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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 MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC; ROBERT J. JESENIK, BRIAN A. OLIVER; and N. SCOTT GILLIS, Defendants.	No. 3:16-cv-00438-JR RECEIVERSHIP ENTITY'S OPPOSITION TO NON-PARTY BRIAN RICE'S MOTION TO INTERVENE AND FOR LIMITED RELIEF FROM STAY TO PERMIT PAYMENT OF DEFENSE COSTS BY STARR INDEMNITY & LIABILITY COMPANY; DECLARATIONS OF STANLEY H. SHURE AND JASON GAUSS **(Request for Oral Argument)**

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CASES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Non-party Brian Rice's ("Rice") Motion to Intervene and for Limited Relief from Stay to Permit Payment of Defense Costs by Starr Indemnity & Liability Company (the "Motion") (Dkt. 732) asks this Court to allow Starr Indemnity & Liability Company ("Starr") to pay his Defense Costs incurred in connection with an April 23, 2019 letter from the United States Attorney's Office (Dkt. 734-1, "DOJ Letter") informing Mr. Rice "of a federal criminal investigation concerning fraud that occurred at Aequitas Commercial Finance and related entities." ("DOJ Investigation")

As discussed herein, Rice's Motion should be denied for the following reasons:

First, Rice claims that because he has allegedly incurred **Loss** in the form of **Defense Costs** that he has and will pay in the future in connection with the DOJ Investigation, the remaining $4.65 million in limits of liability of Starr's 2014 policy are payable solely to him and other similarly situated individual insureds. Rice takes this position despite the undisputed fact that the Receivership Entity already sustained **Loss** (in the form of its February 8, 2019 $30 million settlement of the Investor Claims) months before the DOJ Letter was sent to Rice. (Dkt. 732 at p. 4.) Rice's position is premised almost exclusively upon his interpretation of the "Priority-of-Payments" provision of the underlying Catlin Specialty Insurance Company's ("Catlin") policy (Catlin Policy § XIII),[1] which is incorporated up into the 2014 Starr policy. According to Rice, this provision mandates that payment of all **Loss** be made to individual insureds under **Insuring Agreement A**, irrespective of the presence of any **Loss** sustained by the Receivership Entity.[2] (*Id.*)

Rice's interpretation of the Priority-of-Payments provision is both unreasonable and disingenuous. Rice's Motion references only the *first* paragraph of the Priority-of-Payments

[1] A copy of Catlin's 2014 policy is attached as an exhibit to the Declaration of Angelo J. Calfo in support of Rice's Motion. (Dkt. 734-4, "Catlin Policy"). Words that are in bold are defined terms found in the various 2014/2015 and 2015/2016 policies, including Catlin's, where they are also set in bold type.

[2] The Catlin 2014 policy provides for payment of **Loss** under three (3) different Insuring Agreements. Insuring Agreement A applies to **Loss** sustained by **Insured Persons** (individual insureds) that is not indemnified by an **Insured Organization(s)**, such as the Receivership Entity here. Insuring Agreement B applies to **Loss** sustained by **Insured Persons** that is indemnified by an **Insured Organization(s)**. Insuring Agreement C applies solely to **Loss** sustained by an **Insured Organization(s)**. (*See infra* at pp. 8-9.)

provision, conveniently ignoring the *second* paragraph of the Priority-of-Payments provision. This was not an inadvertent oversight on Rice's part. The *second* (omitted) paragraph of the Priority-of-Payments provision unambiguously states that **Loss** is payable *only* under Insuring Agreement A *if* the **Named Organization** (here, Aequitas Holdings, LLC) informed the insurer in writing to pay only Insuring Agreement A **Loss** and *not* to pay **Loss** incurred by the **Insured Organization(s)** under Insuring Agreements B and C. Under Rice's interpretation of the *first* paragraph of the Priority-of-Payment provision, however, payment of Insuring Agreement A **Loss** is automatically mandated whenever **Loss** payable under Insuring Agreement B and/or C exists. Rice's interpretation renders the unambiguous language of the *second* paragraph of the Priority-of-Payment provision without force or effect. Thus, Rice's interpretation is unreasonable and cannot be adopted under Oregon law. *See Hoffman Constr. Co. v. Fred S. James & Co.*, 313 Or. 464, 473 (1992) (interpretation that creates a meaningless redundancy is unreasonable and will not be adopted.) Rice's silence on the second Priority-of-Payments provision – which undercuts his argument – is quite telling.

Second, even if this Court were constrained to consider only the *first* Priority-of-Payments provision in the Catlin policy in isolation (and it is not), Rice's interpretation of the provision fails because it ignores the plain language in Catlin's policy. On its face, the first Priority-of-Payments provision is applicable only "[i]f **Loss** is *incurred* that exceeds the *remaining Limit of Liability* for this Policy . . . ." Catlin Policy § XIII.C.1 (emphasis added). Yet, Rice concedes for purposes of this Motion that (a) the Receiver incurred **Loss** of $30 million when it entered into a settlement agreement to settle the Investors' Claims ("Investor Settlement"), (b) the Receiver incurred this **Loss** *before* Rice received the April 23, 2019 DOJ Letter (let alone before Rice incurred any allegedly covered **Loss**), (c) the maximum Limit of Liability under the Starr policy is $5 million; and (d) the combined **Loss** incurred by the Receiver and Rice exceed Starr's limit of liability, thus triggering the Priority of Payment provision. (*See* Shure Decl. ¶ 4.) These concessions are fatal to his Motion. By conceding that the Investor Settlement triggered the Priority-of-Payments

provision, there is no reason (and Rice offers none) why the Investor Settlement did not, *by itself*, completely exhaust Starr's remaining limits of liability when the Receiver had entered into the settlement on February 8, 2019. Put another way, if the Receiver's $30 million **Loss** for the Investor Settlement counts now, it has counted since February 8, 2019. Since the Receiver's **Loss** was incurred prior to Rice's alleged **Loss**, and the Receiver's **Loss** was large enough by itself to exhaust Starr's remaining limits of liability, it necessarily follows that the first Priority-of-Payments provision is inapplicable. By its terms, the Priority-of-Payments provision is not triggered where (as here) there are no *remaining limits of liability* under the Starr policy.

Third, to the extent Rice argues that Starr is obligated to pay for both his past and *future* defense costs, Rice's argument also ignores the plain language of the Priority-of-Payments provision. This provision is triggered only if, *inter alia*, "**Loss** is *incurred* . . . ." Catlin Policy § XIII.C.1 (emphasis added). Thus, the plain language of the policy refers to **Loss** in the past tense by using the term "incurred." *Casey v. Rotenberg (In re Kenny G. Enters., LLC*, 512 B.R. 628, 634 (C.D. Cal. 2014). There is no obligation under the policy, therefore, to pay for Rice's future **Loss**.

Fourth, there is no equitable basis for prioritizing coverage for Rice's liability for defense costs over the settlement of the Investors' Claims. While Judge Papak previously granted the motions of the individual defendants Robert Jesenik, Brian Oliver, and N. Scott Gillis for relief from the Receivership Order to permit a different insurer (Forge Underwriting) to pay the individual defendants' defense costs (*see* October 23, 2017 Opinion and Order, Dkt. 551), the Receivership Entity had not yet incurred a **Loss** in connection with the Investors' Claims at the time of Judge Papak's ruling. Thus, there were no competing claims for the insurance proceeds almost two years ago. Now that the Receivership Entity has incurred **Loss** by entering into Investor Settlement, Starr is obligated under **Insuring Agreement C** of the Catlin Policy to pay the Receivership Entity's **Loss**. Catlin Policy § I.C ("The **Insurer** shall pay on behalf of an **Insured Organization** all **Loss** which the **Insured Organization** becomes legally obligated to pay resulting from a **Claim** . . . first made against such Insured Organization during the Policy Period

. . . for a Wrongful Act."). In other words, Rice is not similarly situated to the individual defendants who previously moved for relief. Since there is an express contractual provision covering the Receivership Entity's **Loss,** there is no basis for equitable relief. *See, e.g., U.S. Airways, Inc. v. McCutchen*, 569 U.S. 88, 99-100 (2013) ("[I]f the agreement governs, the agreement governs . . . [and] [t]he agreement itself becomes the measure of the parties' equities"); *Arnett v. Bank of Am.*, 874 F. Supp. 2d 1021, 1035 (D. Or. 2012) (dismissing unjust-enrichment claim because a valid contract covered the services at issue and the defendant admitted to being a party to contract).

Fifth, even if this Court were to find that the Investor Settlement has not exhausted the Starr 2014/15 Policy, Rice has also failed to meet his burden to prove that he has incurred covered **Loss**. For example, the April 23, 2019 DOJ Letter simply notifies Rice that he is a "subject of a federal criminal investigation concerning fraud that occurred at Aequitas Commercial Finance and related entities." (*See* Dkt. 734-1). Rice has not cited to any provision in the Catlin policy, however, that identifies such a letter as a **Claim**. Indeed, Section III.F.5 of the policy mentions only such steps as a "Wells Notice, subpoena or 'target' letter . . ., formal order of investigation or other formal investigative document . . . ." And the Catlin policy contains a "**Delete Informal Investigations Coverage Endorsement**," which provides in relevant part that "it is hereby understood and agreed that Section II. **COVERAGE EXTENSIONS**, A. **Informal Investigations Coverage**, of the Policy is deleted in its entirety." (Dkt. 734-4 at p. 35 of 42.) Moreover, Rice has not established the reasonableness and necessity of the alleged defense costs he has incurred. Because it is Rice's burden to prove he has incurred covered loss, and he has failed to do so, the Court should deny the Motion on this basis as well.[3]

[3] Rice also argues that equity dictates that his defense-cost payments be prioritized over future defense-costs payments to the individual defendants. (Motion at 15.) The Receiver takes no position at this time on this specific argument. As for Rice's decision to file his Motion in the instant SEC Enforcement Action, as opposed to the Receiver's coverage action (Case No. 3:19-cv-00817-JR), the Receiver hereby incorporates by reference his arguments against MacRitchie's decision to file his Motion to Intervene in the SEC Enforcement Action. (*See* Dkt. 745 at pp. 9-10.) Rice should have filed his Motion in the Receiver's coverage action.

Finally, in opposing Rice's Motion, the Receivership Entity is not seeking to prevent him from having his "day in court" or doing so on a relatively expedited basis. However, the Receivership Entity wants to proceed in an orderly and comprehensive manner involving all the competing claims seeking coverage under the Starr 2014/2015 policy,[4] as well as the other insurers (Catlin and Forge) that issued 2014/2015 polices.[5]

The Receivership Entity, in conjunction with the insurers in the Insurers' Declaratory Relief Action, have proposed that the Insurers' Declaratory Relief Action and the Receivership Entity's Coverage Action be consolidated, an early scheduling conference be set with the Court, and in conjunction therewith, an expedited briefing schedule set so that the Receivership Entity's claim for coverage under the Starr policy, Starr's coverage defenses, and the competing claims of individual insureds for the same Starr proceeds can all be expeditiously heard and a determination(s) made regarding whether the Receivership Entity or the individual insureds are entitled to receive the remaining $4.65 million of limits of liability left in the Starr 2014/2015 Policy. (*See* Declaration of Jason Gauss ¶¶ 2-6.)

II. THE RECEIVERSHIP ENTITY NOW TURNS TO A DISCUSSION OF THE RELEVANT BACKGROUND FACTS RELEVANT BACKGROUND FACTS

A. The Receivership Entity Incurred $30 Million in Loss since the Last Stipulation

Rice's Motion is predicated in part on his assertion that, because other individual insureds affiliated with Aequitas management previously accessed "D&O" policy proceeds from the policies making up the 2014/2015 coverage tower (Catlin, Forge and Starr), he should also be

[4] The competing claims for the Starr policy proceeds include not only this Motion, but a recently filed motion to intervene and lift the receivership stay brought by Andrew MacRitchie. (Dkt. No. 745.) Olaf Janke has filed a joinder to both the MacRitchie and Rice Motions. (Dkt. No. 748.) The Receivership Entity is also informed and believes that individual defendants Robert Jesenik and N. Scott Gillis intend to bring additional motions to lift the receivership stay and also seek the remaining proceeds of the Starr Policy.

