

Excess Blended “Wrap” Policy, reference 576/MNA831400 (the “Excess Policy”)⁴ (collectively, the “Policies”), and would show:

I. INTRODUCTION

1. Underwriters seek a declaration that R. Allen Stanford, James M. Davis, Laura Pendergest-Holt, Gilberto Lopez, Jr., and Mark Kuhrt (collectively, the “Management Defendants”) are not entitled to coverage under the D&O Policy on grounds that their Loss results from Claims against them arising from acts of Money Laundering, as defined in the D&O Policy, and fraudulent or criminal acts. Underwriters further seek a declaration that Thomas Raffanello and Bruce Perraud (collectively the “Document Destruction Defendants”) are not entitled to coverage under the D&O Policy on grounds that the alleged wrongful act upon which their claims are based occurred after a change of control of Stanford.

2. On February 17, 2009, the Securities and Exchange Commission (“SEC”) filed suit in this Court against Stanford, Davis, Pendergest-Holt, and three Stanford-related companies,⁵ alleging that they had orchestrated a fraudulent, multi-billion dollar investment scheme centering on an \$8 billion Certificates of Deposit (“CD”) program. At the SEC’s request, U.S. District Judge Reed O’Connor entered a temporary restraining order, froze the Defendants’ assets, and appointed a receiver to marshal those assets. The court-appointed receiver later described the Stanford Companies as a “fraud machine” powered by sales of worthless CDs.

3. Subsequent to the seizure of the Stanford Companies, on June 18, 2009, Defendants Stanford, Pendergest-Holt, Lopez, and Mark Kuhrt were indicted in the U.S.

⁴ A true and correct copy of the Excess Policy is attached as Exhibit C.

⁵ The companies include Antigua-based Stanford International Bank (SIB), Houston-based broker-dealer and investment adviser Stanford Group Company (SGC), and investment adviser Stanford Capital Management.

District Court for the Southern District of Texas on charges of wire fraud; mail fraud; conspiracy to commit mail, wire, and securities fraud; and conspiracy to commit money laundering. Additionally, Stanford and Holt have been indicted on charges of conspiracy to obstruct an SEC investigation and obstruction of an SEC investigation. On June 18, 2009, James Davis was also charged in a criminal information with conspiracy to commit mail, wire, and securities fraud; mail fraud; and conspiracy to obstruct an SEC investigation. The alleged purpose of Davis' and the conspirators' scheme and artifice was to "solicit and obtain billions of dollars of investors' funds through false pretenses, representations and promises, all in order to obtain substantial economic benefit for themselves and others." Raffanello and Perraud were also indicted in the Southern District of Florida on May 7, 2009, for destroying Stanford business records with an intent to obstruct an SEC investigation.

4. Although Underwriters issued the D&O Policy to Stanford Financial Group Company ("SFG"), Stanford Group Company, and their affiliated entities under which they agreed to indemnify Directors and Officers against Loss related to certain types of Claims made during the Policy Period, the D&O Policy specifically excludes coverage of Loss resulting from any Claim "arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) of Money Laundering," among other things. The D&O Policy's broadly definition of Money Laundering includes the conduct alleged as the basis for the charges against the Management Defendants.

5. On August 27, 2009, Defendant Davis, the former Chief Financial Officer of SGC, waived indictment and entered a guilty plea in open court to three felony criminal counts—including mail fraud; conspiracy to commit wire, mail, and securities fraud; and

conspiracy to obstruct an SEC investigation.⁶ During his allocution, Davis testified under oath that he and the other Management Defendants had engaged in various acts that meet the definition of Money Laundering under the D&O Policy. These acts include bribery, concealment of fraudulent personal loans to Allen Stanford, and the execution of bogus real estate transactions designed to inflate artificially the value of SIB's asset portfolio.

6. Specifically, Davis' sworn plea agreement states that the Management Defendants created a "massive Ponzi scheme whereby CD redemptions ultimately could only be accomplished with new infusions of investor funds."⁷ The sworn plea agreement further states that each of the Management Defendants intended to "solicit and obtain billions of dollars in investors' funds through false pretenses, representations and promises, all in order to obtain substantial economic benefit for themselves."⁸ The sworn plea agreement also states that Stanford, Davis, Lopez, and Kuhrt created false financial statements "upon which CD investors routinely relied in making their investment decisions, in effect, created an ever-widening hole between the reported assets and actual liabilities, causing the creation of a massive Ponzi scheme."⁹ These acts constitute Money Laundering as defined by the D&O Policy. In operating a massive ponzi scheme, the Management Defendants engaged in Criminal Conduct.¹⁰ This Criminal Conduct allowed these Defendants to obtain Criminal Property—a benefit derived from or as a result of or in connection with Criminal Conduct.¹¹ The

⁶ Appendix to Notice of Filing at 21-22, *SEC v. SIB* (N.D. Tex. Sept. 28, 2009) (hereinafter "Davis Plea Transcript") (A transcript of the Davis plea colloquy was filed by the Receiver in *SEC v. Stanford Int'l. Bank*, Cause No. 3:09-CV-0298-N (N.D. Tex. Feb. 17, 2009) (hereinafter "*SEC v. SIB*").

⁷ Davis Plea ¶ 17(n).

⁸ See Information at 13-14, 25, 27, *United States v. Davis*, Criminal No. H-09-cv-335 (S.D. Tex. June 18, 2009).

⁹ Davis Plea ¶ 17(n).

¹⁰ Art. III, cl. K.

¹¹ Art. III, cl. J.

Management Defendants' acts of concealment, disguise, conversion, transfer, or removal of Criminal Property constitute Money Laundering.

7. The Document Destruction Defendants, for their part, are alleged to have directed and participated in destruction of SFG documents and records in violation of this Court's Receivership Order. As such, Underwriters seek a declaration that their claims under the D&O Policy are excluded because the alleged wrongful acts which are the basis for their claim occurred after a majority of the voting rights in the parent company were shifted from Allen Stanford to the Stanford Receiver.¹² Underwriters likewise seek a declaration that the Document Destruction Defendants are not entitled to coverage under the PI Policy because, in allegedly destroying SFG's documents and records to hide them from the SEC, they were not performing Professional Services—defined as “activities allowed under the law and regulations governing services provided . . . by the Assureds . . . which are performed for or on behalf of any client or customer.”¹³

8. Additionally, Underwriters seek a declaration that the Management Defendants are not entitled to coverage under the PI Policy on grounds of various other exclusions within that policy, including an exclusion for claims brought by government entities.

