Troy D. Greenfield, OSB #892534
Email: tgreenfield@schwabe.com
Alex I. Poust, OSB #925155
Email: apoust@schwabe.com
Lawrence R. Ream (Admitted *Pro Hac Vice*)
Email: lream@schwabe.com
Schwabe, Williamson & Wyatt, P.C.
Pacwest Center
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
Telephone: 503.222.9981
Facsimile: 503.796.2900

Ivan B. Knauer (Admitted *Pro Hac Vice)*
Email: knaueri@pepperlaw.com
Brian M. Nichilo (Admitted *Pro Hac Vice*)
Email: nichilob@pepperlaw.com
Pepper Hamilton, LLP
600 14th Street, NW, Suite 500
Washington, DC 20005
Telephone: 202.220.1219
Facsimile: 202.220.1665

Stanley H. Shure (Admitted *Pro Hac Vice*)
Email: sshure@shurelaw.com
Law Offices Of Stanley H. Shure
2355 Westwood Blvd. #374
Los Angeles, CA 90064
Telephone: (310) 984-6945
Facsimile: (310) 984-6945

Attorneys for the Receiver for Defendants
AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS, LLC; AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AEQUITAS MANAGEMENT, LLC;	No. 3:16-cv-00438-PK DECLARATION OF STANLEY H. SHURE IN SUPPORT OF RECEIVERSHIP ENTITY'S OPPOSITIONS TO DEFENDANTS' MOTIONS FOR RELIEF

AEQUITAS HOLDINGS, LLC; AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC; ROBERT J. JESENIK, BRIAN A. OLIVER; and N. SCOTT GILLIS, Defendants.	FROM RECEIVERSHIP ORDER

I, Stanley H. Shure, declare as follows:

1. I am the principal and owner of The Law Offices of Stanley H. Shure, which is the duly appointed insurance coverage counsel for the Receivership. I have over thirty (30) years' experience as an insurance coverage attorney and my legal practice for approximately the last twenty-five (25) years has almost exclusively been involved in representing policyholders in connection with insurance coverage disputes. I make this declaration in support of the Receivership Entity's Oppositions to the Motions of Robert J. Jesenik, Brian Oliver, and N. Scott Gillis for Relief from the Receivership Order to Permit Payment of Defense Costs (Dkt. 496 & 499). I am over eighteen years of age and otherwise competent to testify. I make this declaration based upon personal knowledge.

2. In the later part of June 2017, counsel for Brian Oliver ("Oliver"), Larisa Meisenheimer of Shartsis Friese LLP, communicated with Ivan Knauer of Pepper Hamilton and myself, supposedly on behalf of all Individual Defendants, including Robert Jesenik and N. Scott Gillis, asserting that the Catlin Policy was exhausted.

3. During a subsequent call with Ms. Meisenheimer and Ivan Knauer that occurred during the latter part of June or the first few days of July 2017, I asked her for evidence establishing that Catlin had made payments totaling $5 million in connection with the SEC Investigation and subsequent filed SEC Action. I made my request in the context of questioning Ms. Meisenheimer about how it came about that the Receivership had been informed that, as of the end of the first quarter 2017, slightly more than $2.0 million in Defense Costs had been paid out by Catlin, and that toward the end of the second quarter, the Receivership was being informed that the Catlin Policy was exhausted. Ms. Meisenheimer subsequently provided me

with a spreadsheet on July 13, 2017, purportedly showing $5 million in payments by Catlin in connection with the defense of the SEC Action and the SEC's prior investigation. A true and correct copy of the July 13, 2017 email from Ms. Meisenheimer to me and accompanying spreadsheet are attached hereto as Exhibit 1.

4. Based upon my review of the spreadsheet Ms. Meisenheimer provided, I noted that in early June 2017, a large group of payments were made that totaled approximately $1.5 million. The spreadsheet also showed that in early July 2017, about a month after the June 2017 payments, another large group of payments were made again totaling approximately $1.5 million. It therefore became readily apparent to me that, at the time the Individual Defendants first started asserting the Catlin Policy was exhausted, only $3.5 million had actually been paid out by Catlin and that it was only after I had asked for evidence of exhaustion, in late June or very early July 2017, that Catlin made another $1.5 million in payments, which per the spreadsheet were dated July 7, 2017 to reach $5.0 million.

4. Disturbed by the prior misstatements about exhaustion that had been made, the sudden $1.5 million payment made in early July 2017 by Catlin within about a week after I asked for proof of exhaustion, which was inconsistent with Catlin' s prior patterns regarding the timing of its prior payments as reflected in the spreadsheet, and the very significant increase in defense costs payments made during the second quarter 2017 and first week of July 2017 as compared to prior quarters, I undertook a detailed analysis of the information contained in the spreadsheet.

5. On August 3, 2017, I wrote to counsel for the Individual Defendants to convey a number of concerns the Receiver has regarding the apparent exhaustion of the Catlin Policy. All of the discussions contained in my August 3, 2017 letter regarding, *inter alia,* the amounts paid to attorneys representing Mr. Jesenik, including the amounts paid to Schulte, Roth & Zabow ("SRZ") and The Rose Law Firm ("Rose"), are based upon simple arithmetic computations and then undertaking comparisons between the amounts paid to Jesenik's counsel as compared to counsel representing Brian Oliver and counsel representing N. Scott Gillis, and are all based upon or derived from the information contained in the spreadsheet that Ms. Meisenheimer

provided to me with her July 13, 2017 email. A true and correct copy of my August 3, 2017 letter is attached hereto as Exhibit 2. I sent a copy of my August 3, 2017 letter to counsel for each of the 2014/2015 policy-year insurers.

6. On August 7, 2017, I received an email from Ms. Meisenheimer. Among other things, her email noted unpaid Defense Costs for the Individual Defendants for work occurring between April 2017 and up through and including the end of July 2017. By adding together the amounts Ms. Meisenheimer provided in her August 7, 2017 email, I came up with a total additional unpaid legal fees and expenses for the Individual Defendants and their document vendor in excess of $1.4 million. A true and correct copy of an email string containing Ms. Meisenheimer's August 7, 2017 email is attached hereto as Exhibit 3.

7. On August 9, 2017, Peter White, counsel for Jesenik, responded in part to my August 3, 2017 letter. A true and correct copy of Mr. White's August 9, 2017 letter is attached hereto as Exhibit 4.

8. On August 12, 2017, I sent a reply to Mr. White's August 9, 2017 letter. A true and correct copy of my August 12, 2017 letter is attached hereto as Exhibit 5. Again, all of the financial figures and comparisons referenced in my August 12, 2017 letter are based on or derived from the figures Ms. Meisenheimer provided in the spreadsheet that accompanied her July 13, 2017 email to me, as supplemented by the figures for unpaid amounts she provided in her August 7, 2017 email. Also, as with my August 3, 2017 letter, I sent a copy of my correspondence to counsel for each of the 2014/2015 policy-year insurers.

9. On August 30, 2017, I provided notice to the 2014/2015 policy-year insurers (and the 2015/2016 policy-year insurers (or their counsel) of an August 10, 2017 letter from Robert Banks of Samuels Yoelin Kantor, LLP ("SYK") to Troy Greenfield, counsel for the Receiver. ("SYK Claim") A true and correct copy of my August 30, 2017 Notice of the SYK Claim is attached hereto as Exhibit 6.

10. Based upon my review and analysis of the SYK Claim, in light of the terms of the Catlin Policy and the excess policies issues to Forge and Starr Indemnity both of which "follow

form" to the Catlin Policy, the only policies exclusions that could apply to the SYK Claim are the so called "personal profit" and "deliberate fraud" exclusions found in the Catlin Policy. Neither of these exclusions however, per their express terms, is triggered unless and until there is a final adjudication, following an appeal, establishing that the excluded conduct has occurred.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 14th day of September, 2017, at Perpignan, France.

/s/ Stanley H. Shure
Stanley H. Shure

Subject: [FWD: SEC v. Aequitas et al]
Attachments: Aequitas Holdings - Catlin Payments Made by Date.pdf

-------- Original Message --------
Subject: SEC v. Aequitas et al
From: "Meisenheimer, Larisa A." <LMeisenheimer@sflaw.com>
Date: Thu, July 13, 2017 1:22 pm
To: "Knauer, Ivan B." <knaueri@pepperlaw.com>, 'Stanley Shure' <sshure@shurelaw.com>

Ivan and Stan,

In our discussion on Monday, you requested further information concerning how Catlin disbursed its $5 million in insurance payments. I have attached a spreadsheet provided by Catlin showing in detail the source of each bill paid by Catlin and the date it was paid. We would like to bring this matter to a resolution as soon as possible. Please provide a time that you are available for a call tomorrow.

Regards,

Larisa A. Meisenheimer | Shartsis Friese LLP
Partner
One Maritime Plaza, Suite 1800
San Francisco, CA 94111
t. 415.421.6500 | f. 415.421.2922
lmeisenheimer@sflaw.com | www.sflaw.com

Aequitas Holdings - Catlin Payments Made by Date

Date	Firm	Invoices Paid	Amount
8/1/2016	Shartsis Friese LLP	5363938, 5365014, 5366069, 5367113, 5368209	$71,100.99
8/1/2016	Covington & Burling LLP	60709243, 60713283, 60715496	$165,306.50
8/1/2016	Whipple & Duyck, P.C.	4795, 4868	$8,023.59
8/1/2016	Gibson, Dunn & Crutcher LLP	2016021290, 2016031831, 2016042509, 2916052579, 2016062667	$325,435.01
8/1/2016	Stoel Rives LLP	3895847	$1,232.50
10/12/2016	Shartsis Friese LLP	5369173, 5370176; 5363938 (requested supplemental information provided), 537113 (requested supplemental information provided)	$52,137.80
10/13/2016	Black Helterline LLP	88470, 88471	$5,573.20
10/13/2016	Covington & Burling LLP	60721409, 60722398, 60726148	$240,828.48
10/13/2016	Whipple & Duyck, P.C.	4918	$5,413.00
10/13/2016	Gibson, Dunn & Crutcher LLP	2016072038, 2016083098; 2016031831 (requested supplemental information provided), 2016042509 (requested supplemental information provided), 2916052579 (requested supplemental information provided), 2016062667 (requested supplemental information provided)	$174,428.90
10/13/2016	Stoel Rives LLP	3890339, 3902204, 3907393, 3914837	$10,592.50

