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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

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

Defendants.

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

**SUPPLEMENTAL DECLARATION OF
JASON P. CRONIC IN SUPPORT OF
MOTIONS FOR RELIEF FROM
RECEIVERSHIP ORDER, TO THE
EXTENT NECESSARY, TO PERMIT
PAYMENT OF DEFENSE COSTS**



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I, Jason P. Cronic, declare as follows:

1. I am a partner at Wiley Rein LLP (“Wiley Rein”), counsel for Catlin Specialty Insurance Company (“Catlin”). For approximately 17 years, I have represented directors and officers liability insurers and other professional liability insurers on a wide variety of claims, underwriting, and litigation matters. I serve as the co-chair of the Professional Liability Insurance Committee, Tort Trial & Insurance Practice Section, of the American Bar Association, and have been recognized as having expertise in directors and officers and professional liability coverage issues.

2. I am over eighteen years of age and otherwise am competent to testify. I make this declaration based upon my personal knowledge of the non-privileged facts set forth in this declaration, including as a result of my firm’s role as outside counsel for Catlin in connection with the matters discussed herein. If called and sworn as a witness, I could and would testify to the facts stated in this declaration.

Catlin’s Directors and Officers Liability Policy

3. Catlin issued Private Equity Management Liability Insurance Policy No. MFP-686757-0714 to Aequitas Holdings, LLC, for the Policy Period of July 1, 2014 to November 1, 2015, as amended by Endorsement 8 (the “Catlin Policy”). True and correct copies of the Catlin Policy were included as exhibits to my prior declarations submitted in support of the Motions. *See* Dkt. 497, Exh. 1; Dkt. 500, Exh. 1.

4. The Catlin Policy has two Insuring Agreements relevant here that provide specified coverage subject to its terms, conditions, and limitations. Insuring Agreement, A (“Insured Person Liability”) applies to Claims first made against an Insured Person during the Policy Period, or Extended Reporting Period, if applicable, for Loss for a Wrongful Act for

which the Insured Organization has not indemnified such Insured Person. *Id.*, Section I.(A). Insuring Agreement C (“Insured Organization Liability”) applies to Claims against an Insured Organization for Loss for which the Insured Organization “becomes legally obligated to pay resulting from a Claim for a Wrongful Act.” *Id.*, Section I.(C).

5. Under the Catlin Policy, “Loss” is defined to include “Defense Costs,” which is defined, in relevant part, as “reasonable and necessary fees and expenses incurred in the defense or appeal of a Claim.” *Id.*, Section III.(K).

6. Catlin received a notice of the action captioned *Securities and Exchange Commission v. Aequitas Management, LLC, et al.*, No. 3:16-cv-00438-PK (D. Or.) (the “SEC Litigation”), as well as a related investigation (the “SEC Investigation”), under the Catlin Policy from Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis (together, the “Individual Defendants”). Catlin advised the Individual Defendants that they satisfied the Catlin Policy’s definition of “Insured Person,” and further advised that Catlin would afford coverage for the Claim subject to a reservation of rights. This reservation included “the right to deny coverage for amounts that fall outside the [Catlin Policy’s] definition of Loss.”

This Court’s Prior Order Approving Payment of Defense Costs

7. The Catlin Policy provides that Catlin “shall pay on behalf of” the Individual Defendants Defense Costs resulting from defense of a Claim “no later than ninety (90) days after the receipt by [Catlin] of such defense invoices.” Catlin Policy, Sections I.(A), VII.(B). In light of the appointment of a receiver and order freezing the Receivership Estate’s assets, however, Catlin requested that the Individual Defendants obtain an order from the receivership court authorizing Catlin to advance Defense Costs on behalf of the Individual Defendants.

8. On or about May 23, 2016, the Court approved a Stipulation and Order Granting Relief from Receivership Order to Permit Limited Payment of Defense Costs, Dkt. No. 185 (“Defense Costs Order”). The Defense Costs Order “authorized [Catlin] to make payments under the [Catlin] Policy to or for the benefit of the [Individual Defendants] for covered Defense Costs incurred in connection with the [SEC] Investigation and [the SEC] Litigation.” Dkt. No. 185, at 5.

