

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

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 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;
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.

No. 3:16-cv-00438-JR

DECLARATION OF JASON M. GAUSS
IN SUPPORT OF RECEIVERSHIP
ENTITY'S OPPOSITION TO NON-PARTY
ANDREW MACRITCHIE'S MOTION TO
INTERVENE AND FOR LIMITED RELIEF
FROM RECEIVERSHIP ORDER TO
PERMIT PAYMENT OF LEGAL FEES
AND EXPENSES



I, Jason M. Gauss, declare as follows:

1. I am a lawyer at Parsons Farnell & Grein, LLP. I make this declaration based on personal knowledge as counsel to Ronald F. Greenspan, in his capacity as Court-Appointed Receiver for the Receivership Entity¹, in the following two insurance coverage actions filed in the United States District Court for the District of Oregon:

- (a) *Greenspan v. Catlin Specialty Ins. Co.*, 3:19-cv-817-JR, filed on May 24, 2019; and
- (b) *Forge Underwriting Ltd. v. Greenspan*, 3:19-cv-810-JR, filed on May 23, 2019.

2. Attached as Exhibit A is a true and correct copy of a July 25, 2019 email from me to insurers' counsel and counsel for the individual insureds, including *inter alia* counsel for Starr Indemnity & Liability Company ("Starr") and counsel for Andrew MacRitchie ("MacRitchie"), proposing that all insurance coverage disputes be consolidated in one action and setting forth a briefing schedule for an early resolution of the competing insurance claims by the Receiver and individual insureds.

3. Attached as Exhibit B is a true and correct copy of a July 26, 2019 email from counsel to Starr responding to my July 25, 2019 email.

4. Counsel for MacRitchie has not provided a substantive response to my July 25, 2019 email.

5. Attached as Exhibit C is a true and correct copy of an August 2, 2019 email from me to counsel for the individual insureds, including *inter alia* counsel for MacRitchie, Brian Rice, Robert J. Jesenik, Brian Oliver and N. Scott Gillis, requesting a to have a meet and confer as described in the July 25, 2019 email.

///

¹ Capitalized terms not otherwise defined in this declaration shall have the meanings ascribed to them in the April 14, 2016, Order Appointing Receiver. [Dkt. 156].

6. On August 9, 2019, counsel for the Receiver, the insurers, Olaf Janke, Brian Rice, N. Scott Gillis, William Glasgow and Patrick Terrell met and conferred on the topics addressed in my July 25, 2019 email. Counsel for MacRitchie tried, but was unable to join the meet and confer, and indicated that he would speak with counsel for the other individuals regarding what was discussed. Counsel who participated on the call have agreed to a follow-up meet and confer on August 15, 2019 to continue their discussions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements and those contained in any attached exhibits, are true and correct to the best of my knowledge, information and belief.

Executed on: August 9, 2019

/s/ Jason M. Gauss
Jason M. Gauss

Jason M. Gauss

From: Jason M. Gauss
Sent: Thursday, July 25, 2019 5:36 PM
To: 'mborja@wileyrein.com'; 'jwilliams@cozen.com'; 'JHess@cozen.com'; 'BBuckner@cozen.com'; 'peter.white@srz.com'; 'jeffrey.robertson@srz.com'; 'chris@chrispetermanlaw.com'; 'jraissi@sflaw.com'; 'lmeisenheimer@sflaw.com'; 'dsprague@cov.com'; 'ltucker@polsinelli.com'; 'bob.mahler@polsinelli.com'; 'dxl@aterwynne.com'; 'rknuts@shertremonte.com'; 'dpeterson@cosgravelaw.com'; 'petranovichm@lanepowell.com'
Cc: Michael E. Farnell; 'Stanley Shure'; 'Salvatore Picariello'; Kevin T. Sasse; Kathleen A. Karan; 'Greenfield, Troy D.'
Subject: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

Counsel:

We write to meet and confer regarding an expedited briefing schedule on the issue of the priority of competing claims by the Receiver and certain individual insureds.

By way of background, the Receiver and the individual insureds dispute the extent to which the individual insureds are entitled to insurance proceeds for payment of incurred defenses costs given the Receiver's February 8, 2019 settlement agreement with the Aequitas investors (the "Investor Settlement"). Pursuant to the Investor Settlement, the Receiver is legally obligated to pay \$30 million irrespective of the amount of any recovery the Receiver may obtain from its insurers. As such, the Investor Settlement constitutes covered loss sufficient to exhaust full policy limits for both the 2014/2015 and 2015/2016 policy periods.