II. PARTIES

9. Underwriters subscribing to the D&O Policy for the Policy Period August 15, 2008 to August 15, 2009, which include Syndicates 2987, 2488, 2623/623, 1866, and Arch Specialty Insurance Company. Underwriters are insurers authorized to do business in the State of Texas.

¹² The D&O Policy defines the Parent Company as SFG and/or SGC.

¹³ PI Policy, Art. II, cl. L.

10. Underwriters subscribing to the PI Policy for the Policy Period August 15, 2008 to August 15, 2009, which include Syndicates 2987, 2488, 1084, 1886, 4000, 1183, and Arch Specialty Insurance Company. Underwriters are insurers authorized to do business in the State of Texas.

11. Underwriters subscribing to the Excess Policy for the Policy Period August 15, 2008 to August 15, 2009, which include Syndicates 2987, 2488, 1886, 1084/1274, 4000, and Arch Specialty Insurance Company. Underwriters are insurers authorized to do business in the State of Texas.

12. R. Allen Stanford ("Stanford"), a citizen of the United States and of Antigua, was the chairman of the board and sole shareholder of SIB and the sole director of SFG. Mr. Stanford may be served at the Federal Detention Center in Houston ("FDC Houston"), P.O. Box 526255, Houston, Texas 77052; 1200 Texas Avenue, Houston, Texas 77002.

13. James M. Davis ("Davis"), a citizen of the United States and a resident of Baldwin, Mississippi, was a director and Chief Financial Officer of SFG and SIB. Mr. Davis may be served at 1140 County Road 165, Baldwin, Mississippi 38824.

14. Laura Pendergest-Holt ("Holt"), a citizen of the United States and a resident of Baldwin, Mississippi, was the Chief Investment Officer of SFG and a member of SIB's board of directors. Mrs. Holt may be served at 410 East Clayton Street, Baldwin, Mississippi 38824.

15. Gilbert Lopez, Jr. ("Lopez"), a citizen of the United States and a resident of Spring, Texas, was the Chief Accounting Officer of SFG. Mr. Lopez may be served at 21802 Dimmett Way, Spring, Texas 77388.

16. Mark Kuhrt ("Kuhrt"), a citizen of the United States and a resident of League City, Texas, was the Global Controller of Stanford Financial Group Global Management, an

affiliate of SFG and SIB. Mr. Kuhrt may be served at 178 Loch Lomond Dr., League City, Texas 77573.

17. Thomas Raffanello (“Raffanello”), a citizen of the United States and a resident of Coral Gables, Florida, was the Director of Security for SFG. Mr. Raffanello may be served at 1049 Malaga Ave., Coral Gables, Florida 33134.

18. Bruce Perraud (“Perraud”), a citizen of the United States and a resident of Weston, Florida, was a Global Security Specialist for SFG. Mr. Perraud may be served with process at 787 Heritage Drive, Weston, Florida 33326.

III. JURISDICTION AND VENUE

19. This Court has jurisdiction to grant the requested relief pursuant to 28 U.S.C. §§ 1331, 1367, 2201, 2202, and quasi in rem jurisdiction under 28 U.S.C. § 1655, without limitation. This Court has assumed exclusive jurisdiction over the assets, monies, securities, properties and the legally-recognized privileges of the Stanford Entities, and has appointed a Receiver over those entities.¹⁴

20. Moreover, this Court has asserted jurisdiction over the Policies, and this declaratory action is to remove a hindrance upon that property pursuant to 28 U.S.C. § 1655. Accordingly, venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b)(2), (d), and § 1655, without limitation.

¹⁴ Order Appointing Receiver ¶ 1 [Docket No. 10]. Citations to documents identified by docket number refer to pleadings and orders on file in *SEC v. SIB*.

IV. FACTUAL BACKGROUND

A. The SEC files a Complaint alleging that R. Allen Stanford and other Stanford Entity management perpetrated a ponzi scheme defrauding investors of billions of dollars.

21. R. Allen Stanford (“Stanford”) owned 100 percent of SFG, which was the parent company of the Stanford Entities.¹⁵ These entities included SIB, a private offshore bank serving 30,000 clients in 131 countries; SGC, a Houston-based broker-dealer and investment advisor; and Stanford Capital Management (“SCM”), a registered investment advisor.¹⁶ Holt, Davis, Lopez, and Kuhrt served on the board of directors or in other management roles for the Stanford Entities. Leroy King was Chief Executive Officer of SIB’s Antigua inspecting agency, the Financial Services Regulatory Commission (“FSRC”).¹⁷

22. Together, the Management Defendants, with King’s complicity, managed, marketed, and monitored SIB’s extensive and purportedly fraudulent CD investment program. The CDs offered rates of return above those offered by CDs issued through U.S. commercial banks.¹⁸ SIB broker-dealer SGC marketed the CDs by recruiting Financial Advisors (along with their clients) from other brokerage firms.¹⁹ This recruiting effort was buttressed by unusually high commissions SGC paid to the advisors.²⁰

¹⁵ Indictment (Count 1) ¶¶ 1, 4; Affidavit ¶ 3; SEC Complaint ¶¶ 12-14.

The factual allegations in this section are derived in part from the First Amended Complaint filed by the SEC on February 27, 2009 (the “SEC Complaint”) [Docket No. 48], an Affidavit submitted by Special Agent Vanessa G. Walther of the Federal Bureau of Investigation (“FBI”) on February 25, 2009 in support of a criminal complaint filed in the United States District Court for the Northern District of Texas on the same day (Case No. 3-09-MJ-56) (the “Affidavit”), and a 21-count Criminal Indictment (the “Indictment”) filed by the United States Department of Justice on June 18, 2009 in the United States District Court for the Southern District of Texas, Houston Division.

¹⁶ Indictment (Count 1) ¶¶ 1, 4; Affidavit ¶ 3; SEC Complaint ¶¶ 12-14.