[5] The Receivership Entity has asserted in its related coverage action, Case No. 3:19-cv-00817-JR, that Catlin's and Forge's 2014-2015 policies might not be exhausted and that those insurers may still have continuing obligations to pay defense costs.

allowed to access the remaining policy proceeds (limits of liability), contained in the 2014/2015 Starr policy. However, Rice's Motion completely ignores that, since the fall of 2018 (Dkt. No. 660), which is the last time any individual insureds accessed 2014/2015 policy-year policy proceeds, the Receivership Entity entered into a $30 million settlement as of February 8, 2019 with the former Aequitas Investors settling the Investor Claims against the Receivership. (*See* Shure Decl., Exhibit 1).

The Receivership Entity, based upon conversations between its counsel and counsel for Starr, believes Starr is looking to have an orderly, expedited, and coordinated process for adjudicating the competing claims for the remaining $4.65 million of its 2014/2015 limits of liability. It is the Receivership Entity's understanding that Starr – and perhaps other 2014/2015 insurers such as Forge – will file papers in response to the Motion to this effect. (*See* Dkt. No. 744 (Starr's Statement Regarding MacRitchie Motion for Limited Relief.)

Separately, the June 24, 2019 reservation of rights letter issued to Rice from Starr's counsel, which is an exhibit to the Declaration of Angelo J. Calfo (*see* Dkt. No. 734-3) in support of the Motion, raises a fundamental question about the validity of Rice's assertion that coverage is triggered for him. The April 23, 2019 letter from the U.S. Attorney's Office to Rice (Dkt. No. 734-2) refers to Rice as a "subject" of a DOJ investigation. However, Starr fails to undertake any analysis whatsoever whether the April 23, 2019 letter from the DOJ qualifies as a "Claim" under the Starr policy.

This is a ***very*** substantial coverage question based upon the definition of "Claim," as it applies to investigations and is one that counsel for Rice agreed would, if required, be adjudicated along with a number of other issues in connection with expedited hearings anticipated in connection with the consolidation of the two coverage actions and the competing claims for the

Starr 2014/2015 policy limits between the Receivership Entity, on the one hand, and Rice, MacRitchie, Janke and other individual insureds, on the other hand.[6]

B. The Court, in Connection with the Motions of Jesenik, Oliver, and Gillis for Relief from Stay, Made Certain Rulings Germane to the Rice's Motion

Judge Papak's October 23, 2017 Opinion (Dkt. 551) addressed motions brought by the Individual Defendants in the SEC Civil Action to access the policy proceeds contained in the Forge 2014/2015 policy, and it contains at least two rulings highly germane to the instant Motion. First, Judge Papak ruled that the D&O policy proceeds are property of the estate (*Id.* at 8.) Second, Judge Papak also correctly ruled that the priority-of-payment provision in the Catlin policy, which applied to the Forge policy, applies only to simultaneously incurred Loss, and that because the Receivership Entity had not yet incurred Loss, such as a settlement, the Priority-of-Payments provision did not apply. (*Id*. at 8-9.) As described below, because the $30 million settlement between the Investors and the Receivership Entity qualifies as a Loss and exhausts the remaining $4.6 million Starr limits, and there was no competing Side A Loss, all of Starr's remaining limits are payable solely to the Receivership Entity.

C. The Receivership Coverage Action Seeks Recovery from Starr of the Policy Proceeds of its 2014/2015 Policy

The Receivership Coverage Action seeks recovery from Starr under its 2014/2015 policy for the Loss the Receivership Entity incurred as a consequence of it having entered into the February 8, 2019 settlement with the Investors to settle the Investors' Claims. See Receivership Coverage Action, Second Cause of Action, and pgs. 47-49 therein.[7]

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[6] For example, with respect to whether April 23, 2019 DOJ Letter qualifies as a "Claim" an insured, such as Rice, has the burden of establishing that a "Claim" as defined in the policy exists. The Receivership Entity does not have the benefit at this time of any articulation by Rice of its position regarding how the April 23, 2019 DOJ Letter qualifies as a Claim.

[7] Starr's primary coverage defense to the Receivership Entity's claim for coverage under its 2014/2015 policy is its "warranty letter" defense. This defense is asserted in the related Insurers' Declaratory Relief Complaint (Case 3:19-cv-00810-JR) as the Fourth Claim for Relief.

D. The Receivership Entity & the Insurers Are Trying to Put Together an Orderly Procedure to Expeditiously Determine Coverage under the Starr and Other 2014/2015 Policies and the Individual Insureds' Competing Claims

As reflected in the attached declaration of Jason Gauss, the Receivership Entity, along with the Insurers and the individual insureds, have been communicating with each other and are attempting to come up a procedure for an orderly and expeditious determination of the competing coverage claims at issue here. Currently, it is contemplated that such a procedure would occur in connection with the two pending coverage actions, which would be consolidated. The parties are also trying to come up with an expedited and streamlined process for determining the validity of these claims and which claim(s) are entitled to access the remaining $4.65 million in remaining limits under the Starr policy.

III. RELEVANT POLICY PROVISIONS

Catlin's 2014/2015 Private Equity Management Liability Insurance policy, the terms of which are incorporated up into the Starr 2014/2015 second-level excess policy, contains various terms and conditions that are relevant to Rice's Motion.

Specifically, the "Named Insured" in the Catlin 2014/2015 Policy is Aequitas Holdings, LLC. The Catlin policy also provides coverage under three (3) different Insuring Agreements. They are Insuring Agreements A, B, and C set forth below.

I. Insuring Agreements

A. **Insured Person Liability**

> The **Insurer** shall pay on behalf of any **Insured Person** all **Loss** for which the **Insured Organization** has not indemnified such **Insured Person**, resulting from a **Claim** . . . first made against such **Insured Person** during the **Policy Period** . . . for a **Wrongful Act**.

B. **Insured Organization Reimbursement**

> The **Insurer** shall pay on behalf of an **Insured Organization** all **Loss** for which the **Insured Organization** is permitted or required to indemnify any **Insured Person**, resulting from a **Claim** . . . first made against such **Insured Person** during the **Policy Period** . . . for a **Wrongful Act**.

C. **Insured Organization Liability**

> The **Insurer** shall pay on behalf of an **Insured Organization** all **Loss** which the **Insured Organization** becomes legally obligated to pay resulting from a **Claim** . . . first made against such **Insured Organization** during the **Policy Period** . . . for a **Wrongful Act**.

As reflected by a review of the three (3) Insuring Agreement, there is nothing within the language in Insuring Agreements A, B, or C that gives any priority to paying **Loss** incurred under one Insuring Agreement as compared to another.

Certain definitions contained in the Catlin are also germane to the matters put at issue in this motion.

F. "Claim" means any:

. . .

> 5. civil, criminal, administrative, or regulatory investigation of an **Insured** by any natural person or entity or any local, state, federal or foreign investigating authority commenced upon such **Insured's** receipt of a formal order of investigatory, or once such **Insured** is identified by name in a Wells Notice, subpoena or "target" letter (within the meaning of Title 9, 11.151 of the United States Attorney's Manual), formal order of investigation or other formal investigative document as a person or entity against whom or which a proceeding described in paragraphs 2., 3. or 4. above may be commenced . . . .

As reflected in the quoted portion of the "Claim" definition, an "investigation" that qualifies as a Claim exists only: (i) if investigation of an Insured commenced upon an Insured's receipt of a formal order of investigation; or (ii) once an Insured is identified by name in a "Wells Notice", subpoena or "target" letter, in a formal order of investigation or other formal investigation document as a person or entity against whom a proceeding may be commenced. Here, the April 23, 2019 DOJ Letter received by Rice does not fall within any of the enumerated items that qualifies as a Claim.

Other relevant defined terms include the various **Insured**-related definitions. They provide:

X. "**Insured**" means any:

1. **Insured Organization**; or

2. **Insured Person**.

Y. "**Insured Organization**" means the **Named Insured** . . . .

Z. "**Insured Person**" means any:

1. **Executive**;

2. **Employee** . . . .

The Catlin policy also specially defines **Loss**. It provides:

DD. "**Loss**" means **Defense Costs**, compensatory and other damages, settlements, judgments . . . .

In Section XIII.C of the Catlin policy, entitled "General Conditions", the following "Priority of Payments" provision is set forth:

C. Priority of Payments

1. If **Loss** is incurred that exceeds the remaining Limit of Liability for this Policy, the **Insurer** shall pay **Loss** under **Insuring Agreement** A. before paying any other **Loss**.

2. If **Loss** is incurred other than under **Insuring Agreement** A., the **Named Insured** shall have the right to direct the **Insurer** to delay payment of such Loss until such time as the **Named Insured** specifies. Any such direction by the **Named Insured** to delay or make payment of **Loss** shall be by written notice to the **Insurer**. The **Insurer's** liability under this Policy shall not be increased, and the **Insurer** shall not be liable for any interest, as a result of any such delayed **Loss** payment. Any such delayed **Loss** payment shall be available to the **Insurer** to pay **Loss** covered under **Insuring Agreement** A. Any **Loss** payment under **Insuring Agreement** A. by the **Insurer** out of funds withheld pursuant to this provision shall terminate the **Insurer's** liability to make a delayed **Loss** payment under any other **Insuring Agreement** by the amount of such payment.

Finally, the Catlin policy, per Endorsement 1, deletes the Informal Investigation coverage provided as one of the supplemental coverage in the Catlin policy. That endorsement provides:

Endorsement

Delete Informal Investigations Coverage Endorsement

This Endorsement Changes The Policy. Please Read It Carefully.

> In consideration of the payment of the premium for this Policy, it is hereby understood and agreed that Section II. **COVERAGE EXTENSIONS**, A. **Informal Investigations Coverage**, of the Policy is deleted in its entirety.
>
> All other terms, conditions and exclusions remain unchanged.

IV. OREGON'S PRINCIPLES OF POLICY INTERPRETATION

Oregon law governs with respect to the interpretation of the insurance policy. *Kabatoff v. Safeco Ins. Co. of Am.*, 627 F.2d 207, 209 (9th Cir. 1980). The interpretation of an insurance policy, like every other contract, is a question of law. *Timberline Equip. v. St. Paul Fire & Marine Ins. Co*., 281 Or. 639, 643 (1978).

The Oregon Supreme Court has explained that "the primary and governing rule of the construction of insurance contracts is to ascertain the intention of the parties." *Hoffman, supra,* 313 Or. at 469. Courts must determine the intention of the parties based on the terms and conditions of the insurance policy. *Id*. Courts begin with the wording of the policy, "applying any definitions that are supplied by the policy itself and otherwise presuming that words have their plain, ordinary meanings." *Tualatin Valley Hous. Partners v. Truck Ins. Exch.*, 208 Or. App. 155, 159-60 (2006); *see also Botts v. Hartford Acc. & Indem. Co.*, 284 Or. 95, 101 (1978) ("The insurance company may, of course, insert in its policy any definitions of [policy terms] it chooses but, in the absence of doing so, it must accept the common understanding of the terms by the ordinary member of the purchasing public.").

If the policy does not define the terms in dispute, the court must decide if the term at issue has a plain, unambiguous meaning. *Hoffman, supra*, 313 Or. at 470. If a term has only one plausible interpretation, then the term is interpreted in accordance with that unambiguous meaning. *Andres v. Am. Standard Ins. Co.*, 205 Or. App. 419, 423 (2006). If the disputed terms are susceptible to more than one plausible interpretation, however, then the Court examines the terms in the particular context in which that term is used in the policy and the broader context of the policy as a whole. *Hoffman, supra,* 313 Or. at 470. In doing so, it is important to note that a proposed

interpretation of a term that may be plausible in isolation is not reasonable, if it would render another term redundant or meaningless. *N. Pac. Ins. Co. v. Hamilton*, 332 Or. 20, 25 fn. 3 (2001). Indeed, courts presume that contracting parties intend that each word in a contract carries independent significance. *Hunters Ridge Condo. Assn. v. Sherwood Crossing, LLC*, 285 Or. App. 416 (2017). If the Court's consideration of the policy's context fails to resolve the ambiguity, then the Court will construe the term against the insurer, who drafted the policy. *Hoffman, supra*, 313 Or. at 470.