The Receiver is informed that certain individual insureds will seek to intervene in the SEC Enforcement Action for the purpose of asserting competing demands for payment of policy proceeds from the Starr 2014/2015 policy. We understand Starr to maintain that approximately \$4.6 million remains on its 2014/15 policy. Similar claims were made by other individual insureds in the SEC Enforcement Action, in which the court allowed payment of no more than approximately \$10.4 million in defense costs. Those claims, however, were made and resolved prior to the Investor Settlement. The Receiver believes that all defense costs thus far incurred are owed by one or more insurers in addition to limits. That is, the burning limits provisions of the Catlin and Forge policies are not enforceable. If the Receiver is correct, the individual insureds' defense cost claims, past and future, do not compete with the Receiver's indemnity claim unless and until the insurers exhaust their limits by payment of indemnity. To the extent, however, the insurers contend that all defense cost payments erode policy limits, the individual insureds' requests for payment of defense costs compete with the Receiver's indemnity claim. In other words, from the Receiver's perspective, there are no competing claims because the Investor Settlement operated to exhaust the policies as of February 8, 2019. For this reason, the Receiver will vigorously dispute the individual insureds' claims and object to any future payment of defense costs as detrimental to the Receivership Estate unless and until such costs are determined to be owed in addition to limits. The Receiver will object accordingly to any motion to intervene in the SEC Enforcement Action by the individuals. Now that the coverage actions have been filed, however, we believe all coverage-related disputes should be litigated in these actions and the Receiver will consent to intervention as necessary in the coverage action(s).

As alluded to above, the competing claims issue is not merely an inter-insured dispute. Questions involving competing access to policy limits cannot easily be answered until the policy limits are known. Given the complexity of coverage issues and the potentially diverging interests of typically-aligned parties on specific issues, we propose that the early motions practice include the parties' positions on related coverage issues. The goal of the early briefing is to promote

efficiency, reduce unnecessary discovery and help streamline the parties' respective coverage positions by resolving as much of the coverage dispute as possible early on.

During prior discussions, the insurers have indicated that they are planning to file certain Rule 12 motions against the Receiver's complaint and have raised concerns that the competing claims briefing could unfairly extend the deadline for the Receiver's substantive response to such motions. To address those concerns, we propose harmonizing the current responsive pleading deadline of August 9 with the opening brief schedule, as set forth below—i.e., all responsive pleadings will now be due September 30.

In order to streamline the coverage disputes and tee up as many of the coverage issues as early as possible in a single forum, we propose the following:

1. Consolidate the Receiver's coverage action and the insurers' declaratory judgment action. Many of the individual insureds are already parties in the DJ. To the extent necessary, the parties can file amended pleadings on or before August 23, 2019.
2. Enter a stipulation allowing any additional individual insureds to intervene in the coverage action(s).
3. Move the court to enter the following briefing schedule:
 - a. Simultaneous opening briefs/Rule 12 motions to be filed by September 30, 2019.
 - b. Simultaneous responsive briefs to be filed by October 28, 2019.
 - c. Simultaneous reply briefs to be filed by November 18, 2019.

As always, we welcome your thoughts on the above. Please be advised that the Receiver reserves all rights and intends no waiver of any kind by way of this proposal.

Best regards,

Jason



Jason M. Gauss
 Parsons Farnell & Grein, LLP
 1030 SW Morrison Street
 Portland, OR 97205
 Phone: 971-244-9537
 Email: jgauss@pfglaw.com
 Website: www.pfglaw.com

Jason M. Gauss

From: Williams, John L. <JLWilliams@cozen.com>
Sent: Friday, July 26, 2019 2:43 PM
To: Jason M. Gauss
Cc: Borja, Mary; Cronic, Jason; peter.white@srz.com; jeffrey.robertson@sez.com; chris@chrispetermanlaw.com; jraissi@sflaw.com; lmeisenheimer@sflaw.com; dsprague@cov.com; ltucker@polsinelli.com; bob.mahler@polsinelli.com; dxi@aterwynne.com; rknuts@shertremonte.com; dpeterson@cosgravelaw.com; petranovichm@lanepowell.com; Michael E. Farnell; Stanley Shure; Salvatore Picariello; Kevin T. Sasse; tgreenfield@schwabe.com; Hess, Jordan A.; Franklin D. Cordell; Earle, William G.; Buckner, Bonnie
Subject: RE: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