¹⁷ SEC Complaint ¶¶ 5, 11.

¹⁸ Affidavit ¶ 6; SEC Complaint ¶ 26.

¹⁹ Indictment (Count 1) ¶ 15; Affidavit ¶ 7.

²⁰ Indictment (Count 1) ¶ 15; Affidavit ¶ 7; SEC Complaint ¶ 27.

23. On February 16, 2009, the SEC filed a Complaint alleging “massive, on-going fraud” and seeking relief against various Stanford Entities, Stanford, Davis, and Holt.²¹ The SEC filed an Amended Complaint on February 27, further alleging “misappropriation of billions of dollars of investor funds” and other fraudulent conduct.²²

24. The SEC alleged that SIB had sold approximately \$8 billion worth of CDs by touting (1) the bank’s safety and security; (2) consistent double digit returns on the bank’s investment portfolio; and (3) high return rates on the CDs that greatly exceeded those offered by commercial banks in the United States.²³ Unbeknownst to investors, however, Stanford and Davis had misappropriated at least \$1.6 billion of investor money through bogus personal loans to Stanford and had “invested” an undetermined amount of investor funds in speculative, unprofitable private businesses controlled by Stanford.²⁴

25. To conceal the fraud, Stanford and Davis purportedly decided on a pre-determined return on investment for SIB’s portfolio each month and instructed SIB’s internal accountants to “reverse-engineer” financial statements to make it appear as though the bank had achieved its desired financial goals.²⁵ These financial statements allegedly bore no relationship to the actual performance of the bank’s investment portfolio, however.²⁶

26. In addition, SGC and SCM purportedly sold more than \$1 billion through the Stanford Allocation Strategy (“SAS”) proprietary mutual fund wrap program, using materially

²¹ Indictment (Count 1) ¶ 32.

²² *Id.*; SEC Complaint ¶ 1.

²³ SEC Complaint ¶ 3.

²⁴ *Id.* ¶ 4.

²⁵ *Id.* ¶ 5.

²⁶ *Id.*

false and misleading historical performance data.²⁷ The fraudulent SAS performance results were allegedly used to recruit new financial advisers who were heavily incentivized to reallocate their clients' assets to SIB's CD program.²⁸

B. This Court makes a preliminary finding that the Stanford Entities were engaged in fraud and issues a Receivership Order.

27. Based on the allegations in the SEC Complaint and certain evidence offered in support of those allegations, this Court found good cause to believe that Stanford, Davis, Holt, and various Stanford Entities had committed a massive fraud and violated numerous securities laws. On February 17, 2009, the Court entered a Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents and Order Authorizing Expedited Discovery.²⁹

28. On February 17, 2009, this Court also issued an Order (the "Receivership Order") appointing Ralph S. Janvey as Receiver (the "Receiver") with "full power of an equity receiver under common law as well as such powers as are enumerated herein."^{30 31} The Receiver was ordered "to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate," and to "perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate."^{32 33} The Receivership Order also ordered the seizure of and enjoined

²⁷ *Id.* ¶ 6.

²⁸ *Id.*

²⁹ Temporary Restraining Order ¶¶ 1-12 [Docket No. 8].

³⁰ Receivership Order ¶ 2 [Docket No. 10].

³¹ The Court amended its order on March 12, 2009, but the provisions of the Receivership Order relevant to this Complaint remain unchanged. *See* Amended Order Appointing Receiver at 1, 8 [Docket No. 157].

³² Receivership Order ¶¶ 4 and 5.

any payment or expenditure from the Receivership Estate and gave the Receiver the authority to “institute actions or proceedings to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate.”³⁴ The Receivership Order vested the Receiver with “full control of the Receivership Estate with the power to retain or remove, as the Receiver deems necessary or advisable, any officer, director, independent contractor, employee or agent of the Receivership Estate.”³⁵ Consistent with the Court’s Order, the Receiver initiated several proceedings against various individuals seeking to obtain possession of assets purportedly traceable to the Stanford Entities or associated individuals’ wrongful conduct.

C. The United States Department of Justice charges Stanford Entity Directors, Officers, and management on various counts of conspiracy, wire fraud, mail fraud, obstruction of an SEC investigation, and destruction of records.

29. On June 18, 2009, in the U.S. District Court for the Southern District of Texas, indictments were returned against Stanford, Holt, Lopez, and Kuhrt on charges of conspiracy to commit mail, wire, and securities fraud; seven counts of wire fraud; ten counts of mail fraud; and conspiracy to commit money laundering. Stanford and Holt were also indicted for obstruction of and conspiracy to obstruct an SEC investigation.

30. In addition, Raffanello, and Perraud were indicted on May 7, 2009 in the U.S. District Court for the Southern District of Florida for knowingly altering, destroying, and

³³ The “Receivership Estate” consists of “Receivership Assets” and “Receivership Records.” *Id.* ¶ 2. The Order Appointing Receiver defines “Receivership Assets” as the “assets, monies, securities, properties, real and personal, tangible and intangible, or whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the Defendants and all entities they own or control.” *Id.* ¶ 1. “Receivership Records,” in turn, consist of “books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers, telephones, personal digital devices and other informational resources of or in possession of the Defendants, or issued by Defendants and in possession of any agent or employee of the Defendants.” *Id.*

³⁴ *Id.* ¶ 5.