V. RICE'S MOTION SHOULD BE DENIED

A. Rice's Interpretation of the Priority-of-Payments Provision Ignores, Among Other Things, the Plain Language of the Policy and Judge Papak's October 23, 2017 Opinion and Order.

Although one would not know it from reading Rice's brief (*see, e.g.*, Motion at 9), there are actually *two* Priority-of-Payments provision paragraphs in Catlin's primary policy. We turn now to an interpretation of these two paragraphs.

1. Interpretation of the Two Priority-of-Payments Provisions

Again, the two "priority-of-payment" paragraphs at issue here provide as follows:

> C. Priority of Payments
>
> 1. If **Loss** is incurred that exceeds the remaining Limit of Liability for this Policy, the **Insurer** shall pay **Loss** under **Insuring Agreement** A. before paying any other **Loss**.
>
> 2. If **Loss** is incurred other than under **Insuring Agreement** A., the **Named Insured** shall have the right to direct the **Insurer** to delay payment of such Loss until such time as the **Named Insured** specifies. Any such direction by the **Named Insured** to delay or make payment of **Loss** shall be by written notice to the **Insurer**. The **Insurer's** liability under this Policy shall not be increased, and the **Insurer** shall not be liable for any interest, as a result of any such delayed **Loss** payment. Any such delayed **Loss** payment shall be available to the **Insurer** to pay **Loss** covered under **Insuring Agreement** A. Any **Loss** payment under **Insuring Agreement** A. by the **Insurer** out of funds withheld pursuant to this provision shall terminate the **Insurer's** liability to make a delayed **Loss** payment under any other **Insuring Agreement** by the amount of such payment.

(Catlin Policy, Section XIII, C.1 & 2.)

Under Oregon law, if a policy provision, such as the "priority-of-payment" provision here, is not ambiguous, the policy is then interpreted in accordance with its unambiguous meaning. *Hoffman, supra,* 313 Ore. at 469-70. Here the subject "priority-of-payment" provisions are precisely drafted so that they apply only in the specific circumstances delineated therein.

As reflected by the language used in the Priority-of-Payments provisions, they were drafted to address only situations involving the order in which **Loss** should be paid in circumstances where the combined **Loss** incurred by both an **Insured Organization** under Insuring Agreements B and/or C and an **Insured Persons** (individual insureds) under Insuring Agreement A exceed a policy's *remaining limits of liability*.

By its express terms, the first Priority-of-Payments paragraph is implicated *if, and only if,* **Loss** is incurred that exceeds the *remaining Limits of Liability*. The term "incurred," which is not defined in the Policy, commonly means "to become liable or subject to." *White v. Jubitz Corp.*, 345 Or. App. 62 (2008) (quoting Webster's Third New Int'l Dictionary 1146 (unabridged ed. 2002)), *aff'd* 2009 Or. LEXIS 500 (Or. Oct. 15, 2009). The term "priority" means "the quality or state of being prior; precedence in date or position of publication; superiority in rank, position, or privilege; or legal precedence in exercise of rights over the same subject matter. *Scannell v. JP Morgan Chase Bank, N.A. (In re Scannell),* 505 B.R. 523, 527 n.7 (Bankr. Az. 2014) Accordingly, it is only after there are competing claims for payment of **Loss** – one group of claims involving **Loss** incurred under Insuring Agreements B and/or C and the other group of claims involving **Loss** incurred under Insuring Agreement A – which results in combined **Loss** for all Insureds (here, **Insured Persons** and **Insured Organizations**, such as Aequitas Holdings and its subsidiaries) that is in excess of the policy's then-existing limits of liability that the Priority-of-Payments provision first comes into play. If these conditions are met, then and only then, the first Priority-of-Payments paragraph provides that **Loss** incurred by the **Insured Persons** is paid first, and once paid, the remaining balance of limits is then paid to **Insured Organization's Loss**.

The second Priority-of-Payments paragraph comes into play where there is **Loss** under Insuring Agreements B and/or C, and the **Named Insured** (Aequitas Holdings) elected to delay payment of such **Loss** so that only **Loss** under Insuring Agreement A, without consideration of the Insuring Agreements B and C **Loss**, is paid. To make this election, however, the **Named Insured** must provide *written notice to the Insurer*. Absent such prior written notice from the **Named Insured** stating that all **Loss** should be first paid to **Insured Persons** under Coverage A, the **Individual Insureds** do not have an unfettered right to payment of all policy proceeds. Here, no such written notice was ever made in connection with Rice (or any of the individual insureds), and Rice does not argue (let alone provide evidence) to the contrary.

Under the plain unambiguous language of the second Priority-of-Payments paragraph, neither Rice, nor any other **Insured Person**, has an unfettered right to recover all policy proceeds.[8] Nor does any such right to unfettered recovery of all policy limits of liability for **Insured Persons** exist under Insuring Agreement A pursuant to the first Priority-of-Payments paragraph.

The Priority-of-Payments provisions, by their terms, are not drafted to address (and have no bearing upon) situations where only **Insured Persons** have incurred **Loss** or where only an **Insured Organization(s)** has incurred **Loss**. As Judge Papak correctly stated in his October 23, 2017 Opinion & Order (Dkt. No. 551 at pp. 8-9), the Priority-of-Payments provisions had no bearing upon the insurer's obligation to pay covered **Loss** incurred by the **Insured Persons** where the Receivership Entity – though Claims were pending against it – had yet to *incur* **Loss**. Conversely, Judge Papak's interpretations applies equally to those situations where an **Insured Organization(s)** has incurred **Loss** and there is no competing **Loss** incurred by **Insured Persons**. In such circumstances, the "Priority-of-Payments" provision is inapplicable and the insurer is

[8] Indeed, Rice essentially takes the position that he is entitled to all policy proceeds, which would effectively make the subject management liability policies' promises to pay an **Insured Organization's Loss** under Insurance Coverage C illusory. The **Individual Insured**'s position, if adopted, would also transform the subject policies into standalone "Side A" policies which, by their terms, cover only directors and officers and do not provide "entity" coverage for an **Insured Organization**, a type of policy the Aequitas Entities did not purchase.

contractually obligated to pay all of the **Insured Organization(s)'** incurred **Loss,** subject to any coverage defenses that may apply**,** up through and including its remaining limits of liability.

In sum, the following principles can be adduced by reviewing the plain language of the Priority-of-Payments provisions and Judge Papak's interpretation of these terms:

- The first Priority-of-Payments paragraph is not triggered unless an **Insured Person** is competing with an **Insured Organization** over policy limits (*i.e.*, it is inapplicable if two or more **Insured Persons** are competing over policy proceeds, or where *only* an **Insured Person** is seeking payment and the **Insured Organization** has not yet incurred a **Loss**, as Judge Papak concluded in Dkt. No. 551.)
- The first Priority-of-Payments paragraph is inapplicable unless there are *remaining limits of liability* and the combined claims of an **Insured Person**'s incurred **Loss** and an **Insured Organization**'s incurred **Loss** exceed the remaining policy limits. Thus, if two or more insureds have **Loss** that does not exceed the remaining limits of liability, the Priority-of-Payment provision does not apply. Likewise, if there are no remaining policy limits, the provision does not apply because there is nothing that can be paid.
- The second Priority-of-Payments paragraph gives the **Insured Organization** the right (but not the obligation) to direct payments that it would normally receive from the insurer solely to the **Insured Persons**, under Insuring Agreement A, but only if it was provided by prior written instruction to this effect to the Insurer. This is the sole situation articulated in the Catlin policy whereby payments are made exclusively to **Insured Persons** under Insuring Agreement A, whereas, here, **Loss** is also owed to the **Insured Organization(s)**.[9] The Priority-of-Payments provisions

[9] Further, Rice's interpretation of the first Priority-of-Payment paragraph to the effect that all **Loss** is payable to **Insured Persons** in the face of a competing claims for coverage by the Receivership Entity under Insuring Agreement C (Motion at p. 4) would render illusory the second paragraph of the Priority-

are triggered, if at all, only where *Loss* has already been incurred (i.e., **Loss** that is anticipated in the future or hypothetical does not qualify.)

Here, the narrowly drafted Priority-of-Payment provisions incorporated up into the Starr excess policy are not triggered and therefore are inapplicable because the entire remaining Starr 2014/2015 policy limits of liability were exhausted when the Receivership Entity settled with the Investors for $30 million on February 8, 2019. In other words, as of February 8, 2019, the *remaining limits of liability* in the Starr policy should have been paid as **Loss** by Starr to the Receivership Entity, leaving no *remaining limits of liability* in the Starr policy available to Rice or other individual insureds.

2. Rice's Misconstrues the Priority-of-Payments Provisions

Rice cannot avoid this result by claiming that a new calculation of the policy's remaining limits of liability must be performed now that he has allegedly incurred a **Loss**. Again, since Rice concedes that the Receiver's $30 million **Loss** must be included when calculating whether there are any remaining limits of liability under Starr's $5 million policy, there is no reason (and Rice offers none) why the Receiver's **Loss** did not, *by itself*, completely exhaust Starr's remaining limits of liability when the Receiver entered into the settlement with the Investors on February 8, 2019. In other words, if the Receiver's **Loss** counts now, it has counted since February 8, 2019. Because the Receiver's **Loss** was incurred prior to Rice's alleged **Loss**, and the Receiver's **Loss** was large enough by itself to exhaust Starr's remaining limits of liability, it necessarily follows that the first Priority-of-Payments paragraph is inapplicable. *The Priority-of-Payments provisions are not triggered where, as here, there are no payments that could possibly be made*. While Rice may

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of-Payment. Again, the second paragraph involves the situation where the **Named Insured** (**Insured Organization**) with **Loss** payable under Insuring Agreement B or C, specifically designates that payments be made only to the **Insured Persons** under Insuring Agreement A. Simply put, there would be no need for a policy term providing for a writing from the **Insured Organization** to the Insurer to pay only under Insuring Agreement A under the second paragraph of the Priority-of-Payment if all **Loss** was already payable under the terms of the policy to Insured Persons under Insuring Agreement A, where **Loss** also existed payable under Insuring Agreements B or C.

wish that a new assessment of remaining limits of liability is performed each and every time another insured incurs a new **Loss**, there is no basis in the policy (or common sense) to perform such a calculation after an insured (here, the Receivership Entity) has already incurred a **Loss** sufficient to exhaust the remaining limits of liability.

Moreover, Rice's argument on page 5 of his brief that the first paragraph of the Priority-of-Payments provision is silent about the chronology of incurred **Loss**, and that the Receiver is improperly adding language to the Priority-of-Payments provision, is meritless. Even if the Court were to focus solely on the first Priority-of-Payments paragraph, the policy refers to **Loss** in the past tense by using the term "incurred." *Casey, supra*, 512 B.R. at 634. Moreover, the policy expressly provides that the Priority-of-Payments provisions are not implicated unless and until the parties have competing claims that will exceed the *remaining limits of liability*.

For example, the parties and this Court cannot determine if there are any remaining limits of liability available to pay Rice or other **Insured Persons** under Insuring Agreement A unless they determine the amount of previously incurred **Loss** that existed prior to an individual insured's claim, a calculation that is required to determine the amount of remaining limits of liability available under the policy. Determining how much of the policy limits are remaining necessarily requires consideration of what has already been incurred. *See, e.g.*, *People v. Tolbert*, 216 Mich. App. 353, 358 (1996) (defining "remaining as "that which is left over"); Merriam-Webster.com (defining "remaining" as "left over after a part has been destroyed, taken, used, or lost"). In other words, these required calculations necessarily contains a backward-looking element to determine the amount of remaining limits of liability. Finally, it is important to note that the Receiver's interpretation is also consistent with Insuring Agreement C, which provides, in pertinent part, that the "**Insurer** shall pay on behalf of an **Insured Organization** all **Loss** which the **Insured Organization** becomes legally obligated to pay resulting from a **Claim** . . . first made against such **Insured Organization** during the **Policy Period** . . . for a **Wrongful Act**."