Jason:

Thank you for the below. As an initial matter, we agree that the insurers' declaratory relief action and the Receiver's action should be consolidated and that all insurance coverage issues existing between my clients and their insureds should be decided in the coverage action, not the SEC Enforcement action. I will confer with my clients regarding the remainder of your proposal, but we do not believe that filing motions on the merits of substantive coverage issues simultaneously with challenges to the pleadings is either appropriate or workable. We are, however, willing to work with the parties on developing a logical and efficient approach to the litigation. Perhaps a conference call will facilitate that. In the event the parties cannot come to agreement, we can request an early case management/scheduling conference with the court.

Relatedly, as you note below, we currently intend to file a Rule 12 motion on certain of the claims asserted in the Receiver's complaint. Please let me know when you are available to meet and confer as required by Local Rule 7-1.

Please note that I've added Frank Cordell of the Gordon Tilden firm to the distribution list. Mr. Cordell represents Brian Rice. Mr. Rice is not a party to the coverage actions, but I understand he may be seeking defense costs from Starr.

Feel free to call me if you have any questions or want to discuss.



John L. Williams
Cozen O'Connor
 999 Third Avenue, Suite 1900 | Seattle, WA 98104
 P: 206-224-1288 F: 866-537-7536
 Email | [Bio](#) | [Map](#) | [cozen.com](#)

From: Jason M. Gauss <JGauss@pfglaw.com>
Sent: Thursday, July 25, 2019 5:40 PM
To: Williams, John L. <JLWilliams@cozen.com>

Subject: FW: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

****EXTERNAL SENDER****

John –

Please see my email below. I inadvertently left out the “L” in your email address and it bounced back. My apologies.

Best,
Jason

From: Jason M. Gauss

Sent: Thursday, July 25, 2019 5:36 PM

To: 'mborja@wileyrein.com'; 'jwilliams@cozen.com'; 'JHess@cozen.com'; 'BBuckner@cozen.com'; 'peter.white@srz.com'; 'jeffrey.robertson@srz.com'; 'chris@chrispetermanlaw.com'; 'jraissi@sflaw.com'; 'lmeisenheimer@sflaw.com'; 'dsprague@cov.com'; 'ltucker@polsinelli.com'; 'bob.mahler@polsinelli.com'; 'dxl@aterwynne.com'; 'rknuts@shertremonte.com'; 'dpeterson@cosgravelaw.com'; 'petranovichm@lanepowell.com'

Cc: Michael E. Farnell; 'Stanley Shure'; 'Salvatore Picariello'; Kevin T. Sasse; Kathleen A. Karan; 'Greenfield, Troy D.'

Subject: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

Counsel:

We write to meet and confer regarding an expedited briefing schedule on the issue of the priority of competing claims by the Receiver and certain individual insureds.

By way of background, the Receiver and the individual insureds dispute the extent to which the individual insureds are entitled to insurance proceeds for payment of incurred defenses costs given the Receiver's February 8, 2019 settlement agreement with the Aequitas investors (the "Investor Settlement"). Pursuant to the Investor Settlement, the Receiver is legally obligated to pay \$30 million irrespective of the amount of any recovery the Receiver may obtain from its insurers. As such, the Investor Settlement constitutes covered loss sufficient to exhaust full policy limits for both the 2014/2015 and 2015/2016 policy periods.