Catlin’s Consent to the Individual Defendants’ Selection of Counsel, Requirement to Comply with Billing Guidelines, and Agreement to Advance Defense Costs

9. Subject to its reservation of rights, Catlin consented to representation of the Individual Defendants in the SEC Litigation by Gibson Dunn & Crutcher LLP (“Gibson”) (for Defendant Jesenik), Covington & Burling LLP (for Defendant Gillis), and Shartsis Friesen LLP (for Defendant Oliver) at rates specified by Catlin. Catlin’s consent to the Individual Defendants’ counsel selection was conditioned on compliance with Catlin’s litigation management guidelines (“Billing Guidelines”) by the Individual Defendants’ counsel. Among other things, Catlin’s Billing Guidelines do the following:

- a. Prohibit vague time entries or descriptions of tasks performed;
- b. Require billing in increments no greater than 1/10 hour;
- c. Limit excessive intra-firm conferencing by limiting reimbursements to such conferences that Catlin determines advance the litigation in an efficient and cost effective manner;
- d. Prohibit excessive hourly rates by requiring that Catlin approve, in advance, use of personnel and hourly rates charged;
- e. Absent Catlin’s consent, prohibit more than one attorney from attending meetings, interviews, and hearings; and
- f. Prohibit reimbursement for administrative services including secretarial and clerical functions.

10. On November 7, 2016, representatives of Defendant Jesenik requested Catlin's consent (as required by the Catlin Policy) to Mr. Jesenik engaging new counsel to represent him in the SEC Litigation, specifically Schulte, Roth & Zabel LLP ("SRZ") to replace Gibson as Mr. Jesenik's primary counsel, and the Rose Law Firm LLP to replace Stoel Rives LLP. In response, Catlin requested information regarding the reason for the change in counsel, proposed hourly rates, information about the handling of travel expenses, the role of each firm going forward, and steps to ensure that Defense Costs would not fund efforts by Mr. Jesenik's new counsel to get up to speed and duplicate efforts undertaken by prior counsel.

11. Catlin subsequently consented to Mr. Jesenik's change in counsel, provided that Catlin would not have to pay Defense Costs for new counsel to get up to speed, or for former counsel's efforts to transfer the representation, and that the new counsel would agree to negotiated hourly rates for specified timekeepers and limitations on reimbursable travel expenses. In addition, Catlin required that Mr. Jesenik's new counsel comply with Catlin's Billing Guidelines.

Catlin's Review Of, and Payments Based On, Invoices Reflecting Defense Costs Submitted by the Individual Defendants' Counsel

12. Pursuant to the Catlin Policy, the Individual Defendants are required to repay Catlin, severally according to their respective interests, all payments for Defense Costs advanced by Catlin in the event that it is determined that any Individual Defendant is not entitled to payment of such Loss under the terms of the Catlin Policy. Catlin Policy, Section VII.(B).

13. Catlin undertook to ensure that payments on behalf of the Individual Defendants pursuant to the Catlin Policy were limited to Defense Costs that were "reasonable and necessary to the defense" of the SEC Litigation and SEC Investigation. This included a review of the fees and expenses detailed on invoices submitted by the Individual Defendants' counsel. The review

of the invoices submitted by counsel for the Individual Defendants enabled Catlin to determine what Defense Costs were covered by the Catlin Policy and to reject payment of fees and expenses that it concluded were not.

14. For example, the following chart summarizes, for each invoice SRZ submitted to Catlin on behalf of Mr. Jesenik, the total fees and costs submitted, the total deductions taken by Catlin, and the total amounts advanced by Catlin.