Date	Firm	Invoices Paid	Amount
12/20/2016	Shartsis Friese LLP	5371202, 5372309, 5373235; 530176 (requested supplemental information provided)	$85,358.49
12/20/2016	Black Helterline LLP	89854, 91068	$2,555.00
12/20/2016	Covington & Burling LLP	60729987, 60733217	$139,224.18
12/20/2016	Whipple & Duyck, P.C.	4973	$1,985.00
12/20/2016	Stoel Rives LLP	3930360	$27,535.00
12/20/2016	Discovia (discovery vendor)	159745, 160159	$18,292.56
2/8/2017	Stoel Rives LLP	3919516, 3939092	$16,015.00
3/9/2017	Shartsis Friese LLP	5374278, 5375310; 5371202 (requested supplemental information provided), 5372309 (requested supplemental information provided)	$88,536.33
3/10/2017	Black Helterline LLP	91929	$1,155.00
3/10/2017	Covington & Burling LLP	60737445, 60740332	$71,449.50
3/10/2017	Whipple & Duyck, P.C.	5022; 4973 (requested supplemental information provided)	$3,027.50
3/10/2017	Schulte Roth & Zabel LLP	PHW400533	$207,739.37
3/10/2017	Rose Law Firm	22273, 22277	$53,727.20
3/20/2017	Discovia (discovery vendor)	159745, 160159	$244,169.99
6/2/2017	Shartsis Friese LLP	5379973, 5380919	$247,781.00
6/2/2017	Black Helterline LLP	92684, 93121, 93948	$3,470.00
6/2/2017	Covington & Burling LLP	60745586, 60746763, 60750721	$175,061.50
6/2/2017	Whipple & Duyck, P.C.	5081	$9,214.00
6/2/2017	Schulte Roth & Zabel LLP	PHW403777, PHW406592	$369,180.49
6/2/2017	Rose Firm Law	22338	$52,507.00
6/2/2017	Discovia (discovery vendor)	161432, 161575, 161862	$192,168.30
6/2/2017	Gibson, Dunn & Crutcher LLP	Supplemental payment in satisfaction of prior invoices 2016092390, 2016103754, 2016112216, 2016122212	$515,809.14
7/7/2017	Shartsis Friese LLP	5381916, 5382957	$254,229.26

Date	Firm	Invoices Paid	Amount
7/7/2017	Black Helterline LLP	94636, 95485	$2,485.00
7/7/2017	Covington & Burling LLP	60754508	$84,600.00
7/7/2017	Whipple & Duyck, P.C.	5131	$1,487.50
7/7/2017	Schulte Roth & Zabel LLP	PHW409671, PHW410835, PHW413083 (partial); PHW400533 (requested supplemental information provided)	$858,114.20
7/7/2017	Rose Law Firm	22359, 22409	$101,366.48
7/7/2017	Discovia (discovery vendor)	162311, 162802	$19,596.15
7/7/2017	Dechert LLP	1284851, 1287888, 1291701	$92,087.39
	Total		**$5,000,000.00**

LAW OFFICES OF
STANLEY H. SHURE

INSURANCE RECOVERY & ENFORCEMENT

August 3, 2017

Via E-Mail Only

Peter H. White
Jeffrey F. Robertson
Schulte Roth & Zabel LLP
1152 15th St. NW, Ste. 850
Washington, DC 20005

William D. Sprague
Ashley M. Simonsen
Covington & Burling LLP
One Front Street
San Francisco, CA 94111

Jahan P. Raissi
Larisa A. Meisenheimer
Shartsis Friese LLP
One Maritime Plaza, 18th Fl.
San Francisco, CA 94111

Re: Request for Information from Individual Defendants in SEC Action

Dear Counsel

The purpose of this correspondence is to address certain questions the Receiver has regarding certain assertions made by counsel for Robert Jesenik, Brian Oliver, and N. Scott Gillis, the Individual Defendants in the SEC Action,[1] in connection with the payment, via insurance assets, of legal fees and expenses they have incurred in that matter. The Individual Defendants have asserted that the $5,000,000 in limits of liability of the Catlin/XL primary level policy is fully exhausted. To support their exhaustion position, the Individual Defendants have provided a spreadsheet, which they assert was prepared by Catlin/XL and shows payment of $5,000,000 in defense costs by Catlin/XL to the Individual Defendants.[2] The Individual Defendants have also asserted that, because of the asserted exhaustion of the Catlin/XL Policy, they are entitled to a lifting of the stay, thereby allowing the Individual Defendants to have their respective defense costs paid by the Forge Excess Policy, which sits immediately above the Catlin/XL primary-level policy and which is triggered by its exhaustion.

The first group of questions involves the issue of whether the Catlin/XL policy was, in fact, properly exhausted.

[1] The term "SEC Action" as used herein refers to the SEC's prosecution of the complaint it filed March 10, 2016, entitled *Securities and Exchange Commission v. Aequitas Management, LLC, et al.*, in the United States District Court for the District of Oregon, Case No. 3:16-cv-00438-PK.

[2] The sole exception is a $92,087.32 payment made to the Dechert law firm, which represents Olaf Janke, a former CFO for Aequitas, in connection with legal fees incurred in connection with the SEC's prior investigation. Janke is ***not*** a defendant in the SEC Action.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

I.
Questions About The Amounts Paid To Jesenik's Attorneys & Related Issues

The Receiver has questions about the amounts incurred and ultimately paid by Catlin/XL to Mr. Jesenik's various attorneys. These questions are based upon an analysis of the information contained in the Catlin/XL spreadsheet provided by the Individual Defendants. As discussed in greater detail below, the total of the fees that Catlin/XL paid to Jesenik's various counsel appear to be far in excess of the amounts paid to either Oliver's or Gillis' counsel.

A. Given the Nature and Amount of Work Involved Thus Far, the Large Discrepancy between the Amounts Paid to Jesenik's Attorneys, as Compared to Other Counsel, Requires a Detailed Explanation

This very large difference between what was paid to Jesenik's counsel, as compared to either Gillis' or Oliver's counsel, raises serious concerns given the nature and amount of work performed. The only motion brought by any of the Individual Defendants on their own behalf was Gillis' Motion to Dismiss the SEC Action. The only other motion the three Individual Defendants filed was a Joint Motion for a Protective Order.

Nor are we aware of any reason why the amount of documentation that was reviewed by Jesenik's counsel, as compared to counsel for the other Individual Defendants, could explain the difference in fees paid to Jesenik. Both Jesenik and Oliver were at the company during the period at issue and, presumably, have effectively the same amount of documentation to review. Yet, the legal fees paid to Jesenik's counsel dwarf those paid to Oliver's counsel. Rather, the only substantive difference in the amount of documents reviewed applies to Gillis, who, because he worked at Aequitas for only a year, would have substantially fewer documents to review than either Jesenik or Oliver.

Further, the amount paid to Jesenik's counsel cannot be explained by the existence of other covered litigation pending against Jesenik. The only active **Claim**[3] pending against Jesenik (as well as Oliver and Gillis) for which covered **Defense Costs** are payable is the SEC Action. Accordingly, one cannot appropriately attribute the disproportionate amounts paid to Jesenik's counsel, as compared to Oliver or Gillis, to work performed on other **Claims** covered under the Catlin/XL policy since none exist.

[3] Words that are in **bold** in this correspondence are defined terms in the Catlin/XL policy and are meant to have the same meaning herein as they do in the Catlin/XL policy.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

B. The Amounts Paid to Jesenik's Counsel to Defend the SEC Action Dwarf The Amounts Paid to Oliver's or Gillis' Counsel

The Receiver does ***not*** find the amounts paid by Catlin/XL to counsel for Oliver or counsel for Gillis to defend their respective clients objectionable. In contrast, the Receiver has serious concerns about the amounts Catlin/XL has paid to Jesenik's counsel.

1. The Fees Paid to Jesenik's Counsel Are Triple The Defense Costs of Gillis' or Oliver's Counsel

Catlin/XL made payments to Oliver's attorneys totaling $814,382.07, of which $15,238.20 was paid to local counsel. Catlin/XL paid Gillis's attorneys a total of $905,070.25, of which $29,150.09 was paid to local counsel.[4] Catlin/XL, in contrast, paid Jesenik's counsel a total of $2,713,683. The $2,713,683 in fees and costs paid to Jesenik's counsel is 333% higher than the $814,382 paid to Oliver's counsel and 300% higher than the $905,070 paid to Gillis' counsel.

2. The Fees Paid to Jesenik's Counsel Greatly Increased When SRZ and Rose Substituted Into the SEC Action

Additionally, the amounts paid to Jesenik's attorneys has significantly increased since Mr. Jesenik replaced Gibson Dunn & Crutcher ("Gibson") and the local counsel he was using, Stoel Rives, with Schulte Roth & Zabel ("SRZ") and new local counsel, the Rose Law Firm ("Rose"). We understand that Rose has since been replaced with the Mahler Law Group.[5]

Gibson received payments totaling $1,015,673.05 pursuant to eleven (11) invoices it submitted to and were paid by Catlin/XL. This equates to an average of $92,333.91 per invoice. Stoel Rives, local counsel, received payments totaling $55,375.10 based upon the eight invoices it submitted. This equates to an average monthly invoice from Stoel Rives of $6,921.89. Catlin/XL, between Gibson and Stoel Rives, was paying an averaging of $99,255.80 per month in Defense Costs for the SEC Action on Jesenik's behalf. From the notices of substitution of counsel filed with the court, we know that Gibson and Stoel Rives were both removed as Jesenik's counsel sometime in early November 2016.

The payments made by Catlin/XL to SRZ and Rose, in contrast, were significantly higher than those made to their predecessors. SRZ received payments totaling $1,435,034.06

[4] The approximate $90,000 difference in the amounts paid to Oliver's counsel as compared to Gillis' counsel can, in material part, be attributed to Gillis having brought a Motion to Dismiss.

[5] The Receiver is also aware of another counsel of record for Mr. Jesenik, the Jonak Law Group.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

based upon five fully paid invoices and the partial payment on a sixth invoice. Using 5.5 invoices, SRZ was paid by Catlin/XL on average $260,915.27 in legal fees and costs per invoice. This is the equivalent of a 282% per invoice increase in the amounts paid by Catlin/XL to SRZ as compared to the amount paid to Gibson.

Rose, Jesenik's local counsel, received a total of $207,600.68 in payments from Catlin/XL based upon the five invoices it submitted to Catlin/XL. This translates to an average payment of $41,520.14 per invoice. Rose's average monthly invoice of $41,520.14 reflects a 600% monthly increase as compared to Stoel Rives' average monthly invoice of $6,921.89.

Based upon the average monthly payment Catlin/XL is making to SRZ ($260,915.27) and to Rose ($41,520.14), the combined monthly payment to Jesenik's Counsel of $302,435.41. This is a 305% increase compared to the $99,255.80 per month Catlin/XL was paying on Jesenik's behalf when Gibson and Stoel Rives were acting as defense counsel. The $302,435.41 Catlin/XL is paying to SRZ and Rose on average per month is the equivalent of $3,620,224.92 in legal fees for Jesenik alone for one year.