The Receiver is informed that certain individual insureds will seek to intervene in the SEC Enforcement Action for the purpose of asserting competing demands for payment of policy proceeds from the Starr 2014/2015 policy. We understand Starr to maintain that approximately \$4.6 million remains on its 2014/15 policy. Similar claims were made by other individual insureds in the SEC Enforcement Action, in which the court allowed payment of no more than approximately \$10.4 million in defense costs. Those claims, however, were made and resolved prior to the Investor Settlement. The Receiver believes that all defense costs thus far incurred are owed by one or more insurers in addition to limits. That is, the burning limits provisions of the Catlin and Forge policies are not enforceable. If the Receiver is correct, the individual insureds' defense cost claims, past and future, do not compete with the Receiver's indemnity claim unless and until the insurers exhaust their limits by payment of indemnity. To the extent, however, the insurers contend that all defense cost payments erode policy limits, the individual insureds' requests for payment of defense costs compete with the Receiver's indemnity claim. In other words, from the Receiver's perspective, there are no competing claims because the Investor Settlement operated to exhaust the policies as of February 8, 2019. For this reason, the Receiver will vigorously dispute the individual insureds' claims and object to any future payment of defense costs as detrimental to the Receivership Estate unless and until such costs are determined to be owed in addition to limits. The Receiver will object accordingly to any motion to intervene in the SEC Enforcement Action by the individuals. Now that the coverage actions have been filed, however, we believe all coverage-related disputes should be litigated in these actions and the Receiver will consent to intervention as necessary in the coverage action(s).

As alluded to above, the competing claims issue is not merely an inter-insured dispute. Questions involving competing access to policy limits cannot easily be answered until the policy limits are known. Given the complexity of coverage issues and the potentially diverging interests of typically-aligned parties on specific issues, we propose that the early motions practice include the parties' positions on related coverage issues. The goal of the early briefing is to promote efficiency, reduce unnecessary discovery and help streamline the parties' respective coverage positions by resolving as much of the coverage dispute as possible early on.

During prior discussions, the insurers have indicated that they are planning to file certain Rule 12 motions against the Receiver's complaint and have raised concerns that the competing claims briefing could unfairly extend the deadline for the Receiver's substantive response to such motions. To address those concerns, we propose harmonizing the current responsive pleading deadline of August 9 with the opening brief schedule, as set forth below—i.e., all responsive pleadings will now be due September 30.

In order to streamline the coverage disputes and tee up as many of the coverage issues as early as possible in a single forum, we propose the following:

1. Consolidate the Receiver's coverage action and the insurers' declaratory judgment action. Many of the individual insureds are already parties in the DJ. To the extent necessary, the parties can file amended pleadings on or before August 23, 2019.
2. Enter a stipulation allowing any additional individual insureds to intervene in the coverage action(s).
3. Move the court to enter the following briefing schedule:
 - a. Simultaneous opening briefs/Rule 12 motions to be filed by September 30, 2019.
 - b. Simultaneous responsive briefs to be filed by October 28, 2019.
 - c. Simultaneous reply briefs to be filed by November 18, 2019.

As always, we welcome your thoughts on the above. Please be advised that the Receiver reserves all rights and intends no waiver of any kind by way of this proposal.

Best regards,

Jason



Jason M. Gauss
Parsons Farnell & Grein, LLP
1030 SW Morrison Street
Portland, OR 97205
Phone: 971-244-9537
Email: jgauss@pfglaw.com
Website: www.pfglaw.com

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction

of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.

Jason M. Gauss

From: Jason M. Gauss
Sent: Friday, August 2, 2019 2:30 PM
To: 'Williams, John L.'
Cc: Borja, Mary; Cronic, Jason; peter.white@srz.com; jeffrey.robertson@sez.com; chris@chrispetermanlaw.com; jraissi@sflaw.com; lmeisenheimer@sflaw.com; dsprague@cov.com; ltucker@polsinelli.com; bob.mahler@polsinelli.com; dxi@aterwynne.com; rknuts@shertremonte.com; dpeterson@cosgravelaw.com; petranovichm@lanepowell.com; Michael E. Farnell; Stanley Shure; Salvatore Picariello; Kevin T. Sasse; tgreenfield@schwabe.com; Hess, Jordan A.; Franklin D. Cordell; Earle, William G.; Buckner, Bonnie
Subject: RE: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

All –

Counsel for the receiver and the insurers' counsel have had initial discussions about requesting a scheduling/case management conference before Judge Russo in the very near term. The parties agree that scheduling a case management conference is imperative in light of the competing claims being made by different insureds. During the scheduling/case management conference, the parties plan to address (1) consolidating the two coverage actions and (2) establishing a procedure for an early and efficient resolution on the competing claims issue(s) to determine each parties' respective entitlement to and/or obligations concerning the remaining limits of the 2014/2015 tower.