3. The Case Law upon which Rice Relies in Support of His Priority-of-Payments Argument is Unavailing.

Not surprisingly, none of the cases Rice cites in support of his Motion contain a narrow priority-of-payments provision like the ones found in the Catlin policy. In *MF Global Holdings Ltd.*, 469 B.R. 177, 185 (Bankr. S.D.N.Y. 2012), for example, the Specialty D&O policy at issue contained the following priority-of-payments language:

> If the Insurer is obligated to pay Loss, including Defense Costs, under more than one INSURING AGREEMENT, whether in connection with a single Claim or multiple Claims, the Insurer will first pay any Loss payable under INSURING AGREEMENT (A) and, if the Insurer concludes that the amount of all Loss, including Defense Costs, is likely to exceed the Insurer's Limit of Liability, the Insurer shall be entitled to withhold some or all of any Loss payable under INSURING AGREEMENT (B)(l) or (B)(2) to ensure that as much of the Limit of Liability as possible is available for the payment of Loss under INSURING AGREEMENT (A).

The MF Global Holdings court interpreted this language as requiring that "the coverage potentially afforded to the Individual Insureds under Insuring Agreement A must be paid prior to the payment of any loss on behalf of the Debtors under Insuring Agreements B(1) or (B)(2)." *Id.*; *see also id.* at 193 (noting that the priority-of-payment "clarify[ies] that the coverage potential afforded to the Individual Insureds for non-indemnifiable losses must be paid prior to any payments made for matters implicating coverage potentially provided to the Debtors . . . ." *Id.* at 193.

Thus, unlike the present action, the priority-of-payments provision in *MF Global Holdings* dictated that the insurer must pay insured persons first whenever loss was incurred under more than one insuring agreement. Moreover, while the D&O policy in *MF Global Holding* gave the insurer discretion to withhold some or all of any Loss payable to the Debtor in order to pay Insured Persons if the insurer concluded the amount of Loss was likely to exceed the remaining limits of liability (*id.* at 185), no such contractual right is given to the Insurer or Insured Persons in the

Catlin Policy. To impose such a provision here would effectively rewrite the Priority-of-Payments provision, something that cannot occur under Oregon law. *Usinger*, *supra*, 280 Or. 751, 755 (1977) (court may not rewrite policies). Additionally, the language quoted above, by its express terms, presupposes that there are remaining limits of liability. The *MF Global Holding* decision does not remotely suggest that an insurer must pay an individual insured when there are no remaining limits of liability from which it could pay **Loss**.

SEC v. Morriss, 2012 U.S. Dist. LEXIS 64465 (E.D. Mo. May 8, 2012) is equally unavailing. As in *MF Global Holdings* (but unlike in Catlin's policy here), the priority-of-payments provision in *Morriss* "requires [the insurer] to first pay claims arising under Insurance Clause 1; other claims are payable only to the extent of the remaining limit of liability." *Id*. at *4. By contrast, Catlin's first Priority-of-Payments paragraph is implicated *if, and only if*, **Loss** is incurred that exceeds the *remaining Limits of Liability*.

A number of other cases upon which Rice relies do not even contain priority-of-payments provisions. *See, e.g., In re Petters Co.*, 419 B.R. 369 (Bankr. D. Minn. Aug. 31, 2009) (granting insurance companies' motion for relief from automatic stay and authorized them to make payments under the policies up to $7.5 million; no priority-of-payments provision discussion in case); *In re Cybermedica, Inc.*, 280 B.R. 12, 16-17 (Bankr. D. Mass. 2002) (court granted former director's motion to use policy proceeds to pay defense costs but case is silent about any priority-of-payments provision or issues related thereto); *In re Tierone Corp.*, 2012 Bankr. LEXIS 4608 (Bankr. D. Neb. Oct. 2, 2012) (court found that directors and officers were entitled to policy proceeds before any interest of the estate came into play; no priority-of-payments provision discussed in case); *Nat'l Century Fin. Enters. v. Gulf Ins. Co. (In re Nat'l Century Fin. Enters.)*, 2005 Bankr. LEXIS 1052, at *15 (Bankr. S.D. Ohio Jan. 10, 2005) ("[The policy] does not contain a 'priority of payments' section, listing who should take first or most in the event where claims to proceeds exceed the aggregate amount that can be paid under the Policy.")

Finally, the Receiver notes that it does not quibble with the general proposition (cited by Rice) that D&O policies are concerned with, *inter alia*, protecting directors and officers. But where there is specific policy language controlling the situation (such as here), there is no basis for resorting to general propositions in an effort to rewrite the policy so a new and different contract, one distinct from the bargain actually struck, is made. Here, the policy unambiguously states that the Priority-of-Payments provision upon which Rice relies is inapplicable where (as here) there are no remaining policy limits.

B. Rice's Argument that Starr is Obligated to Pay for Future Defense Costs Is Contrary to the Plain Language in the Priority-of-Payments Provisions

Rice also argues that Starr is obligated to pay not only for defense costs incurred after his receipt of the April 23, 2019 letter from the U.S. Attorney's office, but also for *future* defense costs. Rice appears to argue that the Policy's definition of **Defense Costs** – which includes "reasonable and necessary fees and expenses incurred in the defense or appeal of a Claim" – requires that the insurer reimburse an insured for fees that he or she will have to pay but that have not yet been incurred. (Motion at p. 10.) Even assuming Rice's interpretation of the term **Defense Costs** is correct, however, the specific provision Rice is attempting to invoke for relief – the Priority of Payments provisions – use the term "incurred." Thus, the plain language of the policy refers to **Loss** in the past tense by using the term "incurred." *Casey, supra,* 512 B.R. at 634. In other words, Rice is asking this Court to rewrite the policy language by striking the term "incurred," to require payment of future "unincurred" **Loss**, which is something it cannot do. *Usinger v. Campbell*, 280 Or. 751, 755 (1977) (court may not rewrite policies). There is no obligation under the policy therefore to pay for Rice's future **Loss**.

C. There is No Basis for Equitable Relief Where, as here, there is Governing Policy Language

As noted above, there is no equitable basis for prioritizing coverage for Rice's liability for defense costs over the Receivership Entity's settlement of the Investors' Claims. At the time Judge

Papak granted the individual defendants' motions to lift the stay and permit Forge Underwriting to pay their defense costs (Dkt. No. 551), the Receivership Entity had not yet incurred a **Loss** in connection with the Investor Claims. There were no competing claims by the Receivership Entity for insurance proceeds thereafter until about 18 months later when the February 8, 2019 settlement was executed. Now that the Receivership Entity has incurred **Loss** by entering into the $30 million settlement, however, Starr is obligated under **Insuring Agreement C** of the Catlin Policy to pay the Receivership Entity's **Loss**. (Catlin Policy, Section I.C ("The **Insurer** shall pay on behalf of an **Insured Organization** all **Loss** which the **Insured Organization** becomes legally obligated to pay resulting from a **Claim** . . . first made against such Insured Organization during the Policy Period . . . for a Wrongful Act.") In other words, Rice is not similarly situated to the individual defendants who previously moved for and obtained relief

Since there is an express contract provision covering this subject matter, there is no basis for equitable relief. *See, e.g., U.S. Airways, Inc., supra*, 569 U.S. at 99-100 ("[I]f the agreement governs, the agreement governs . . . [and] [t]he agreement itself becomes the measure of the parties' equities"); *Manufacturers' Finance Co. v. McKey*, 294 U.S. 442, 448-49 (1935) (courts cannot modify or disregard terms of a valid and enforceable contract, even when sitting in equity); *Lexington Ins. Co. v. General Acc. Ins. Co. of Am.*, 338 F.3d 42, 50 (1st Cir. 2003) (refusing to apply doctrine of equitable contribution to override explicit, unambiguous language in insurance policy). This is true under Oregon law as well. *See, e.g., Arnett v. Bank of Am., N.A.*, 874 F. Supp. 2d 1021, 1035 (D. Or. 2012) (dismissing unjust-enrichment claim "because a valid contract – the mortgage – covers the services at issue" and the defendant "expressly admitted being party to the contract"); *U.S. ex rel. Doughty v. Or. Health & Scis. Univ.*, 2017 U.S. Dist. LEXIS 55083, at *14-*15 (D. Or. Apr. 11, 2017) (no unjust enrichment claim where express contract defines parties' rights) (citations omitted); *Prestige Homes Real Estate Co. v. Hanson*, 151 Or. App. 756, 762 (1997) ("[T]here cannot be a valid legally enforceable contract and an implied contract covering the same services."). In fact, Oregon law has even extended the bar to instances "where the parties

have entered into an actual agreement, *whether express or implied*." *DCIPA, LLC v. Lucile Slater Packard Children's Hosp. at Stanford*, 868 F. Supp. 2d 1042, 1061 (D. Or. 2011) (emphasis added). Accordingly, Rice's request for equitable relief must be denied.

D. Rice Has Failed to Satisfy His Burden of Establishing that He Has Incurred Covered Loss.

Finally, Rice has also failed to establish that he has incurred covered **Loss**. Rice notes that he has received an April 23, 2019 letter from the U.S. Attorney's Office notifying him that he is a "subject of a federal criminal investigation concerning fraud that occurred at Aequitas Commercial Finance and related entities." (*See* Dkt. 734-1). Yet, Rice has not cited to any provision in the Catlin policy that identifies such a letter as a **Claim**. Indeed, Section III.F.5 of the policy mentions only such steps as a "Wells Notice, subpoena or 'target' letter . . ., formal order of investigation or other formal investigative document . . . ." Moreover, as noted above, the Catlin policy contains a "**Delete Informal Investigations Coverage Endorsement**," which provides in relevant part that "it is hereby understood and agreed that Section II. **COVERAGE EXTENSIONS**, A. **Informal Investigations Coverage**, of the Policy is deleted in its entirety." (Dkt. 734-4 at p. 35 of 42.) Rice has also not established the reasonableness and necessity of the alleged defense costs he has incurred.

On pages 8-9 of his Motion, Rice argues that neither the Receiver nor the Individual Defendants can or should reasonably dispute that the "claims made by the United States Attorney's Office" against him are covered Claims under the Starr policy. In support of this argument, Rice cites to the Stipulation and Order Granting Further Relief from Receivership Order to Permit Limited Payment on Defense Costs by Star (Dkt. No. 659.) However, nowhere in that stipulation is there a discussion that a letter notifying an individual that he or she is a "subject" of an investigation constitutes a Claim under the Policy. Indeed, such a discussion would have been unnecessary since the policy is clear that a civil lawsuit (in which Jesenik, Oliver, and Gillis were named as defendants) qualifies as a **Claim**. Moreover, Rice's reliance on this stipulation is highly

improper because it was entered into in connection with a mediation, and the Court's Order states on its face that, given "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 purposes whatsoever by any third parties . . . ." (Dkt. No. 659 at 7.)

Rice's reliance on Judge Papak's October 23, 2017 Opinion and Order (Dkt. No. 551) for the general proposition that "the individual defendants [have a] legitimate expectation that their insurers will cover their attorneys' fees and costs reasonably incurred in the course of defending this action" is also unavailing. Again, at the time Judge Papak issued his Opinion and Order, the Receivership Entity had not yet incurred any **Loss**, and there was no issue over whether there were sufficient remaining limits of liability to pay the individual defendants for their incurred **Loss**. Nor was there any dispute over whether the *SEC Enforcement Action* constituted a **Claim** under the policy. Accordingly, this Court should deny Rice's Motion.