3. The Payments Made to SRZ and Rose Also Dwarf Those Made to Oliver's and Gillis's Defense Counsel for the Same Time Frame

The disproportionate nature of the legal fees and expenses Catlin/XL paid to Mr. Jesenik's counsel, especially SRZ and Rose, is confirmed by comparing the payment made by Catlin/XL to SRZ and Rose with those it paid to counsel for Gillis and Oliver for the same time period. The combined payment made by Catlin/XL to SRZ and Rose, which go from payments made in early March 2017, through the last payment made on July 7, 2017, total $1,642,634.74. For that same time frame – March 2017 through July 7, 2017 – Catlin/XL paid Gillis' lead and local counsel a combined $344,839.50 in **Defense Costs** and paid Oliver's lead and local counsel a combined $597,654.69 in **Defense Costs**.[6]

*C. Insureds Are Entitled Only to Payment of Reasonable and Necessary Legal Fees and Expenses Incurred in Defending or Appealing a **Claim***

The Catlin/XL policy by its terms provides coverage only for **Loss** resulting from a covered **Claim**. **Loss** is defined to include **Defense Costs**. The term **Defense Costs**, in

[6] The approximate $150,000 difference in Oliver's and Gillis' legal fees for this time period is likely due to the fact that Gillis was only with Aequitas for approximately one year before the financial collapse of the company, while Oliver was with Aequitas for many years. Accordingly, we surmise that the document review undertaken by Gillis' counsel was significantly limited in scope as compared to the document review undertaken by Oliver's counsel. The scope of documents reviewed by Jesenik's counsel should, we assume, be similar to Oliver's.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

turn, is defined to mean "reasonable and necessary fees and expenses incurred in the defense or appeal of a **Claim**, . . ." The only **Claim** that is being litigated against any Insured, which triggers coverage under the Catlin/XL Policy or any excess policy that follows form, is the SEC's lawsuit against Jesenik, Oliver, and Gillis.

Based upon the large deviation between the amounts paid by Catlin/XL to Jesenik's counsel, as compared to counsel for Gillis and Oliver, it appears that uncovered **Defense Costs** were paid by Catlin/XL to Jesenik's counsel.[7] Such uncovered **Defense Costs** would, *inter alia*, take the form of work that did not involve Jesenik's defense of the SEC's **Claim** against him, duplicative work by Jesenik's new counsel replacing Gibson and Stoel Rives, and having higher priced, more senior, personnel undertaking tasks that were more appropriately suited for lower priced, more junior personnel or even contract attorneys.

We think it is only fair that Jesenik and his counsel are given the opportunity to justify what appear to be extraordinary defense expenditures by Jesenik's counsel on his behalf. Specifically, we are looking for Jesenik and his counsel to establish the reasonableness and necessity of the entire $1,435,034.06 paid to SRZ by Catlin/XL, the reasonableness and necessity of the entire $207,600.68 paid to Rose by Catlin/XL, and the reasonableness and necessity of the amounts paid to Gibson by Catlin/XL. We also expect Jesenik and his counsel to acknowledge the existence of legal services performed on his behalf by one or more of his counsel that did not involve the defense of the SEC Action.[8]

Jesenik, in providing the explanations we request, should provide a list for each of its counsel's invoices showing for each counsel involved in representing Jesenik the date of each invoice submitted to Catlin/XL for payment, the date of that invoice, and the time frame for the legal services included in that particular invoice.[9]

---

[7] One does not expect that the legal fees and expenses incurred for each individual defendant will be the same. One does expect, however, that the fees for each individual defendant will vary to some degree but be somewhere in the same "ballpark" when compared to each other. Here, the legal fees and expenses incurred by Jesenik's counsel do not come close to meeting this standard.

[8] We are aware of specific instances of legal services being performed on Jesenik's behalf by Gibson, primarily, and later by Rose, to some extent, which did not involve defending Jesenik in the SEC Action. If Jesenik asserts these legal services were not submitted to Catlin/XL or Forge for payment, we would appreciate seeing evidence supporting this position

[9] We may also have questions about invoices by counsel for Jesenik for incurred **Loss** not yet paid by Catlin/XL or Forge.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

Separately, we also have a number of questions that will be directed to Catlin/XL under separate cover. We will "cc" each of you on our correspondence to Catlin/XL, as we did Catlin/XL on this correspondence.

II.
Current Level of Impairment of The Forge Excess Policy

The Receiver has questions about the current extent of the impairment of the limits of liability of the Forge first-level excess policy. The following questions are meant to obtain that information as to Jesenik, Oliver, and Gillis respectively. There is also a set of questions for the Discovia, which is a discovery vendor on the case.

A. Jesenik's Incurred But Unpaid Fees

We start with Jesenik's various counsel and have three questions pertaining to each of them. The questions are as follows:

1. SRZ

a. What is the total amount of legal fees and expenses incurred by the SRZ in defending Jesenik in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

b. What is the total amount of legal fees and expenses incurred by SRZ in defending Jesenik in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each SRZ invoice, by invoice number and date, which has not been fully paid, by either Catlin and/or Forge, and the amount owed for each identified invoice?

2. Rose

a. What is the total amount of legal fees and expenses incurred by Rose in defending Jesenik in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Rose in defending Jesenik in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Rose invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

3. Jonak

a. What is the total amount of legal fees and expenses incurred by The Jonak Law Group ("Jonak") in defending Jesenik in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Jonak in defending Jesenik in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Jonak invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

4. Mahler

a. What is the total amount of legal fees and expenses incurred by The Mahler Law Group ("Mahler") in defending Jesenik in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Mahler in defending Robert Jesenik in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Mahler invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice? Mahler Law Group?

5. Gibson

a. What is the total amount of legal fees and expenses incurred by Gibson in defending Jesenik in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Gibson in defending Jesenik in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Gibson invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

6. Stoel

a. What is the total amount of legal fees and expenses incurred by Stoel Rives ("Stoel") in defending Jesenik in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Stoel in defending Robert Jesenik in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Stoel invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge and the amount owed for each identified invoice?

B. Oliver's Incurred But Unpaid Fees

1. Shartsis

a. What is the total amount of legal fees and expenses incurred by Shartsis Friese ("Shartsis") in defending Oliver in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Shartsis in defending Oliver in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Shartsis invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

2. Whipple

a. What is the total amount of legal fees and expenses incurred by Whipple Duyck ("Whipple") in defending Oliver in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Whipple in defending Oliver in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Whipple invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

C. Gillis' Incurred But Unpaid Fees

1. Covington

a. What is the total amount of legal fees and expenses incurred by Covington & Burlington ("Covington") in defending Gillis in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Covington in defending Gillis in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Covington invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

2. Black Heterline

a. What is the total amount of legal fees and expenses incurred by Black Heterline ("Black") in defending Gillis in the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of legal fees and expenses incurred by Black in defending Gillis in the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Black invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

D. Discovia's (Discovery Vendor) Incurred But Unpaid Expenses.

a. What is the total amount of fees/expenses charged by Discovia in connection with the SEC Action that have been submitted to Catlin and/or Forge that are unpaid?

b. What is the total amount of fees/expenses charged by Discovia in connection with the SEC Action that have not yet been submitted to Catlin and/or Forge that are unpaid as of July 31, 2017?

c. Identify each Discovia invoice, by invoice number and date, which has not been fully paid, by Catlin and/or Forge, and the amount owed for each identified invoice?

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

On behalf of the Receiver, we look forward to receiving the responses to the inquiries involving Jesenik's legal fees and expenses and the questions above related to determining the current potential impairment of the Forge policy.

Sincerely,

/s/ Stanley H. Shure

Stanley H. Shure

cc: Ronald Greenspan,
Ivan Knauer, Esq.
Troy Greenfield, Esq.
Eryk R. Gettell, Esq.
Matthew Abreu, Esq.
David A. Muller, Esq.
Salvatore Picariello, Esq.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

Subject: RE: SEC v. Aequitas et al]

-------- Original Message --------
Subject: RE: SEC v. Aequitas et al
From: "Meisenheimer, Larisa A." <LMeisenheimer@sflaw.com>
Date: Mon, August 07, 2017 5:52 pm
To: Stanley Shure <sshure@shurelaw.com>
Cc: "White, Pete (Pete.White@srz.com)" <Pete.White@srz.com>, "Robertson, Jeffrey (Jeffrey.Robertson@srz.com)" <Jeffrey.Robertson@srz.com>, "dsprague@cov.com" <dsprague@cov.com>, "asimonsen@cov.com" <asimonsen@cov.com>, "Raissi, Jahan" <JRaissi@sflaw.com>, Ivan Knauer <knaueri@pepperlaw.com>, Troy Greenfield <TGreenfield@SCHWABE.com>

Dear Stan,

Please see below for a response to each of the points raised in your email.

First, the Individual Defendants initially contacted the Receiver's counsel in June to meet and confer about this motion. The entire purpose of the meet and confer was to determine whether the Individual Defendants would need to file this motion, or whether the Receiver is willing to enter into a stipulation to the relief requested in the motion.

Second, your suggestion of a lack of good faith is without basis. The Individual Defendants first contacted the Receiver's counsel to meet and confer about this motion on **June 16, 2017**. Since that time, I have repeatedly requested that we bring this meet and confer to a close so that we could either stipulate or file our motion, and informed you on calls and in writing of the time sensitivity of resolving this issue. (*See, e.g., L. Meisenheimer emails to I. Knauer and S. Shure dated 7/13/17, 7/28/17, 8/1/17*). And yet 45 days after we initially contacted you, and three weeks after we provided you a detailed spreadsheet showing precisely how the first tier of insurance was paid out, we received your ten-page August 3rd letter stating your concerns and questions. Many of these questions, such as a request that counsel for Mr. Jesenick "justify what appear to be extraordinary defense expenditures," made it clear that a global stipulation at this juncture is not possible. In addition, I understood your position on our final call on August 2, 2017, to be that the Receiver was unwilling to enter into a stipulation at this point, and that the Individual Defendants would need to move forward with their motion.

With respect to the Receiver's position that the defendants took advantage of "reporting" requirements, this is inaccurate. At the Receiver's request, the prior stipulation provided that "[t]he Executives shall submit to the Receiver on a quarterly basis, commencing within 90 days of the entry of this Order, a report reflecting the aggregate amount of Defense Costs paid by the Insurer on behalf of the Executives during the prior quarter." The Individual Defendants fully complied by requesting this information from the Insurer and providing it to the Receiver. Any delays in the Insurer processing and paying claims were not under the Individual Defendants' control and certainly not in their interest.

To the extent the Receiver has concerns about certain prior bills by one defendant, this is an inappropriate basis to deny all defendants all access to the second tier of insurance funds,

and to refuse to enter into a stipulation similar to the one the parties agreed to for the first tier of insurance. The insurance funds are necessary to our clients' defense, and our clients have already started to incur prejudice because of the delay in payment and the uncertainty caused by the current situation. Any concerns about one defendant's prior bills should not hold all defendants' future bills hostage.