³⁵ *Id.*

mutilating records with the intent to obstruct the SEC's investigation into the Stanford Entities. On September 10, 2009, a Florida grand jury returned a Superseding Indictment charging both men with counts of conspiracy to obstruct a pending proceeding before the SEC and to destroy records in an SEC investigation, obstruction of a proceeding before the SEC, and destruction of records in a federal investigation.³⁶

31. The Superseding Indictment against Raffanello and Perraud alleges that they orchestrated and carried out a plan to shred company documents located at SFG's offices in Fort Lauderdale, Florida. These Defendants allegedly undertook this course of action on or about February 23, 2009, just a few days after the United States District Court for the Northern District of Texas issued the Receivership Order. The Receivership Order, among other things, includes language enjoining and restraining all Stanford personnel from destroying, mutilating, concealing, altering or otherwise disposing company records.³⁷ The Superseding Indictment alleges that both Raffanello and Perraud had knowledge of the Receivership Order and its contents.³⁸

32. The Superseding Indictment alleges that on February 23, 2009, Raffanello instructed an SFG employee to contact a shredding company (the "Shredding Company") "to arrange for immediate destruction of all the documents" at SFG's office in Fort Lauderdale.³⁹ It further alleges that, on or about February 23, 2009, Bruce Perraud placed a telephone call to the

³⁶ On September 30, 2009, Raffanello (later joined by Perraud) moved to dismiss the Indictment in its entirety. A magistrate judge in the Southern District of Florida issued a report and recommendation on November 2, 2009 that the court grant in part and deny in part the Defendants' Motion to Dismiss. Specifically, the magistrate recommended that the court grant Defendants' Motion to Dismiss with respect to Count II (obstruction of a proceeding before the SEC) and the part of Count I (Conspiracy) relating to the underlying obstruction charge. The magistrate recommended that the court deny Defendants' Motion in all other respects. To Underwriters' knowledge, the court has not yet adopted the magistrate's recommendation.

³⁷ Receivership Order ¶ 13.

³⁸ Superseding Indictment ¶¶ 17-20.

³⁹ Superseding Indictment ¶ 21.

Shredding Company to request that it come to SFG's offices to shred numerous documents.⁴⁰ On February 25, 2009, a Shredding Company representative arrived at SFG's office.⁴¹ Perraud escorted that individual to the documents and then supervised as that person packed a 95-gallon bin with documents.⁴² Perraud and the Shredding Company representative then went to the Shredding Company's truck, and Perraud supervised the shredding of documents at a document shredder located in the truck.⁴³ While Perraud supervised the document shredding, other SFG employees gathered additional documents and files from SFG's offices and automobiles in the parking lot so those could be shredded as well.⁴⁴ The Superseding Indictment further alleges that when the Receiver's representative arrived at SFG's Fort Lauderdale office on February 26, 2009, Raffanello confronted the representative, "ordered the representative to sit in the back office," and interceded to prevent the representative from questioning Perraud regarding SFG's documents and records.⁴⁵

D. James Davis pleads guilty and describes criminal conduct by the Management Defendants.

33. On August 27, 2009, Davis waived indictment and pled guilty to a criminal information charging him with mail fraud; conspiracy to violate the mail, wire, and securities fraud laws; and conspiracy to obstruct a proceeding before the SEC. On August 27, 2009, he entered a guilty plea on those charges. During his allocution, Davis testified under oath to his and the other Management Defendants' roles in perpetrating a fraud on investors.

⁴⁰ *Id.* ¶ 22.

⁴¹ *Id.* ¶ 23.

⁴² *Id.* ¶ 24.

⁴³ Superseding Indictment ¶¶ 24 and 25.

⁴⁴ *Id.* ¶ 25 and 26.

⁴⁵ *Id.* ¶ 27.

34. Davis admitted a number of facts under oath. Specifically, Davis admitted that from at least 1999 through February 2009, he conspired with the other Management Defendants to orchestrate a scheme whereby investors were duped into investing billions into SIB's CD program on the basis of false representations that their investments, and indeed SIB itself, were safe and secure.⁴⁶ Davis testified as to how, at the request of Stanford, he made false entries into the books and records of SIB to artificially inflate earnings and assets.⁴⁷ SIB would then report these false numbers to investors in annual reports and to the Antiguan regulator, the FSRC, in regulatory filings.⁴⁸ Davis further admitted that there were a number of relevant facts that he took part in hiding from investors, including the existence of billions of dollars in personal loans to Allen Stanford, artificial inflation of real estate listed as assets on the Stanford Entities' books, and the fact that the Stanford Companies were paying hundreds of thousands of dollars of bribes to the FSRC, and specifically to Leroy King, to go along with the scheme.⁴⁹ With regard to this last admission, Davis acknowledged signature authority over a Swiss bank account from which he directed bribe payments to the FSRC and to allegedly independent outside auditors in Antigua.⁵⁰ Davis also admitted his role in a scheme that began in 2005 to obstruct the SEC's investigation of SIB and its CD program.⁵¹ For example, Davis testified to his role in intercepting, with King's help, the SEC's confidential investigatory letters to the FSRC.⁵² He and others would respond to the SEC's letters by making false statements about

⁴⁶ Davis Plea Transcript at 16.

⁴⁷ *Id.*

⁴⁸ *Id.* at 16-17.

⁴⁹ *Id.* at 17-18.

⁵⁰ Davis Plea Transcript at 18.

⁵¹ *Id.* at 19.

⁵² *Id.*

the financial condition of SIB.⁵³ Davis further admitted that he and others falsely convinced the SEC that he and Allen Stanford did not have knowledge of SIB's asset portfolio to the extent Holt did, and that Holt should therefore be the person to answer the SEC's questions.⁵⁴ Davis admitted that he and others put up Holt to testify before the SEC on February 10, 2009.⁵⁵ In her appearance before the SEC, Holt allegedly gave false testimony.⁵⁶

35. Davis's sworn Plea Agreement further describes how the Management Defendants perpetrated their ponzi scheme. Specifically, Davis admitted that he, Stanford, Lopez, and Kuhrt regularly created false books and records together and submitted fictitious investment reports to the Antigua FSRC on a quarterly basis.⁵⁷ The Plea Agreement states: "This continued routine false reporting by Stanford, Davis, Lopez, Kuhrt and their conspirators . . . caus[ed] the creation of a massive Ponzi scheme."⁵⁸ Additionally, Davis admitted that under Stanford's instruction, he regularly wired funds from a Swiss bank account to an Antigua bank account, from which King withdrew bribe payments in United States dollars.⁵⁹ Davis further admitted that he, Stanford, and Holt, unbeknownst to investors, segregated SIB's investment portfolio into three investment tiers, of which Holt managed only 10%, though SIB represented that she managed the portfolio in its entirety.⁶⁰ At least \$2 billion dollars of loans to Stanford himself were concealed within the portfolio as "investments."⁶¹ Moreover, Davis describes how he, Stanford, Lopez, and Kuhrt designed a real estate transaction where they

⁵³ *Id.*

⁵⁴ *Id.* at 20.