VI. CONCLUSION

The Receivership Entity has a meritorious claim for coverage under the Starr 2014/2015 policy that will, as a practical matter, defeat Rice's attempt to access the Starr limits of liability if the Receivership Entity is given the opportunity to fully litigate its claim. This Motion should therefore be denied so that Rice, any other individual insureds seeking to access the Starr 2014/2015 policy limits, and the Receivership Entity's claims can all be fully and fairly adjudicated and the priority of those claims properly determined.

Dated this 21st day of August, 2019.

Respectfully submitted,

PARSONS FARNELL & GREIN, LLP

By: */s/ Michael E. Farnell*

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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 MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC; ROBERT J. JESENIK, BRIAN A. OLIVER; and N. SCOTT GILLIS, Defendants.	No. 3:16-cv-00438-JR DECLARATION OF JASON M. GAUSS IN SUPPORT OF THE RECEIVERSHIP ENTITY'S OPPOSITION TO NON-PARTY BRIAN RICE'S MOTION TO INTERVENE AND FOR LIMITED RELIEF FROM STAY TO PERMIT PAYMENT OF DEFENSE COSTS BY STARR INDEMNITY & LIABILITY COMPANY

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 Entity, 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 ("Receiver's Coverage Action"); and

(b) *Forge Underwriting Ltd. v. Greenspan*, 3:19-cv-810-JR, filed on May 23, 2019 ("Insurers' Declaratory Relief Action").

2. Attached as Exhibit A is a true and correct copy of a July 25, 2019 email from me to counsel of record in the Receiver's Coverage Action and Insurers' Declaratory Relief Action 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 certain individual insureds.

3. Attached as Exhibit B is a true and correct copy of a July 26, 2019 email from counsel for Starr Indemnity & Liability Company responding to my July 25, 2019 email and adding counsel for non-party Brian Rice to the distribution list.

4. 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 Brian Rice, requesting a meet and confer as described in the July 25, 2019 email.

5. Attached as Exhibit D is a true and correct copy of an August 14, 2019 email from me to counsel for the insurers and certain individual insureds, including *inter alia* counsel for Brian Rice, proposing a case management schedule to establish an orderly and expeditious determination of certain issues related to the competing insurance claims by the Receiver and certain individual insureds.

6. On August 9, 2019, August 15, 2019, and August 23, 2019 I participated in conference calls with counsel for the insurers and certain individual insureds, including *inter alia* counsel for Brian Rice. During those calls, the parties to the Receiver's Coverage Action and the Insurers' Declaratory Relief Action agreed to submit a stipulated motion to consolidate the two cases and request that the court schedule an early case management conference to address an orderly and expeditious determination of certain material issues related to the competing insurance claims. Although Mr. Rice is not currently a party to either the Receiver's Coverage Action or the Insurers' Declaratory Relief Action, his counsel advised on the August 23 call that he agrees the two coverage actions should be consolidated and is in favor of and plans to participate on an early case management conference, should one be scheduled.

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 21, 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

PARSONS FARNELL & GREIN, LLP
ATTORNEYS AT LAW

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EXHIBIT A
Page 2 of 2

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; dxl@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

PARSONS FARNELL & GREIN, LLP
ATTORNEYS AT LAW

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

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; dxl@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

PARSONS FARNELL & GREIN, LLP
ATTORNEYS AT LAW

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

COZEN O'CONNOR

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

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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

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

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on or before August 23, 2019.

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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

PARSONS FARNELL & GREIN, LLP
ATTORNEYS AT LAW

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: Jason M. Gauss
Sent: Wednesday, August 14, 2019 9:58 AM
To: 'Williams, John L.'; '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'; 'dxl@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'; Kathleen A. Karan; 'PeakeR@LanePowell.com'; 'Clifford, Dwain'
Subject: RE: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - follow up to August 9 meet and confer

Counsel –

Per the parties' prior discussions and in advance of tomorrow's follow-up meet and confer, please find below a proposed case management schedule. The proposal is being sent for discussion purposes only.

Best,
Jason

Proposed Case Management Schedule

A. Parties file Rule 12 motions in the Receiver's coverage action and the insurers' declaratory judgment action by August 16, 2019.

1. Response briefs to be filed August 30, 2019.

2. Reply briefs to be filed September 13, 2019.

B. File a stipulated motion to consolidate the Receiver's coverage action and the insurers' declaratory judgment action by August 23, 2019 and request a status conference with all counsel for August 26, 2019.

C. Status conference before Judge Russo on August 26, 2019.

D. Non-party individual insureds file motions to intervene by August 26, 2019.

E. To the extent necessary, parties file amended pleadings on or before September 4, 2019.

F. Early briefing on competing claims/priority of payments:

1. Simultaneous opening briefs to be filed by September 20, 2019 on the following issues:

a. Whether the insured has a covered loss under the policy's affirmative coverage grant;

b. Whether the priority of payment provision is triggered and, if so, how it applies to the payment of each insured's covered loss.

2. Simultaneous responsive briefs to be filed by October 4, 2019.

3. Simultaneous reply briefs to be filed by October 11, 2019.

-----Original Appointment-----
From: Jason M. Gauss
Sent: Friday, August 9, 2019 12:41 PM
To: 'Williams, John L.'; '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'; 'dxl@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'; Kathleen A. Karan; 'PeakeR@LanePowell.com'; Clifford, Dwain
Subject: Forge Underwriting Ltd. v. Ronald Greenspan/Aequitas (3:19-cv-00817-BR) - follow up to August 9 meet and confer
When: Thursday, August 15, 2019 10:00 AM-11:00 AM (UTC-08:00) Pacific Time (US & Canada).
Where: dial in below

Please use the following dial in:

Dial-in number: 469-941-0740
Conference code: 6304788168

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 Avenue, 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 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; 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.

No. 3:16-cv-00438-JR

DECLARATION OF STANLEY H. SHURE IN SUPPORT OF RECEIVERSHIP ENTITY'S OPPOSITION TO NON-PARTY BRIAN RICE'S MOTION TO INTERVENE AND FOR LIMITED RELIEF FROM STAY TO PERMIT PAYMENT OF DEFENSE COSTS BY STARR INDEMNITY & LIABILITY COMPANY

I, Stanley H. Shure, declare as follows:

1. I am the principal and owner of the Law Offices of Stanley H. Shure ("LOSHS"), which is the duly appointed insurance coverage counsel for the Receivership Entity. 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 Response to Interested Non-Party Brian Rice's Motion to Intervene and for Limited Relief from Receivership Order to Permit Payment of Defense Costs by Starr Indemnity& Liability Company (Dkt. No. 732) (hereinafter "Motion"), in which Mr. Rice is seeking payment of defense costs related to an April 23, 2019 letter he received from the U.S. Attorney's office ("DOJ Letter"). I am over eighteen years of age and otherwise competent to testify. I make this declaration based upon personal knowledge.

2. During the course of LOSHS's representation of the Receivership Entity, I have been intimately involved with the insurance coverage matters concerning the Receivership Entity, including those involving the 2014/2015 policy-year and 2015/2016 policy-year Management Liability Policies and the insurers issuing these policies, which include Forge, Starr, and Underwriters.

3. Attached hereto as Exhibit 1 is a true and correct copy of the February 8, 2019 agreement entered into by the Receiver and the authorized representatives of the Investors who as articulated therein made claims against the Receivership Entity ("Investor Settlement").

4. On August 15, 2019, I participated in a conference call with a number of other counsel, including but not limited to Franklin Cordell, counsel for non-party Brian Rice. During this call, Mr. Cordell advised me that, for purposes of Mr. Rice's Motion only, Rice is assuming that the Receiver incurred a covered loss of $30 million by entering into the Investor Settlement. Mr. Cordell also stated that it is his client's position that the Receiver's loss and Mr. Rice's loss for defense costs incurred in connection with the DOJ Letter exceed the remaining limits of liability under the Starr 20154/15 policy.

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 21st day of August 2019, at Los Angeles, California.

/s/ Stanley H. Shure
Stanley H. Shure

SETTLEMENT TERM SHEET

This Settlement Term Sheet is entered into by Ronald Greenspan, Receiver, in behalf of the Aequitas entities listed on the attached Schedule A (collectively referred to as the "Receivership Entities"), and on behalf of the investors in Aequitas associated funds and entities and represented in the following actions:

- *Ciuffitelli* et al. v. *Deloitte & Touche LLP*, et al., Case No. 3:16-cv-00-580 (D. Or.) ("Ciuffitelli Investors" – the *Ciuffitelli* action was filed as a putative Class action);
- *Albers* et al. v. *Deloitte & Touche LLP*, et al., Case No. 3:16-cv-02239 (D. Or.) ("Albers Investors");
- *Pommier* et al. v. *Deloitte & Touche LLP* et al., Case No. 16CV36439 (Mult. County Circuit Court); *Ramsdell* et al. v. *Deloitte & Touche LLP* et al., Case No. 16CV40659 (Mult. County Circuit Court); *Layton* et al. v. *Deloitte & Touche LLP* et al., Case No. 17CV42915 (Mult. County Circuit Court); *Cavanagh* et al. v. *Deloitte & Touche LLP* et al., Case No. 18CV09052 (Mult. County Circuit Court) (collectively, "Pommier Investors");
- *Wurster* et al. v. *Deloitte & Touche LLP* et al., Case No. 16CV25920 (Mult. County Circuit Court) ("Wurster Investors").

The Ciuffitelli Investors, Albers Investors, Pommier Investors, and Wurster Investors are collectively referred to as the "Investors." A list of the members of the Wurster Investors (Exhibit 1-a), Pommier Investors (Exhibit 1-b), and Albers Investors (Exhibit 1-c) is attached.

RECITALS

The Receivership Entities obtained a number of policies of liability insurance, including:

- XL/Catlin Specialty Insurance Company, Private Equity Management Liability Insurance, Policy No. MFP-686757-0714, Policy Period July 1, 2014 – July 1, 2015 (extended to Nov. 1, 2015), $5 million;
- Forge Underwriting (on behalf of PartnerRe Ireland Insurance Limited/dac), Excess Claims Made Private Equity Liability Insurance, Policy No. 0146ERUSA1400543, Period of Insurance July 1, 2014 – July 1, 2015 (extended to Nov. 1, 2015), $5 million excess of $5 million;

- Starr Indemnity & Liability Company, Starr Secure Excess Liability Policy, Policy No. SISIXFL21175714, Policy Period July 1, 2014 – July 1, 2015 (extended to Nov. 1, 2015), $5 million excess of $10 million;
- Forge Underwriting, London (Forge) 2015-2016 Primary Policy 001, Policy No. B046ERUSA1500543, Policy Period November 1, 2015 – November 1, 2016, $5 million;
- Lloyd's – Syndicate, London (Aspen Group) 2015-2016 First-Level Excess Policy 017, Policy No. B0146ERUSA1500643, Period of Insurance November 1, 2015 – November 1, 2016, $5 million excess of $5 million;
- Starr Indemnity & Liability Company, Starr Secure Excess Liability Policy, Policy No. SISIXFL21175715, Policy Period November 1, 2015 – November 1, 2016 (follow form policy), $5 million excess of $10 million.

These policies are collectively referred to as "the Policies." The insurers on these policies are collectively referred to as "Insurers."

On October 8, 2014, in *In re Aequitas Management, LLC*, SF-3959, a Securities and Exchange Commission proceeding, the SEC issued an Order Directing Private Investigation and Designating Officers to Take Testimony. Aequitas obtained a copy of the Order and forwarded it to the Insurers who provided coverage for the July 1, 2014 – July 1, 2015 policy period, as extended. Notice of Circumstance – Insd: Aequitas Holdings, LLC/Securities & Exchange Commission (June 26, 2015).

On February 26, 2015, the Consumer Finance Protection Bureau issued a Civil Investigative Demand to Aequitas Capital Management. (See also CFPB letter dated March 12, 2015). Aequitas forwarded the CID to the Insurers who provided coverage for the July 1, 2014 – July 1, 2015 policy period, as extended. Notice of Circumstance – Insd: Aequitas Holdings, LLC/Consumer Financial Protection Bureau (June 25, 2016).