In a final effort to resolve this matter, and in response to the questions in your August 3rd letter, the Individual Defendants are willing to provide the following information (in addition to the detailed spreadsheet already provided showing the full distribution of the first tier of insurance): (1) Shartsis Friese has outstanding, unpaid bills for the months of May, June and July that total approximately $315,000, and local counsel bills have been less than $10,000 during this time period; (2) Covington has outstanding, unpaid bills for the months of April, May, June and July that total approximately $227,064, and local counsel bills during this time period that should not be a material amount and will be provided to you shortly; (3) Schulte has outstanding, unpaid bills for the months of April, May, June and July that total approximately $808,924, and local counsel bills have been approximately $35,000 during this time period; and (4) Discovia has outstanding, unpaid bills for the months of May, June and July that total $25,534.45. The Individual Defendants also are willing to enter into a stipulation that provides that the Receiver will be informed each quarter of the amount of both paid claims and pending claims. We also have no objection to Forge being a party to the stipulation.

Please confirm by the end of the day tomorrow whether, with the additional protections described in the preceding paragraph, the Receiver will enter into a stipulation confirming that Forge can pay fees and costs.

Finally, you assert that you are unaware of the basis for the request to expedite the motion. The basis for the request to expedite the motion is that the individual defendants are at risk of incurring substantial prejudice due to the nonpayment of fees and the uncertainty caused by the current situation. There are a number of time sensitive issues in the case, including the review of the SEC's recently produced set of 500,000 documents and planning for depositions that should commence in the near future. Our clients are unable to defend themselves in a reasonable and appropriate manner without a resolution of this issue. Please let us know by the end of the day tomorrow whether the Receiver opposes our request for an expedited hearing.

We look forward to hearing from you.

Larisa A. Meisenheimer | Shartsis Friese LLP
Partner
One Maritime Plaza, Suite 1800
San Francisco, CA 94111
t. 415.421.6500 | f. 415.421.2922
lmeisenheimer@sflaw.com | www.sflaw.com

From: Stanley Shure [mailto:sshure@shurelaw.com]
Sent: Saturday, August 05, 2017 1:14 PM
To: Meisenheimer, Larisa A.
Cc: White, Pete (Pete.White@srz.com); Robertson, Jeffrey (Jeffrey.Robertson@srz.com); dsprague@cov.com; asimonsen@cov.com; Raissi, Jahan; Ivan Knauer; Troy Greenfield
Subject: RE: SEC v. Aequitas et al

Dear Larisa:

I've read your email and am responding to address certain issues you've raised therein.

First, it would be inaccurate to state in your motion that we've met and conferred on a ***motion*** by the Individual Defendants to lift the receivership order so that Forge could pay defense costs let alone met and conferred in good faith. It would be correct to say that we have met and conferred to some extent as to a stipulation, not a motion.

Second, I must also take issue with your assertions about any meet and confer being in good faith, especially in light of the striking omission in your email of any reference to my correspondence of Thursday, August 3, 2017, sent to you and Mr. Raissi of your firm, Mr. White and Mr. Robertson of Schulte, Roth & Zabow, lead counsel for Mr. Jesenik and Mr. Sprague and Ms. Simonsen of Covington & Burlington, lead counsel for Mr. Gillis.

The documentation you sent to Ivan and me for purposes of establishing the Catlin/XL Policy's exhaustion, when examined closely raises a number of significant issues germane to that issue. My correspondence of August 3, 2017 addresses, in pertinent part, the question of whether substantial portions of the more than $2.7 million in legal fees and expenses Catlin/XL paid to Mr. Jesenik's counsel constitutes covered Defense Costs under the Catlin/XL Policy. This is directly relevant to the issue of whether the the Catlin/XL Policy is, in fact, properly exhausted and the corresponding question of whether liability under the Forge Policy is, in fact, triggered.

The second part of my correspondence also asked for information about the amount of incurred but unpaid Defense Cost, broken down by firm, the Individual Defendants are seeking to be paid from the Forge Policy. The purpose of this information is to determine the extent of the current impairment of the Forge Policy, assuming it is triggered. This is an important issue because of the apparent advantage the defendants are taking under the "reporting" requirements of the initial order allowing Catlin/XL to pay the Investor Defendants Defense Costs. That order, as you know, requires quarterly disclosure of the amounts paid by Catlin/XL. The payment information from Catlin/XL however indicates substantial amounts were being accrued, thus exhausting the Catlin/XL policy but without having been reported to the Receiver (or Court).

As Ivan and I made clear in our prior discussions with you about this issue, any new order would have to close this and other loopholes and include the insurer as a party to that order. Specifically, as you will recall, we discussed the fact that the Receiver was blind-sided by the Individual Defendants' assertions of exhaustion of the Catlin/XL Policy. In particular, we spoke about the fact that the Individual Defendants had reported as of early April 2017 that only $2,020,000 in Defense Costs had been paid out as of the end of the first quarter 2017, yet were claiming before the end of the second quarter 2017 that the $5,000,000 Catlin/XL policy was fully exhausted.

I interpret the "impasse" you refer to as the Individual Defendants' expression of their unwillingness to respond to the reasonable and germane information requests posed on the Receiver's behalf in my recent correspondence.

Finally, your email fails to set forth the bases of the Individual Defendants' request that their motion be heard on an expedited basis. Please advise as to the bases for this request so the Receiver can properly evaluate this request.
Regards,

Stanley H. Shure
Law Offices of Stanley H. Shure
2355 Westwood Blvd. #374
Los Angeles, CA 90064
***Tel**: 310.984.6945*
***Fax**: 310.984.6945*
***Cell**: 310.309.9571*
***Email**: sshure@shurelaw.com*

-------- Original Message --------
Subject: SEC v. Aequitas et al
From: "Meisenheimer, Larisa A." <LMeisenheimer@sflaw.com>
Date: Fri, August 04, 2017 1:03 pm
To: "knaueri@pepperlaw.com" <knaueri@pepperlaw.com>, "Stanley Shure (sshure@shurelaw.com)" <sshure@shurelaw.com>
Cc: "White, Pete (Pete.White@srz.com)" <Pete.White@srz.com>, "Robertson, Jeffrey (Jeffrey.Robertson@srz.com)" <Jeffrey.Robertson@srz.com>, "dsprague@cov.com" <dsprague@cov.com>, "asimonsen@cov.com" <asimonsen@cov.com>, "Raissi, Jahan" <JRaissi@sflaw.com>

Dear Ivan and Stan,

We have now extensively met and conferred concerning the Individual Defendants efforts to secure a stipulation to our

request for a court order permitting Forge to pay defense costs. It appears we have reached an impasse. The Individual Defendants intend to file their motion seeking relief from the receivership order, to the extent necessary, to pay defense costs. We intend to include with it a request for an expedited hearing on the ground that the continued non-payment of defense costs risks immediate and substantial prejudice to our clients. We will state in the motion that we met and conferred in good faith, but that Aequitas was not willing to stipulate to such an order, and that Aequitas opposes our request for an expedited hearing.

Regards,

Larisa A. Meisenheimer | Shartsis Friese LLP
Partner
One Maritime Plaza, Suite 1800
San Francisco, CA 94111
t. 415.421.6500 | f. 415.421.2922
lmeisenheimer@sflaw.com | www.sflaw.com

Schulte Roth&Zabel LLP

1152 Fifteenth Street, NW, Suite 850
Washington, DC 20005
202.729.7470
202.730.4520 fax

www.srz.com

Peter H. White
202.729.7476

Writer's E-mail Address
Peter.White@srz.com

August 9, 2017

BY E-MAIL

Stanley H. Shure, Esq.
Law Offices of Stanley H. Shure
2355 Westwood Blvd., #374
Los Angeles, CA 90064

Re: Request for Information from Individual Defendants in SEC Action

Dear Counsel:

I write on behalf of Robert Jesenik in response to your letter of August 3, 2017, and email of Saturday, August 7, 2017.

Notably, though your letter and email make multiple demands for information, both are silent as to any authority either in contract or caselaw supporting any of those demands. In fact, both are silent as to what authority the Receiver has to question the reasonableness and necessity determinations made by XL Catlin ("Catlin") in authorizing payments, why the Receiver is posing these questions to counsel for Mr. Jesenik rather than to Catlin (which has already determined that the compensated charges were reasonable and necessary), or what authority exists to use this process to deny continued coverage to Mr. Jesenik under the Forge policy, which clearly covers his continued fees and expenses in this matter. The letter also does not address how the Receiver could conclude that a policy is not exhausted while conceding that the responsible carrier has paid out its policy limits.

The letter and email do not address any of these points for one simple reason – the Receiver is not entitled to audit how the insurance proceeds have been spent so far. This is especially so where, as here, Catlin had an incentive not to pay excessive fees and rejected substantial amounts of the fees submitted to it. What is clear is that the carriers who issued the relevant policies have a contractual obligation to advance on behalf of Mr. Jesenik reasonable defense costs incurred in defense of the SEC's allegations, and that no one, including your client

and the carriers obligated to advance those costs, questions Mr. Jesenik's entitlement to payment of reasonable defense costs from the applicable insurance policies.

The legal services reflected in the invoices that Schulte Roth & Zabel LLP ("SRZ") has submitted on behalf of Mr. Jesenik have been reasonable, necessary to his defense, and in accord with or below the fees charged for similar cases of this type. The hourly rates SRZ is charging for this matter were negotiated at arm's length with Catlin, are below market rates, and have been approved by Forge, the carrier responsible for the next layer of coverage. Our invoices have stated in appropriate detail what work we have performed, and for each time entry approved for payment, the insurer has determined independently that they were reasonable and necessary to the defense of the covered SEC Action.

The fundamental thrust of your correspondence is that different amounts have been paid to the different defense counsel, meaning that there must be something unreasonable about the amounts paid to counsel for Mr. Jesenik. This is, of course, an obvious *non sequitur*. While not conceding that the Receiver is entitled to obtain any of the requested information from us, we offer the following information regarding the relative roles of the defense counsel in the interest of addressing the concerns raised in your letter and resolving this issue expeditiously.

As you must be aware, defense costs may vary significantly among co-defendants in the same case for a great many reasons. Co-defendants, and their counsel, may take responsibility for different aspects of a case, they may proceed at different paces, and they may be affected by different issues and challenges unique to each defendant. By itself, a variance in fees between co-defendants says nothing about the reasonableness of those fees.

Much of what is cited in your letter is meaningless to a determination of reasonableness. Obviously, monthly legal fees fluctuate during the course of a litigation, so comparing average fees during a dormant period of that litigation with no document review to the period when the labor-intensive document review is occurring is pointless. Your letter implies that SRZ's fees are unreasonable because they increased over the average monthly fees paid to prior lead counsel for Mr. Jesenik. This allegation ignores that the cost-intensive process of document review had not begun prior to our replacement of predecessor counsel. You will note that the fees of the firms involved for the other defendants – fees that your letter states are not objectionable – likewise increased on a per month basis over the same time period.