Counsel anticipate having a call next week to continue their discussions. Please let us know if you would like to participate on that call.

Best,

Jason



Jason M. Gauss
 Parsons Farnell & Grein, LLP
 1030 SW Morrison Street
 Portland, OR 97205
 Phone: 971-244-9537
 Email: jgauss@pfglaw.com
 Website: www.pfglaw.com

From: Williams, John L. [mailto:JLWilliams@cozen.com]
Sent: Friday, July 26, 2019 2:43 PM
To: Jason M. Gauss
Cc: Borja, Mary; Cronic, Jason; peter.white@srz.com; jeffrey.robertson@sez.com; chris@chrispetermanlaw.com; jraissi@sflaw.com; lmeisenheimer@sflaw.com; dsprague@cov.com; ltucker@polsinelli.com; bob.mahler@polsinelli.com; dxi@aterwynne.com; rknuts@shertremonte.com; dpeterson@cosgravelaw.com; petranovichm@lanepowell.com; Michael E. Farnell; Stanley Shure; Salvatore Picariello; Kevin T. Sasse; tgreenfield@schwabe.com; Hess, Jordan A.; Franklin D. Cordell; Earle, William G.; Buckner, Bonnie
Subject: RE: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

Jason:

Thank you for the below. As an initial matter, we agree that the insurers' declaratory relief action and the Receiver's action should be consolidated and that all insurance coverage issues existing between my clients and their insureds should be decided in the coverage action, not the SEC Enforcement action. I will confer with my clients regarding the remainder of your proposal, but we do not believe that filing motions on the merits of substantive coverage issues simultaneously with challenges to the pleadings is either appropriate or workable. We are, however, willing to work with the parties on developing a logical and efficient approach to the litigation. Perhaps a conference call will facilitate that. In the event the parties cannot come to agreement, we can request an early case management/scheduling conference with the court.

Relatedly, as you note below, we currently intend to file a Rule 12 motion on certain of the claims asserted in the Receiver's complaint. Please let me know when you are available to meet and confer as required by Local Rule 7-1.

Please note that I've added Frank Cordell of the Gordon Tilden firm to the distribution list. Mr. Cordell represents Brian Rice. Mr. Rice is not a party to the coverage actions, but I understand he may be seeking defense costs from Starr.

Feel free to call me if you have any questions or want to discuss.



John L. Williams
Cozen O'Connor
 999 Third Avenue, Suite 1900 | Seattle, WA 98104
 P: 206-224-1288 F: 866-537-7536
 Email | Bio | Map | cozen.com

From: Jason M. Gauss <JGauss@pfglaw.com>
Sent: Thursday, July 25, 2019 5:40 PM
To: Williams, John L. <JLWilliams@cozen.com>
Subject: FW: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

****EXTERNAL SENDER****

John –

Please see my email below. I inadvertently left out the “L” in your email address and it bounced back. My apologies.

Best,
 Jason

From: Jason M. Gauss
Sent: Thursday, July 25, 2019 5:36 PM
To: 'mborja@wileyrein.com'; 'jwilliams@cozen.com'; 'JHess@cozen.com'; 'BBuckner@cozen.com'; 'peter.white@srz.com'; 'jeffrey.robertson@srz.com'; 'chris@chrispetermanlaw.com'; 'jraissi@sflaw.com'; 'lmeisenheimer@sflaw.com'; 'dsprague@cov.com'; 'ltucker@polsinelli.com'; 'bob.mahler@polsinelli.com'; 'dxl@aterwynne.com'; 'rknuts@shertremonte.com'; 'dpeterson@cosgravelaw.com'; 'petranovichm@lanepowell.com'
Cc: Michael E. Farnell; 'Stanley Shure'; 'Salvatore Picariello'; Kevin T. Sasse; Kathleen A. Karan; 'Greenfield, Troy D.'

Subject: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - proposed request for briefing schedule

Counsel:

We write to meet and confer regarding an expedited briefing schedule on the issue of the priority of competing claims by the Receiver and certain individual insureds.

By way of background, the Receiver and the individual insureds dispute the extent to which the individual insureds are entitled to insurance proceeds for payment of incurred defense costs given the Receiver's February 8, 2019 settlement agreement with the Aequitas investors (the "Investor Settlement"). Pursuant to the Investor Settlement, the Receiver is legally obligated to pay \$30 million irrespective of the amount of any recovery the Receiver may obtain from its insurers. As such, the Investor Settlement constitutes covered loss sufficient to exhaust full policy limits for both the 2014/2015 and 2015/2016 policy periods.