On March 10, 2016, the SEC filed a complaint against Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc.; Aequitas Investment Management, LLC, Robert J. Jesenik, Brian Oliver, and Scott Gillis. *SEC v. Aequitas Management, LLC, et al*, No. 3:16-cv-00438-PK, currently pending in U.S. District Court for the District of Oregon ("SEC Civil Action"). On March 16, 2016, the court in the SEC Civil Action entered a stipulated order appointing Ronald Greenspan as the Receiver for the Receivership Entities.

As part of that order in the SEC Civil Action, the court entered a stay of litigation that stayed all civil proceedings involving the Receiver or the Receivership Entities. But

for the stay, the Investors are and have been prepared to commence actions against the Receivership Entities.

On October 31, 2016, the Receiver, through his lawyer, sent five notice of claim (potential claim) letters to the Insurers for the 2015-2016 policy year.

Thereafter, on August 10, 2017, September 11, 2017, and September 12, 2017 different groups of Investors made demands upon the Receivership Entities for damages (claims) in amounts exceeding $605 million. Some of the demands (claims) made by the Investors included claims for wrongful acts that arose from, were based upon, or were attributable to the same wrongful acts raised, or were interrelated to the wrongful acts raised in the SEC Order or the CFPB CID. Other of the demands (claims) made by the Investors included claims for wrongful acts that arose from, were based upon, or were attributable to the same wrongful acts raised, or were interrelated to the wrongful acts raised in the five October 31, 2016 notice of claim (potential claim) letters from the Receiver to the Insurers for the 2015-2016 policy year. Among other things, demands by Investors included, but were not limited to, claims for breach of fiduciary duties, aiding breaches of fiduciary duties, and abuse of vulnerable persons (elder abuse).

By letters dated August 30, 2017 and September 21, 2017, the Receiver notified the Insurers who provided coverage for the November 1, 2015 – November 1, 2016 policy period (subject to extension) of the claims made by the Investor groups in August and September, 2017. Those Insurers have disclaimed or denied coverage of the claims by the Investors.

Thereafter, on February 13, 2018, the Investors presented an offer (demand) to the Receivership Entities to settle, for $21 million, the claims covered by all of the policies of liability insurance. The offer noted that the amount of the demand was close to, but less than, the then-remaining remaining insurance limits. (On March 19, 2018, the Investors sent a supplemental letter indicating their willingness to explore a global settlement that included the individuals covered by the policies of liability insurance.) On May 4, 2018, the Investors sent a new demand letter stating that if the offer was not accepted by May 8, 2018, it would be deemed withdrawn and that Investors would instead be seeking a settlement of $45 million. The Receiver Entities notified the Insurers of the offer, but the Insurers refused to pay the offer to settle within policy limits.

Thereafter, the Receiver attempted to negotiate a settlement with the Investors of all claims arising in tort and including those claims covered by the policies of liability insurance.

The parties to this Settlement Term Sheet engaged in a mediation with the Insurers on August 22-23, 2018 and November 12, 2018. Louis D. Peterson served as mediator in those sessions and continues to serve in that capacity. This Settlement Term Sheet is intended to resolve certain claims and other issues between Investors and the Receiver.

SETTLEMENT TERMS

1. Settlement Amounts and Allocation. In consideration of the releases to be provided in Settlement Agreements, the Receiver, on behalf of the Receivership Entities, agrees to pay a total of $30 million to Investors. That payment will be allocated among the plaintiff groups as follows:

a. $20,910,000 to the Ciuffitelli Investors (69.80%);
b. $3,660,000 to the Albers Investors (12.20%);
c. $3,240,000 to the Wurster Investors (10.80%); and
d. $2,190,000 to the Pommier Investors (7.20%).

The payment to each of the different groups of Investors (the "Settlement Payment") will be made by check payable to the applicable Lawyers' Trust Account in the case of the Albers, Wurster, and Pommier Investors; and to an account designated by the court in the Class action in the case of the Ciuffitelli Investors. Each Settlement Payment amount will be incorporated into the appropriate Settlement Agreement.

2. Releases in the Settlement Agreements.

a. Each Settlement Agreement will provide for the release of (1) all claims that such Investors have against the Receivership Entities sounding in tort, including common law torts (including, but not limited to fraud, negligence, breach of fiduciary duty, and aiding breach of fiduciary duty) and statutory torts (e.g., claims arising under federal and state securities laws and elder abuse statutes); and (2) all claims that such Investors have against the Receivership Entities covered by the duty to indemnify provided by the Policies.

b. Notwithstanding any other provision of this Settlement Term Sheet, the release in each Settlement Agreement will exclude any claim sounding in contract (express, implied-in-fact, implied-in-law), and any claim arising from a right to share in any distribution of assets from a Receivership Entity (e.g., ORS 63.625).

3. Court Approval in SEC Civil Action of Settlement Agreement(s) as Condition Precedent of Payment; Class Action. Each Settlement Agreement will provide that payment of the Settlement Payment is expressly conditioned upon the approval of the court in the SEC Civil Action of the terms of such Settlement Agreement, to include a *pro tanto* claims bar. Accordingly, each Settlement Agreement will provide that, within a reasonable time following the execution of each, the Receiver will file in the SEC Civil Action a motion for approval of such Settlement Agreement. Such Investors will cooperate with the Receiver as is reasonably necessary in connection with the motion for approval. In addition, the Settlement Agreement with the Ciuffitelli Investors also will provide that payment of the amount of the Settlement Payment designated to be received by it is expressly conditioned upon the approval of the court in the Class action of the terms of such Settlement Agreement, and upon such other orders as the court might make in that action.

4. Payment of the Settlement Payment. Each Settlement Agreement will provide that, subject to occurrence of the conditions provided in paragraph 3, the Receiver will make the Settlement Payment provided in such Settlement Agreement within 21 days of the Receiver's receipt of a payment from an Insurer. Each Settlement Agreement will provide that to the extent that the amount of the payment received is less than the balance of all the Settlement Payments owed under all the Settlement Agreements, the Receiver will pay a pro rata portion of the Settlement Payments owed using the percentages provided in paragraph 1. Each Settlement Agreement will provide that before the Receiver makes any distributions to Investors as compensation for claims sounding in contract (express, implied-in-fact, implied-in-law) or for claims arising from a right to share in any distribution of assets from a Receivership Entity (e.g., ORS 63.625), the Receiver will pay the balance of the Settlement Payment owed under such Settlement Agreement.

5. Confidentiality. Except as provided herein, no party shall disclose the terms of this Settlement Term Sheet to any non-party without the consent of the other parties; provided the Receiver may share this Settlement Term Sheet with the insurers as a part of the mediation referred to in the Recitals.

[signatures appear on following pages]

SCHWABE WILLIAMSON & WYATT PC

By: _____

Troy Greenfield
1420 Fifth Avenue, Suite 3400
Seattle, WA 98101
Email: tgreenfield@schwabe.com
Telephone: (206) 407-1581

Authorized Representative for the Receiver and Receivership Entities

Dated: February 8, 2019

MILLER NASH GRAHAM & DUNN LLP

By: _____

Bruce L. Campbell
Seth H. Row
3400 US Bancorp Tower
111 SW Fifth Avenue
Portland, Oregon 97204
Email: bruce.campbell@millernash.com
Email: seth.row@millernash.com
Telephone: (503) 224-5858

Authorized Representative for Wurster Investors

Dated: February 7, 2019

ESLER STEPHENS & BUCKLEY, LLP

By: _____
John W. Stephens
121 SW Morrison Street, Suite 700
Portland, Oregon 97204
Email: esler@eslerstephens.com
Telephone: (503) 223-1510
Authorized Representative for Pommier Investors

Dated: February 8th, 2019

LARKINS VACURA KAYSER LLP

By: _____
Christopher J. Kayser
121 SW Morrison Street, Suite 700
Portland, Oregon 97204
Email: cjkayser@lvklaw.com
Telephone: (503) 222-4424
Authorized Representative for Pommier Investors

Dated: February 5, 2019

STOLL BERNE LLP

By: _____
Timothy S. DeJong
209 SW Oak Street, Suite 500
Portland, OR 97204
Authorized Representative for the Cuiffitelli Class

Dated: February ____, 2019

PEIFFER ROSCA WOLF ABDULLAH CARR & KANE

By: _____
Joseph C. Peiffer
201 St. Charles Avenue, Suite 4610
New Orleans, LA 70170
Email: jpeiffer@prwlegal.com
Telephone: (504) 586-5259
Authorized Representative for Albers Investors

Dated: February ____, 2019

STOLL BERNE LLP

By:_____
Timothy S. DeJong
209 SW Oak Street, Suite 500
Portland, OR 97204
Authorized Representative for the Cuiffitelli Class

Dated: February ____, 2019

PEIFFER ROSCA WOLF ABDULLAH CARR & KANE

By:_____
Joseph C. Peiffer
201 St. Charles Avenue, Suite 4610
New Orleans, LA 70170
Email: jpeiffer@prwlegal.com
Telephone: (504) 586-5259
Authorized Representative for Albers Investors

Dated: February 4, 2019

DAREN A. LUMA, PLLC

By: _____

Daren A. Luma
75 South Broadway, Suite 400
White Plains, NY 10601
Email: dluma@lumalegal.com
Telephone: (914) 304-4051

Authorized Representative for Albers Plaintiffs

Dated: February 4, 2019

EXHIBIT A

1	Aequitas Enterprise Services, LLC	27	Aequitas Capital Opportunities Fund, LP
2	Aequitas Hybrid Fund, LLC	28	Aequitas Capital Opportunities GP, LLC
3	Aequitas Income Opportunity Fund II, LLC	29	ACC Holdings 5, LLC
4	Aequitas Private Client Fund, LLC	30	ACC Funding Series Trust 2015-5
5	Aequitas Income Opportunity Fund, LLC	31	Aequitas Corporate Lending, LLC
6	Aequitas ETC Founders Fund, LLC	32	Aequitas Wealth Management, LLC
7	Aequitas Enhanced Income Fund, LLC	33	Aequitas Wealth Management Partner Fund, LLC
8	Aequitas WRFF I, LLC	34	Hickory Growth Partners, LLC
9	Aequitas Income Protection Fund, LLC	35	Aspen Grove Equity Solutions, LLC
10	Aequitas EIF Debt Fund, LLC	36	Aequitas International Holdings, LLC
11	ACC C Plus Holdings, LLC	37	Aequitas Asset Management Oregon, LLC
12	ACC Holdings 2, LLC	38	AAM Fund Investment, LLC
13	ACC Funding Trust 2014-2	39	Aequitas Senior Housing Operations, LLC
14	Aequitas Peer-To-Peer Funding, LLC	40	Executive Citation, LLC
15	CarePayment Holdings, LLC	41	Executive Falcon, LLC
16	CarePayment, LLC	42	APF Holdings, LLC
17	CP Funding I Holdings, LLC	43	Aequitas Partner Fund, LLC
18	Campus Student Funding, LLC		
19	ACC F Plus Holdings, LLC		
20	ACC Holdings 1, LLC		
21	ACC Funding Trust 2014-1		
22	ML Financial Holdings, LLC		
23	Motolease Financial, LLC		
24	Unigo Student Funding, LLC		
25	The Hill Land, LLC		
26	Aequitas Senior Housing, LLC		

EXHIBIT 1-a to TERM SHEET

***Wurster* Group**

WALTER WURSTER, individual

WALTER WURSTER, trustee for the WALTER W. WURSTER REVOCABLE TRUST

RONALD INOUYE, trustee for the WALTER W. WURSTER IRREVOCABLE TRUST

ZAM CAPITAL GROUP, LLC, a California limited liability company

KEITH BARNES, individual

CUSTOM STAMPING, INC., a Nevada corporation

LEE JOHNSON, individual

LEE JOHNSON, as trustee for the LEE JOHNSON TRUST

PAUL SYLVAN, individual

PAUL GULICK, individual

PAUL GULICK, as trustee for the GULICK FAMILY TRUST

SHARON BARNES, individual

JULIE SCHMITZ, individual

JEFF JOHNSON, individual

KENYON CLARK and KATHY CLARK, husband and wife

PETER DAFFERN and ZOE DAFFERN, husband and wife

MIGUEL A. ELIAS, as trustee for THE DECLARATION OF TRUST OF MIGUEL A. ELIAS

JA 309 INVESTORS, LLC, a Michigan limited liability company

THOMAS E. MULFLUR, individual

THOMAS E. MULFLUR and CYNTHIA R. MULFLUR, husband and wife

THOMAS E. MULFLUR and CYNTHIA R. MULFLUR, as co-trustees for the THOMAS E. MULFLUR AND CYNTHIA R. MULFLUR REVOCABLE LIVING TRUST