Your assertion that an increase in legal fees once SRZ was engaged must reflect duplicative work, tasks unrelated to defending the SEC claim, or higher billing rates confuses causation with correlation. As noted, SRZ's retention coincided with labor-intensive document review efforts. Moreover, with the agreement of counsel for the co-defendants, Mr. Jesenik's counsel has taken a lead role in several areas. For example, Mr. Jesenik's counsel developed the protocol for the joint document review effort and were the sole provider of on-site supervision of the contract attorney document review, which counsel for all defendants agreed was desirable and beneficial to the joint defense effort. SRZ also researched, drafted all pleadings and argued the joint defense group's motion concerning complex privilege issues. To the extent that one defendant's counsel has taken the lead on issues affecting all defendants, that defendant's defense costs will increase relative to those of his co-defendants. The goal and result of such

collaboration among the co-defendants here was to avoid duplicative efforts and minimize aggregate defense costs.

The Receiver's simplistic comparison of Mr. Jesenik's defense costs with those of his co-defendants requires an assumption that the defendants are identically situated in both the complexity and scope of the issues they face as well as their progress towards understanding, resolving, or defending those issues. SRZ has no reason to believe this assumption is correct, nor has the Receiver provided any such reason. What SRZ does know is that it has performed substantial and necessary work to defend Mr. Jesenik from the complex allegations brought by the SEC. This work has included a significant amount of targeted second-level document review of the hundreds of thousands of documents produced by the Receiver in this case, interviews of individuals with information relevant to this case, and as factual discovery has proceeded, developing factual defenses on behalf of Mr. Jesenik. Mr. Jesenik's defenses may be unique from those being prepared by Mr. Oliver and Mr. Gillis and so may require different amounts of time to explore and prepare.

Moreover, given Mr. Jesenik's role at Aequitas and his interactions with its internal and external lawyers, he had a significantly greater number of potentially privileged documents to review than the co-defendants. This effort was required because your client determined it was in its interest to waive its attorney-client and work product protections in connection with this matter. While a desire to minimize its own legal expenditures may have played a role in the Receiver's decision to waive corporate privilege, that decision merely shifted those costs to the individual defendants and, in particular, to Mr. Jesenik. Your client has no basis now to question legal expense that were caused by that decision.

Given his role in the company, the issues Mr. Jesenik must defend against, while arising from the same complaint, are more complex and far-reaching than the issues facing the other defendants, given their respective roles in the company. This has a drastic impact on the number of documents we must review on his behalf, which include documents he may be deemed responsible for even though he did not draft them. The notion that "Jesenik and Oliver were at the company during the period at issue and, presumably, have effectively the same amount of documentation to review" (p. 2) is nonsensical, and can attributed only to deliberate ignorance or a complete lack of experience in matters like this. In any organization, people use email internally and externally with differing frequency, have differing areas of responsibility, have access to different information and attend different meetings.

As the Receiver is well aware, there have been hundreds of thousands of documents produced in this case, with more to come. Though we could reasonably have done so, we have not had SRZ attorneys review them all. Rather, to be responsible with insurance assets in a very complex litigation, have engaged in only targeted searches during the second-level review process. Moreover, in the initial review, we utilized contract attorneys to reduce the cost and provide all the defendants with baseline characterizations of the documents. From there, counsel for each individual defendant must conduct a second-level review of documents that pertain to their client. Indeed, in a further cost-saving measure, the contract attorneys themselves did not review each of the hundreds of thousands of documents produced in this case,

but rather reviewed only a subset of those documents narrowed by electronic search terms designed to capture the documents most likely to be relevant.

Your assumption that duplicative work was done by SRZ is likewise incorrect, as is your assumption that some portion of the legal services performed on his behalf "did not involve the defense of the SEC Action" (p. 5). In fact, SRZ wrote off all of its startup time that duplicated efforts by prior counsel and limited its fee applications to only those defense costs directly touching on the claim at issue here (i.e., the pending investigation and complaint filed by the SEC). Despite this fact, Catlin has quite substantially cut what it has paid on these applications given its independent determinations that the work may have been duplicative or not sufficiently related to the SEC action. Your correspondence provides no reason to challenge Catlin's independent assessment of the necessity and reasonableness of our legal services, which has led to the denial of substantial fees to date.

As to fees paid to prior counsel, we are not in a position to address those as we do not have access to their invoices. As your client is well aware, the pace of this case picked up significantly soon after SRZ was retained to replace prior counsel. It was only then that the document review process could begin, explaining the bulk of the work performed by SRZ to date. If the Receiver would like to know what prior counsel did or why payment for its services was approved by Catlin, those questions should be addressed to prior counsel or Catlin, not to us.

In addition to not being required by law or the relevant insurance documents, it would risk violating attorney-client privilege and work product protection to disclose the level of detail regarding our work to date requested in your letter. This is especially so when your client's legal interests are adverse to Mr. Jesenik's. In fact, your client has taken several actions in pursuit of its adverse interests that have been directly and intentionally adverse to the interest of Mr. Jesenik, including the waiver of attorney-client privilege and work product protections, in order to curry favor with the SEC. To be clear, we are not alleging that these actions were inappropriate, just that they establish adversity, which severely limits the information we can properly and prudently provide you in response to your letter.

In response to your specific questions (letter, p. 6), the following SRZ invoices are outstanding:

SRZ Invoice No.	Invoice Date	Period Covered	Amount	Carrier
413083	5/26/17	April 2017	$197,991	Catlin/Forge
415479	6/30/17	May 2017	$237,983	Forge
416623	7/31/17	June 2017	$189,370	Forge

In addition, approximately $183,500 in fees and expenses have been incurred by SRZ in defending Jesenik in the SEC Action that have not yet been submitted to Catlin or Forge.

We are informed by our local counsel that it (and the affiliated Jonak Law Group) incurred approximately $35,000 in fees and expenses defending Jesenik in the SEC Action that have not yet been submitted to Catlin or Forge. We have no information responsive to your questions regarding the Rose Law Firm, Stoel Rives, or Gibson Dunn & Crutcher, but have no reason to believe that any of them have any outstanding invoices. The relevant information regarding Discovia and the other counsel has been sent you by counsel for Mr. Oliver.

Sincerely,

/s/ Peter H. White

Peter H. White
Schulte Roth & Zabel LLP

cc: Mr. Ronald Greenspan
Ivan Knauer, Esq.
Troy Greenfield, Esq.
Erik R. Gettell, Esq.
Matthew Abreu, Esq.
David A. Muller, Esq.
Salvatore Picariello, Esq.
William D. Sprague, Esq.
Ashley M. Simonson, Esq.
Jahan P. Raissi, Esq.
Larisa A. Meisenheimer, Esq.

LAW OFFICES OF
STANLEY H. SHURE

INSURANCE RECOVERY & ENFORCEMENT

August 12, 2017

Via E-Mail Only

Peter H. White	William D. Sprague	Jahan P. Raissi
Jeffrey F. Robertson	Ashley M. Simonsen	Larisa A. Meisenheimer
Schulte Roth & Zabel LLP	Covington & Burling LLP	Shartsis Friese LLP
1152 15th St. NW, Ste. 850	One Front Street	One Maritime Plaza, 18th Fl.
Washington, DC 20005	San Francisco, CA 94111	San Francisco, CA 94111

Re: Response to Peter White's Letter of August 9, 2017 and Larisa Meisenheimer's Email of August 7, 2017

Dear Counsel:

The purpose of this correspondence is to respond to Mr. White's correspondence, dated August 9, 2017 sent on behalf of Robert Jesenik and to Ms. Meisenheimer's email, dated August 7, 2017. I'll start with Mr. White's correspondence.

I.
The Receiver Has Standing to Object to the Improper Payment of Defense Costs to the Individual Defendants by Catlin/XL and Require that Exhaustion is Properly Established Before Liability Attaches Under the Forge First-Level Excess Policy

Mr. White begins his August 9, 2017 correspondence by discussing the absence of any citations to legal authority in my prior correspondence, dated August 3, 2017, or my prior email, dated August 7, 2017, establishing the Receiver's standing to object to the Defense Costs paid to the Individual Defendants by Catlin/XL or the Defense Costs which they have incurred and expect to be paid by Forge, in its capacity as the excess insurer sitting immediately above the Catlin/XL primary-level policy. Mr. White then goes on to conclude, based upon the absence of cited authority in my writing, that the Receiver does not have standing to object, *inter alia*, to the payment of Defense Costs to the Individual Defendants or challenge whether Catlin/XL has properly exhausted its policy and is acting inappropriately in doing so. Mr. White's assertion to the contrary

notwithstanding, the Receiver, as discussed in more detail below, has standing to make such objections.[1]

The Receiver, along with all other insureds, including the Individual Defendants, have an undivided, unliquidated interest in the policy proceeds of each of the policies making up the 2014/2015 coverage tower,[2] and these proceeds are property of the Receivership Estate. *Metro Inv. Sec., Inc. v. Cavul (In re Metro. Mortg & Sec. Co.),* 325 B.R. 851, 857 (Bankr. E.D. Wash 2005). Where, as here, the policies provide direct coverage to both the Receivership Estate and the directors and officers, the proceeds are property of the estate if their depletion would affect the estate. *In re Downey Fin. Corp.*, 438 B.R. 595, 603 & fn. 34 (Bankr D. Del 2010) (citing *In re Allied Digital Tech. Corp.*, 306 B.R. 509, 512 (Bankr. D. Del. 2004)).

Further, in the event any of the Receiver's objections ultimately come before the district court, the district court has broad power and wide discretion to fashion appropriate relief where, as here, it is supervising an equity receivership. The decisions of the district court in these circumstances will be upheld absent an abuse of discretion. *SEC v. Hardy*, 803 F.2d 1034, 1037–1038 (9th Cir. 1986); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980; *SEC v. Capital Consultants, LLC,* 397 F.3d 733, 738 (9th Cir. 2005); *see also CFTC v. Topworth Int'l, Ltd.;* 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors.").

Additionally, the *Consumer Financial Protection Bureau* ("*CFPB*") Investigation and the *SEC* Action, including the prior *SEC* Investigation (collectively referred to as the "SEC Action") all constitute claims deemed first made against the Aequitas Entities during the 2014/2015 policy year. The fact that the *CFPB* Investigation and the *SEC* Action themselves did not trigger coverage for the Receivership Entities because of the application of the policies' "regulatory" exclusion, does not preclude coverage for those portions of any other existing or future claims made by others against the Receivership Entities that are based upon the same wrongful acts at issue by the *CFPB* Investigation and the *SEC* Action. *See, e.g., WFS Fin., Inc. v. Progressive Cas. Ins. Co.*, 232 Fed. Appx. 624 (9th Cir. April 16, 2007) (WFS's second claim involved an interrelated wrongful act to the act set forth in the first claim; therefore, the second claim was subject

[1] I note that Mr. White, in asserting Mr. Jesenik's erroneous position that the Receiver did not have standing, failed to cite to any legal authority supporting this proposition.