⁵⁵ Davis Plea Transcript at 20.

⁵⁶ *Id.*

⁵⁷ Davis Plea ¶ 17(h).

⁵⁸ *Id.* ¶ 17(n).

⁵⁹ *Id.* ¶¶ 17(p-q).

⁶⁰ *Id.* ¶¶ 17(aa-bb)

⁶¹ *Id.* ¶ 17(cc).

falsely inflated and converted \$65 million in real estate into a purported \$3.2 billion asset of SIB through related-party property flips by Stanford business entities.⁶²

E. Stanford investors file individual and class action lawsuits against SFG Companies, Directors, Officers, Financial Advisors and employees.

36. On the heels of the SEC Action and the criminal charges, Stanford investors, believing their investments worthless or nearly worthless, began filing individual and class action civil lawsuits against SFG Companies, Directors, Officers, Financial Advisors, and employees in jurisdictions throughout the United States and in several foreign nations. Likewise, the Receiver, standing in the Company's shoes, has brought a number of suits, particularly against so-called "Relief Defendants" who are alleged to have reaped ill-gotten gains as a result of their association with the Stanford Entities. Currently, there are approximately 50 suits pending in state or federal court in six states.⁶³ There are approximately ten foreign actions pending, primarily in Latin America, but also in Canada and the United Kingdom. There are several arbitrations pending as well as a number of potential claims that may soon ripen into lawsuits.

37. The allegations in these civil suits vary widely, but they all arise out of the Stanford Entities' demise as a result of what is alleged to be a massive ponzi scheme. There are a number of suits that have been brought by and against the former members of Stanford's management team. In one case, for example, Holt filed a lawsuit against SGC and its attorneys Mauricio Alvarado, Thomas Sjoblom, and Proskauer Rose, LLP, alleging various causes of action relating to those person's purported misrepresentation of Holt during her interviews with the SEC prior to her indictment.

⁶² *Id.*

⁶³ A few of these cases are currently stayed.

38. There are an even greater number of suits that have been brought against individuals who worked as Financial Advisors within the Stanford organization. These suits, which appear to arise primarily from the provision of professional services to victimized investors, involve many different claims, including but not limited to fraud, negligence, negligent misrepresentation, state and federal securities law violations, breach of fiduciary duties, breach of duties of good faith and fair dealing, and violation of state deceptive trade practices law. Many of the defendants in these lawsuits have noticed claims under the Policies. The Receiver has likewise sought coverage for, and noticed a number of claims for coverage to Underwriters for suits brought against the Stanford Entities.

39. In addition to these lawsuits, there are also several ongoing government inquiries and investigations into the Stanford Entities and principals, including reviews brought by the SEC and the Texas State Securities Board.

F. **This Court asserts its jurisdiction over the Policies, permits disbursement of certain Policy proceeds, and enjoins Stanford from seeking relief in other courts.**

40. On June 24, 2009, the Receiver notified Underwriters (through its agent for notice of claims) of his position that proceeds of the Policies are assets of the Receivership Estate under the February 17, 2009 Receivership Order. The Receiver further asserted that the Receiver's right to contractual proceeds supersedes the insured's. Thus, the Receiver's position, if correct, would have meant that any distribution of Policy proceeds would have violated this Court's Receivership Order, and possibly subjected Underwriters to contempt sanctions.

41. Underwriters filed a Motion to Intervene in the SEC Action on September 11, 2009.⁶⁴ In that Motion, Underwriters requested that this Court clarify whether the proceeds of the Policies are part of the Receivership Estate, and thus whether disbursement of those proceeds would violate the Receivership Order.⁶⁵

42. On October 9, 2009, this Court held that Underwriters are permitted to pay defense costs from Policy proceeds while refraining from ruling on whether or not the proceeds are assets of the Receivership Estate.⁶⁶ In doing so, the Court acted within and retained its jurisdiction over the Policies, stating:

Today the Court holds only that its prior orders do not bar Lloyd's from disbursing policy proceeds to fund directors' and officers' defense costs in accordance with the D&O policies' terms and conditions. The Court does not, however, hold that any defendant is *entitled* to have its defense costs paid by D&O proceeds. Lloyd's reminds the Court that Lloyd's may ultimately deny coverage for even the individual directors' and officers' claims as barred by various policy exclusions. The Court also does not today authorize Lloyd's to pay any claims other than those for defense costs. Whether and how any successful claims within policy coverage will be paid is a matter the Court can address if and when that issue is ripe.⁶⁷

43. During the same time period, Stanford filed an emergency application in the English High Court of Justice seeking relief against the Receiver that would trump any rulings of this Court. After the Receiver became aware of the English Court application, he requested that this Court enjoin the application and require Stanford's withdrawal. On September 28, this Court ordered Stanford to withdraw the application and enjoined him from taking steps to seek relief relating to the Policies in any other court, stating:

⁶⁴ See Certain Underwriters at Lloyd's of London's Brief in Support of Motion to Intervene [Docket No. 774].

⁶⁵ *Id.* at 2.

⁶⁶ Order Addressing Holt's Motion for Clarification of Receivership Order [Docket No. 831].

⁶⁷ *Id.* (footnote omitted).

The Court finds that it has jurisdiction over Defendant Allen Stanford, as well as the insurance policies at issue: (1) Lloyd's D&O and Company Indemnity Policy, reference number 576/MNK558900, (2) Lloyd's Financial Institutions Crime and Professional Indemnity Policy, reference number 576/MNA85300, and (3) Lloyd's excess Blended "Wrap" Policy, reference number 576/MNA831400 It appears that Stanford is purporting to seek relief before another tribunal relating to the Policies. Such actions by Stanford both violate the terms of this Court's prior orders, as well as threaten to interfere with this Court's jurisdiction over the Policies.⁶⁸

44. At this time, there has been no final determination that the full proceeds of any of the Policies are or ever will be payable to Defendants, the Receiver, or any other claimant. The Policies specifically define and exclude coverage for, among other things, claims resulting from money laundering activities, fraudulent and criminal acts, prior known circumstances, and intentional corporate policies, which are exactly the nature of the allegations in the SEC Complaint and the criminal charges, and of the facts established in Davis' Plea Agreement and allocution.