NB 309 INVESTORS, LLC, a Michigan limited liability company

WILLIAM RUH, as trustee for the WILLIAM J. RUH TRUST

JAMES SAIVAR and LYNN SAIVAR, as cotrustees for the JAMES AND LYNN SAIVAR FAMILY TRUST

BENJAMIN SIETSEMA, individual

KENT THOMPSON, individual

THE JERRY L. & MARCIA D. TUBERGEN FOUNDATION

JAMES M. WRIGHT, individual

ADAM ZUFFINETTI, individual

MICHAEL J. ZUFFINETTI and TERI DEA ZUFFINETTI, husband and wife

STEVEN J. SHARP, individual

PATRICIA SHARP, as trustee for the STEVEN SHARP IRREVOCABLE 2012 TRUST

PARTHA SAROTHI KUNDU, individual

AXEL H. FLICHTBEIL, individual

STEWART BOGEN, as trustee for the BOGEN FAMILY TRUST

ART DORFMAN, individual

DEAN STEIN, individual

DENNIS A. JOHNSON, individual

EDWIN G. HATTER, JR., individual

GARY and JANET LITTLE, husband and wife

GARY R. MIEHE, individual

HUGH DOUGLAS YEARSLEY, individual

JAMES MAILANDER, individual

JEFFREY STUART, individual

JOHN CLARK MORZELEWSKI, individual

KENNETH A. MEYER, as trustee for the KENNETH A. MEYER FAMILY TRUST

LAWRENCE C. RAY, individual

LEON MCKENDRICK, as trustee for the LEON AND JEANNIE MCKENDRICK FAMILY TRUST

PHYL A. RAY, individual

MAXIS INSURANCE CO. LTD.

MICHAEL SEMPRINI, as trustee for the MICHAEL SEMPRINI LIVING TRUST

PAULA KIMBLE, individual

PUGET SOUND INVESTMENTS, LLP, an Arizona limited liability partnership

RAJAN PAREKH, individual

RAJAN V. and JILL C. PAREKH, husband and wife

ROBERT L. SUGAR, individual

ROSE MARIE LE CHEMINANT, individual

SANDY AND ANN COLEMAN, as co-trustees for the COLEMAN FAMILY TRUST

SCOTT LOVETT, individual

STEPHEN PATYK, individual

STEVEN J. LABAND and LAUREL KUBBY, as co-trustees for the STEVEN J. LABAND
AND LAUREL KUBBY TRUST

THOMAS BERETVAS, individual

DAVID S. NICHOLES, as trustee for the LOIS J. NICHOLES TRUST

CHERYL HOLT, individual

MICHAEL MCDONALD, individual

LUKE TUBERGEN, individual

ROBERT BEAUCHAMP and LYNDA BEAUCHAMP, as co-trustees for the ROBERT BEAUCHAMP FAMILY LIVING TRUST

REBECCA LECHEMINANT, individual

ERIK HENDRIK VOLKERINK, individual

TONY G. ENG, individual

TONY G. ENG and CLARISA I. ENG, husband and wife

EXHIBIT 1-b to TERM SHEET

Pommier, Ramsdell, and Layton Groups

ABDOU, SHAREEF, as trustee of SHAREEF ABDOU FAMILY TRUST

AKEJ INVESTMENTS, LLC, an Arizona limited liability company

APPIGNANI, LOUIS, an individual

AVNY, DAVID and SUSAN, as trustees of THE AVNY FAMILY TRUST

BAKER, SUN SUQIN, an individual

BEARDSLEY, MARY ANN and WARREN, as individuals

BEARDSLEY, MARY ANN, an individual

BEARDSLEY, MARY ANN, as trustee of MARY ANN BEARDSLEY ROTH IRA

BEARDSLEY, WARREN, an individual

BEARDSLEY, WARREN, as trustee of the WARREN BEARDSLEY ROTH IRA

BENNETT, MATTHEW abo Betty T Bennett, Self Directed IRA

BERT, JEFFREY KENT as trustee of JEFFREY KENT BERT IRA

BHARGAVA, ARJUN, an individual

BHARGAVA, ARVIND & ANU, as individuals

BHARGAVA, SHIVANI, an individual

BRANDT, KATHLEEN, as trustee of KATHLEEN BRABDT ROLLIVER IRA

BROWN, JORDAN, as trustee of DR. JORDAN BROWN TRUST SALEM EYE CLINIC PENSION PLAN POOLED ACCOUNT

BURRILL, SUSANNE, as trustee of SUSANNE A BURRILL REVOCABLE LIVING TRUST

CALABRO, ANTHONY, an individual

CALABRO, ANTHONY, as trustee of ANTHONY CALABRO IRA Anthony

CARTER, DONALD, as trustee for TRUST B UNDER SKOUGARD LIVING TRUST

CAVANAUGH, JOHN, as trustee of the LJM TRUST

CERF, LAWRENCE, as trustee of LAWRENCE E. CERF REVOCABLE TRUST

CHEN, ANTHONY, an individual

CHEUNG, MARY, as trustee for MARY SAU-WAN CHEUNG TRUST

CHEW, THOMAS, as trustee of THOMAS CHEW ROLLOVER IRA

CHIANG, LUCY and TANG, CHOK, as individuals

CHIAPELLA, LYNN, as trustee of the LYNN G. CHIAPELLA IRA

CHOI, WINGLIK, as trustee of WINGLIK CHOI IRA

CHOU, JULIE, as trustee of JULIE CHOU ROLLOVER IRA

CHU, CHEUK, as trustee of CHEUK WAH ROLLOVER IRA

CHU, RAYMOND and **PEGGY** as trustees of CHU FAMILY TRUST

CHU, SALLY, as trustee of SALLY HUI-LING CHU IRA

CHUI, PETER and ROSEANNA, as trustees of the CHUI TRUST

COMEY, DIANE, as trustee of DIANE COMEY ROLLOVER IRA

CURRY, JOHN W. III, an individual

DAVID and **CARRIE SCHULMAN FAMILY FOUNDATION, INC.**

DE GRAAF, CLARE, as trustee of CLARE DE GRAAF IRA

DUGHI, GARLAND and BRUCE, as individuals

DUTT, SOURAV, as trustee of SOURAV DUTT ROLLOVER IRA

ETHERIDGE, BARBARA, an individual

FAN, ELLEN, as trustee of ELLEN FAN ROTH IRA

FANG, HAO and **MAO, YIPEI JENNIFER** , as trustees of FANG MAO FAMILY TRUST

FOUTCH, ERNEST P., as trustee of ERNEST P. FOUTCH IRA

FOUTCH, MICHELLE Y., as trustee of MICHELLE Y. FOUTCH IRA

GUO, ZHONG JIU, as trustee of ZHONG GUO ROLLOVER IRA

GUPTA, AMAR and PADMINI, as trustees of the STARBRIGHT TRUST

GUTIERREZ, LUIS, an individual

HANSEN, CRAIG, as trustee of CRAIG HANSEN IRA
HAO, SZUMING and SU, HUA-YU, as trustees of HUA-YU SU AND SZUMING HAO 1996 FAMILY TRUST

HARIHARA, MOHAN, as trustee of MOHAN HARIHARA ROLLOVER IRA

HSUING, LAWRENCE, as trustee of LAWRENCE K HSUING ROLLOVER IRA

JACKMAN, M. STEPHEN, as trustee of M. STEPHEN JACKMAN IRA

JAYAKUMAR, VASANTHA and NATARAJAN, JAYAKUMAR, as individuals

JHAM, AROON and **SAPRU, NISHA,** as individuals

JING, TAO and XU, HONG, as individuals

JOHNSON, ROBERT, an individual

KARNAVY, CHARLES and **KAN, TIN-NA,** as individuals

KRESS, LESLYE, an individual

KRESS, LESLYE, as executor of the ESTATE OF EILEEN STONE

KUNG, ELLEN B. and HIN LOK, as individuals

KUO, MANNA , as trustee of the MANNA N. KUO ROLLOVER IRA

LABANZ, LEEANNE, as trustee of STILES-NICHOLSON FOUNDATION

LAM, JENNIFER and **LE, HANG,** as trustees of Le and Lam Dental Corp MPPP

LAYTON, CHARLES and MARTHA , as individuals

LIANG, GONG-SHYA, an individual

LIAO, CHIAWEI , as trustee of CHAIWEI LIAO ROLLOVER IRA

LIEM,CHEN FEE, as trustee of the CHEN FEE LIEM ROLLOVER IRA

LIM, VIVIAN, as trustee of VIVIAN LIM ROLLOVER IRA

LIU, DICK, as trustee of DICK LIU ROLLOVER IRA

LUCZO, STEPHEN J., as trustee of STEPHEN J. LUCZO REVOCABLE TRUST
LUDERS, JURGEN and REBECCA, as trustee of REBECCA A. LUDERS TRUST Rebecca A. Luders

MA, BING FONG, an individual

MA, KINNIE, as trustee of KINNIE MA ROLLOVER IRA

MATTSON-HAMILTON, MICHELLE and TREVOR, as individuals

MENOCAL, STEFANIE and RAIMUNDO, as individuals

NG, WING FOON, as trustee of the WING FOON NG ROLLOVER IRA

NICHOLSON, DAVID, as trustee of DAVID J.S. NICHOLSON LIVING TRUST

NORRIS, WENDI, as trustee of WENDI M. JACKMAN NORRIS 2009 GIFT TRUST

OPPENHEIM, AL, as trustee of the OPPENHEIM/SLAGLE FAMILY TRUST

PATEL, CHETNA JAYENDRA, as trustee of the CHETNA PATEL ROLLOVER IRA

PERNG, SHUN-YEE, an individual

POMMIER, KENNETH and ISABELLA, as trustees of KENNETH W. POMMIER & ISABELLA B. POMMIER FAMILY REVOCABLE TRUST

RAHNAMA, MANI, as trustee of MANI RAHNAMA IRA

RAHNAMA, NAZANIN, an individual

RAHNAMA, NIMA, as trustee of NIMA RAHNAMA IRA

RAJAGOPALAN, CHITHRA, as trustee of CHITRA RAJAGOPALAN ROLLOVE IRA

RAMSDELL, CHARLES, as trustee of CHARLES T. RAMSDELL IRA

RAMSDELL, CHARLES, as trustee of CHARLES T. RAMSDELL ROTH IRA

RAMSDELL, JOAN, as trustee of the JOAN LESLIE RAMSDELL ROTH IRA

REYES, TERESA and MARIBELL, as individuals

REYES, TERESA, as trustee of 2013 TERESA O. REYES FAMILY TRUST

SADANA, SUMIT, as trustee of SADANA FAMILY TRUST

SALTA, STEVEN, an individual

SAMANTA, ARINDAM, an individual

SCHNUTE, WILLIAM JR., as trustee of WILLIAM CHARLES SCHNUTE, JR. ROLLOVER IRA

SCHULMAN, DAVID, an individual

SCHULMAN, DAVID, as trustee of the DAVID B. SCHULMAN PROFIT SHARING PROGRAM

SHINOHARA, MASARU, as trustee of MASARU SHINOHARA

SHINOHARA, MASARU, as trustee of MASARU SHINOHARA REVOCABLE LIVING TRUST

SHRAGER, ARI and LILY, as trustees of ARI & LILY SHRAGER LIVING TRUST

SMITH, R. TOM SMITH and MARCELLA J., as trustees of the SMITH FAMILY TRUST
SMITH, R. TOM, as trustee of R. TOM SMOTH IRA
SO, LING LIN, as trustee of LING SO ROLLOVER IRA