[2] Those policies were issued by Catlin (now Catlin/XL), Forge and Starr Indemnity.

to the policy limits of the first policy); *Friedman Prof. Mgmt. Co., Inc. v. Norcal Mut. Ins. Co.*, 120 Cal. App. 4th 17, 34 (2004) (where policy's definition of claim extends to a series of related acts or omissions, a claim made after expiration of the policy period may be covered if it is logically or causally related to a claim previously made during the policy period); *S. Coos Hosp. & Health Ctr. v. Exec. Risk Indem., Inc.*, 2006 U.S. Dist. LEXIS 3758, at *10-11 (D. Or. Jan. 12, 2006) (the 2003 district court complaint asserts substantially the same facts as the April 11, 2002 demand letter and the 2002 Bureau of Labor and Industries complaint; thus, the policy deems the district court complaint a claim first made when plaintiff received the demand letter in April 2002, and the policy does not cover losses from claims first made prior to the policy period).

I will now move on to the more substantive aspects of your correspondence.

II.
Raising Straw Man Arguments, Misconstruing The Receiver's Position And Failing to Address Certain Issues Does Not Advance The Dialogue

After raising the standing issue, the balance of Mr. White's August 9th correspondence tries, in material part, to justify the reasonableness and necessity of the Defense Costs paid to or incurred by the Schulte Roth & Zabel ("SRZ") firm on behalf of Mr. Jesenik,[3] based upon the questions posed on the Receiver's behalf in my correspondence of August 3, 2017. This part of Mr. White's correspondence contains a number of different assertions that are either irrelevant, are devoid of an underlying factual basis, or are based upon a misconstruction of the Receiver's position.

First, on page 2 of Mr. White's correspondence in support of his position that SRZ's Defense Costs are reasonable and necessary, Mr. White discusses the issue of the rates charged by SRZ in defending Mr. Jesenik, asserting that they are below market. The apparent purpose of Mr. White's assertion about SRZ charging below-market rates is to support the reasonableness of the fees and expenses SRZ charged.

Mr. White's assertion about the below-market rates charged by SRZ is, however, irrelevant to the issues presented in my August 3, 2017 correspondence. My August 3, 2017 correspondence does not raise the hourly rates charged by SRZ personnel (or any other of Jesenik's counsel) as an issue in determining the reasonableness or necessity of the Defense Costs billed by SRZ on Mr. Jesenik's behalf. The hourly rates charged by SRZ is ***not*** an issue that was raised on the Receiver's behalf.

[3] *See* page 2 through 5 of Mr. White's August 9, 2017 correspondence.

Second, at page 2 of Mr. White's correspondence, he states "the insurer [presumably Catlin/XL] has determined independently that they were reasonable and necessary to the defense of the covered SEC Action." Mr. White, however, is not an employee, representative, or counsel for Catlin/XL. White's statement, quoted above, lacks personal knowledge and appears to be his opinion, albeit without a factual basis, supporting it.

Mr. White, for example, fails to articulate any knowledge of, or even familiarity with, Catlin/XL practices, if any, for determining the reasonableness or necessity of the legal fees and expenses submitted to it for payment. Nor does Mr. White, to the extent he may have some second- or third-hand knowledge of Catlin/XL's practices, articulate whether they were followed and, if so, for each and every one of SRZ's invoices submitted to Catlin/XL for payment.

Third, on page 2 of Mr. White's letter, he infers that the analysis found in my correspondence was inadequate because it did not contain a comparison of the fees incurred by defense counsel for Oliver and Gillis with those incurred by Jesenik's counsel, including SRZ, during the same time frame after SRZ came into the case and it first became more labor intensive because of the review of documents. Specifically, Mr. White states that:

> "Your letter implies that SRZ's fees are unreasonable because they increased over the average monthly fees paid to prior lead counsel for Mr. Jesenik. This allegation ignores that the cost-intensive process of document review had not begun prior to our replacement of predecessor counsel. You will note that the fees of the firms involved for the other defendants – fees that your letter states are not objectionable – likewise increased on a per month basis over the same time period."

Mr. White's correspondence ignores the fact that my August 3, 2017 letter contained an analysis closely resembling the one you assert was not made. Specifically, on page 4 of my August 3, 2017 letter, under the heading **"The Payments Made to SRZ and Rose Also Dwarf Those Made to Oliver's and Gillis's Defense Counsel for the Same Time Frame"**, it states:

> "The disproportionate nature of the legal fees Catlin/XL paid to Mr. Jesenik's counsel, especially SRZ and Rose, is confirmed by comparing the payment[s] made by Catlin/XL to SRZ and Rose with those it paid to counsel for Gillis and Oliver for the same time period. The combined payment[s] made by Catlin/XL to SRZ and Rose, which go from payments made in early March 2017, through the last payment made on July 7, 2017, total $1,642,634.72. For that same time frame – March 2017

> through July 7, 2017 – Catlin/XL paid Gillis'[s] lead and local counsel a combined $344,839.50 in **Defense Costs** and Oliver's lead and local counsel a combined $597,654.60 in **Defense Costs**."

As is readily apparent, the comparative analysis of the fees and expenses paid to Jesenik's lead and local counsel, SRZ and Rose, and the other defendants' lead and local counsel during the period when the cost-intensive document review was occurring, was provided to Mr. White and then conveniently ignored by him in his August 9, 2017 correspondence. Tellingly, the figures in my comparative analysis show that the legal fees and expenses incurred by SRZ and Rose on Mr. Jesenik's behalf for the same time frame were $1,297,795.22 (476%) greater than those incurred by Gillis's counsel and $1,044,980.12 (274%) greater than those incurred by Oliver's counsel.[4]

Fourth, on page 4 of Mr. White's correspondence, he states that my "assumption that some portion of the legal services on [Jesenik's] behalf 'did not involve the defense of the SEC Action'" is incorrect. Mr. White's assertion that I was making an "assumption" about legal services being provided to Mr. Jesenik by his defense counsel that did not involve the defense of the SEC Action is without support and is directly contrary to what I wrote on the subject. As pointed out at page 5 (footnote 8) of my August 3, 2017 letter, the Receiver is aware of specific instances of legal services being performed by Gibson Dunn and Rose on behalf of Mr. Jesenik that are unrelated to his defense of the SEC Action.[5]

Fifth, in connection with the same issue of legal services provided by defense counsel to Mr. Jesenik not involving the defense of the SEC Action, in footnote 8 of my August 3, 2017 letter, I stated that: "[i]f Mr. Jesenik asserts that these legal services were not submitted to Catlin/XL or Forge for payment, we would appreciate seeing evidence supporting this position." Mr. White's August 9, 2017 correspondence also does not address the questions involving the reasonableness of the $207,600.68 in legal fees and expenses paid by Catlin/XL to Rose or the reasonableness of Gibson's legal fees and expenses.

Mr. White's correspondence, which he wrote on behalf of Mr. Jesenik, makes it clear that Mr. Jesenik will neither obtain nor facilitate obtaining the information from Mr. Jesenik's former counsel, Gibson and Rose. Rather, it is abundantly clear from the correspondence that from Mr. Jesenik's perspective, it is the Receiver's burden to obtain

[4] I will look at the issue you raised as to whether Gillis's counsel's or Oliver's counsel's average monthly invoice increased during this same time frame.

[5] The Receiver and his counsel have in their possession documentation showing such services by Gibson Dunn and Rose unrelated to the defense of the SEC Action.

the information from Gibson and Rose. One can readily view this position as being obstructive to the Receiver's legitimate inquiries.

In summary, the five non-exclusive examples set forth above - whether characterized as misstatements, straw man arguments, mischaracterizations of the Receiver's position, or obstruction – create an adverse inference as to the veracity of Mr. White's other assertions trying to justify SRZ's legal fees and expenses.

III.
SRZ's Attempts to Justify The Amount of Legal Fees And Costs it Has Incurred Ring Hollow

A. SRZ's Positions Justifying its Fees

SRZ, as articulated by Mr. White in his August 9, 2017 correspondence, justifies the size of its legal fees and costs it has incurred in the defense of Mr. Jesenik through the end of July 2017, as compared to other counsel, based upon a number of different points. Those points are:

(i) Mr. Jesenik's counsel developed the protocol for the joint document review effort. (See pg. 2 of 8/9/17 White Correspondence);

(ii) Mr. Jesenik's counsel was the sole provider of on-site supervision of the contract attorneys hired for document review. (See pg. 2 of 8/9/17 White Correspondence);

(iii) SRZ researched, drafted all pleadings, and argued the joint defense group's motion for a protective order involving privilege issues. (See pg. 2 of 8/9/17 White Correspondence);

(iv) SRZ's work included a significant amount of targeted second-level document review. (See pg. 3 of 8/9/17 White Correspondence);

(v) SRZ's work included interviewing witnesses with information relevant to the case. (See pg. 3 of 8/9/17 White Correspondence); and

(vi) SRZ is developing Jesenik's factual defenses, which may be unique for him as compared to Mr. Oliver's or Mr. Gillis's. (See pg. 3 of 8/9/17 White Correspondence).

Separately, SRZ also asserted that its legal fees and expenses were reduced because:

(vii) It wrote off substantial time that it felt duplicated the efforts of prior counsel. (See pg. 4 of 8/9/17 White Correspondence);

(viii) It limited the billing in the invoices[6] it submitted for payment to SRZ to only those defense costs directly touching upon SEC Action. (See pg. 4 of 8/9/17 White Correspondence); and

(ix) ". . . Catlin has quite substantially cut what it has paid on these applications given its independent determinations that the work may have been duplicative or not sufficiently related to the SEC Action." (See pg. 4 of 8/9/17 White Correspondence)

B. **There Are Only Limited Areas Where Jesenik's Defense Facially Differs From Oliver's and Gillis's**

It is axiomatic that the allegations of a complaint, albeit in relatively broad strokes, sets forth the factual and legal issues presented in a given action. The complaint in the SEC Action alleges twelve different claims for relief. As to the Individual Defendants, eight (8) claims for relief are asserted jointly against Jesenik, Oliver, and Gillis, and two (2) solely against Jesenik.[7] The relief sought by the SEC as reflected in the prayer for relief in its complaint, however, is exactly the same as relates to Jesenik, Oliver, and Gillis. Two (2) other claims for relief found in the SEC's complaint do not list any of the Individual Defendants.

As reflected by a review of the SEC's complaint, the SEC makes various factual allegations regarding the Individual Defendants. The majority of these allegations are made jointly as to all three Individual Defendants. Some are also made against Jesenik and Oliver, without mentioning Gillis. Other allegations are made solely against Jesenik, solely against Oliver and solely against Gillis.

