

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

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

CASE NO. 15-81004

CHAPTER 7

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

ADVERSARIAL PROCEEDING
NO. 17-08003

versus

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)

ANSWER TO THIRD AMENDED AND RESTATED CLASS ACTION COMPLAINT
BY CARDIOVASCULAR SURGERY OF ALEXANDRIA, LLC

NOW INTO COURT COMES CARDIOVASCULAR SURGERY OF ALEXANDRIA,
LLC ("**Cardiovascular**"), named defendant herein and through undersigned counsel, and
responds to petitioner's *Third Amended and Restated Class Action Complaint*, upon
information and belief that it incorporates the original *Class Action Complaint, First Amended*
and Restated Class Action Complaint and *Second Amended and Restated Class Action Complaint*
filed by T. BRET BRUNSON ("**Trustee**") in his capacity as the trustee for the LOUISIANA
SAFETY ASSOCIATION OF TIMBERMEN - SELF INSURED FUND (the "Fund"), as

follows:

Jurisdiction and Venue

1. Cardiovascular 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

3. Cardiovascular has not consented to be a Class Representative and is without sufficient information to determine whether a class would be appropriate and, therefore, denies same. Further answering, Cardiovascular 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 that regarding each putative class member. The affirmative defenses and defense in general for a class have to be uniform throughout and the parties sought to be made representatives of the putative class cannot all adequately protect the interest of the class itself because the claims of the Plaintiff against each member 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 against each other. For the reasons above, Cardiovascular cannot in good faith be represented by this putative class.

Background

4. Admitted.
5. Admitted.
6. Denied.
7. Cardiovascular denies that it is solidary liable under the recited statutes or otherwise. Further answering, it is against public policy to determine, hold and/or find that Cardiovascular is a solidary obligor with other named defendants and/or unnamed persons.
8. Cardiovascular denies that it has solidary liability under an indemnity agreement for all the named years.

The Class

9. Cardiovascular 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, Cardiovascular 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 that regarding each putative class member.
11. Denied.
12. Denied. Further answering 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 against each other.

13. Denied. Further answering, the affirmative defenses and defense in general for a class have to be uniform throughout and the parties sought to be made representatives of the putative class cannot all adequately protect the interest of the class itself because the claims against each member of the putative class are varied and different. Further answering, forcing certain defendants to bear the costs and expenses of being a putative class representative is inequitable and not supported by law.

14. Denied.

Claim Against Class

15. Denied. Further answering, it is against public policy to determine, hold and/or find that Cardiovascular is a solidary obligor with other named and/or unnamed defendants.

FIRST AFFIRMATIVE DEFENSE

Upon information and belief, Cardiovascular avers that it neither owes the sum demanded nor does it have any obligation under law or contract to provide indemnity.

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 founded, managed and/or operated consistently with Louisiana law and regulations. Specifically, without limitation, the Fund failed to provide requisite notice to Cardiovascular, or other defendants, of the lack of a guaranty fund.

SIXTH AFFIRMATIVE DEFENSE

The Trustee's request for certification of a defendant's 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 and/or prohibited by Louisiana public policy.

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 answering, Cardiovascular's signature on the indemnity agreement was procured by error, mistake, or unlawful inducement.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

Any alleged signatory of any alleged contract purporting to be on behalf of Cardiovascular did not have legal authority to execute such an agreement on behalf of Cardiovascular and/or bind Cardiovascular to the alleged contract; thus, any alleged

contract is null and void.

FIFTEENTH AFFIRMATIVE DEFENSE

This defendant pleads any and all limitations and defenses under the Louisiana Revised Statute 23:1191 *et seq.*

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent the Trustee has settled with and/or collected monies from any potential class members, this defendant is entitled to a credit and/or off-set for any amounts paid in behalf of a settlement and/or collection by other potential class members.

SEVENTEENTH AFFIRMATIVE DEFENSE

This defendant reserves and preserves its rights against any other potential class members regardless if the Trustee has or has not settled with other potential class members.

EIGHTEENTH AFFIRMATIVE DEFENSE

Cardiovascular cannot be liable for any obligation that arose and/or occurred outside the time-period for which it was an alleged member of the Fund. Specifically, any incident, accident or other event which may give rise to the Fund's workers' compensation liability which did not occur on a date and time that Cardiovascular was an alleged member of the Fund, cannot be deemed the responsibility of Cardiovascular. Moreover, the amounts due pursuant to workers' compensation laws accrue based upon multiple

factors, including incurring of medical expenses, indemnity benefits, rehabilitation benefits and may cease upon other events including but not limited to obtaining social security benefits and/or death. Thus, any factor that triggers the need for payments pursuant to the workers' compensation requirements which occurred or accrued after the time and dates that Cardiovascular was an alleged member of the Fund, cannot be deemed the responsibility of Cardiovascular.

NINETEENTH AFFIRMATIVE DEFENSE

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

CONCLUSION

WHEREFORE defendant, Cardiovascular, prays that this Court deem its answer and affirmative defenses good and sufficient; deny the claims of the Trustee to the extent required by law or by agreements between Cardiovascular and the Trustee; and award any and all other relief to which Cardiovascular may be entitled including, but not limited to, attorney fees and court costs.

Respectfully submitted,

FAIRCLOTH, MELTON & SOBEL, LLC

By: /s/ Lottie Bash

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**ATTORNEYS FOR DEFENDANT,
CARDIOVASCULAR SURGERY OF
ALEXANDRIA, LLC**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Answer to Third Amended and Restated Class Action Complaint by Cardiovascular Surgery of Alexandria, LLC has been sent to all known counsel of record via the Court's CM/ECF Electronic Notification System.

THUS DONE from Alexandria, Louisiana, this 4th day of January, 2017.

/s/ Lottie Bash

OF COUNSEL