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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL

No. 3:16-cv-00438-PK

STIPULATION AND ORDER GRANTING
RELIEF FROM RECEIVERSHIP ORDER
TO PERMIT LIMITED PAYMENT OF
DEFENSE COSTS BY STARR
INDEMNITY & LIABILITY COMPANY

DOC ID - 28969504.1



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

Defendants.

Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis (collectively, “Individual Defendants”) and Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, Inc., Aequitas Capital Management, Inc., and Aequitas Investment Management, LLC (collectively, “Receivership Defendants” or “Receivership Entity” and, together with the Individual Defendants, “the Parties”), by and through their respective undersigned counsel, hereby respectfully submit the following Stipulation and [Proposed] Order Granting Relief from the Receivership Order to Permit Limited Payment of Loss in the form of Defense Costs under that certain policy issued by Starr Indemnity & Liability Company (“Starr”), policy number SISIXFL21175714 (“Starr Policy”). Plaintiff Securities and Exchange Commission (“SEC”) takes no position regarding this stipulation.

STIPULATION

WHEREAS, the SEC instituted an investigation of the Receivership Defendants as well as their subsidiaries and/or majority-owned affiliates (collectively, “Receivership Entity”) (the “Investigation”), which subsequently resulted in the SEC filing a civil action entitled *SEC v. Aequitas Management, LLC, et al.*, Case No. 3:16-cv-00438-PK (D. Or.) (“SEC Enforcement Action” or “Litigation”) (Dkt. No. 1);

WHEREAS, on April 14, 2016, the Court entered the Order Appointing Receiver (Dkt. No. 156), by which it appointed Ronald F. Greenspan (the “Receiver”) as the Receiver for the Receivership Defendants and froze the assets of the Receivership Entity (the “Receivership Order”);

WHEREAS, on May 12, 2016, the Individual Defendants filed a Motion for Relief from Order Appointing Receiver to allow Catlin Specialty Insurance Company (“Catlin”) under its

policy number, MFP-686757-0714, to advance certain past and future defense costs to or on behalf of the Individual Defendants and or other insured persons in connection with the Investigation, the Litigation, and other Claims (Dkt. No. 176);

WHEREAS, the Parties subsequently met and conferred in an attempt to informally resolve the issues raised in the Individual Defendants' Motion;

WHEREAS, as a result of the Parties' meet and confer efforts, they entered into a stipulation, which ultimately resulted in the Court entering its May 23, 2016 Order (Dkt. No. 185), lifting the Receivership Order to the extent applicable so that Catlin could make payments under the Catlin Policy to or for the benefit of the Individual Defendants for covered Defense Costs incurred in connection with the Investigation and Litigation;

WHEREAS, Catlin later asserted that it had exhausted its \$5 million limits of liability under the Catlin Policy by the payment of Defense Costs to the Individual Defendants;

WHEREAS, on August 22 and August 23, 2017, the Individual Defendants filed motions for relief from the Receivership Order, to the extent necessary, to permit Forge Underwriting Ltd. ("Forge") (policy number B0146ERUSA1400543, which sits immediately excess of and follows form to the Catlin Policy (the "Forge Policy")) to make payments under the Forge Policy to or for the benefit of the Individual Defendants for covered Defense Costs incurred in connection with the Investigation, the Litigation, and other Claims (Dkt. Nos. 496, 499);

WHEREAS, the Receivership Entity opposed the Individual Defendants' motions;

WHEREAS, the Court granted the Individual Defendants' motions, pursuant to and subject to its Opinion and Order dated October 23, 2017 (Dkt. No. 551);

WHEREAS, Forge asserts that it has exhausted its \$5 million limits of liability under the Forge Policy by the payment of Defense Costs incurred by the Individual Defendants;

WHEREAS, the Starr Policy sits immediately in excess of the Forge Policy and, in material part, follows form to the Catlin Policy;

WHEREAS, the Individual Defendants assert that they have incurred \$87,522.33 in covered Defense Costs that was not paid by Forge because of the exhaustion to the Forge Policy;

WHEREAS, the Individual Defendants assert that they are entitled to payment by Starr of these and ongoing Defense Costs pursuant to the Starr Policy;

WHEREAS, the Individual Defendants have reached tentative settlements with the SEC of the SEC Enforcement Action, which are, *inter alia*, contingent upon the Individual Defendants' reaching a settlement with both the Receivership Entity and the Aequis investors;

WHEREAS, discovery in the SEC Enforcement Action is currently stayed (Dkt. No. 616);

WHEREAS, a private mediation involving the Individual Defendants, the Receivership Entity, the Aequis investors, and the Receivership Entity's insurance carriers is set to occur on August 22, 2018 and August 23, 2018 in Portland, Oregon;

WHEREAS, the Individual Defendants assert that the legal fees and expenses they incur in connection with, *inter alia*, preparing for, traveling to, and participating in the mediation qualify as Defense Costs and Loss under the Starr Policy;