V. THE INSURANCE POLICIES

A. The D&O Policy.

45. On August 25, 2008, Underwriters issued the D&O Policy to SFG, SGC, and various Stanford Entities for the Policy Period August 15, 2008 to August 15, 2009. The D&O Policy specifies that "The Underwriters shall pay, on behalf of the Directors and Officers, Loss resulting from any Claim first made during the Policy Period for a Wrongful Act."⁶⁹

46. This insuring clause contains several defined terms. For example, "Claim" means "any judicial or administrative proceeding initiated against any of the Directors and Officers or the Company in which they may be subjected to a binding adjudication of liability

⁶⁸ Order Addressing Receiver's Emergency Motion [Docket No. 810].

⁶⁹ D&O Policy Art. I, cl. A.

for damages or other relief, including any appeal therefrom.”⁷⁰ A “Wrongful Act” is “any actual or alleged error, act, omission, misstatement, misleading statement, neglect or breach of duty or negligent act by . . . the Directors and Officers whilst acting in their capacity as directors or officers of the Company.”⁷¹ “Loss” includes “damages, judgments, settlements and Costs, Charges and Expenses . . . incurred by any of the Directors or Officers.”⁷²

47. Directors and Officers potentially entitled to coverage under this Policy are “any persons who were, now are, or shall be directors or officers of the Company and shall include:

- (1) foreign titled equivalents of directors and officers in the U.S. Corporation;

* * *

- (3) employees of the Company solely whilst acting in a supervisory or managerial capacity;

* * *

- (5) employees of the Company, if named as a co-defendant with a director or officer of the Company to the extent that the Claim does not involve a Claim of the type excluded under Article IV. Exclusion P.”⁷³

48. The D&O Policy contains an aggregate limit of liability of \$5 million under each of two Sections and a \$250,000 per Claim Retention that is applicable to certain types of Claims.⁷⁴ This means that Underwriters are required to pay Loss resulting from Claims in excess of any applicable Retention up to \$5 million for each of the two Sections.⁷⁵ With one exception, the D&O Policy generally requires Underwriters to pay Loss only upon a final

⁷⁰ Art. III, cl. B.

⁷¹ Art. III, cl. H.

⁷² Art. III, cl. F. “Costs, Charges and Expenses,” in turn, is defined as “all reasonable and necessary legal fees and expenses incurred by the Directors and Officers . . . in defense of any Claim.” Art. III, cl. D.

⁷³ Art. III, cl. E. Exclusion P relates to claims arising out of wrongful employment practices or workplace conduct.

⁷⁴ Policy Schedule, Items C and D.

⁷⁵ Art. V, cl. A. The two sections of the D&O Policy include a separate listing of Antiguan-based insureds and Houston-based insureds.

disposition of a Claim.⁷⁶ The exception is that, if Underwriters give prior written consent for a claimant Officer or Director under the Policy to incur Costs, Charges and Expenses,⁷⁷ they will pay such Costs, Charges and Expenses no more than once every 60 days.⁷⁸

49. Even if coverage is available under the Policy, however, these insuring provisions are subject to a number of exclusions that may operate to bar coverage. Specifically, the Policy excludes coverage for, among other things, any Loss due to Claims insured under any other D&O policy or policies;⁷⁹ for fraudulent, dishonest and/or criminal acts;⁸⁰ based on Wrongful Acts arising subsequent to certain events;⁸¹ and for acts constituting money

⁷⁶ Art. V, cl. A.

⁷⁷ The D&O Policy does not impose a duty to defend on Underwriters. Art. VI, cl. B.

⁷⁸ Art. VI, cl. B.

⁷⁹ Exclusion C of the D&O Policy provides that

“The Underwriters shall not be liable to make any payment for Loss insured under any other existing valid Directors and Officers Liability policy or policies, regardless of whether or not Loss in connection with such Claim is collectable or recoverable under such other Director and Officers Liability policy or policies; provided, however, this exclusion shall not apply to the amount of Loss which is in excess of the amount of any retention and the limit of liability of such other policy or policies.”

⁸⁰ Exclusion I of the D&O Policy states that

“The Underwriters shall not be liable to make any payment for Loss resulting from any Claim brought about or contributed to in fact by: (a) any dishonest, fraudulent or criminal act or omission by the Directors or Officers or the Company, or (b) any personal profit or advantage gained by any of the Directors and Officers or the Company to which they were not legally entitled . . . as determined by a final adjudication.”

⁸¹ Exclusion J of the D&O Policy provides that

The Underwriters shall not be liable to make any payment for Loss based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any Wrongful Act occurring subsequent to the time that the earliest of the following events take place:

- (1) Another entity or individual holds a majority of the voting rights in the Parent Company.
- (2) Another entity or individual is a member of the Parent Company and has the right to appoint or remove a majority of its board of directors.
- (3) Another entity or individual has the right to exercise a dominant influence over the Parent company
 - (i) by virtue of the creation of provisions contained in the Parent Company’s Memorandum of Association or Articles of Association, or
 - (ii) by virtue of the creation of a control contract.
- (4) Another entity or individual is a member of the Parent Company and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the Parent Company.

laundering under the Policy.⁸² Only if coverage exists and no exclusion applies is Loss payable under the Policy.

B. The PI Policy.

50. On July 25, 2008, Underwriters issued the PI Policy to SFG, SGC, and various Stanford Entities for the Policy Period August 15, 2008 to August 15, 2009. This Policy provides that “Underwriters shall reimburse the Assureds for Loss resulting from any Claim first made during the Policy Period for a Wrongful Act in the performance of a Professional Service.”⁸³ ⁸⁴ Again, this insuring clause contains several defined terms. A “Claim” is “any written demand for monetary or non-monetary damages or other relief ... or judicial or administrative proceeding ... initiated against any of the Assureds in which they may be subject to a binding adjudication of liability for damages or such relief.”⁸⁵ A “Wrongful Act” is “any actual or alleged negligent error, negligent omission or negligent act or breach of trust or of constructive trust or of fiduciary duty or breach of professional duty in rendering or failing to render Professional Services.”⁸⁶ In turn, the PI Policy defines “Professional Services” as any “activities allowed under the law and regulations governing services provided ... by the Assureds ... which are performed for or on

(5) The merger of the Parent Company into another company such that the Parent Company is not the surviving entity.