Other than the allegations regarding Jesenik's, Oliver's, and Gillis's respective positions and roles at the Aequitas entities, the distinct factual allegations made solely

[6] Mr. White uses the term "application" as opposed to invoice in referring to the amounts submitted by SRZ to Catlin/XL for payment.

[7] These are the SEC Complaint's 5th and 7th claims for relief. The 5th Claim for Relief involves "Violations of Section 17(a)(2) of the Securities Act". The 7th Claim for Relief involves "Violations of Section 10(b) of the Exchange Act and Rules 10(b)-5(b) Thereunder".

against Jesenik can be found at Paragraphs 31, 38, 40, 44, and 71 of the SEC's complaint. The distinct factual allegations made solely against Oliver can be found at Paragraphs 29, 32, 42, and 67 of the SEC's complaint. The factual allegations made solely against Gillis can be found at Paragraphs 72-76, of the SEC's complaint.

The SEC complaint, whose allegations involve conduct starting in 2014 and running through early 2016, also makes a factual distinction involving Gillis as compared to Jesenik and Gillis, based upon the fact his relationship with Aequitas did not start until the first part of 2015.

C. Legal Fees and Expenses Paid and Incurred for Each Individual Defendant from SRZ's First Involvement Through July 31, 2017

Based upon the information contained in Ms. Meisenheimer's email of August 7, 2017, which was confirmed as to Jesenik's current counsel in his August 9, 2017 letter, the Receiver is now able to update the respective Defense Costs for Oliver, Gillis, and Jesenik, starting with the payments made in March 2017, which is when the first payment of invoices submitted by SRZ (and, at the same time, new local counsel, Rose) occurred.

For the time frame from March 2017 through July 31, 2017, the combined Defense Costs paid and incurred but not paid to Jesenik's, Oliver's, and Gillis's local and lead counsel are as follows:

- Jesenik – $2,486,559
- Oliver – $ 920,655
- Gillis – $ 571,904

Jesenik's legal fees and expenses during this period are $1,565,904 (270%) more than Oliver's for the same time period and $1,914,655 (435%) more than Gillis's for the same period. The difference between the amount of Defense Costs paid to and incurred by Oliver as compared to Gillis is $348,751. This difference is likely attributable to the fact that the document review and analysis on Gillis' behalf was more limited in scope than Oliver's because Gillis' involvement was the Aequitas Entities did not start until 2015.

We now turn to analyzing SRZ's justification as to the reasonableness and necessity of the fees it is charging.

D. Analysis of SRZ's Justification of the Reasonableness And Necessity of its Defense Costs

In conducting this analysis, the Receiver is making various assumptions about counsel for each of Individual Defendants. They are that:

- Lead counsel for each of the Individual Defendants have expertise in this area of the law;
- The billing rates charged by lead counsel for the defense of their respective clients in the SEC Action are all in the same general range; and
- Lead counsel for each Individual Defendant, up through the present, are all vigorously prosecuting their respective client's defense of the SEC Action. This would include, *inter alia*, their review and analysis of pertinent documentation, interviewing/speaking with potential witnesses, and preparing (from a factual perspective) their client's respective defenses.

Based upon these assumptions and the issues in the case as framed by the complaint in the SEC Action, the sole material difference between the work done by Oliver's counsel[8] during this time frame and the work done by Jesenik's counsel is the motion for a protective order involving attorney/client issues.[9] Jesenik's counsel also, per Mr. White's counsel, prepared the document review protocol and provided supervision for the contract attorneys involved in the document review.[10]

The justifications Mr. White provides in his August 9, 2017 correspondence, which are discussed at various points in this letter, regrettably do not adequately explain

[8] We focus on comparing Oliver's and Jesenik's Defense Costs because the two of them, at least in general terms, are similarly situated to each other. Gillis's involvement, in comparison, with his connection to the Aequitas Entities only starting in 2015 is different from Oliver's and Jesenik's.

[9] We are giving you the benefit of the doubt for the time being regarding the motion for a protective order, which, from our perspective, bordered on specious and therefore was unreasonable and unnecessary.

[10] Though Jesenik is named in two claims for relief that neither Oliver nor Gillis are named, factually this will not make much difference. This is because all three Individual Defendants are named in "aiding and abetting" claims involving the same subject where Jesenik is facing direct liability and, therefore, they each require familiarity regarding the relevant underlying documentation and facts.

the existence of the $1,565,904 difference between Jesenik's Defense Costs and Oliver's Defense Costs for the same nine month time frame[11]. The work Jesenik's legal team performed on its own – even assuming additional document review and analysis, witness interviews, and development of factual defenses as compared to the other Individual Defendants - does not provide a satisfactory explanation for Jesenik having incurred $1,565,904 more in Defense Costs than Oliver.

Finally, in asserting this position, the Receiver is cognizant that the legal fees incurred by each of the Individual Defendants will differ from each other. The Receiver also recognizes that the justifications provided by Mr. White might conceivably support, for example, amounts incurred by Jesenik somewhere in the $500,000 to $600,000 range in excess of the amounts incurred by Oliver. Mr. White's "justifications" do not, however, support the $1,565,904 difference that exists here.[12]

IV.
Comments Regarding Ms. Meisenheimer's August 7, 2017 Email

Initially, I'd like to thank you and other counsel for providing the updated information regarding the incurred but unpaid Defense Costs. I also want to thank you for more fully articulating the basis for the Individual Defendants' request to expedite its motion.

I am not going to discuss each and every point made in your August 7, 2017 email with which I disagree since I don't think that it will advance the dialogue between the Receiver and the Individual Defendants. I will, however, take this opportunity to discuss some points that I think will provide you and counsel for the other Individual Defendants the Receiver's perspective on a number of different points.

First, there appears to be a rush by Catlin/XL to "exhaust" its policy that was inconsistent with its prior pattern and practice for paying the Individual Defendants' counsel.

[11] This equates to an average of $173,989 per month being billed by Jesenik's counsel more than Oliver's counsel during the exact same 9 month period.

[12] Any suggestion by the Receiver that a particular hourly rate does not appear to be objectionable, or that a certain range of attorneys' fees could potentially be reasonable, is not an acknowledgment that such rates and/or fees are in fact reasonable and necessary. The focus of this and prior correspondence has been on what appears to be Mr. Jesenik's excessive fees. The Receiver reserves all of his rights regarding, among other things, the hourly rates and attorneys' fees charged by counsel for all of the Individual Defendants.

During the latter half of 2016, starting in August 2016, Catlin effectively made payments of Defense Costs every two months, to wit: October 2016 and December 2016. Catlin/XL, other than a single payment in February 2017, made the great majority of its payments for the first quarter 2017 in March 2017. Catlin/XL then made its second quarter 2017 payments, totaling approximately, $1.5 million, in early June.

Based upon Catlin's past practice, the next payment expected from Catlin should have been in September 2017, and if they went to a two-month time frame, some time in August 2017. Yet, a little over a month later on July 7, 2017, Catlin – completely at odds with its past practices – suddenly made additional payments totaling approximately $1.5 million in order to exhaust its policy.

Catlin/XL's rush to exhaust its policy is, to say the least, suspicious.

Second, the Individual Defendants assert that the Catlin/XL policy was exhausted in June 2017, prior to that policy's actual exhaustion. Effectively, the Individual Defendants were asserting that Catlin/XL had paid out some $3.0 million during the second quarter 2017, after having informed the Receiver that only $2.0 million had been paid through the first quarter 2017.

Third, the Individual Defendants' assertions of their dire financial situation and their resulting need to have a motion to lift the stay as to the Forge Excess policy heard on a expedited basis, which first goes back to June and or early July 2017, is belied by the facts.

After receiving the June 2017 payments to the Individual Defendants, the next payments they would have expected to receive, based upon Catlin/XL's payment history, was sometime in September 2017. In fact, the Individual Defendants received a payment only a month later, in early July 2017.

Under these facts there is no basis for an expedited hearing on this matter, as the Individual Defendants have already received their third quarter 2017 payment.

Fourth, the Receivership Entities are not the only Insureds with an interest in the policy proceeds represented by, *inter alia*, the purportedly exhausted Catlin policy and the excess Forge policy. Other Insured Persons exist under the various 2014/2015 policies who almost certainly would look to the proceeds of these policies in response to the covered claims that are almost certainly going to occur when the stay preventing litigation against the Aequitas Entities and affiliated individuals is ultimately lifted (*e.g.*, Olaf Janke, Andy McRitchie, and Advisory Board Members).

Finally, I'd appreciate if the Individual Defendants would let me know if Forge has agreed to be a party to any motion to lift the stay that may be brought. If not, let me

know and I'll contact them directly on this issue. From my perspective, they are a necessary party to any motion that might be brought.

Sincerely,

/s/ Stanley H. Shure

Stanley H. Shure

cc: Ronald Greenspan,
Ivan Knauer, Esq.
Troy Greenfield, Esq.
Eryk R. Gettell, Esq.
Matthew Abreu, Esq.
David A. Muller, Esq.
Salvatore Picariello, Esq.

LAW OFFICES OF
STANLEY H. SHURE

INSURANCE RECOVERY & ENFORCEMENT

August 30, 2017

Via E-Mail Only

Eryk R. Gettell
Sedgwick LLP
333 Bush St., 30th Fl.
San Francisco, CA 94104
eryk.gettell@sedgwicklaw.com

David Muller
Bailey Cavalieri
10 West Broad Street
Suite 2100
Columbus, OH 43215
dmuller@baileycav.com

Claims Manager
Aspen Insurance
smarshall@paragonbrokers.com

Re:	Insured(s):	Aequitas Holdings, LLC, et al.
	Coverage:	Management Liability/Professional Liability
	Matter:	SYK's August 10, 2017 Claim to Aequitas
	2014/2015 Policy Year:	Forge Policy No. B0146ERUSA1500543
		Starr Policy No. SISIXFL21175714
	2015/2016 Policy Year:	Forge Policy No. B0146ERUSA1500543
		Aspen Policy No. B0146ERUSA1500634
		Starr Policy No. SISIXFL21175715

Dear Counsel/Claims Manager:

This firm as you know is the duly appointed insurance coverage counsel for the Aequitas Receivership Entities (collectively "Receivership"), created pursuant to the Receivership Order, dated April 14, 2016, enclosed herewith. This correspondence is being sent on behalf of all **Insured Organizations,** including the **Named Insured**, Aequitas Holdings, LLC and any **Affiliated Entity**, **Investment Fund** or **Investment Holding Company**, as those terms are defined in the respective primary level policies for the 2014/2015 policy-year and the 2015/2016 policy-year.[1]

Also enclosed with this letter is correspondence dated August 10, 2017, from Robert Banks of Samuels Yoelin Kantor, LLP ("SYK") to Troy Greenfield of Schwabe, Williamson & Wyatt, PC, ("Schwabe"), counsel for Ronald F. Greenspan, the duly appointed Receiver for the Receivership. SYK, as mentioned in Mr. Banks's August 10,

[1] The primary policy for the 2014/2015 policy-year was issued by Catlin Insurance. Catlin is now part of the XL Group. The primary policy for the 2015/2016 policy-year was issued by Forge Underwriters, as referenced above.

