

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.

No. 3:16-cv-00438-PK

RECEIVERSHIP ENTITY'S
EVIDENTIARY OBJECTIONS TO

Page 1 – RECEIVERSHIP ENTITY'S' EVIDENTIARY OBJECTIONS TO DECLARATION
OF JASON P. CRONIC IN SUPPORT OF ROBERT J. JESENİK'S MOTION FOR
RELIEF FROM RECEIVERSHIP ORDER, TO THE EXTENT NECESSARY TO
PERMIT PAYMENT OF DEFENSE COSTS



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

 Defendants.

DECLARATION OF JASON P. CRONIC IN
 SUPPORT OF ROBERT J. JESENİK'S
 MOTION FOR RELIEF FROM
 RECEIVERSHIP ORDER, TO THE
 EXTENT NECESSARY, TO PERMIT
 PAYMENT OF DEFENSE COSTS

The Receivership Entity respectfully submits the following Objections to the Declaration of Jason P. Cronic ("Cronic") filed in Support of Defendant Robert J. Jesenik's Motion for Relief from Receivership Order, To the Extent Necessary, To Permit Payment of Defense Costs (Dkt. 500), and request that the cited excerpts and evidence be stricken from Defendant's evidentiary support. *See FDIC v. New Hampshire Insurance Co.*, 953 F.2d 478, 484, (9th Cir. 1991) (statements in declaration or other evidence which are not admissible may be stricken by the Court).

I. The Receivership Entity's General Evidentiary Objections

The Receivership Entity objects to the Cronic Declaration, in part, on the grounds of lack of foundation. Declarations used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. *Casey v. Lewis*, 4 F.3d 1516, 1527 (9th Cir. 1993). The declaration must affirmatively demonstrate personal knowledge, not merely assert that this requirement is met. *Behurst v. Crown Cork & Seal USA, Inc.*, 2007 U.S. Dist. LEXIS 24922, at *4-5 (D. Ore. Mar. 30, 2007). Moreover, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Fed. R. Evid. 602. In addition, the Receivership Entity also objects to the Cronic Declaration, in part, on the grounds that it consists of out of court statements, for the truth of the matters asserted therein. *See* Fed. R. Evid. 801(c) (hearsay is "a statement, other

than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted”).

II. The Receivership Entity’s Specific Objections to the Cronic Declaration

MATERIAL OBJECTED TO	GROUND FOR OBJECTION	RULING ON THE OBJECTION
Cronic Decl., ¶3: “. . . Catlin has paid \$5 million in Loss on behalf of Insured Persons under the Catlin Policy through the advancement of ‘Defense Costs,’ which term is defined under the Policy as ‘reasonable and necessary fees and expenses incurred in the defense or appeal of a Claim.’”	<p>(1) Lack of personal knowledge; lack of foundation. Fed. R. Evid. 602.</p> <p>Cronic states that he is counsel for Catlin, but he does not set forth facts explaining how he is in a position to personally know that Catlin has paid \$5 million in Loss in the <i>SEC</i> Action.</p> <p>Cronic has not established the foundational requirements for this statement. He provides no facts whatsoever involving his:</p> <p>(i) reviewing and analyzing the contents of any invoice submitted in connection with the <i>SEC</i> Action or the SEC’s prior investigation, let alone invoices seeking payment of \$5 million in attorneys’ fees and</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RULING ON THE OBJECTION
	<p>expenses; (ii) concluding that these invoices contained \$5 million in covered Defense Costs; or (iii) paying out \$5 million in Defense Costs on Catlin's behalf to the Insured Persons or telling Catlin to do so, is <i>not</i> admissible evidence.</p> <p>(2) Hearsay. Fed. R. Evid. 801, 802. By stating that Catlin has paid out \$5 million in Loss, he is in effect making an out of court statement, for the truth of the matters asserted therein, which constitutes inadmissible hearsay. <i>See</i> Fed. R. Evid. 801(c).</p>	

THE FOLLOWING OBJECTIONS ARE RULED UPON AND EITHER SUSTAINED OR OVERRULED AS SET FORTH ABOVE.

Dated: _____, 2017

The Honorable Paul Papak
United States Magistrate Judge