The Receiver is informed that certain individual insureds will seek to intervene in the SEC Enforcement Action for the purpose of asserting competing demands for payment of policy proceeds from the Starr 2014/2015 policy. We understand Starr to maintain that approximately \$4.6 million remains on its 2014/15 policy. Similar claims were made by other individual insureds in the SEC Enforcement Action, in which the court allowed payment of no more than approximately \$10.4 million in defense costs. Those claims, however, were made and resolved prior to the Investor Settlement. The Receiver believes that all defense costs thus far incurred are owed by one or more insurers in addition to limits. That is, the burning limits provisions of the Catlin and Forge policies are not enforceable. If the Receiver is correct, the individual insureds' defense cost claims, past and future, do not compete with the Receiver's indemnity claim unless and until the insurers exhaust their limits by payment of indemnity. To the extent, however, the insurers contend that all defense cost payments erode policy limits, the individual insureds' requests for payment of defense costs compete with the Receiver's indemnity claim. In other words, from the Receiver's perspective, there are no competing claims because the Investor Settlement operated to exhaust the policies as of February 8, 2019. For this reason, the Receiver will vigorously dispute the individual insureds' claims and object to any future payment of defense costs as detrimental to the Receivership Estate unless and until such costs are determined to be owed in addition to limits. The Receiver will object accordingly to any motion to intervene in the SEC Enforcement Action by the individuals. Now that the coverage actions have been filed, however, we believe all coverage-related disputes should be litigated in these actions and the Receiver will consent to intervention as necessary in the coverage action(s).

As alluded to above, the competing claims issue is not merely an inter-insured dispute. Questions involving competing access to policy limits cannot easily be answered until the policy limits are known. Given the complexity of coverage issues and the potentially diverging interests of typically-aligned parties on specific issues, we propose that the early motions practice include the parties' positions on related coverage issues. The goal of the early briefing is to promote efficiency, reduce unnecessary discovery and help streamline the parties' respective coverage positions by resolving as much of the coverage dispute as possible early on.

During prior discussions, the insurers have indicated that they are planning to file certain Rule 12 motions against the Receiver's complaint and have raised concerns that the competing claims briefing could unfairly extend the deadline for the Receiver's substantive response to such motions. To address those concerns, we propose harmonizing the current responsive pleading deadline of August 9 with the opening brief schedule, as set forth below—i.e., all responsive pleadings will now be due September 30.

In order to streamline the coverage disputes and tee up as many of the coverage issues as early as possible in a single forum, we propose the following:

1. Consolidate the Receiver's coverage action and the insurers' declaratory judgment action. Many of the individual insureds are already parties in the DJ. To the extent necessary, the parties can file amended pleadings

on or before August 23, 2019.

2. Enter a stipulation allowing any additional individual insureds to intervene in the coverage action(s).
3. Move the court to enter the following briefing schedule:
 - a. Simultaneous opening briefs/Rule 12 motions to be filed by September 30, 2019.
 - b. Simultaneous responsive briefs to be filed by October 28, 2019.
 - c. Simultaneous reply briefs to be filed by November 18, 2019.

As always, we welcome your thoughts on the above. Please be advised that the Receiver reserves all rights and intends no waiver of any kind by way of this proposal.

Best regards,

Jason



Jason M. Gauss
Parsons Farnell & Grein, LLP
1030 SW Morrison Street
Portland, OR 97205
Phone: 971-244-9537
Email: jgauss@pfglaw.com
Website: www.pfglaw.com

Notice: This communication, including attachments, may contain information that is confidential and protected by the attorney/client or other privileges. It constitutes non-public information intended to be conveyed only to the designated recipient(s). If the reader or recipient of this communication is not the intended recipient, an employee or agent of the intended recipient who is responsible for delivering it to the intended recipient, or you believe that you have received this communication in error, please notify the sender immediately by return e-mail and promptly delete this e-mail, including attachments without reading or saving them in any manner. The unauthorized use, dissemination, distribution, or reproduction of this e-mail, including attachments, is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) is not a waiver of any attorney/client or other privilege.