WHEREAS, the Individual Defendants assert that, without payment to their respective counsel of the Defense Costs they will incur in connection with the mediation, they cannot meaningfully participate in the mediation;

WHEREAS, the Receivership Entity asserts that it has claims against Catlin, Forge, and Starr involving various issues;

WHEREAS, the Receivership Entity and the Individual Defendants have, or may have, disputes by and among themselves regarding insurance coverage-related issues;

WHEREAS, the Parties hereby stipulate as follows and request that the Court approve this stipulation:

1. Starr issued the Starr Policy for the Policy Period of July 1, 2014 to July 1, 2015, subsequently extended to November 1, 2015, with limits of liability in the amount of \$5 million, as set forth in the Starr Policy;

2. The Starr Policy provides coverage for “Claim(s),” including Claims made by governmental entities (such as the Investigation and Litigation) against Insured Persons (such as the Individual Defendants) under the Policy’s Insuring Agreement A, as set forth in the Catlin Policy, which is incorporated by reference into the Starr Policy;

3. The Individual Defendants represent that they have incurred and continue to incur “Loss,” as that term is defined in the Starr Policy, in the form of “Defense Costs” in connection with the Litigation, including \$87,522.33 in Defense Costs not paid by Forge under the Forge Policy;

4. The Receivership Entity is willing at this time to lift the stay resulting from the Receivership Order for the Individual Defendants as it pertains to the Starr Policy but only as to: (i) the matters described in Paragraph 7 below, and (ii) subject to the Receivership Entity reserving and maintaining any and all its rights it has or has or may have as they pertain to the Individual Defendants and the insurers Catlin, Forge, and Starr;

5. The Individual Defendants, in entering into this stipulation to lift the stay resulting from the Receivership Order as it pertains to the Starr Policy also reserve and maintain any and all of the rights they, or any of them, have or may have as they pertain to the insurers Catlin, Forge, and Starr and the Receivership Entity;

6. The Parties agree that the Receivership Order shall be lifted, to the extent necessary, to permit Starr to pay (i) the \$87,522.33 in Defense Costs previously incurred by the Individual Defendants but not paid by Forge under the Forge Policy and (ii) up to, but no more than, \$50,000 in additional Defense Costs incurred by each of the Individual Defendants (for a total of up to \$150,000); and

7. The Receivership Entity is entering into this stipulation only as an accommodation to the Individual Defendants, primarily for the purpose of the Individual Defendants' attending the August 22-23, 2018 mediation;

IT IS SO STIPULATED this 16th day of August, 2018.

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LR 11-1(D)(2) CERTIFICATION

I hereby attest that all other signatories listed, on whose behalf this filing is submitted,
concur in the filing's content and have authorized this filing.

/s/ Peter H. White
Peter H. White (*Pro Hac Vice*)

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[PROPOSED] ORDER GRANTING RELIEF
FROM RECEIVERSHIP ORDER TO
PERMIT LIMITED PAYMENT OF
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INDEMNITY & LIABILITY COMPANY

MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENIK, BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

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[PROPOSED] ORDER

Good cause appearing, it is hereby ORDERED that:

1. The stay imposed by the Receivership Order is lifted, but only to the extent necessary so that Starr, subject to the terms of the Starr Policy, may make payments for those previously incurred Defense Costs not paid by Forge, as follows:

- Schulte Roth – \$68,998.35 (June & July 2018 invoices)
- Shartsis Friese – \$13,692.00 (July 2018 invoice)
- Covington – \$2,931.98 (July 2018 invoice)
- Whipple Law Office – \$212.50
- FTI Consulting – \$1,687.50¹;

2. The stay imposed in the Receivership Order is also lifted, but only to the extent necessary so that Starr, subject to the terms of the Starr Policy, can pay up to \$50,000 in Defense Costs incurred by each of the Individual Defendants (for a combined total of \$150,000), in connection with the August 22-23, 2018 mediation in Portland, Oregon;

¹ The amount paid to FTI Consulting are for database-related charges incurred by Shartsis Friese.

3. Because the primary purpose for the Parties to enter into this Stipulation is related to the upcoming mediation on August 22-23, 2018, and the privileged nature of such a proceeding, any and all statements made in the Parties' Stipulation, including the Recitals and Stipulation, may not be used for any evidentiary purpose whatsoever by any third parties, including but not limited to Catlin, Forge, or Starr against the Receivership Entity, the Individual Defendants, or either of them; however, this paragraph does not apply to the Order itself; and

4. The Individual Defendants shall provide a copy of this Stipulation and Order, once signed by the Court, to counsel for Starr;

5. Starr, at the Receivership Entity's request, will notify counsel for the Receivership Entity about any amounts it pays to or on behalf of the Individual Defendants pursuant to Paragraphs 1 and 2 of this Order.

IT IS SO ORDERED.

Dated this _____ day of August, 2018.

United States Magistrate Judge Paul Papak