Invoice No.	Period Covered	Invoice Date	Initial Advancement Date	Total Defense Costs	Catlin Deductions	Defense Costs Advanced
400533	Oct.-Nov. 2016	12/12/16	3/10/17	\$259,134.76	(\$46,469.39)	\$212,665.37
403777	Dec. 2016	1/31/17	6/2/17	\$180,961.75	(\$29,440.25)	\$151,521.50
406592	Jan. 2017	3/9/17	6/2/17	\$273,138.59	(\$55,479.60)	\$217,658.99
409671	Feb. 2017	4/14/17	7/7/17	\$441,321.07	(\$42,904.07)	\$398,417.00
410835	Mar. 2017	4/27/17	7/7/17	\$375,111.61	(\$16,641.11)	\$358,470.50
413083	Apr. 2017	5/26/17	7/7/17	\$294,291.93	(\$6,856.51)	\$96,300.70
TOTALS				\$1,823,959.71	(\$202,716.93)	\$1,435,034.06

15. Among the reasons that Catlin identified for the deductions it made to the SRZ invoices presented for payment under the Catlin Policy were: (i) entries reflecting transition time as a result of Mr. Jesenik engaging new counsel; (ii) entries Catlin determined were too vague to confirm that they were Defense Costs; (iii) tasks that Catlin concluded were not sufficiently related to defense of the covered Claim; (iv) insufficient expense documentation; and (v) other practices that were inconsistent with Catlin's Billing Guidelines.

16. Regarding SRZ invoice no. 413083, Catlin deducted \$6,856.51 for time entries that it determined were not covered Defense Costs. The remainder of the nearly \$200,000 difference between the SRZ invoice total and the amount of Catlin's partial payment

(\$96,300.70) was due to exhaustion of the limit of liability of the Catlin Policy, as discussed below.

Exhaustion of the Catlin Policy's Limit of Liability

17. The Limit of Liability under the Catlin Policy is \$5 million, which is the maximum aggregate amount that Catlin is obligated to pay under the Catlin Policy. *See* Catlin Policy, Declarations, Item 3; Section V.(A).

18. On June 2, 2017, Catlin notified Mr. Jesenik's counsel that the Catlin Policy would be exhausted following Catlin's payments towards then-pending invoices that Catlin was processing. That same communication advised Mr. Jesenik's counsel to submit future invoices on Mr. Jesenik's behalf to Eryk R. Gettell, outside counsel for Forge Underwriting Ltd, which Catlin understood to be providing insurance coverage excess of the Catlin Policy.

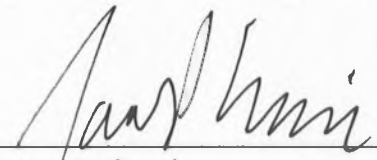
19. On June 30, 2017, Mr. Jesenik's counsel requested, on behalf of the Individual Defendants, information regarding payments under the Catlin Policy as of June 30, as well as a quarter by quarter breakdown, by recipient, of past and future anticipated payments.

20. On July 11, 2017, Wiley Rein provided Mr. Jesenik's counsel with a spreadsheet identifying, by payment date and payee, Catlin's payment of Defense Costs totaling \$5 million, the Limit of Liability under the Catlin Policy. A true and correct copy of the spreadsheet I provided to Mr. Jesenik's counsel is attached as Exhibit A. A Catlin representative reviewed the figures on Exhibit A and confirmed that they were the correct figures maintained in Catlin's records of payment prior to the provision of the spreadsheet to Mr. Jesenik's counsel.

21. Based on my review, Exhibit A appears identical to the spreadsheet included with the Declaration of Stanley H. Shure in Support of Receivership Entity's Opposition to Defendants' Motions for Relief From Receivership Order. *See* Dkt. No. 531, Exh. 1.

22. As Exhibit A shows, Catlin has paid \$5 million in Loss on behalf of Insured Persons by advancing Defense Costs. The limit of liability of the Catlin Policy has thus been fully exhausted.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 28, 2017 in Washington, D.C.



Jason P. Cronin

Exhibit A

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