2017 correspondence, makes a demand upon, *inter alia*, Aequitas Holdings and its various subsidiaries in the amount of $45 million on behalf of the Aequitas Investors that SYK represents.

SYK's August 10, 2017 correspondence sets forth in general terms the wrongful conduct that it attributes to Aequitas that is the basis of its demand. Factually, this wrongful conduct is described as follows:

- Aequitas's failure to disclose the true nature of the relationship between Aequitas Holdings and its subsidiaries (collectively "Aequitas"), on the one hand, and the Registered Investment Advisory ("RIA") firms that sold Aequitas investments to many of SYK's clients, on the other hand. Aequitas failed to disclose that it was providing the enumerated RIA firms with undisclosed financial incentives in the form of loans, undisclosed fees, and other compensation in exchange for offering Aequitas investments for sale to their clients;

- Numerous misrepresentations and omissions in the private placement memoranda for Aequitas investments, including many that were not identified in the SEC Lawsuit. Two examples of misrepresentations and omissions not identified in the SEC Lawsuit are:

  - "[T]he failure to disclose the relationship between Aequitas and the trading platforms used by the RIAs, which were designed and used to steer our clients' managed portfolio into Aequitas Investments, and which were owned and controlled by [Aequitas];" and

  - "[T]he failure to disclose the existence and dire financial conditions of business entities owned by Aequitas affiliates that were losing money year after year."

- Aequitas, while acting as direct sellers (not through RIAs), "misrepresenting to elderly investors that the Aequitas investments were safe, fully secured, and suitable investments for them, when in fact they were high risk investments wholly unsuitable for [elderly investors]."

The SYK August 10, 2017 correspondence qualifies as a "Claim," as that term is defined in the Forge and Starr Indemnity 2014/2015 policy-year policies[2] and the Forge,

[2] Catlin Insurance, since being acquired by the XL Group (herinafter "Catlin/XL"), as previously mentioned is the primary-level policy for the 2014/2015 policies. The Receivership understands that Catlin/XL is claiming exhaustion of the $5 million limits of liability of its policy by means of

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

Aspen, and Starr 2015/2016 policy-year policies.[3] Certain allegations of the SYK Claim trigger coverage and "relate back" to the 2014/2015 policies and other allegations "relate back" to the 2015/2016 policies. The existence of a Claim that contains some matters that are covered by a given policy and some matters that are not covered is contemplated by both the 2014/2015 policies and the 2015/2016 policies.[4]

The $45 million in damages sought as part of the SYK Claim are well in excess of the approximately $23 million in combined limits currently available under the 2014/2015 policy-year D&O/Professional Liability policies and 2015/2016 D&O/Professional Liability policy-year policies.[5] Putting aside the liability insurance assets discussed above, the Receivership as of July 31, 2017 has assets in the amount of $150 million.

The Receivership intends to conduct an analysis of its potential liability and asserted damages as referenced in the SYK Claim. The Receivership, based upon its counsels' and FTI's familiarity with many of the items put at issue by the SYK Claim, is in a singularly advantageous position to analyze the matters put at issue therein. Should the Receivership ultimately determine that one or more of the Receivership entities has potential liability and the SYK claimants are able to establish the $45 million in damages mentioned therein, the Receivership will have substantial exposure in excess of the currently available limits.

Since both the 2014/2015 policies and 2015/2016 policies provide that the Insureds defend themselves, the Receivership has decided to use Schwabe Wiliamson & Wyatt ("Schwabe") as its primary/lead counsel on this matter and any subsequent

---

the payment of Defense Costs. It is our understanding that Forge has acknowledged exhaustion of the underlying Catlin/XL policy.

[3] The SYK's/Bank's August 10, 2017 correspondence is hereinafter referred to as the "SYK Claim".

[4] Both the 2014/2015 policy-year and the 2015/2016 policy-year primary level policies contain identical Allocation provisions that provides "[i]f the **Insureds** incur **Loss** that is only partially covered by this Policy because a **Claim** includes *both covered and uncovered matters* . . . then the **Insurer** and the **Insureds** shall use their best efforts to allocate such **Loss** based upon: . . . ." (*Italics* added.)

[5] It is the Receivership's understanding that that there are in excess of $8 million in unimpaired limits left of the original $15 million of combined limits of the 2014/2015 policy-year D&O/Professional Liability policies. In addition, the full $15 million in combined limits of the 2015/2016 policy-year D&O/Professional Liability policies remains unimpaired.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

litigation that is likely to ensue on this Claim,[6] when the stay resulting from the Receivership Order is ultimately lifted. The Schwabe firm will be providing you with its evaluation of liability and the asserted damages in the near future.

Forge's acknowledgement of coverage and the Receiver's selection of Schwabe, *et al*. as defense counsel for the SYK Claim is expected.[7] Forge's obligation to pay Loss for the SYK Claim is, of course, not triggered until any applicable Retention is satisfied.

Finally, Forge, in various letters dated May 22, 2017, took the position that all the claims first made against Aequitas during the 2015/2016 policy-year of which the Receiver gave notice prior to the policy's expiration "relate back" to the 2014/2015 policy year, as they either: (i) are "Interrelated Claims" when compared to the Claims at issue in the 2014/2015 policy-year, to wit: the SEC Action, the SEC Investigation, and the Consumer Financial Protection Bureau ("CFPB") Investigation and/or (ii) are barred because they trigger the Prior Acts Exclusion.

Forge also substantially took the same "relation-back" positions, with one exception,[8] as to each notice sent by the Receiver pursuant to Section IX.B (Claim and Potential Claim Notices) of the London (Forge) Primary 2015/2016 policy-year policy setting forth potential claims involving wrongful conduct that was not alleged in prior claims but that could later be asserted against the Receivership Entities.

The Receivership takes issue with Forge's erroneous conclusions. For example, Forge, in each of the four May 22, 2017 letters it sent asserting that the 2015/2016 policy-years claims and potential claims all related back to the 2014/2015 policy-year claims, incorrectly asserts that the presence of Interrelated Wrongful Acts in subsequently asserted claims means those claims automatically qualify as Interrelated Claims. Forge, contrary to the terms of its policy, conflates the two separate analytical questions presented in its policy involving whether more than one Claim contains Interrelated

[6] Pepper Hamilton LLP has also been providing the Receivership with legal services related to securities law issues. Pepper Hamilton may be involved in analyzing securities-related issues in connection with the SYK Claim.

[7] We reference Forge here because it is the carrier whose defense obligations are triggered for both the 2014/2015 and 2015/2016 policy-years. Forge is the first-layer excess policy during the 2014/2015 policy-year, and we understand it has acknowledged that the primary-level carrier for that year, Catlin/XL, has paid out its limits. Forge is also the primary-level carrier for the 2015/2016 policy-year.

[8] The one exception is the Receiver's October 31, 2016 Correspondence regarding multiple categories of potential claims. Forge did not take a position regarding whether any of the matters discussed "relates back" to the 2014/2015 policy-year, instead reserving its rights on these and other coverage issues.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

Wrongful Acts and, if so, whether those Claims qualify as a single Interrelated Claim based upon whether the "**Claims** [are] arising from, based upon or attributable to the same . . . **Interrelated Wrongful Acts** . . . ."[9]

Forge's reliance on *Alexander Manufacturing, Inc. v. Illinois Union Ins. Company*, 666 F. Supp. 2d 1185, 1203-1204 (D. Or. 2009), is also misplaced here. The Illinois Union policy at issue in *Alexander* provided, in pertinent part, very broadly that if more than one Claim contained the same Wrongful Act or Interrelated Wrongful Acts, it shall constitute a single Claim. *Id*. at 1192. Under the plain meaning of this provision, any overlap between two or more Claims means the claims are deemed a single Claim. As the court mentioned, both the *Emerson* Action and the *Trust* Action at issue therein contained the same allegations about misleading financial statements caused by Klutho's job cost entries. *Id*. at 1203.

Under the terms of the Illinois Union policy at issue in *Alexander*, since both the *Emerson* and *Trust* Actions contained the same Wrongful Act, to wit: Kultho's incorrect job cost entries that created the misleading financial statements, the two actions constitute a single Claim. The Court, however, in determining the two actions constituted a single Claim asserted it did so because the two claims were "related." It is unclear why the parties introduced this term, as none of the relevant Illinois Union policy language contains the words "related" or any synonyms thereof. In contrast, the question of whether multiple claims constitute a single claim under the Forge Policy is based upon the policy's Interrelated Claims language which contains very different policy language, as previously noted, as compared to Illinois Union language at issue in *Alexander*.

Further, a close reading of the *Alexander* opinion reveals that the Court, in determining the *Emerson* and *Trust* Actions constituted a single Claim, was never asked to address the question of whether the additional facts alleged in the *Trust* Action, as compared to the *Emerson* Action, were Interrelated Wrongful Acts.[10]

Nor do any of Forge's May 22, 2017 letters asserting the Prior Notice Exclusion applies to the Receiver's 2015-2016 policy-year Claims or Potential Claims cite to any case law supporting its interpretation of this exclusion. Instead, Forge used its seriously flawed "relation back" Interrelated Wrongful Acts argument to justify its denial of

[9] The Receivership also takes issues with Forge's assertions that the 2014/2015 policy-year claims and the matters for which notice was given for the 2015/2016 policy-year qualify as Interrelated Wrongful Acts. The Receivership will address these issues with Forge under separate cover.

[10] The Court did later conclude that this was the case in analyzing the import of the Common Claim Endorsement, but the parties did not request an analysis based upon the actual language contained in the Interrelated Wrongful Acts definition of the Illinois Union policy at issue in *Alexander*.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com

coverage under the Prior Notice Exclusion, which interestingly does not involve the concept of Wrongful Acts.

The Receiver intends to provide you with its analysis of the questions involving Interrelated Wrongful Acts, Interrelated Claims and the Prior Notice Exclusion, to the Wrongful Acts put at issue by the SYK Claim, under separate cover.

Sincerely,

/s/ Stanley H. Shure

Stanley H. Shure

Enclosure

cc: Ronald Greenspan, Esq.
Ivan Knauer, Esq.
Troy Greenfield, Esq.
Matthew Abreu, Esq.
Salvatore Picariello, Esq.

2355 Westwood Blvd., #374 · Los Angeles · California 90064 ·Telephone 310 984 6945 · Facsimile 310 984 6945
E-mail: sshure@shurelaw.com