Coastal is without sufficient information from which to determine the truth or veracity of the averments of paragraph 9 and therefore denies same.

10. Denied. Further answering, Coastal shows that the members of the putative class hold divergent positions and defenses vis a vis the Plaintiff and each other, the members of the putative class did not all hold an interest or membership in the Debtor during or for the same periods of time, there are different questions of law and fact regarding the putative class members, the affirmative defenses and defenses in general available to putative class members are not uniform throughout the putative class, and the parties sought to be made representatives of the putative class cannot all adequately protect the interests of other members of the class because the claims of the Plaintiff against each member-representative, and also the various members of the putative class, are varied and different. Additionally, there may or may not be rights of contribution and indemnity as between the members of the putative class which would or could cause the various class members to make claims one against the other.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

**Claim Against Class**

15. Denied. Further answering, the solidary liability mentioned in the applicable state statute envisions solidary liability as to a self insured fund, not as between the members of a fund.

**FIRST AFFIRMATIVE DEFENSE**

On information and belief, and without having reviewed applicable documents, Coastal believes and therefore avers that it does not owe the sums demanded nor does it have any obligation under law or contract that gives rise to any indemnity requirement.

**SECOND AFFIRMATIVE DEFENSE**

The Trustee's claims are barred by estoppel.

**THIRD AFFIRMATIVE DEFENSE**

The Trustee's claims are barred by waiver.

**FOURTH AFFIRMATIVE DEFENSE**

The Trustee's claims are barred by failure of consideration.

**FIFTH AFFIRMATIVE DEFENSE**

The Trustee's claims are barred since the Fund was not managed and/or operated consistent with Louisiana law and regulations. Specifically, without limitation, the Fund failed to provide requisite notice to Coastal of the lack of a guaranty fund.

**SIXTH AFFIRMATIVE DEFENSE**

The Trustee's request for certification of a defendants' class is improper under, fails to comply with, and cannot satisfy the requirements of Bankruptcy Rule 7023, Federal Rules of Civil Procedure 23, and the applicable Local Rules.

**SEVENTH AFFIRMATIVE DEFENSE**

The Trustee lacks standing to bring these claims.

**EIGHTH AFFIRMATIVE DEFENSE**

Any efforts by the Trustee to collect from the Fund members for *in solido* liability, if possible at all, are constrained by Louisiana laws and regulations.

**NINTH AFFIRMATIVE DEFENSE**

The Trustee's claims are barred by illegality.

**TENTH AFFIRMATIVE DEFENSE**

The Trustee's claims are barred by laches.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Trustee's claims are barred because the indemnity agreement was never fully or properly executed and/or the Trustee does not have possession of a fully executed, original contract. Further, Coastal's signature on the indemnity agreement was procured by error, mistake, or unlawful inducement.

**TWELFTH AFFIRMATIVE DEFENSE**

Coastal never properly became a member of the Fund since, and for other reasons as well, Coastal was wrongfully induced to join the Fund.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The Fund violated directives from the Louisiana Department of Insurance concerning the assessment of fund members and, therefore, cannot impose liability upon its members.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Coastal reserves the right to amend its answer pending discovery in this matter and further review of the facts and law.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The Complaint, originally and as amended, fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 7012(b)(6), FRBP, which incorporates Rule 12 of the FRCP because it does not give sufficient details of the specific claims against each member of the putative class. The Complaint as amended does not satisfy the dictates for federal pleading as enunciated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Respectfully submitted,

THROUGH ITS ATTORNEY,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2017 a copy of the foregoing has been served via Email through this Court's CM/ECF Electronic Notification System to the following parties:

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