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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

**AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENİK; BRIAN A.
OLIVER; and N. SCOTT GILLIS,**

Defendants.

Case No. 3:16-cv-00438-PK

**DECLARATION OF JEFFREY F. ROBERTSON IN
SUPPORT OF DEFENDANT ROBERT J JESENİK'S
MOTION FOR RELIEF FROM RECEIVERSHIP ORDER,
TO THE EXTENT NECESSARY, TO PERMIT PAYMENT
OF DEFENSE COSTS**

Complaint Filed: March 11, 2016



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I, Jeffrey F. Robertson, declare as follows:

1. I am an attorney licensed to practice law in the State of New York and the District of Columbia. I am special counsel with the law firm of Schulte Roth & Zabel LLP, counsel for defendant Robert J. Jesenik in the above captioned matter. I submit this Declaration in support of Defendant Robert J. Jesenik's Motion for Relief from Receivership Order. I have personal knowledge of the facts set forth in this Declaration, and if called and sworn as witness, I could and would testify to the following facts.

2. Attached hereto as Exhibit A is a true and correct copy of Excess Claims Made Private Equity Liability Insurance Policy No. B0146ERUSA1500543 issued by Forge Underwriting Ltd. to Aequitas Holdings, LLC, for the Policy Period of July 1, 2014 to July 1, 2015.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 23, 2017 in Washington, D.C.

/s/ Jeffrey F. Robertson
JEFFREY F. ROBERTSON

Exhibit A

COMPANY POLICY

on behalf of

FORGE UNDERWRITING

**EXCESS CLAIMS MADE
PRIVATE EQUITY LIABILITY INSURANCE**

IN WITNESS WHEREOF I, being a representative of the Insurer and authorized by the Insurer to sign this Policy on its behalf, have hereunto subscribed my name this 28th day of AUGUST Two Thousand and Fourteen.



For and on behalf of
FORGE UNDERWRITING



The Insurers	Proportion %	Reference Numbers
FORGE UNDERWRITING	100%	14BF10618230006

THE PERCENTAGES SET FORTH ABOVE ARE PERCENTAGES OF 100%
OF THE AMOUNT(S) OF INSURANCE AND PREMIUM STATED HEREIN

(RE)INSURERS LIABILITY CLAUSE

(Re)insurer's liability several not joint

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Proportion of liability

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

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SCHEDULE

Policy No.: B0146ERUSA1400543

The Name and Principal Address of The Assured:

AEQUITAS HOLDINGS, INC

5300 Meadows Road, Suite 400
Lake Oswego
Oregon 97035
United States of America

The Risk, Interest, Location and Sum Insured hereunder:

As per wording attached hereto which is hereby declared to be incorporated in and to form an integral part of this Policy.

The Period of Insurance:

From inception date: 1st July 2014
To expiry date: 1st July 2015

Both days at 12.01 a.m. Local Standard Time at the principal address of the Assured

The Premium:

USD 158,200 (100%) for the Period

Security:

This Policy of Insurance is underwritten by Forge Underwriting on behalf of PartnerRe Ireland Insurance Limited.



**WNM PROFESSIONAL INDEMNITY
(EXCESS: AGGREGATE COSTS INCLUSIVE)**

To indemnify the Assured for claim or claims first made against the Assured during the Period of Insurance hereon up to this Policy's amount of liability (as hereinafter specified) in the aggregate, the excess of the Underlying Policy(ies) limits (as hereinafter specified) in the aggregate, the latter amount being the subject of Indemnity Policy(ies) (as hereinafter specified) or any Policy(ies) issued in substitution or renewal thereof for the same amount effected by the Assured and hereinafter referred to as "the Underlying Policy(ies)".

This Policy's amount of liability: USD 5,000,000 in the aggregate for the period

Underlying Policy(ies) limits: USD 5,000,000 in the aggregate for the period

Underlying Policy(ies) Number(s): MFP-686757-0714

1. Liability to pay under this Policy shall not attach unless and until the Underwriters of the Underlying Policy(ies) shall have paid or have admitted liability or have been held liable to pay, the full amount of their indemnity inclusive of costs and expenses.
2. It is a condition of this Policy that the Underlying Policy(ies) shall be maintained in full effect during the currency of this Policy except for any reduction of the aggregate limits contained therein solely by payment of claims or of legal costs and expenses incurred in defence or settlement of such claims.