⁸² Exclusion T of the D&O Policy provides that “The Underwriters shall not be liable to make any payment for Loss resulting from any Claim arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) of Money Laundering or any act or acts (or alleged act or acts) which are in breach of and/or constitute an offence or offences under any money laundering legislation (or any provisions and/or rules or regulations made by any Regulatory Body or Authority thereunder).”

Exclusion T goes on to say:

“Notwithstanding the foregoing Exclusion, Underwriters shall pay Costs, Charges, and Expenses in the event of an alleged act or alleged acts until such time that it is determined that the alleged act or alleged acts did in fact occur. In such event the Directors and Officers and the Company will reimburse Underwriters for such Costs, Charges and Expenses paid on their behalf.”

⁸³ PI Policy Art. I.

⁸⁴ Assureds means the Company and the Directors, Officers and Employees. PI Policy Art. II, cl. B.

⁸⁵ PI Policy Art. II, cl. C.

⁸⁶ Art. II, cl. N.

behalf of any client or customer.”⁸⁷ Finally, “Loss” includes “damages, settlements, Costs, Charges and Expenses and amounts payable under Restitution Orders incurred by any of the Assureds.”⁸⁸

51. The PI Policy contains a limit of liability of \$5 million for each single Claim, an aggregate annual limit of \$10 million, and a \$250,000 or \$750,000 retention, depending on the identity of the claimant.⁸⁹ The PI Policy requires Underwriters to “reimburse Loss only upon the final disposition of any Claim; provided, however, that Underwriters at their sole discretion may elect to advance Costs, Charges and Expenses at any time.”⁹⁰

52. Just as is the case with the D&O Policy, the PI Policy’s insuring clauses are subject to a number of exclusions that relieve Underwriters of the obligation to make payments in connection with certain types of Claims. Thus, again as in the case of the D&O Policy, there are exclusions for Claims resulting from fraud, dishonest and/or criminal acts⁹¹ and for money laundering.⁹² In addition, though, this Policy contains other exclusions not found in the D&O Policy. These include, but are not limited to, exclusions for Claims brought by a governmental body or agency,⁹³ for Claims arising from an intentional corporate or business policy,⁹⁴ and for

⁸⁷ Art. II, cl. F.

⁸⁸ Art. II, cl. I.

⁸⁹ Policy Declarations, Items C and D.

⁹⁰ Art. IV, cl. F. As does the D&O Policy, the PI Policy places the duty to defend on Assureds rather than on Underwriters. Art. V, cl. B.

⁹¹ Exclusion E of the PI Policy states that “Underwriters shall not be liable . . . to make any payment in connection with any Claim brought about or contributed to in fact by any dishonest, fraudulent or criminal act or omission or any personal profit or advantage gained by any of the Directors, Officers and Employees to which they were not legally entitled, provided, however, no Wrongful Act shall be imputed to any other person for the purpose of determining the applicability of this Exclusion.”

⁹² Exclusion S of the PI Policy states that “Underwriters shall not be liable . . . to make any payment in connection with any Claim arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) which are in breach of and/or constitute an offence or offences under any Money Laundering legislation (or any provisions and/or rules or regulations made by any regulatory body or authority thereunder). . . .”

⁹³ Exclusion K of the PI Policy states that “Underwriters shall not be liable . . . to make any payment in connection with any Claim made against any of the Assureds by or at the behest of any federal or state governmental

Claims arising from circumstances known to the Assureds at or prior to the inception of the Policy.⁹⁵ Again, Loss is payable under the Policy only if coverage exists and no exclusion applies.

VI. REQUEST FOR DECLARATORY RELIEF

53. Underwriters incorporate paragraphs 1 through 52 by reference.

54. The Declaratory Judgment Act expressly authorizes this Court to declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.⁹⁶ Moreover, any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.⁹⁷

55. Underwriters respectfully request that this Court issue the following declarations to terminate the uncertainty or controversy giving rise to this proceeding.

body or governmental agency, except when acting solely in the capacity of a customer or client of the Company or on behalf of a customer or client of the Company;"

⁹⁴ Exclusion R of the PI Policy states that "Underwriters shall not be liable . . . to make any payment in connection with any Claim for any Intentional Corporate or Business Policy.

This Exclusion goes on to explain that "Corporate or Business Policy as used in this Exclusion shall mean any policy which has been approved, condoned, ratified or endorsed by two or more members of the Assureds' Management and which results in (a) a financial disadvantage to two or more of the Assured's clients, and (b) the Assured making a financial gain to which they were not entitled, whether or not such gain was returned."

It further states that "[t]he Assured's Management shall be deemed to be R. Allen Stanford, James Davis and James Stanford;"

⁹⁵ Exclusion X of the PI Policy states that "Underwriters shall not be liable . . . to make any payment in connection with any Claim

(a) arising out of or in connection with any circumstances or occurrences which have been notified to the Insurer on any other insurance affected prior to the inception of this Policy;

(b) arising out of or in connection with any circumstances or occurrences known to the Assured at inception of this Policy which could reasonably be expected to give rise to Loss of more than USD 100,000 under this Policy."

This exclusion X further provides:

"Solely for the purposes of knowledge as required by point (b) above, the term 'Assured' shall mean: the first named Assured's General Counsel or Corporate Risk manager."

⁹⁶ 28 U.S.C. § 2201.

⁹⁷ *Id.*

COUNT ONE: MONEY LAUNDERING EXCLUSION OF THE D&O POLICY

56. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion T of the D&O Policy relating to claims “arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) of Money Laundering” relieves Underwriters of their obligation to pay for any Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the D&O Policy.

57. Underwriters seek a declaration that Exclusion T of the D&O Policy operates to relieve their obligations to pay any amounts for Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the D&O Policy. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT TWO: FRAUD EXCLUSION OF THE D&O POLICY

58. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion I of the D&O Policy relating to “dishonest, fraudulent or criminal acts or omissions by the Directors or Officers of the Company” or “personal profit or advantage gained by any of the Directors and Officers or the Company to which they were not legally entitled” relieves Underwriters of their obligation to pay for any Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the D&O Policy.