STERLING, FRANCIS, as trustee of F.L. STERLING TRUST

STERN, EVE and **IVERSON, DON**, as individuals
STONE, RICHARD, as trustee of BLACKNER STONE & ASSOCIATES DEFINED BENEFIT PLAN

SURBER, LORETTA, as trustee of LORETTA SURBER IRA

TAI, CHRISTINE, an individual

TAI, JAMES, as trustee of JAMES C. TAI ROLLOVER IRA

THOMAS, MICHAEL and WEN CHI, as trustees of THOMAS FAMILY TRUST

TONG, LESTER and JANICE, as trustees of TONG FAMILY TRUST

TONG, SHUI-MAN, as trustee of SHUI-MAN TONG ROLLOVER IRA

TONG, SHUI-MAN, as trustee of SHUI-MAN TONG TRUST
TRINH, CUONG and **NGUYEN, THANHQUY**, as trustees of the TRINH FAMILY TRUST

TUNG, JASON, as trustee of the JASON TUNG ROLLOVER IRA
TUNG, JULIA and TUNG, AMELIA, as trustees of WAI AND JULIA W. TUNG 1991 REVOCABLE TRUST AND **TUNG, JULIA**, an individual

TURNER, ILARIA and **PINK, JOHN**, as individuals

UNIFAM, L.P, Leeanne Labanz as managing member

VU, MINH DIEU, as trustee of MINH DIEU VU ROLLOVER IRA

WATFORD INVESTMENTS, LLC a Texas limited liability company

WHITMAN, RANDALL M. and DEBORAH A. JTWROS

WHITNEY, ALAN, as trustee of ALAN L. WHITNEY IRA

WILHELM, BRUCE, an individual
WONG, PAK CHING and BETTY, as trustees of PAK CHINGWONG AND BETTY WONGLIVING TRUST
WORKMAN, SIDNEY and ALENE, as individuals

WU, ERICA, as trustee of ERICA WU ROLLOVER IRA

YANG, JUN, an individual

ZHENG, JOE and **SUN, YINGJU,** as trustees of JOE ZHENG AND YINGJU SUN FAMILY TRUST

ZHOU, ZHEJING, as trustee of ZHEJING ZHOU ROTH IRA

ZHOU, ZHEJING, as trustee of ZHEJING ZHOU ROTH IRA

EXHIBIT 1-c to TERM SHEET

***Albers* Group**

HARRY and UNNA ALBERS, husband and wife

KAREN ANDERSON, individually

JEAN ANDREIKO, individually

JODY ANDREIKO-ODEGARD, individually

SCOTT ANDREIKO, individually

FRANCIS and BETTY FLAIM, as trustees for the FLAIM REVOCABLE TRUST

JOANN FLAIM, as trustee for THE BRADLEY DAUGHTER 2006 REVOCABLE LIVING TRUST

STEPHEN FLAIM, as trustee for FLAIM 1998 FAMILY TRUST

STEPHEN FLAIM, individually

STEPHEN FLAIM, as trustee for the JOHN G. WATSON FOUNDATION

LARRY GOLDSTEIN and NANCY WIEDLIN, husband and wife

PAUL HEATH, individually

THOMAS and SARAJEAN HERRMANN, husband and wife

COLLEEN HOBLIT, individually

DAVID JACKSON, individually

GREG LEWIS and MARY JACKSON, husband and wife

ROBERT MANLY, individually

ANNE MCCAMMON, individually

DONALD MCGEE, individually

WILLIAM OLHAUSEN, individually

WILLIAM AND DONA OLHAUSEN, as trustees for the OLHAUSEN FAMILY TRUST

CAROL PAQUETTE, individually

GABRIELA PARENTE, as trustee for the M. GABRIELA PARENTE FAMILY TRUST

BEATRICE RECTOR, as trustee for the BEATRICE RECTOR REVOCABLE LIVING TRUST

RICK REHAN, as trustee for THE REHAN FAMILY 1990 TRUST,

MICHAEL STEVENSON, individually

ANNE and GEORGE STOLL, husband and wife

WILLIAM TYSON, individually

GREG VANDUZER, individually

RAHEL ABRAHAM, individually

VIRGINIA ADAMS, individually

RICHARD ADER, individually

PAUL AND ERNESTINE ALLEN, husband and wife

PETER ANDERSON and SUSAN ROESELER, husband and wife

LEIGH ANNE HADLEY and KARL BALZER, husband and wife and each individually

JAMES BARBER, as trustee for the JAMES AND EMMA BARBER MARITAL TRUST,

STEVEN BEAIRD, individually

GREGORY and BARBARA BERGERE, husband and wife

MURALDHARAN BHOOPATHY and AMUDHA SUNDARAMURTHY, husband and wife

ROSANNA BOULTON, individually

PHIL BOULTON, individually

STEVE BOYD, individually and as trustee for the SABELLA BOYD FAMILY TRUST

LAURA BRACKENRIDGE, individually

JOHN BRILL, individually

ALVAN BROWN, individually

EDWARD BULGER, individually

EDWARD BULGER, as trustee for the BULGER LIVING TRUST

DAN and SUSAN BUREAU, husband and wife

JOEL BUSHMAN, individually

KIM CALDWELL, individually

ANGELA CHEEK, individually

DAVID CHEEK, individually

KEVIN CHEN, individually and as trustee for JOY CAPITAL, LLC, a Washington limited liability company

KEVIN CHEN, as trustee for LIAN SHAO

CHU-TIEN AND YI-JEN CHIA, husband and wife

SHEUNG CHOW and WING-HUNG YAN, husband and wife

JEFFREY and RONNI COHEN, husband and wife

KARRA CRAWFORD, individually

TIMOTHY CUSTER, individually

ALEXANDER MEMORAN DADGAR, individually and as assignee of ARMON DADGAR

ALI DADGAR and FARIBA RONNASI, husband and wife

ERNEST and PAIGE DANTINI, husband and wife

TUAN DAO, individually

JUDY DELAROSE, individually

KAM and PARISA DERAKSHANI, husband and wife

GURCHARAN K. DHALIWAL, individually

BARBARA DOWNS, individually

DAVID EIDE, individually

PEGGY EIDE, individually

GARY and KATHLEEN ETCHELLS, husband and wife

KATHLEEN ETCHELLS, individually

RUDOLPH FALLER, as trustee for the RUDOLPH A. FALLER LIVING TRUST UA 7/13/1993,

CYRENA FALLER, as trustee for the CYRENA FALLER TRUST

VINCENT B. FERNANDES, individually

JUDY FLEXER, individually

KEN FLEXER, individually

DAVID FONTANA, individually

RYAN FOX, individually

LINDA GILSON, individually

JOHN GONNELLA, individually

CAROL GONNELLA, individually

JOHN GOULD, JR., as executor for the ESTATE OF JOHN V. GOULD

SALLY GOULD, individually

TERRANCE GRIER, as trustee for the TERRANCE M. AND DIANE M. GRIER TRUST 12/27/2010

DAVID WHITNEY and RUTH WHITNEY, as trustees for the EDITH GROBE FOUNDATION

BRUCE HALE, individually

JOHN HALLER, individually

JOHN HALLER, as trustee for the FRANKLIN M. HENRY MARITAL TRUST,

DAVID HARRIS, individually

JAMES HARVEY, trustee for the HARVEY REVOCABLE TRUST

DONALD HAUGE, individually

MAX ANTON HERDE, individually

CHARLES EDWARD HUGGINS III, individually

ROLLIE HUNT, as trustee for STRAND HUNT CONSTRUCTION

DOLORES JOHANSEN, as trustee for the JOHANSEN FAMILY SURVIVORS TRUST U/A DTD 2/01/1993 AND JOHANSEN CREDIT SHELTER TRUST U/A DTD 2/01/1993,

ARASH KABIR and SANA PARSIAN, husband and wife

ARMIN KABIR, individually

ARMIN KABIR and MINA LOGHAVI, husband and wife

VICTORIA and GREGORY KARPSTEIN, husband and wife

KELLY KIM, individually

ROSS and LORRELLE KLINGER, husband and wife

ROBERT KLINK, individually

PATRICIA KLINK, individually

ROBERT AND RENEE KOCH, husband and wife and as trustees for the RENEE C.KOCH LIVING TRUST AND ROBERT H. KOCH LIVING TRUST,

KEVIN KORPI, individually

WEN LACASSE, individually

CLIFFORD AND MYRNA LAYCOCK, as trustees for the CLIFFORD AND MYRNA LAYCOCK FAMILY TRUST,

ANN ELIZABETH LECLAIR, individually

MARK LECLAIR, individually

IRVING LEVINSON, individually

ROBERT LEVINSON, individually

MECHELE LIMBAUGH, individually

TONY LIMBAUGH, JR., as power of attorney for his deceased parents, TONY LIMBAUGH SR. and LOLA LIMBAUGH,

JAMES LIVERMORE, individually

BRAD LUNDBERG, individually

DEBORAH MALONEY, individually

SEAN and JONI MAYER, husband and wife

KARIN MCGINN, individually

JOHN MCGINN, individually

JOHN MCKENNA, individually

CATHERINE MOELLER, individually

EDWARD MOORE, individually

MEHRDAD NAEINI and SHAHRZAD AMINI, husband and wife

JOSEPH and KELA NESS, husband and wife

MARY NICHOLSON, individually

DONALD NORTON, individually

HEIDI OWENS, individually

MARY T. PETERSON, as trustee for the MARY T. PETERSON REVOCABLE TRUST

SUDHA PIDIKITI and VIKRAM YEMULAPALLI, husband and wife

EMILY QUAN, individually

DONALD RAMSTHEL, individually

LALEH RAMSTHEL, individually

ANTHONY RAVANI, individually

EDNA READ, individually

PATRICIA REBNE, individually

JOHN REDL, individually

OWEN REESE JR, individually

DAN REINER, individually

JERI MORGAN REINER, individually

ALLEN and SUSAN REITER, husband and wife

SUSAN REITER, as trustee for the JOSEPH E. FELDMAN TRUST FBO UA 6/15/1984

ALLEN RHYASEN, individually

RAYMOND RINGERING, individually

FARIBA RONNASI, individually

SUSAN SABELLA, individually

KEN SCHREIER, individually

BEHROUZ SHOKRI, individually

BEHROUZ and FARIBA SHOKRI, husband and wife

GARY SIMPSON, individually

DAVID and POLLY SKONE, husband and wife

LAKSHMI SRINIVASAN and K.S. VENKATRAMAN, husband and wife

CHRISTOPHER STAHL, individually

TIM STARKEY, individually

JAMES and DEVON SURGENT, husband and wife

DEVON SURGENT, individually

MARLA and GEORGE SURGENT, husband and wife

LAURIE SYLLA, individually

SITA VASHEE, individually

VIJAYKUMAR VASHEE, individually and as trustee for the Vashee Family Limited Partnership

DONALD VERKEST, individually

LINDA WALL, individually

DAVID WHITNEY, as trustee for the DAVID AND RUTH WHITNEY FAMILY

TRUST

DAVID WHITNEY, individually

PHILIP WIDMER, individually

MAUREEN WIMBISCUS, trustee for the MAUREEN A. WIMBISCUS TRUST

KYLE YAKABU, individually

FAROKH and GEETI YAZDANI, husband and wife

MARY T. PETERSON, as trustee for the MARY T. PETERSON REVOCABLE TRUST,

CHRISTOPHER J.N. TOWNER, as director for GALENA INVESTMENTS, INC., a Barbados Corporation

LESLIE FERRONE, individually

RICHARD and JENNIFER MONAHAN, as trustees for the MONAHAN LIVING TRUST

DONALD SEARCY, as trustee for the ELIZABETH ANNE TRUST

KATHLEEN SEARCY, as trustee for the KATHLEEN M. SEARCY TRUST