Failure to comply with the foregoing shall not invalidate this Policy, but in the event of such failure, Underwriters shall be liable under this Policy only to the extent that they would have been liable had the Assured complied with these obligations.
3. If by reason of the payment of any claim or claims or legal costs and expenses by the Underwriters of the Underlying Policy(ies) during the period of this Insurance, the amount of indemnity provided by such Underlying Policy(ies) is:-
 - (a) Partially reduced, then this Policy shall apply in excess of the reduced amount of the Underlying Policy(ies) for the remainder of the Period of Insurance;
 - (b) Totally exhausted, then this Policy shall continue in force as Underlying Policy until expiry hereof.
4. In the event of a claim arising to which the Underwriters hereon may be liable to contribute, no costs shall be incurred on their behalf without their consent being first obtained (such consent not to be unreasonably withheld). No settlement of a claim shall be effected by the Assured for such a sum as will involve this Policy without the consent of Underwriters hereon.
5.
 - a) Notice of any claim(s) made against the Assured, or any circumstances of which the Assured becomes aware during the Period of Insurance which may subsequently give rise to such a claim, given to Primary Insurers in accordance with the terms of the Primary Policy shall be considered notice to the Underwriters hereon.
 - b) The representatives of the Primary Insurers shall also act as monitoring counsel for Underwriters hereon with respect to any such claim or circumstance except that Underwriters hereon reserve the right to appoint their own representatives if they so wish.
 - c) In the event that:
 - i) any claim or loss, including costs and expenses incurred in the defense or settlement of such claim or loss, or
 - ii) the aggregate of claims or losses, including costs and expenses incurred in the defense or settlement of such claims or losses



appears likely to exceed 50% of the total combined limits available under the Policy/ies of the Primary and Underlying Excess Insurers, such claim(s) or loss(es) shall be notified as soon as practicable in writing to the Underwriters hereon.

6. All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Assured and the Underwriters provided always that nothing in this Policy shall be construed to mean that loss settlements under this Policy are not payable until the Assured's ultimate net loss has been finally ascertained.
7. Except as otherwise provided herein this Policy is subject to the same terms, exclusions, conditions and definitions as the Policy of the Primary Insurers. No amendment to the Policy of the Primary Insurers during the period of this Policy shall be effective until agreed in writing by the Underwriters.
8. If the Assured shall prefer any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all claims hereunder shall be forfeited.

04/00
LSW055 (Amended)



ADDITIONAL WORDINGS & CLAUSES

THE FOLLOWING ENDORSEMENTS ARE IN ADDITION TO AND/OR AMEND THE POLICY. PLEASE READ THEM CAREFULLY

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This Policy* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954



or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

* NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

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RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE - LIABILITY - DIRECT

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause - Liability - Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

N.M.A.1477 13/2/64



SERVICE OF SUIT CLAUSE (U.S.A.)

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or any State in the United States. It is further agreed that service of process in such suit may be made upon Mendes & Mount, LLP, 750 Seventh Avenue, New York, New York 10019-6829, United States of America, and that any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

NMA 1998 (24/4/86) Form approved by Lloyd's Underwriters' Non-Marine Association



WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

(1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

(2) any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

NMA2918
08/10/2001



CHOICE OF LAW CLAUSE

It is hereby understood and agreed by both the Assured and Underwriters that any dispute concerning the interpretation of this Policy shall be governed by the laws of the State of New York in the United States of America.



EXTENDED REPORTING PERIOD

- A. Notwithstanding anything contained in any 'extended reporting period', 'optional extended reporting period' or 'automatic extended reporting period' (or any other similar provision) of the Policy of Primary Insurers, in the event of cancellation or non-renewal of this Policy by the Underwriters, the Assured shall have the right, upon payment in full of 150% of the Premium set forth in the Schedule to have issued an endorsement providing a 12 month Extended Reporting Period for any claim or claims first made against the Assured and reported to the Underwriters during the Extended Reporting Period arising out of any negligent act, error or omission (or arising out of conduct covered in the Policy of Primary Insurers) committed prior to the effective date of such cancellation or non-renewal and otherwise covered by this Insurance.
- B. In order for the Assured to invoke the Extended Reporting Period, the Assured must:
1. pay the additional premium for the Extended Reporting Period to the Underwriters within 30 days of the non-renewal or cancellation of this Policy, and
 2. purchase an extended reporting period under all Underlying Policies:
 - (i) for a period of no less than 12 months from the cancellation or non-renewal date of this Policy, and
 - (ii) with no reduction of the Underlying Policy limits except for any reduction solely by payment of any claims or costs and expenses incurred in the defense or settlement of such claims.
- C. The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability for the Period of Insurance.
- D. The quotation by the Underwriters of a different premium or retention or deductible or limit of liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew.
- E. The right to the Extended Reporting Period shall not be available to the Assured where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of the Assured to pay such amounts in excess of the Limit of Liability or within the amount of the applicable retention or deductible or failure of the Assured to comply with the terms and conditions of this Policy.
- F. At the commencement of the Extended Reporting Period the entire premium shall be deemed fully earned and in the event the Assured terminates the Extended Reporting Period for any reason prior to its natural expiration, the Underwriters will not be liable to return any premium paid for the Extended Reporting Period.
- G. All notices and premium payments with respect to the Extended Reporting Period shall be directed to the Underwriters through Paragon International Insurance Brokers Ltd, 140 Leadenhall Street, London EC3V 4QT, United Kingdom.

All other terms and conditions of this policy remain unaltered.