59. Underwriters seek a declaration that Exclusion I of the D&O Policy operates to relieve their obligations to pay any amounts for Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the D&O Policy.

60. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT THREE: SUBSEQUENT WRONGFUL ACTS EXCLUSION OF THE D&O POLICY

61. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion J of the D&O Policy relating to “Wrongful Act[s] occurring subsequent to the time that the earliest of [certain] events take place” relieves Underwriters of their obligation to pay for any Loss with respect to the Document Destruction Defendants under the D&O Policy.

62. Underwriters seek a declaration that Exclusion J of the D&O Policy operates to relieve their obligations to pay any amounts for Loss with respect to the Document Destruction Defendants under the D&O Policy.

63. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT FOUR: COVERAGE UNDER THE PI POLICY

64. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, coverage exists under the PI Policy with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants), whose claims do not result from the performance of professional services, as that term is defined in the PI Policy.

65. Underwriters seek a declaration that there is no coverage under the PI Policy, and they have no obligation to reimburse for any Loss resulting from noticed claims under the PI Policy with respect to the Claims of the Defendants (both Management Defendants and

Document Destruction Defendants), whose claims do not result from the performance of professional services as that term is defined in the PI Policy.

66. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT FIVE: FRAUD EXCLUSION OF THE PI POLICY

67. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion E of the PI Policy relating to any “dishonest, fraudulent or criminal act or omission or any personal profit or advantage gained by any of the Directors, Officers, and Employees to which they were not legally entitled” relieves Underwriters of their obligation to reimburse for any Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy.

68. Underwriters seek a declaration that, if Defendants are entitled to coverage under the PI Policy, then Exclusion E of the PI Policy operates to relieve Underwriters of any obligation to reimburse any amounts for Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy.

69. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT SIX: GOVERNMENT CLAIM EXCLUSION OF THE PI POLICY

70. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion K of the PI Policy relating to any claim made “by or at the behest of any federal or state government, governmental body or governmental agency” relieves Underwriters of their obligation to reimburse for any Loss with respect to the

Claim of the Defendants (both Management Defendants and Document Destruction Defendants).

71. Underwriters seek a declaration that, if Defendants are entitled to coverage under the PI Policy, then Exclusion K of the PI Policy operates to relieve Underwriters of any obligation to reimburse any amounts for Loss with respect to the Claim of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy.

72. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

**COUNT SEVEN: INTENTIONAL CORPORATE POLICY
EXCLUSION OF THE PI POLICY**

73. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion R of the PI Policy relating to any “intentional Corporate or Business Policy . . . approved, condoned, ratified or endorsed by . . . Management” relieves Underwriters of their obligation to reimburse Loss with respect to the Claim of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy.

74. Underwriters seek a declaration that, if Defendants are entitled to coverage under the PI Policy, then Exclusion R of the PI Policy operates to relieve any obligation to reimburse any amounts for Loss with respect to the Claim of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy.

75. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT EIGHT: MONEY LAUNDERING EXCLUSION OF THE PI POLICY

76. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion S of the PI Policy relating to claims “arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) of Money Laundering” relieves Underwriters of their obligation to reimburse Loss with respect to the Claim of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy.

77. Underwriters seek a declaration that, if Defendants are entitled to coverage under the PI Policy, then Exclusion S of the PI Policy operates to relieve Underwriters of any obligation to reimburse any amounts for Loss with respect to the Claim of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy.

78. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT NINE: PRIOR KNOWLEDGE EXCLUSION OF THE PI POLICY

79. An actual case or controversy exists between the parties as to whether, under the circumstances set forth above, Exclusion X of the PI Policy relating to claims “arising out of or in connection with any circumstances or occurrences known [] at the inception of this Policy which could reasonably be expected to give rise to a Loss or more than USD 100,000” relieves Underwriters of their obligation to reimburse for any Loss with respect to the Claim of the Management Defendants under the PI Policy.

80. Underwriters seek a declaration that, if Defendants are entitled to coverage under the PI Policy, then Exclusion X of the PI Policy operates to relieve Underwriters of any obligation to reimburse any amounts for Loss with respect to the Claim of the Management Defendants under the PI Policy.

81. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

COUNT TEN: FORTUITY DOCTRINE

82. Prior to the inception of the Policies, the Management Defendants engaged in activities that might reasonably be expected to expose them to or result in liability, and they knew or should have known that these activities would result in a Loss. A Loss in progress as of the Policy inception precludes coverage for a claim arising out of such circumstances under Texas law. The Claims for which the Defendants (both Management Defendants and Document Destruction Defendants) seek coverage arose out of facts/circumstances known to the Management Defendants prior to Policy inception.

83. Accordingly, an actual case or controversy exists between the parties as to whether, under the circumstances set forth above, the common law fortuity doctrine relieves Underwriters of their obligation to pay, indemnify against, or reimburse for any Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the Policies.

84. Underwriters seek a declaration that the common law fortuity doctrine operates to relieve their obligations to pay, indemnify against, or reimburse for any Loss with respect to the Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the Policies.

85. Entry of a declaratory judgment is necessary and appropriate to avoid the risks and uncertainty arising out of the above-described controversy.

JURY DEMAND

86. Underwriters hereby demand a jury trial.

PRAYER

WHEREFORE, Underwriters respectfully request that the Court enter an Order including or directing the following relief:

87. For a declaratory judgment stating that there is no coverage under the PI Policy, and that Underwriters have no obligation to pay for any Loss resulting from Claims of the Defendants (both Management Defendants and Document Destruction Defendants) under the PI Policy because their claims do not arise from the performance of professional services.

88. For a declaratory judgment stating that one or more of the terms, conditions, or exclusions found in the Policies relieve Underwriters from any obligations to pay, reimburse for, or indemnify the Defendants, as set forth above, against any Loss resulting from any Claims as a result of Exclusions I, J, or T under the D&O Policy, and Exclusions E, K, R, S, or X under the PI Policy.

89. For a declaratory judgment stating that the common law fortuity doctrine operates to relieve Underwriters of their obligation to pay, indemnify against, or reimburse the Defendants (both Management Defendants and Document Destruction Defendants) for any Loss under the Policies.

90. For such other relief the Court deems proper, just and equitable.

